

## MEMORANDUM

<b>DATE</b>	April 12, 2017
<b>TO</b>	Board Members
<b>FROM</b>	Sandra Monterrubio, Enforcement Program Manager Board of Psychology
<b>SUBJECT</b>	Agenda item 7 - Review and Approve Possible Input to Judicial Council On Competence to Stand Trial Draft Guidelines

On March 29, 2017, Executive Officer Antonette Sorrick and Dr. Stephen Phillips attended a meeting at the Department of State Hospitals to discuss proposed guidelines for court-appointed experts, psychologists, and psychiatrists, to adhere to when assessing a subject's competency to stand trial.

Currently, California Rules of Court, rule 4.130(d)(2) provides that a court-appointed expert must examine the defendant and advise the court on the defendant's competency to stand trial. It requires submission of the report to the court, counsel for the defendant, and the prosecution.

The current proposal would amend rule 4.130(d)(2) to identify the information that must be included in a court-appointed expert's report on a criminal defendant's competency to stand trial.

Under this proposal, the following information would be provided by the expert to assist the courts in making competency determinations:

1. A brief statement of the examiner's training and previous experience as it relates to examining the competence of a criminal defendant to stand trial, and preparing a resulting report;
2. A summary of the examination conducted by the examiner on the defendant, including a current diagnosis, if any, of the defendant's mental disorder and a summary of the defendant's mental status;

3. A detailed analysis of the competence of the defendant to stand trial using California's current legal standard, including the defendant's ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental disorder;
4. A summary of an assessment conducted for malingering, or feigning symptoms, which may include, but need not be limited to, psychological testing;
5. Under Penal Code section 1369, a statement on whether treatment with antipsychotic medication is medically appropriate for the defendant, whether the treatment is likely to restore the defendant to mental competence, a list of likely or potential side effects of the medication, the expected efficacy of the medication, possible alternative treatments, whether it is medically appropriate to administer antipsychotic medication in the county jail, and whether the defendant has the capacity to make decisions regarding antipsychotic medication;
6. A list of all sources of information considered by the examiner, including legal, medical, school, military, employment, hospital, and psychiatric records; the evaluations of other experts; the results of psychological testing; and any other collateral sources considered in reaching his or her conclusion;
7. A statement on whether the examiner reviewed the police reports, criminal history, statement of the defendant, and statements of any witnesses to the alleged crime, as well as a summary of any information from those sources relevant to the examiner's opinion of competency;
8. A statement on whether the examiner reviewed the booking information, including the information from any booking, mental health screening, and mental health records following the alleged crime, as well as a summary of any information from those sources relevant to the examiner's opinion of competency; and
9. A summary of the examiner's consultation with the prosecutor and defendant's attorney, and of their impressions of the defendant's competence-related strengths and weaknesses.

The Board receives approximately 1-3 complaints per year involving competency to stand trial.

**Action Requested:**

Staff recommendation is for the Board to provide a letter in support of the draft guidelines and communicate its support to Judicial Council by the April 28, 2017 deadline.

Attachment A: Draft Guidelines