



Judicial Council of California. Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 28, 2011

Title	Agenda Item Type
Juvenile Law: Qualifications for Experts Evaluating Child's Competency to Participate in Juvenile Proceedings	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 5.645(d)	January 1, 2012
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	October 6, 2011
Hon. Kimberly J. Nystrom-Geist, Cochair Hon. Dean Stout, Cochair	Contact
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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending rule 5.645(d) of the California Rules of Court to meet the requirement in Welfare and Institutions Code section 709 that the Judicial Council develop and adopt rules regarding the qualifications of experts who evaluate children when the court or child's counsel raises the issue of the child's competency in any juvenile delinquency proceeding.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2012, amend rule 5.645(d) of the California Rules of Court to specify the qualifications of experts evaluating children's competency to participate in juvenile proceedings.

The proposed California Rule of Court is attached at pages 7–8.

Previous Council Action

The Judicial Council adopted rule 1498, effective January 1, 1999, to specify the procedures by which the court may order the evaluation and treatment of a mental condition of a child before the court when the court believes the child is mentally disabled or may be mentally ill. This rule was renumbered as rule 5.645 effective January 1, 2007.

Chief Justice Ronald M. George created the Task Force for Criminal Justice Collaboration on Mental Health Issues in February 2008 to explore ways to improve practices and procedures in cases involving adult and juvenile offenders with mental illness, to ensure the fair and expeditious administration of justice, and to promote improved access to treatment for defendants with mental illness in the criminal justice system. The task force was charged with developing recommendations for policymakers, including the Judicial Council and this advisory committee, to improve system-wide responses to offenders with mental illness. The juvenile subcommittee of the task force studied the issue of competence to participate in delinquency cases and issued expansive recommendations. They also examined the need for legislation regarding the competency of children in delinquency cases. While no recommendations specifically dealt with the issue of expert qualifications, the task force noted that procedures to determine competency should be clarified and improved. On April 29, 2011, the Judicial Council received and accepted these recommendations.

Rationale for Recommendation

In 2010, the Legislature enacted Welfare and Institutions Code section 709,¹ which requires that the Judicial Council develop and adopt rules for the implementation of requirements for experts who examine children when the court or child’s counsel raises the issue of competency in any juvenile delinquency proceeding.² Upon a showing of good cause, the court must appoint an expert to evaluate whether the child suffers from a mental disorder, developmental disability,

¹ See <http://law.onecle.com/california/welfare/709.html>. This section was added by Assem. Bill 2212 (Stats. 2010, ch. 671, § 1).

² In January 2011, the Assembly Budget Committee introduced Assembly Bill 104, which amended Welfare and Institutions Code section 709 to state that if the issue of competency is based on developmental disability, the court must appoint the regional center director, or his or her designee, to determine whether the child is competent to proceed. The Department of Developmental Services (DDS) was concerned that AB 104 would result in courts ordering the regional centers and DDS to provide services to youth found incompetent based upon a developmental disability without the regional center making a determination that the minor was eligible for the services under the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.). The Budget Committee included AB 104 as a trailer bill to the Omnibus Budget Bill, which resulted in no hearings or testimony on this provision, and expeditious passage of the legislation (which contained other budget related provisions concerning developmental services). After feedback from numerous juvenile justice stakeholders was considered, the director of the Department of Developmental Services agreed to support subsequent legislation to remove the requirement that the court appoint the regional center director as an expert and add language that provides that only the regional center determines eligibility for services under division 4.5 of the Lanterman Act. See Senate Bill 368 (Liu) http://leginfo.ca.gov/pub/11-12/bill/sen/sb_0351-0400/sb_368_bill_20111004_chaptered.html.

developmental immaturity, or other condition and, if so, whether the condition or conditions impair the minor's competency. The statute requires the expert to have expertise in child and adolescent development, to have training in the forensic evaluation of juveniles, and to be familiar with competency standards and accepted criteria used in evaluating competence. Proposed rule 5.645(d) specifies that the expert must be a licensed psychologist or psychiatrist with particular expertise in child development, forensic evaluation, competency standards, and interventions. The proposed rule delineates specific educational and training requirements for the psychiatrist and psychologist. In formulating this rule, the committee reviewed the question of including licensed social workers as experts and determined that only psychiatrists and psychologists possess the academic background, training in differential diagnosis, testing, assessment of a child's competency, forensic specialty training, and experience necessary to provide the court with appropriate competence evaluations.

As part of this process, the committee examined the statutes and rules of other states and California counties that addressed the issue of expert qualifications in juvenile competency matters. Currently 18 states have statutes or rules that address expert qualifications. Eight statutes specify that the court must appoint a psychiatrist or a psychologist to examine the child;³ four provide that the expert may also be a physician,⁴ and two allow for the addition of a designated mental health facility to examine the child.⁵ Courts in New Mexico⁶ appoint a physician, psychologist, or social worker. Nebraska⁷ requires the appointment of a physician, surgeon, psychiatrist, psychologist, or a community mental health service program as an expert, while Florida⁸ allows a mental health professional or the Agency for Persons with Disabilities as an examiner. Indiana⁹ provides no guidelines for the appointment of an examiner.

Of the six superior courts in California known to have adopted protocols regarding juvenile competency matters, Orange, San Diego and Sacramento require that the court appoint a psychologist or psychiatrist, San Francisco appoints a psychologist, and Los Angeles and Santa Clara use an expert panel.¹⁰

³ Ark. Code. Ann. § 9-27-502(b)(2)(A) ; Colo. Rev. Stat. § 19-2-1302 ; D.C. Code § 16-2315(b)(2) ; Ga. Code Ann. § 15-11-152(b) ; Md. Code Ann., Cts. & Jud. Proc. § 3-8A-01(z) ; N.Y. Fam. Ct. Act §§ 322.1, 730.10 ; Vt. Rules for Family Proceedings, rule 1(i)(2)); Wis. Stat. § 938.295(2)(a) .

⁴ La. Child. Code Ann. art. 834 ; Minn. Stat. Juv. Del. Proc. Rule 20.01, subd.3(c) ; ; Tex. Fam. Code Code Ann. § 51.20 (;Wyo.Stat. Ann. § 14-6-219 .

⁵Rev. Kansas Juvenile Justice Code K.S.A. 38-2348(b)(2); Ariz. Rev. Stat. § 8-291.02(A) .

⁶ N.M. Stat. Ann. § 32A-2-17(B).

⁷.Neb. Rev. Stat. § 43.258(1).

⁸ Fla. Stat. § 985.19(1)(b),(d)(e).

⁹ Ind. Stat§ 31-32-12-1 ;see also *In re K.G.*, 808 N.E.2d 631 (Ind. 2004).

¹⁰ Orange County Juvenile Court Competency Protocol (July 11, 2011), San Diego Protocol for Competency (updated 2009); Sacramento Court-Appointed Juvenile Delinquency Expert Panel Policies and Procedures for Experts (July 2010); San Francisco Policies for Competency Evaluations (December 2010); Los Angeles County Juvenile Court's Protocol Regarding Juvenile Competency to Stand Trial (2011); Santa Clara Juvenile Competency Manual and Protocol (2011). These local protocols are available at <http://www.courts.ca.gov/3061.htm>.

Consistent with Welfare and Institutions Code section 709, the proposed rule makes the appointment of an expert to evaluate the child mandatory instead of discretionary. It also changes the legal standard for juvenile competency to correspond with the new statutory language. Currently the rule requires the court to stay the proceedings upon a finding that the “child is not capable of understanding the proceedings or of cooperating with the attorney.” As amended, the rule requires the court to stay the proceedings and conduct a hearing if the child “lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding of the nature of the charges or proceedings against him or her.”

The amended rule also deletes inaccurate cross-references to the involuntary treatment statutes, Welfare and Institutions Code sections 6550–6552, which caused confusion for courts and attorneys. These sections apply only to children who are wards, whereas most children in competency matters have not been adjudged to be wards of the court. While section 6550 remains a possible option if the child found incompetent is already a ward and is mentally disordered, it does not specifically apply to incompetent youth. Additionally, it provides obsolete guidance regarding children found incompetent based on a developmental disability and no direction regarding children found incompetent based on developmental immaturity or other condition.

Comments, Alternatives Considered, and Policy Implications

The invitation to comment on this rule was circulated from April 21 through June 20, 2011, to the standard mailing list for family and juvenile law proposals as well as to the regular rules and forms mailing list. This distribution list includes appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators, attorneys, social workers, probation officers, mediators, and other family and juvenile law professionals. A total of 186 individuals and organizations provided comments. Six agreed with the rule as written and 19 agreed if modified. Of note, 161 individuals joined in the comment from the National Association of Social Workers, which disagreed with the proposal. These comments were virtually identical and will be addressed as one comment for purposes of this discussion.¹¹

The committee specifically invited comment on whether the court should expand the list of accepted experts to other professionals such as social workers. Thirteen comments agreed that

¹¹ The committee received a comment from the National Association of Social Workers, California Chapter, co-signed by Roberta Gonzales, Director of Government Relations and Political Affairs and Cheryl Jackson, Licensed Clinical Social Worker (see comment chart, comment #16), which requested the inclusion of licensed clinical social workers as experts. Subsequently, the committee received 161 substantively virtually identical comments. Some of the comments contained stylistic differences; some stated that they “strongly disagreed” and others stated that they “disagreed” with the proposed rule; and some included their educational background and training.

only psychiatrists or psychologists should conduct the competency evaluation. Comments included professionals representing the California Psychological Association; the Superior Courts of Los Angeles and Ventura Counties; the National Youth Screening and Assessment Project with the University of Massachusetts Medical School (supported by the John D. and Catherine T. MacArthur Foundation); a forensic psychologist with 40 years' experience in the area of juvenile competency who also teaches social workers at the University of California; the acting director of Forensic Services, Child Study and Treatment Center, in Washington state ; the Los Angeles and Orange Counties' Office of Public Defender; the Youth Law Center, and two psychologists. The committee received 5 individual comments and 162 comments organized by the National Association of Social Workers that requested that the rule include social workers as experts.

While the committee received comments from a range of sources that agreed with the rule as written, only social workers supported the inclusion of social workers as experts in competency evaluations.

After careful review and consideration, the committee found that psychologists and psychiatrists are uniquely qualified in terms of academic training; experience in selection, administration, and interpretation of specific tests used in child-specific assessments; and forensic report writing and testimony. In addition, psychologists and psychiatrists have the necessary expertise in neurological impairment, neurodevelopment deficits, psychiatric disorders, intellectual and other cognitive deficiencies, and learning disorders.

The committee received three suggestions to insert the word "juvenile" to clarify that the expert must be specifically familiar with juvenile competency standards. The committee agrees with this recommendation. Three comments also suggested that the committee remove the language "in California" from the requirement that the evaluator have familiarity with interventions, treatment, training, and programs for the child. The committee agrees that this limitation is unnecessary. These comments also advocated that the rule allow clinicians with other professional qualifications to be called as witnesses if necessary to provide the court with additional information, and the committee agreed. The committee also agrees with three comments suggesting the addition of a section that requires the services of a certified interpreter and the use of assessment tools that are culturally and linguistically appropriate.

The rule requires that the expert be knowledgeable about services and programs that may assist in the attainment of competence. This includes providing the court with information about available treatment options for possible mental health issues, disability services, and other areas affecting competency. Three commentators found this requirement burdensome for the expert. The committee found that on balance the expert is in the best position to provide this information to the court.

Alternatives considered and policy implications

Option 1. The committee considered the option of taking no action; however, the Legislature expressly mandated that the Judicial Council create a rule.

Option 2. The committee considered whether to include licensed clinical social workers, marriage and family therapists, and other professionals as experts. While appointment of these professionals may result in possible initial cost savings, the committee decided that only licensed psychiatrists and psychologists possess the level of training and experience needed to conduct the evaluations. In addition, evaluations performed by others less qualified may result in additional litigation and subsequent cost to the court.

Option 3. The committee discussed leaving the decision to appoint other professionals as experts if psychiatrists or psychologists are not available to the discretion of the trial courts. As with option 2, this may save costs initially but could also result in additional expense and delay if evaluations are challenged.

Option 4. The committee decided on this option, the proposed rule that requires appointment of psychiatrists or psychologists as experts. Welfare and Institutions Code section 709 requires development and adoption of a rule regarding expert qualifications for evaluating children's competence to participate in delinquency proceedings. The committee is mindful of the concerns raised by this option and intends to monitor implementation. If experts and resources are not available to perform these evaluations, the committee will review its decision.

Implementation Requirements, Costs, and Operational Impacts

Existing law requires that judges appoint experts to evaluate children's competence to participate in juvenile proceedings. This proposed rule, which mandates specific training, education, and knowledge, could have a financial impact on courts that currently appoint experts who do not meet the rule's requirements. Compliance with this proposed rule may require the court to appoint a higher paid expert.

Attachments

1. Cal. Rules of Court, rule 5.645, at pages 7–8
2. Chart of Comments, at pages 9-68
3. Attachment A, list of 161 individuals joined in the comment from the National Association of Social Workers (#16 on the chart of comments), at pages 69-72

Amended California Rules of Court, rule 5.645 is adopted effective January 1, 2012, to read as:

1 **Rule 5.645. Mental health or condition of child; court procedures**

2
3 (a)-(c)***

4
5 (d) **Doubt as to capacity to cooperate with counsel (§§ 601, 602; Pen. Code, § 1367)**

6
7 (1) If the court finds that there is ~~reason to doubt~~ substantial evidence that a child
8 who is the subject of a petition filed under section 601 or 602 ~~is capable of~~
9 ~~understanding the proceedings or of cooperating with the child's attorney,~~
10 lacks sufficient present ability to consult with counsel and assist in preparing
11 his or her defense with a reasonable degree of rational understanding, or lacks
12 a rational as well as factual understanding of the nature of the charges or
13 proceedings against him or her, the court must ~~stay~~ suspend the proceedings
14 and conduct a hearing regarding the child's competence. Evidence is
15 substantial if it raises a reasonable doubt about the child's competence to
16 stand trial.

17
18 (A) The court ~~may~~ must appoint an expert to examine the child to
19 evaluate ~~the child's capacity to understand the proceedings and to~~
20 ~~cooperate with the attorney whether the child suffers from a mental~~
21 disorder, developmental disability, developmental immaturity, or other
22 condition and, if so, whether the condition or conditions impair the
23 child's competency.

24
25 (B) To be appointed as an expert, an individual must be a:

26
27 (i) Licensed psychiatrist who has successfully completed four years
28 of medical school and either four years of general psychiatry
29 residency, including one year of internship and two years of child
30 and adolescent fellowship training, or three years of general
31 psychiatry residency, including one year of internship and one
32 year of residency that focus on children and adolescents and one
33 year of child and adolescent fellowship training; or

34
35 (ii) Clinical, counseling, or school psychologist who has received a
36 doctoral degree in psychology from an educational institution
37 accredited by an organization recognized by the Council for
38 Higher Education Accreditation and who is licensed as a
39 psychologist.

40
41 (C) The expert, whether a licensed psychiatrist or psychologist, must:

- 1 (i) Possess demonstrable professional experience addressing child
2 and adolescent developmental issues, including the emotional,
3 behavioral, and cognitive impairments of children and
4 adolescents;
5
6 (ii) Have expertise in the cultural and social characteristics of
7 children and adolescents;
8
9 (iii) Possess a curriculum vitae reflecting training and experience in
10 the forensic evaluation of children;
11
12 (iv) Be familiar with juvenile competency standards and accepted
13 criteria used in evaluating juvenile competence;
14
15 (v) Possess a comprehensive understanding of effective interventions
16 as well as treatment, training, and programs for the attainment of
17 competency available to children and adolescents; and
18
19 (vi) Be proficient in the language preferred by the child, or if that is
20 not feasible, employ the services of a certified interpreter and use
21 assessment tools that are linguistically and culturally appropriate
22 for the child.
23

- 24 (2) ~~If the court finds that the child is not capable of understanding the~~
25 ~~proceedings or of cooperating with the attorney, the court must proceed under~~
26 ~~section 6550 and (a) (c) of this rule. Nothing in this rule precludes~~
27 involvement of clinicians with other professional qualifications from
28 participation as consultants or witnesses or in other capacities relevant to the
29 case.
30
31 (3) ~~If the court finds that the child is capable of understanding the proceedings~~
32 ~~and of cooperating with the attorney, the court must proceed with the case.~~
33 Following the hearing on competence, the court must proceed as directed in
34 section 709.
35

Advisory Committee Comment

36
37
38 Welfare and Institutions Code section 709(b) mandates that the Judicial Council develop
39 and adopt rules regarding the qualification of experts to determine competency for
40 purposes of juvenile adjudication. Upon a court finding of incompetency based on a
41 developmental disability, the regional center determines eligibility for services under
42 Division 4.5 of the Lanterman Developmental Disabilities Services (Welf. & Inst. Code,
43 § 4500 et seq.).

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Juvenile Law: Qualifications for Experts Evaluating Child’s Competency to Participate in Juvenile Proceedings (amend Cal. Rules of Court, rule 5.645(d))[†]

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	AFSCME Local 2620 Patton State Hospital Christy Crespin, Licensed Clinical Social Worker Highland		Currently, SPR11-48 allows for psychologists and psychiatrists to conduct court-appointed evaluations for juveniles to determine trial competency. It is well within the scope of practice for licensed clinical social workers to conduct these evaluations. Licensed clinical social workers are often in the forefront of working with children, dealing with developmental, psychosocial functioning, and many of us are in the forensic mental health settings that would allow our expertise in areas that make us the appropriate court-appointed court competency evaluators. Please include licensed clinical social workers as eligible to conduct these evaluations.	After consideration, the committee does not recommend that licensed clinical social workers be eligible to conduct evaluations to determine trial competency. To evaluate whether the child suffers from a mental disorder, developmental disability, developmental immaturity, or other condition, and if so, whether the condition or conditions impair the minor’s competency, the expert must have specific academic background, training in differential diagnosis, testing, and assessment of a child’s competency, and forensic specialty training. Psychiatrists and psychologists with doctoral degrees possess the requisite level of training, experience, and knowledge to conduct these evaluations. The committee, therefore, recommends that only licensed psychiatrists or psychologists with doctoral degrees be eligible to conduct evaluations.
2.	Hon. Stacy Boulware Eurie Superior Court, Sacramento County Sacramento	NI	[S]hould proposed CRC 5.645 be adopted, one of our members of Sacramento’s Juvenile Expert Panel Advisory Committee had the following comment regarding Rule 5.645(d)(1)(B)(i): “The American Board of Psychiatry and Neurology (ABPN) does not approve or certify medical residency programs. They are the organization that approves/certifies individual psychiatrists or neurologists after they have completed their residency training. The	After consideration, the committee has chosen to recommend that psychiatrists attain specific types and levels of education, training, and experience, but not to limit their appointment as experts based on any professional certification other than a valid license to practice.

[†]The original Invitation to Comment was titled, *Juvenile Law: Qualifications for Experts Evaluating Child’s Competency to Stand Trial*.

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Juvenile Law: Qualifications for Experts Evaluating Child’s Competency to Participate in Juvenile Proceedings (amend Cal. Rules of Court, rule 5.645(d))

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	Commentator	Position	Comment	Committee Response
			Accreditation Council for Graduate Medical Education (ACGME) is the entity that approves/certifies specialty training programs.”	
3.	California Psychological Association Amanda Levy Director of Government Affairs Sacramento	A	<p>On behalf of the California Psychological Association, we regret to inform you of our opposition to allowing new providers to serve as expert evaluators for minor competency to stand trial evaluations.</p> <p>CPA opposes expanding the list of accepted court experts to include other mental health professionals, such as licensed clinical social workers (LCSWs). At this time, after a review of the functions of evaluating competency, CPA does not believe the training of LCSWs supports their inclusion as evaluators.</p> <p>It is of paramount importance that individuals who intend to provide mental health services have the appropriate education, training and experience to ensure that the public is provided with quality professional services. At this time, without additional training, CPA does not feel it is appropriate to allow Masters Level practitioners to perform competency evaluations for juveniles. Social work programs lack the extensive training in differential diagnosis, testing, and assessment of a juvenile’s competency to stand trial.</p> <p>Juvenile competency experts must have training</p>	After consideration, the committee does not recommend that licensed clinical social workers be eligible to conduct evaluations to determine trial competency. To evaluate whether the child suffers from a mental disorder, developmental disability, developmental immaturity, or other condition, and if so, whether the condition or conditions impair the minor’s competency, the expert must have specific academic background, training in differential diagnosis, testing, and assessment of a child’s competency, and forensic specialty training. Psychiatrists and psychologists with doctoral degrees possess the requisite level of training, experience, and knowledge to conduct these evaluations. The committee, therefore, recommends that only licensed psychiatrists or psychologists with doctoral degrees be eligible to conduct evaluations.

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Juvenile Law: Qualifications for Experts Evaluating Child’s Competency to Participate in Juvenile Proceedings (amend Cal. Rules of Court, rule 5.645(d))

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>in the selection, administration, or interpretation of specific tests used in child-specific assessment, and “must be skilled at integrating information obtained at different ages, using multiple assessment methods, and data from a variety of informants, as well as addressing functioning in a number of contexts and social systems.”¹ Finally, the standard of practice in this niche practice requires substantial training in forensic report writing, testimony, and the juvenile justice system. CPA is concerned about granting broad permission without adequate preparation for that practice. The social work curriculum does not prepare for this specialized practice, including psychological test administration and interpretation. The Legislature has rejected attempts by the social work profession to increase their scope of practice to include full practice of the areas of “assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions.”</p> <p>Students in Psychology graduate programs have, on average, three to four years of education and training in psychopathology, developmental psychology, test administration and interpretation, and statistics. Competency courses taught by our members typically include (1) competency theory, (2) case law, (3) test administration and interpretation, (4) critiques of</p>	

¹ Evaluation of Juveniles’ Competence to Stand Trial (Best Practices in Forensic Mental Health Assessment), Ivan Kruh and Thomas Grisso, Oxford University Press, 2009.

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	Commentator	Position	Comment	Committee Response
			<p>competency tests, (5) child and adolescent developmental issues, (6) special populations, (7) unusual situations, and more.</p> <p>The California Psychological Association is a non-profit professional organization of over 5,000 members practicing in the state of California. California’s psychologists currently work in private practice, hospitals, government agencies, university and research settings, schools, community clinics, and businesses.</p> <p>Thank you for your consideration of this important matter.</p>	
4.	East Bay Children's Law Offices By Roger Chan Executive Director Oakland	A	No specific comment.	No response required.
5.	Michael Feer Clinical Social Worker Chula Vista	A	<p>Psychiatrists have special and unique expertise to comment and testify on areas of diagnostic criteria, medically-related or induced diagnoses and on medication effect, affect and interaction. Psychologists have particular expertise in the administration and interpretation of a wide range of mental health tests and scales.</p> <p>I would strongly recommend that added to this team of experts be clinical social workers. For it is the social worker who has particular and unique expertise in the broader and over-arching</p>	After consideration, the committee does not recommend that licensed clinical social workers be eligible to conduct evaluations to determine trial competency. To evaluate whether the child suffers from a mental disorder, developmental disability, developmental immaturity, or other condition, and if so, whether the condition or conditions impair the minor’s competency, the expert must have specific academic background, training in differential diagnosis, testing and assessment of a child’s competency, and forensic specialty training. Psychiatrists and psychologists

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	Commentator	Position	Comment	Committee Response
			<p>concerns surrounding any single individual, family or group. For it is the social worker who is trained and sensitive to the full bio-psycho-social spectrum that most directly influences, impels and produces the array of mental health disabilities requiring the services of the psychiatrist and the psychologist.</p> <p>I can think of no more effective union of skill than the breadth of social work knowledge with the rigorous analysis offered by psychiatry and psychology. Indeed, no one is entire without the others. A fabulous forensic team.</p>	<p>with doctoral degrees possess the requisite level of training, experience, and knowledge to conduct these evaluations. The committee recommends that only licensed psychiatrists or psychologists with doctoral degrees be eligible to conduct evaluations.</p>
6.	Karen Franklin, Ph.D. Clinical & Forensic Psychologist El Cerrito	A	<p>Thank you for inviting public input on your proposed rules for the qualification and appointment of experts to evaluate minors whose competency to stand trial is at issue. I am excited to see this effort to systemize procedures, provide guidance, and raise the standards for juvenile competency evaluations in California. Overall, I support your rules and proposed changes. I am writing in response to your specific request for feedback on whether the court should expand the list of accepted experts to other professionals such as social workers. In addition, I have one other, fairly minor suggestion in regard to the proposed rules.</p> <p>By way of background, I am a forensic psychologist and educator, licensed in the states of California and Washington. As part of my advanced training, I completed a postdoctoral fellowship in forensic psychology through the</p>	<p>After consideration, the committee does not recommend that licensed clinical social workers be eligible to conduct evaluations to determine trial competency. To evaluate whether the child suffers from a mental disorder, developmental disability, developmental immaturity, or other condition, and if so, whether the condition or conditions impair the minor’s competency, the expert must have specific academic background, training in differential diagnosis, testing and assessment of a child’s competency, and forensic specialty training. Psychiatrists and psychologists with doctoral degrees possess the requisite level of training, experience, and knowledge to conduct these evaluations. The committee recommends that only licensed psychiatrists or psychologists with doctoral degrees be eligible to conduct evaluations.</p>

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	Commentator	Position	Comment	Committee Response
			<p>University of Washington that included extensive training in competency, including a specific focus on juvenile evaluations. I teach a semester-long course on competency assessment to graduate psychology students in the forensic child/family track at the California School of Professional Psychology in San Francisco. I also provide training on competency assessment to licensed professionals. I serve on the expert panels in several Bay Area counties, and regularly conduct court-appointed and privately retained competency evaluations of juveniles. I also serve on the Ethics Committee and Forensic Psychology Executive Committee of the California Psychological Association.</p> <p>In my opinion, it would be a mistake to expand the list of accepted experts to other professionals such as social workers. Social workers typically are not adequately trained or experienced in the methods and topics that are essential to conducting state-of-the-science juvenile competency assessments, whereas such training is fairly routine in PhD and psychiatric programs.</p> <p>All too commonly, competency becomes an issue with children due to complex constellations of underlying deficits, such as neurological insults, neurodevelopmental impairments, psychiatric disturbances, intellectual or other cognitive limitations, and learning disabilities. In such cases, ferreting out</p>	

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	Commentator	Position	Comment	Committee Response
			<p>what is going on requires the proper selection, administration, and interpretation of an ever-changing array of psychological tests and measures. It also requires sophisticated assessment of response style, to rule out the potential of poor effort or frank malingering.</p> <p>There are many fine social workers in the field, just as there are plenty of poor psychologists and psychiatrists. In my opinion, social workers can be valuable members of a forensic assessment team. But because social work programs do not offer the extensive training in differential diagnosis that is standard in graduate psychology and psychiatric training programs, social workers as a rule are not equipped to adequately sort through complex differential diagnostic issues and assess their functional impact on a juvenile’s competency to stand trial. As noted in a recent training manual on this topic, juvenile competency experts must have training in the selection, administration, or interpretation of specific tests used in child-specific assessment, and “must be skilled at integrating information obtained at different ages, using multiple assessment methods, and data from a variety of informants, as well as addressing functioning in a number of contexts and social systems.”² Finally, the standard of practice in this niche requires substantial training in forensic report writing, testimony, and the</p>	

² Evaluation of Juveniles’ Competence to Stand Trial (Best Practices in Forensic Mental Health Assessment), Ivan Kruh and Thomas Grisso, Oxford University Press, 2009.

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	Commentator	Position	Comment	Committee Response
			<p>juvenile justice system, again areas of focus in forensic psychology and psychiatry graduate and post-graduate training.</p> <p>For example, the psychology graduate students whom I teach have three to four years of education and training in psychopathology, developmental psychology, test administration and interpretation, statistics, etc. My competency course spans an entire semester, and covers: (1) competency theory, (2) case law, (3) test administration and interpretation, (4) critiques of competency tests, (5) child and adolescent developmental issues, (6) special populations, (7) unusual situations, and more. Such courses are fairly routine in psychology graduate programs these days, but are rare to nonexistent in social work programs. Not only do social work programs not focus on psychological test administration and interpretation, but the major test companies will not even sell their products to social workers because of this lack of adequate training.</p> <p>On a more minor note, I have a concern that one of the areas of expertise proposed for rule 5.645 goes beyond the standard professional bounds of forensic psychology, and may lead to unintended negative consequences. Specifically, section (v) would require that evaluators “be familiar with ... treatment, training and programs for the attainment of competency available to children and adolescents in California.” In</p>	<p>In order to properly advise the court about whether the child will attain competency, the expert must be knowledgeable about local providers offering programs for the attainment of competence. The court also needs information about treatment options for possible mental health issues, disability services, and other areas affecting competency. The committee recognizes the importance of and does not intend to</p>

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			<p>practice, this could require an evaluator to take on the onerous burden of ferreting out the available services in each jurisdiction in which he or she practices. The task of locating appropriate services for incompetent minors properly belongs to local probation officers, child welfare workers, regional centers, and others, not forensic evaluators. As you may be aware, well-qualified evaluators are already discouraged from conducting court-ordered evaluations by the pittance that most counties pay. Mandating additional burdens that do not exist for other types of forensic work could inadvertently contribute to poor practice by leaving only shoddy “drive-by” evaluators willing to take on these complex and time-consuming cases.</p> <p>Thank you once again for soliciting public input. I want to emphasize how exciting it is to see the topic of juvenile competency evaluations getting this welcome attention.</p> <p>I would greatly appreciate being informed of future opportunities for public comment on any aspects of the new law or Rules of Court. In the meantime, if I may be of any further assistance, please do not hesitate to call upon me.</p>	discourage collaboration among all stakeholders.
7.	Joseph Gardner Licensed Clinical Social Worker Patton State Hospital Patton	AM	As a social worker, with extensive background in clinical and forensic issues, it is considered most vital that the clinician have extensive knowledge and expertise in all aspects of trial competency,	After consideration, the committee does not recommend that licensed clinical social workers be eligible to conduct evaluations to determine trial competency. To evaluate whether the child

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			and less important as to which type of clinician that would be. Additionally, issues related to a type of “Murphy Conservatorship” be developed and logistics as to how becoming an adult would affect and be integrated into Restoration of Competency Treatment. (Apologies to Judicial Council about handwritten document).	suffers from a mental disorder, developmental disability, developmental immaturity, or other condition, and if so, whether the condition or conditions impair the minor’s competency, the expert must have specific academic background, training in differential diagnosis, testing and assessment of a child’s competency, and forensic specialty training. Psychiatrists and psychologists with doctoral degrees possess the requisite level of training, experience, and knowledge to conduct these evaluations. The committee recommends that only licensed psychiatrists or psychologists with doctoral degrees be eligible to conduct evaluations.
8.	Humboldt County Department of Health & Human Services Humboldt County Counsel’s Office Karen Roebuck Senior Deputy County Counsel Eureka	N	Section (d)(1)(C)(v), requiring that evaluators are familiar with effective interventions as well as treatment, training and programs for the attainment of competency available to children and adolescents in California, will be a difficult standard for rural counties to meet.	In order to properly advise the court about whether the child will attain competency, the expert must be knowledgeable about local providers offering programs for the attainment of competence. The court also needs information about treatment options for possible mental health issues, disability services, and other areas affecting competency. The committee recognizes the importance of and does not intend to discourage collaboration among all stakeholders.
9.	Edward J. Hyman, Ph.D. Forensic Psychology Berkeley	A	As a forensic expert who has worked for over four decades in the area of juvenile competency, and one who has taught excellent social work students at UC, I oppose the proposed inclusion of social workers in this task. Though there are multitudes of fine social workers, social work education and training do not prepare social workers to perform adequate forensic assessments in this complex area. Social work	After consideration, the committee does not recommend that licensed clinical social workers be eligible to conduct evaluations to determine trial competency. To evaluate whether the child suffers from a mental disorder, developmental disability, developmental immaturity, or other condition, and if so, whether the condition or conditions impair the minor’s competency, the expert must have specific academic background,

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			<p>programs do not provide substantial if any education or supervised clinical training in psychometrics, psychodiagnostic assessment, statistics or differential diagnosis, all of which are emphasized in graduate psychology education. These areas are intricate, and require a psychologist or psychiatrists four or five years of doctoral level education beyond the masters of social workers, and the intense years of post-doctoral clinical training that characterize psychological and psychiatric education, but are lacking in their entirety in social work training.</p> <p>Assessment of adjudicative competency can often involve a complex constellations of underlying deficits in a youth. These often can include neurological impairment, neurodevelopmental deficits, psychiatric disorders, intellectual and other cognitive deficiencies, and learning disorders. Parceling out what is transpiring In such complex cases requires the proper selection, administration, and interpretation of an ever-changing array of psychological tests and measures, as well as preparedness in a variety of other areas such as personality theory, personality assessment, psychopathology, psychodiagnosis, and nosology, where social workers have no formal education or training.</p> <p>Social work programs do not incorporate the extensive training in differential diagnosis that is required in psychology and psychiatry training programs. By education and training, social</p>	<p>training in differential diagnosis, testing and assessment of a child’s competency, and forensic specialty training. Psychiatrists and psychologists with doctoral degrees possess the requisite level of training, experience, and knowledge to conduct these evaluations. The committee recommends that only licensed psychiatrists or psychologists with doctoral degrees be eligible to conduct evaluations.</p>

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			<p>workers are not prepared to weigh the complex legal and differential diagnostic issues that arise in these cases, nor to assess their functional impact on a juvenile’s competency to stand trial.</p> <p>I also oppose section (v) which would require the evaluator “to be familiar with ... treatment, training programs for attainment of competency available to children.</p> <p>This is certainly a major extension of the bounds of current juvenile competency examinations, and may lead to quite dire and unanticipated consequences. For instance, this change could require an evaluator to assume the onerous burden of discerning available services in each jurisdiction in which he or she practices. The task of locating appropriate services for incompetent minors more properly is that of local juvenile probation officers, regional centers, and child welfare workers, but not that of forensic evaluation of a juvenile’s competency. The skills required are quite different. Forensic psychologists and psychiatrists assess capacities, while other professionals discern the environments in which deficiencies they discern might be addressed.</p> <p>Most well-qualified forensic evaluators are already loathe to conduct court-ordered evaluations due to the inadequate fees paid by most counties. Mandating additional burdens in evaluation of juvenile competency that do not exist in other types of forensic work could</p>	<p>In order to properly advise the court about whether the child will attain competency, the expert must be knowledgeable about local providers offering programs for the attainment of competence. The court also needs information about treatment options for possible mental health issues, disability services, and other areas affecting competency. The committee recognizes the importance of and does not intend to discourage collaboration among all stakeholders.</p>

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			inadvertently contribute to poor practice by eliminating from the field of juvenile competency evaluators all but poorly educated or otherwise deficient "drive-by" evaluators willing to take on these complex cases, but not willing to engage in the complex evaluations and and time-consuming techniques required, producing inadequate evaluation of juvenile wards.	
10.	Danielle Kelley, MSW Social Worker Los Angeles	AM	<p>Thank you for providing the public with an opportunity to submit comments regarding the above stated legislation.</p> <p>I am a mental health professional currently providing judicial hearings with the Los Angeles County Mental Health Court for minors held on involuntary holds in inpatient hospital settings. I recommend that social workers (MSW) are included in the list of mental health professionals eligible for the position to declare if the minor is competent. Also, I recommend that all mental health professionals demonstrate a minimum of two years experience providing direct services in the area of clinical assessments and interventions for minors to ensure the highest level of expertise in this area. My recommendations are based on witnessing mental health professionals assigned as presenters and as hearing officers in cases where the professional assessed the minor inaccurately due to their limitations of actually understanding the complexity of the minor from a psychosocial/cultural perspective. Often, in today's job market, many psychologists and</p>	After consideration, the committee does not recommend that licensed clinical social workers be eligible to conduct evaluations to determine trial competency. To evaluate whether the child suffers from a mental disorder, developmental disability, developmental immaturity, or other condition, and if so, whether the condition or conditions impair the minor’s competency, the expert must have specific academic background, training in differential diagnosis, testing and assessment of a child’s competency, and forensic specialty training. Psychiatrists and psychologists with doctoral degrees possess the requisite level of training, experience, and knowledge to conduct these evaluations. The committee recommends that only licensed psychiatrists or psychologists with doctoral degrees be eligible to conduct evaluations.

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			<p>psychiatrists are not hired to provide direct, front line, services to minors in treatment agencies beyond their residency program. This can result in severe limitations of successfully applying practice to theory in the professional's assessment and recommendations. Severe limitations in direct contact experience with minors can often result in further harming the minor, which is often in the case of African-American, Latino, and Asian minors due to the limitations of a strong mentor/supervisory program while the professional is gaining their expertise- therefore a minimum of two years direct experience will ensure competency in this area.</p> <p>Social Workers (MSW) are often the professionals hired to provide direct, front-line, psychosocial assessments, diagnostic impressions, and clinical intervention services to minors in the community settings. Also, MSW training is compatible with psychologists and psychiatrists in the area of psychosocial assessments, child development, (DSM) diagnostic impressions and recommendations. Furthermore, MSW postgraduate requirements are the most extensive because the California Board of Behavioral Science requires 3200 postgraduate hours, under direct clinical supervision, which the other disciplines do not.</p> <p>Please consider my recommendations in the proposed delivery of the legislation to ensure that</p>	

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			our children's rights are upheld and their quality of life is not unnecessarily damaged by faulty investigations.	
11.	Fran Lexcen, Ph.D. Acting Director Forensic Services Child Study & Treatment Center Lakewood, Washington	A	<p>The wording in the proposed rule looks good to me. I don’t see anything about restoration, so I’m assuming that’s addressed elsewhere. There are some pitfalls to avoid with that, but you may have already side-stepped them.</p> <p>Just some thoughts about setting up the referral for evaluation. I have a few questions about the language, but this might just be rooted in my lack of legal training. I’m uncertain about the implications of using “substantial evidence” and “reasonable doubt.” The tricky part in this is a rather ordinary problem in a lot of settings, and that is, where and how do you set the limits on referrals so that you don’t waste money evaluating unnecessarily AND you don’t miss evaluating youths with genuine needs. Here are my thoughts about how the question of competence is raised. I’ll have to rely on your judgment as to whether this is relevant to your standard.</p> <p>In WA, we use the “reason to doubt” phrase, and the concern can be raised by defense, prosecutor, judge, probation officer, parents, concerned citizens – in other words, anyone. So we get some referrals that reflect concerns over issues that I think may be questionable, such as “his father has bipolar disorder” or “he needs an IEP.”</p>	<p>The rule requires that the expert be knowledgeable in programs for the attainment of competency.</p> <p>The court must find that there is substantial evidence of incompetency before appointment of the expert. The rule and Welfare and Institutions Code section 709 require this showing.</p>

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			<p>In short, there are times when I am aware that our clinic is being used because someone wants a good diagnosis or data they can use to argue with the schools. This *might* be an acceptable purpose, given that the juvenile court is more oriented to a youth’s best interests, but it’s not a genuine competence concern.</p> <p>There are other times when I am clear this is just a defense maneuver to get mitigating information in front of the judge. It’s obvious b/c the attorney will spend a lot of their time sharing irrelevant information with me in a “dramatic” fashion, like stories about the absent father having kicked the dog in the youth’s presence when the kid was three years old, thereby causing the youth to develop PTSD which led to a carefully planned and executed armed robbery.</p> <p>Some of the cases we get are kids who may be clearly competent but the community is scared witless and they want me to “do something – anything” to make it stop. Other times, it is obvious to everyone that the youth is not competent and not restorable, but the court wants me to make suggestions about how to manage the kid’s placement and problems in the community. Again, not directly related to competence but grossly within the juvenile court’s orientation.</p> <p>That’s sort of the down side of having generous referral standards. The flip side can be that if the</p>	

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			<p>standards are too tight, kids who are genuinely not competent will not be evaluated. If only the lawyers or judge can raise the concern, then the people who have more intimate knowledge of the youth (e.g., parents, probation officers) are not accessed.</p> <p>This conundrum is ubiquitous in making decisions about social institutions and social services. If you set the “bar” too low, everybody gets referred. If you set the bar too high, kids with serious problems are over-looked. The crux of the issue is how much of the two types of problems your system can tolerate. To the best of my knowledge, there is no fool-proof way of getting it exactly right all the time. Usually, people just aim for mostly right as often as possible.</p> <p>So, back to that first paragraph. I don’t quite know the implications of the two phrases used, but these are the things I would think about in considering the language.</p>	
12.	<p>Los Angeles County Public Defender’s Office Appellate Division Rourke F. Stacy Deputy Public Defender Los Angeles</p>	AM	<p>These comments are submitted on behalf of the Juvenile Division of the Los Angeles County Public Defender’s Office, with respect to SPR11-48, which proposes amendments to Cal. Rules of Court, rule 5.645(d)—“Criteria for Experts in Competency to Stand Trial Matters.”</p> <p>The Juvenile Division of the Los Angeles County Public Defender’s Office represents over 35,000</p>	<p>After consideration, the committee does not recommend that licensed clinical social workers be eligible to conduct evaluations to determine trial competency. To evaluate whether the child suffers from a mental disorder, developmental disability, developmental immaturity, or other condition, and if so, whether the condition or conditions impair the minor’s competency, the expert must have specific academic background,</p>

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			<p>children in delinquency proceedings each year in twenty-nine delinquency courts throughout the county. The juvenile division includes deputy public defenders, paralegals, investigators, psychiatric social workers, and special units of resource attorneys, reentry advocates, and appellate specialists. Together they collaborate to provide effective, holistic representation of children from the earliest stage of the juvenile delinquency proceedings through post-disposition planning. Our Juvenile Division is recognized both statewide and nationally as providing cutting edge, innovative legal representation to children charged with crimes and is considered a preeminent leader in juvenile delinquency representation.</p> <p>Because of our expertise in representing children we are aware of the significant problems that occur when experts who do not have sufficient training and experience with children and evaluating the competency of children are appointed on matters. The results of such appointments create manifold problems for the bench officer, defense counsel, and the prosecution. Moreover, such improper appointments often delay or prevent the crucial mental health treatment and services that many of these children need. Although we basically agree with the proposed changes to Rule 5.645, we are proposing the following comments for your consideration.</p>	<p>training in differential diagnosis, testing and assessment of a child’s competency, and forensic specialty training. Psychiatrists and psychologists with doctoral degrees possess the requisite level of training, experience, and knowledge to conduct these evaluations. The committee agrees that only licensed psychiatrists or psychologists with doctoral degrees be eligible to conduct evaluations.</p>

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			<p>2. In 5.645(d)(1)(C)(iv) please consider removing “in California.” One of the crucial issues in competency cases is whether the child will ever be able to be restored to competence. To fully assess this issue the expert needs to be aware of what services exist wherever they may be and how they could assist a juvenile with certain impairments. This part of the evaluation does not depend on what is available “in California”—it requires knowledge of what exists and how those services could assist the child with his or her particular cognitive defects.</p> <p>Although knowledge about local services is essential when developing services for the child, that is a separate issue from qualification to initially evaluate the child.</p> <p>3. A new subsection (vi) should be created to address language issues and particular handicaps of the child.</p> <p>Because Los Angeles, like many parts of California, is ethnically diverse, many of the children in the juvenile delinquency system do not identify with English as their first language. The practical result is that there is a language and cultural barrier that is not easily overcome with the appointment of an interpreter. Moreover, any test results based on the use of the interpreter may reflect inaccurate scores due to the test</p>	<p>The committee agrees with the suggestion and removed “in California”.</p> <p>The committee agrees with this suggestion and has added rule 5.645(d)(1)(C)(vi) in response.</p>

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			<p>evaluator not being able to directly administer the test to the child. ³</p> <p>It is unfortunate that we have had to litigate cases with this very issue. In fact, in one case, the initial psychologist recommended to the court that a Spanish Speaking Psychologist be appointed to administer a Full-Scale IQ test to one of our clients who was a native Spanish speaker. The court refused. The result was unfortunate; the child was ultimately sent to adult court, and in adult court his attorney was able to obtain a Spanish Speaking psychologist and the child tested in the range common for children suffering with mental retardation/developmental disability. This is only one of the many examples illustrating why it is necessary, when possible, to have experts appointed who speak the native language of the child.</p> <p>In addition to employing experts who speak the language of the child, it is also important that they employ tests and assessment tools designed for use with the child’s primary language. Although many of the assessment tools are only in English, the court rule should acknowledge that the linguistic issues are important to the quality of the overall evaluation.</p> <p>There are also some children who are sight/hearing impaired or may suffer from unique</p>	

³ See *The American Academy of Psychiatry and the Law Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial*.

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			<p>handicaps. It is imperative that they also have experts who have experience dealing with their handicaps. An expert with experience in and perspective on a certain disabling condition is able to more thoroughly and accurately assess a child with that condition. More often than not, these experts will not only yield more reliable evaluations, but also play a significant role in helping the court implement services that are appropriately suited for the child.</p> <p>By failing to include a provision that addresses the necessity of appointing experts in the child’s native language, and, for those children with certain handicaps, an expert who has experience in assessing those types of children, the proposed rules run the risk that these children become vulnerable to potentially inaccurate or incomplete assessments. A proposed comment would be:</p> <p style="padding-left: 40px;">(vi) be proficient in the language preferred by the child, or if that is not feasible, employ the services of a certified interpreter; and use assessment tools that are linguistically and culturally appropriate for that child. If the child suffers from a physical impairment/handicap a qualified expert with expertise in assessing children with the specific type of handicap should be appointed when possible.</p> <p>Thank you for your consideration of these</p>	

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			comments. Please let us know if we can clarify anything in these comments or otherwise be of assistance in the rulemaking process.	
13.	Alexander Millkey, PsyD Northwest Forensic Institute, LLC Portland, Oregon	A	<p>I am writing to submit comment on the question of who should be an acceptable expert for testimony on issues of juvenile competency.</p> <p>I support restricting the experts eligible for qualification to psychologists and psychiatrists. I am against having social workers qualified as experts.</p> <p>Social workers do not receive sufficient training for diagnosis, and most states do not allow social workers to testify as experts in issues of competency to stand trial for adults, much less children.</p> <p>Issues surrounding adjudicative competency for children are complicated by the presence of developmental factors. A standard part of training for psychologists is a relatively intense focus on developmental issues. This is an element that is absent from the training programs for most social workers, and is a necessary component of doing the sorts of evaluations indicated in the law.</p>	After consideration, the committee does not recommend that licensed clinical social workers be eligible to conduct evaluations to determine trial competency. To evaluate whether the child suffers from a mental disorder, developmental disability, developmental immaturity, or other condition, and if so, whether the condition or conditions impair the minor’s competency, the expert must have specific academic background, training in differential diagnosis, testing, and assessment of a child’s competency, and forensic specialty training. Psychiatrists and psychologists with doctoral degrees possess the requisite level of training, experience, and knowledge to conduct these evaluations. The committee, therefore, recommends that only licensed psychiatrists or psychologists with doctoral degrees be eligible to conduct evaluations.
14.	Patti Morua-Widdows Court Program Manager Superior Court of Ventura County Oxnard	A	The court expert should continue to be either a licensed physician or psychologist.	The Committee agrees with this recommendation.
15.	NASW	NI	No comment received.	No response required.

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	Tora Miller, MSW Los Angeles			
16.- 177.	National Association of Social Workers, California Chapter Rebecca Gonzales Director of Government Relations and Political Affairs Cheryl Jackson, MA, MSW, LCSW Sacramento <i>(This comment was joined by 161 individuals listed at Attachment A. All comments were substantively consistent although a few varied in terms of formatting or minor wording.)</i>	N	The National Association of Social Workers, California Chapter (NASW-CA) strongly disagrees with the recommendation on the proposed changes to rule 5.645 (d) that define qualified “experts” to implement Welfare and Institutions Code section 709 (AB 2212 (Fuentes); Stats. 2010, ch. 671). The proposed rule specifies that the expert must be a licensed psychologist or psychiatrist with particular expertise in child development, forensic evaluation, competency standards, and interventions. We are requesting the inclusion of Licensed Clinical Social Workers as qualified “experts” to implement WIC section 709 (AB2212) and consider the LCSW to be more than qualified to perform these evaluations: <ul style="list-style-type: none"> • LCSWs are often the first line of defense on behalf of youth who fall under the definitions of WIC section 300 and 602 and as such must have expertise in child development, forensic evaluation, competency standards, and interventions; • As Social Workers, Probation, Parole and Correctional Officers, Mediators, Community Based Caseworkers we are the “Canaries in the Coal Mines” for WIC 300 and 602 youth and currently define and implement Strength, Evidence 	After consideration, the committee does not recommend that licensed clinical social workers be eligible to conduct evaluations to determine trial competency. To evaluate whether the child suffers from a mental disorder, developmental disability, developmental immaturity, or other condition, and if so, whether the condition or conditions impair the minor’s competency, the expert must have specific academic background, training in differential diagnosis, testing, and assessment of a child’s competency, and forensic specialty training. Psychiatrists and psychologists with doctoral degrees possess the requisite level of training, experience, and knowledge to conduct these evaluations. The committee, therefore, recommends that only licensed psychiatrists or psychologists with doctoral degrees be eligible to conduct evaluations.

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			<p>Based, and Best practices on behalf of our youth;</p> <ul style="list-style-type: none">• Many of us are Forensic Social Workers which is the practice of social work and the law. This may include work in criminal justice, family court, child welfare, and programs for offenders or victims of crime;• In the above capacities we utilize our own agency and shared Risk and Needs Assessments from Mental Health, Health Services and Education on behalf of our youth.• We diagnose and are classified as Clinical Social Workers who provide in depth Biological-Psychological-Social and Environmental Assessments including the use of the DSM IV in providing a diagnosis;• Our referrals which include our assessments are often the sole source in determining the strengths, weaknesses, limitations of functioning, and all resource needs of our clients.• Biological-Psychological-Social and Environmental Assessments have been utilized by psychologist and psychiatrist with little or no modification as the basis for their diagnosis, this is due to our expertise in diagnosis and our access to	

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			<p>testing information provided on behalf of the youth.</p> <p>The National Association of Social Workers, California Chapter represents over 11,500 professional social workers in California who have degrees from accredited social work programs across the country. NASW-CA advocates, on behalf of our members and their clients, for the implementation and improvement of programs and policies designed to enhance human well-being and help meet the basic needs of all people. We strongly believe that Licensed Clinical Social Workers are highly qualified to perform these assessments.</p>	
178.	<p>National Organization of Forensic Social Work The Executive Board of the NOFSW Kathleen A. Carty, PhD, MSW, LICSW; President Robert Butters, PhD, MSW, LCSW; Treasurer Susan McCarter, PhD, MS, MSW; Secretary Elgie Dow, MSW, ACSW; Councilor Stacey Hardy, PhD, JD, LCSW; Councilor Viola Vaughan-Eden, PhD, MSW; Councilor Suzanne Dowling, MSW, LCSW; former President Paul Brady; Executive Director</p>	AM	<p>The National Organization of Forensic Social Work would like to respond to the Judicial Council of California’s Invitation to Comment on Proposal #SPR 11-48. We disagree with the proposed changes and urge you to include Licensed Clinical Social Workers as qualified experts.</p> <p>Insomuch as the proposed change seeks to standardize the caliber of experts evaluating children’s competency, and specifically seeks those “with particular expertise in child development, forensic evaluation, competency standards, and interventions” these qualifications describe LCSWs, many of whom specialize in forensic settings. Licensed Clinical Social Workers are often the professionals with the</p>	<p>After consideration, the committee does not recommend that licensed clinical social workers be eligible to conduct evaluations to determine trial competency. To evaluate whether the child suffers from a mental disorder, developmental disability, developmental immaturity, or other condition, and if so, whether the condition or conditions impair the minor’s competency, the expert must have specific academic background, training in differential diagnosis, testing, and assessment of a child’s competency, and forensic specialty training. Psychiatrists and psychologists with doctoral degrees possess the requisite level of training, experience, and knowledge to conduct these evaluations. The committee, therefore, recommends that only licensed psychiatrists or psychologists with doctoral degrees be eligible to</p>

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	Middletown, Connecticut		<p>most experience working directly with clients in forensic settings.</p> <p>Forensic social work is based on specialized knowledge drawn from established principles and their application, familiarity with the law, expert evaluation, and evidence-based criteria associated with treatment outcomes. Forensic social workers are called upon to evaluate, diagnose, and make clinical recommendations. Their expert opinions are routinely requested by criminal justice and mental health professionals regarding the specialty area of juveniles, who present as both offenders and victims. Forensic social workers testify as expert witnesses.</p> <p>Throughout the United States, and internationally, forensic social workers make recommendations about juveniles’ mental status, interests, incapacities, ability and/or inability to testify. For decades we have provided the biopsychosocial needs assessments required to forge best practices and evidence-based interventions.</p> <p>When considering Proposal # SPR 11-48, we recommend that you include Licensed Clinical Social Workers as qualified experts. Please contact us for further commentary or to learn more about forensic social work.</p>	conduct evaluations.

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	Commentator	Position	Comment	Committee Response
179.	National Youth Screening and Assessment Project (NYSAP) Kimberly Larson, J.D., Ph.D. Worcester, Massachusetts	AM	<p>I am writing on behalf of the National Youth Screening and Assessment Project (NYSAP) to provide commentary on the recently proposed amendments to the California Court Rules. The National Youth Screening & Assessment Project is a technical assistance and research center dedicated to improving juvenile justice and mental health services. NYSAP is located at the University of Massachusetts Medical School, with support by a grant from the John D. and Catherine T. MacArthur Foundation. Our team has been working on issues related to juvenile competence for over a decade, including conducting large-scale national studies of juveniles’ competence. Our most recent project has been the development of a “guide” for states who are in the process of drafting juvenile competence legislation.</p> <p>Our group has been asked to comment upon three issues: (1) the minimum qualifications for psychologist and psychiatrists who evaluate juveniles’ competence to stand trial; (2) the inclusion of social workers as juvenile competence evaluators; and (3) the use of interpreters during forensic evaluations. Overall, we agree with the proposed changes <i>if modified</i>, as discussed below.</p> <p>Issue #1: Minimum qualifications for psychiatrists and psychologists conducting</p>	

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			<p>juvenile competence to stand trial forensic evaluations</p> <hr/> <p><i>Current Proposed Language for Rule 5.645(d)(1) relevant to issue #1:</i></p> <p>(B) To be appointed as an expert, an individual must be a:</p> <p style="padding-left: 40px;">(i) Licensed physician who has successfully completed at least two years of postdoctoral specialty training in a psychiatric residency program approved by the American Board of Psychiatry and Neurology (or one year of internship and one year of such residency training); or</p> <p style="padding-left: 40px;">(ii) Clinical, counseling or school psychologist who has received a doctoral degree in psychology from an educational institution accredited by an organization recognized by the Council on Postsecondary Accreditation, and who is licensed as a psychologist.</p> <p>(C) The expert, whether a licensed physician or a psychologist, must:</p> <p style="padding-left: 40px;">(i) have expertise in child and adolescent development, including the emotional, behavioral, and cognitive impairments of children and adolescents;</p> <p style="padding-left: 40px;">(ii) have expertise in the cultural and social characteristics of children and adolescents;</p> <p style="padding-left: 40px;">(iii) have training in the forensic evaluation of children;</p>	

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			<p>(iv) be familiar with the competency standards and accepted criteria used in evaluating competence; and</p> <p>(v) be familiar with effective interventions as well as treatment, training and programs for the attainment of competency available to children and adolescents in California.</p> <hr/> <p>With regard to the issue #1, we have identified several areas in the proposed language that, in our opinion, should be changed in order to ensure that juvenile competence to stand trial evaluators in California meet minimum training requirements. We will first make broader comments regarding what we see as important elements of minimum training for both psychology and psychiatry. After making these general comments, we will consider the proposed language pertaining to psychology and psychiatry separately, providing specific guidance and comments.</p> <p><i>General Comments Regarding Issue #1</i></p> <p>The court’s need for accurate and relevant information requires that examiners who perform mental health evaluations understand the legal definitions and requirements associated with competence to stand trial (“forensic expertise”). It also requires that they possess the professional expertise to perform psychiatric or psychological clinical evaluations (“clinical expertise”) with children and adolescents.</p>	

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			<p>The mere fact of psychiatric or psychological training in no way assures that a professional knows how competence to stand trial is defined and applied, unless the professional has had special forensic training or experience beyond his or her general clinical training. Similarly, the professional organizations of psychiatrists and psychologists do not presume that all of those professionals are qualified to perform evaluations of children and adolescents. They require specialized training or experience⁴ specifically in the assessment and treatment of children and adolescents. Psychologists or psychiatrists should practice only in areas in which they have had sufficient training.⁵</p> <p>It can be argued that courts should make similar distinctions when identifying professionals who are qualified to perform forensic evaluations of juveniles relevant for competence to stand trial. While formulating the required qualifications for such evaluations, policymakers must also consider the likelihood that specialists with those qualifications will actually be available to the court. The more stringent a jurisdiction’s requirements regarding qualifications, the more difficult it might be to</p>	

⁴ The most common requirement used in mental health professional specialty regulations refers to “training or experience” in the specialty. This recognizes that graduate or medical school preparation are not the only ways to obtain the necessary expertise. Many child forensic experts have obtained their qualifications through post-degree experience, continuing education and/or supervision by other specialty experts.

⁵ AM. PSYCHOLOG. ASS’N, CODE OF ETHICS (2003). Am. Psychiatric Ass’n CODE OF MEDICAL ETHICS WITH SPECIAL ANNOTATIONS FOR PSYCHIATRY (2009 Ed. Revised). *See also* Committee on Ethical Guidelines for Forensic Psychologists, Specialty Guidelines for Forensic Psychologists, 15 L. & HUM. BEHAV. 655 (1991).

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			<p>find experts with those qualifications.</p> <p>We recommend that states should require at least a minimum level of training and/or experience in the area of child clinical psychology or psychiatry <i>and</i> forensic practice. However, we recognize that in some jurisdictions, such criteria could result in a lack of qualified examiners. In such cases, as a remedy, we suggest that many communities will have child developmental professionals who can be provided with continuing education opportunities and supervised clinical experience that will allow them to understand the legal concept of competence to stand trial. In contrast, it is our opinion that it would be much more difficult to train forensic clinicians who do not have child clinical experience to perform juvenile competence to stand trial evaluations. By definition, such evaluations require expertise in diagnosing childhood mental disorders, which are quite different from adult mental disorders. The degree of training that would be required typically is not possible through continuing education mechanisms.</p> <p><i>Psychology Specific Recommendations:</i> As the Rule language currently states, psychologists should be required to have a doctoral degree and become licensed (as stated in 5.645(d)(1)(B) (ii)). This training should incorporate both “forensic” and “child and adolescent” expertise gained through coursework and clinical training (as stated in 5.645(d)(1) (C) (i)-(v)).</p>	<p>The committee agrees with this suggestion and has modified its recommendation in response.</p>

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			<p>The rule, as written, appears to allow those that have not yet completed residency training to conduct evaluations of juveniles’ competence. Minimally, psychiatrists should have completed four years of medical school <i>and</i> either:</p> <ul style="list-style-type: none"> • four years of general psychiatry residency (including the internship year), and two years of child and adolescent fellowship training, <i>or</i> • three years of general psychiatry residency (including the internship year), one year of residency which focuses on children and adolescents, and one year of child and adolescent fellowship.⁶ <p>As discussed above in our general comments, evaluators should also have gained “forensic expertise” in addition to “child expertise.” It appears that this requirement is, however, covered in 5.645(d)(1)(C). It is unclear whether the drafters perhaps intended the language as currently drafted to allow trainees to conduct evaluations. However, usually this issue is handled by having trainees</p>	<p>recommendation as suggested.</p>

⁶ At the end of such training, psychiatrists are licensed and “board eligible,” which means they are able to practice independently in child and adolescent psychiatry. Most go on to take the examination conducted by the Board of Psychiatry and Neurology, which then makes them “board certified.”

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			<p>work under the supervision of an already licensed professional. That licensed professional is responsible for ensuring that the work is meets acceptable standards.</p> <p>Issue #2: Inclusion of Social Workers among those who may conduct evaluations of juveniles’ competence to stand trial</p> <p>While we have great respect for our social work colleagues, in our opinion, social work training generally does not sufficiently prepare one to conduct forensic evaluations of juveniles’ competence to stand trial.</p> <p>Social work training does not require the level and extent of clinical experience required of those undergoing training in psychology or psychiatry. The skills acquired during this type of training, especially within the areas of clinical assessment and diagnosis, are necessary to provide adequate clinical forensic evaluations. Furthermore, forensic experience is not currently included in the training of social workers. While this experience could potentially be obtained post-degree, unlike psychiatry and psychology, which have more formalized processes and opportunities for obtaining forensic experience, adequate training and experience would be much more difficult to obtain for social workers.</p> <p>Issue #3: Use of Interpreters in Forensic Evaluation</p> <p>We have decided to decline to provide an opinion regarding the use of interpreters in forensic evaluations at this time. While this area is generally within our area of expertise as</p>	<p>After consideration, the committee does not recommend that licensed clinical social workers be eligible to conduct evaluations to determine trial competency. To evaluate whether the child suffers from a mental disorder, developmental disability, developmental immaturity, or other condition, and if so, whether the condition or conditions impair the minor’s competency, the expert must have specific academic background, training in differential diagnosis, testing, and assessment of a child’s competency, and forensic specialty training. Psychiatrists and psychologists with doctoral degrees possess the requisite level of training, experience, and knowledge to conduct these evaluations. The committee, therefore, recommends that only licensed psychiatrists or psychologists with doctoral degrees be eligible to conduct evaluations.</p> <p>No response required.</p>

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			<p>forensic clinicians and researchers, we do not feel that we have the information available to us regarding California’s particular circumstances and resources to be able to evaluate this issue fully. Overall, while we believe this is an important issue for California to consider, in our opinion, it will take careful study of California’s data/resources to be able to adequately answer this question.</p> <p>Thank you for the opportunity to comment upon California’s proposed amendments to court rule 5.645(d). Please let us know if we can be of further assistance to the Judicial Council in this matter.</p>	
180.	Orange County Bar Association John Hueston, President Newport Beach	A	No specific comment.	No response required.
181.	Orange County Public Defender’s Office Deborah A. Kwast Public Defender Santa Ana	AM	<p>These comments are submitted on behalf of the Orange County Public Defender’s Office with respect to SPR11-48, which would amend California Rules of Court, rule 5.645(d). We agree and support the proposed amendments but have one proposed modifications which is set forth below.</p> <p>Rule 5.645(d)1(c): In subsection iv, we request that the word “juvenile” be inserted into the clause so as to read “be familiar with the juvenile competency standards and accepted criteria used</p>	The committee agrees with this suggestion and has modified its recommendation in response.

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			<p>in evaluating juvenile incompetence.”</p> <p>The Judicial Counsel specifically requests comments concerning whether social workers should be utilized to conduct competency evaluations in addition to licensed psychiatrists and psychologists. We oppose this proposal as do not believe that a social worker has the needed educational background or training necessary to qualify to make competency determinations. Social workers need only possess a (pre-professional) master’s degree, whereas a psychiatrist must possess an M.D., and a psychologist, a doctoral degree. If social workers are to be considered as experts for purposed of the rule, at a minimum, the workers should be licensed. (Bus. & Prof. Code, § 4996.2.)</p>	<p>After consideration, the committee does not recommend that licensed clinical social workers be eligible to conduct evaluations to determine trial competency. To evaluate whether the child suffers from a mental disorder, developmental disability, developmental immaturity, or other condition, and if so, whether the condition or conditions impair the minor’s competency, the expert must have specific academic background, training in differential diagnosis, testing, and assessment of a child’s competency, and forensic specialty training. Psychiatrists and psychologists with doctoral degrees possess the requisite level of training, experience, and knowledge to conduct these evaluations. The committee, therefore, recommends that only licensed psychiatrists or psychologists with doctoral degrees be eligible to conduct evaluations.</p>
182.	Superior Court of Los Angeles County	AM	On behalf of the Los Angeles Superior Court’s	

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	<p>Juvenile Competency to Stand Trial Expert Panel Robert Leventer Pasadena</p>		<p>Juvenile Competency to Stand Trial expert panel⁷, I would like to express our disagreement with the proposed changes to California Rules of Court, rule 5.645. Our specific concern is with section (d)(1)(B)(i); and we would like to comment on whether the court should expand the list of accepted experts to include social workers.</p> <p>Section (d)(1)(B)(i) provides that to be appointed as an expert an individual must be a: Licensed physician who has successfully completed at least two years of postdoctoral specialty training in a psychiatric residency program approved by the American Board of Psychiatry and Neurology (or one year of internship and one year of such residency training).</p> <p>The above training period required for medical professionals is underestimated. Once a person has completed medical school he or she typically completes a residency training program (e.g., psychiatry, surgery, internal medicine, pediatrics). Adequate training to obtain the qualifications needed to conduct juvenile competency evaluations would, at a minimum, include completion of an accredited general psychiatry residency training program and an accredited child and adolescent psychiatry fellowship program. Generally speaking,</p>	<p>The committee agrees with this comment and has made changes to the qualifications to require higher levels of training and experience.</p>

⁷ The JCST Panel was established by the Los Angeles Juvenile Court to implement §709. The initial panel of five doctors will provide evaluations in all competency cases in ten of our 28 juvenile delinquency courts. The panel will be expanded to the remaining courts within the year. The JCST doctors are: Eraka Bath, M.D., Praveen R. Kambam, M.D., Nancy Kaser-Boyd, Ph.D., A.B.A.P., Philip C. O'Donnell, M.J., Ph.D and Christopher R. Thompson, M.D.

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			<p>residency training in general psychiatry is for 4 years, with subspecialty training in child and adolescent psychiatry (often referred to as a “fellowship”) being an additional 2-year program.</p> <p>Training in child and adolescent psychiatry should be a requirement for any M.D. who wishes to perform juvenile competency evaluations. In total this would represent 6 years of training post medical school. The JCST Panel feels strongly that an M.D. with just one year of post medical school training is grossly under-qualified to conduct juvenile competency evaluations. An M.D. with just one year of postgraduate training has not completed a psychiatry residency nor completed a child and adolescent psychiatry fellowship, both of which would be the minimal requisite competencies and skills acquisition to conduct juvenile competency evaluations.</p> <p>The inclusion of social workers to conduct competency evaluations for a court is inappropriate. Although the JCST Panel has great respect for our social work colleagues, they do not receive the requisite training in diagnostic assessment to provide an expert opinion on the issue of competency to a court. Moreover, there is no accepted training for LCSWs to obtain the necessary competencies to conduct juvenile competency assessments, and it is out of the scope of their practice. To our knowledge, there</p>	<p>After consideration, the committee does not recommend that licensed clinical social workers be eligible to conduct evaluations to determine trial competency. To evaluate whether the child suffers from a mental disorder, developmental disability, developmental immaturity, or other condition, and if so, whether the condition or conditions impair the minor’s competency, the expert must have specific academic background, training in differential diagnosis, testing and assessment of a child’s competency, and forensic</p>

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			are no specialized post graduate training programs for social workers to obtain forensic specialty training or certification.	specialty training. Psychiatrists and psychologists with doctoral degrees possess the requisite level of training, experience, and knowledge to conduct these evaluations. The committee recommends that only licensed psychiatrists or psychologists with doctoral degrees be eligible to conduct evaluations.
183.	Superior Court of Monterey County Eva Mihu, Operations Manager Salinas	A	Could possibly create challenges to find an expert.	The committee will monitor implementation over the next year in order to evaluate the need for changes.
184.	Superior Court of Orange County, Juvenile Hon. Douglas J. Hatchimonji Presiding Judge, Juvenile Court Orange		The Orange County Juvenile Court and its justice partners (District Attorney, Public Defender, Probation Department, Social Services Agency, Health Care Agency, Department of Education, and Orange County Regional Center) have been working on implementation of WIC 709, since January 2011. While these comments regarding the proposed rule are made only on behalf of the Orange County Juvenile Court, they are reflective of those discussions.	

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			<p><i>Regarding the requirement that the expert:”be familiar with the competency standards and accepted criteria used in evaluating competence” (Proposed – 5.645(d)(1)(C)(iv):</i></p> <p>It’s not clear what this provision is requiring. Is “the competency standards” essentially the Dusky definition (ability to assist counsel and understanding of the proceedings) or something more? Is “accepted criteria” the diagnostic criteria for a disorder or disability, or something more?</p> <p>This question is raised because the over-arching ambiguity that has permeated our discussions in Orange County is the concept of “developmental immaturity”, under <i>Timothy J. V. Superior Court</i>. Developmental immaturity is not a DSM-IVR diagnosis and there is sparse case law subsequent to <i>Timothy J</i> articulating a standard for determining whether a minor is developmentally immature. Not surprisingly, the District Attorney and Public Defender have very different interpretations of what constitutes developmental immaturity. The Juvenile Court has taken the position that it will not articulate a legal standard for developmental immaturity in the context of collaborative discussions aimed at creating WIC 709 procedures-that a trial court and court of appeal is the appropriate forum for formulating and articulating such a standard. (It is respectfully submitted that the same should be said for a Judicial Council committee.)</p>	

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			<p>The problem is applying a requirement that an evaluating expert “<i>be familiar with the competency standards and accepted criteria used in evaluating competency</i>” in the context of developmental immaturity. How does an expert demonstrate that he or she is familiar with developmental disability as a basis for incompetency, and how does a judge decide that an expert meets the requirement, when it’s not clear what the term means?</p> <p>It is recommended that that subparagraph (iv) be deleted as a precondition to the appointment of an expert. The provisions of WIC 709 in this regard can be met without making them prerequisites to appointment.</p> <p>Since the state of the law is up in the air, the direction the Orange County court and justice partners have taken is to incorporate the general competency standard in appointment orders to the expert, ordering that the expert opine, as follows:</p> <ol style="list-style-type: none"> 1. In the opinion of the evaluator, does the minor suffer from a disorder, developmental disability, developmental immaturity or other mental condition? <ol style="list-style-type: none"> a. If so, describe the disorder, disability, immaturity or condition. 2. In the opinion of the evaluator, is the minor competent to stand trial, meaning: 	

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			<p>a. Is the minor able to understand the nature of the proceeding, and the minor’s interest in the proceeding?; or b. Is the minor able to assist his or her attorney in the conduct of a defense in a rational manner?</p> <p>3. If the minor is not competent to stand trial, is the minor likely to benefit from attempts at attaining competency?</p> <p>These questions in and of themselves leave much room for interpretation by the evaluator. However, any perceived shortcomings with the expert’s opinions can be ferreted out by cross-examination and considered by the court in light of the statutory and decisional law concerning juvenile competency, as the law evolves over time.</p> <p><i>Regarding the requirement that the expert: “be familiar with effective interventions as well as treatment, training and programs for the attainment of competency available to children and adolescents in California.” (Proposed – 5.645(d)(1)(C)(v):</i></p> <p>Again, the recommendation is to delete this language as a condition to the appointment of an expert to determine whether a minor is incompetent.</p> <p>WIC 709 draws a distinction between</p>	<p>In order to properly advise the court about whether the child will attain competency, the expert must be knowledgeable about local providers offering programs for the attainment of competence. The court also needs information about treatment options for possible mental health</p>

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			<p><i>determining</i> whether a minor is or is not competent (subdivision (b)), and services to <i>attain</i> competency after the determination of incompetency (subdivision (c)). The existence or lack of services to attain competency does not seem to be relevant to determining whether a minor is or is not competent. Further, while the statute requires that an expert be appointed to determine whether a minor is competent, the statute does not require an expert determination as to the appropriate services to assist the minor in attaining competency.</p> <p>Additionally, are there “treatment, training and programs for the <i>attainment</i> of competency available to children and adolescents in California”? Certainly there are treatment, training and programs for children with mental disorders and developmental disabilities. But treatment for disorders and disabilities may be very different from treatment to attain competency. Nevertheless, the proposed rule presupposes the existence of treatment, training and programs specifically aimed at the “attainment of competency”. Unless there is a plethora of such programs, in particular for a “developmentally immature” minor, the phrase “<i>for the attainment of competency</i>” should be deleted, because otherwise a proposed expert will not be able to meet the provision of subparagraph (v). (See the comment below regarding ascertaining appropriate attainment of competency services for an incompetent minor.)</p>	<p>issues, disability services, and other areas affecting competency. The committee recognizes the importance of and does not intend to discourage collaboration among all stakeholders.</p>

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			<p><i>Regarding the request for feedback on whether the court should expand the list of accepted experts to other professionals such as social workers.</i></p> <p>No, the rule should not expand the list of experts beyond psychiatrists and psychologists, because experts are only required for determining competency, not for assisting the minor to attain competency.</p> <p>As noted above, WIC 709 draws a distinction between determining whether a minor is or is not competent (subdivision (b)), and services to attain competency after the determination of incompetency (subdivision (c)). By its terms, as well as by the nature of the task, the determination of competency, under subdivision (b), requires a psychiatrist or psychologist. It’s very hard to imagine any other profession competent to determine whether the minor suffers from a mental disorder, developmental disability, developmental immaturity or other condition. However, in making “orders it deems appropriate for services that may assist the minor in attaining competency” (subdivision (c)), there is no requirement in the statute that the court appoint an expert – doctor, psychologist, social worker or otherwise.</p> <p>The problem here is that the nature of the services that may assist the minor will differ</p>	<p>After consideration, the committee does not recommend that licensed clinical social workers be eligible to conduct evaluations to determine trial competency. To evaluate whether the child suffers from a mental disorder, developmental disability, developmental immaturity, or other condition, and if so, whether the condition or conditions impair the minor’s competency, the expert must have specific academic background, training in differential diagnosis, testing and assessment of a child’s competency, and forensic specialty training. Psychiatrists and psychologists with doctoral degrees possess the requisite level of training, experience, and knowledge to conduct these evaluations. The committee recommends that only licensed psychiatrists or psychologists with doctoral degrees be eligible to conduct evaluations..</p>

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			<p>depending upon the reason for the minor’s incompetency. A minor with a developmental disability may be best served by a Regional Center facility, whereas a minor with a mental disorder may require psychiatric care and psychotropic medication. Further, the pathways to funding mechanisms and the patient capacity of a treatment facility. Layered upon this reality is the fact that service delivery mechanisms can greatly differ from one California county to another. Finding a single “expert” to assist the court in ordering services may be impossible to locate, particularly in a large urban environment.</p> <p>In Orange County we are in the process of establishing a “Interagency Juvenile Competency Attainment Team”, made up of decision making representatives of the Probation Department, Social Services Agency, Health Care Agency, Department of Education, and Regional Center. Based upon the opinions of the expert evaluator in the determination that the minor is incompetent, the purpose of the Team is to: (a) express an opinion whether or not there are services and/or placement that may provide a substantial probability the minor will attain competency in the foreseeable future; (b) provide recommendations to the Court for services and/or placement that may assist the minor in attaining competency and/or for other therapeutic, placement, or rehabilitative services; (c) coordinate services and resources for the minor; (d) monitor the programs and services ordered by</p>	

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			<p>the Court. Essentially, this team will consider not only treatment options, but further the service delivery hurdles that must be overcome to get the minor the treatment.</p> <p>The Family and Juvenile Law Advisory Committee deserves kudos and compliments for these proposed amendments. This is not an easy area of the law to navigate and the committee has made a strong effort. If there are any questions or comments with respect to the views expressed in this correspondence, please do not hesitate to contact the undersigned.</p>	
185.	Superior Court of Riverside County Staff	A	No specific comment	No response required
186.	Superior Court of Sacramento County Finance Division Robert Turner, ASO II Sacramento	NI	No specific comment	No response required
187.	Superior Court of San Diego County	AM	The Welfare and Institutions Code section 709	The committee agrees with and has recommended

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	Mike Roddy Executive Officer San Diego		uses the term "suspend", not "stay". Therefore, rule 5.645 should be consistent.	this change.
188.	Superior Court of San Francisco County Juvenile Probation Department Garry Bieringer San Francisco	AM	Thank you for the opportunity to have this input. Suggested comments are in bold. (d) <u>Doubt as to the child’s competency</u> (iii) <u>The expert, whether a licensed physician or a psychologist, must have expertise possess demonstrable professional experience addressing in-child and adolescent developmental issues, including the emotional, behavioral, and cognitive impairments of children and adolescents as well as the cultural and social characteristics of children and adolescents. The expert shall have possess a curriculum vitae reflecting training in the forensic evaluation of children, and shall be familiar with the competency standards and accepted criteria used in evaluating competence. The expert shall have familiarity with possess a comprehensive understanding of the effective interventions as well as treatment, training and programs for the attainment of competency available to children and adolescents in California.</u>	The committee agrees with and has recommended these changes.
189.	Lois A. Weithorn Professor of Law UC-Hastings Law San Francisco	A	No comment	No response required.

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190.	Youth Law Center Sue Burrell, Staff Attorney San Francisco		<p>These comments are submitted on behalf of the Youth Law Center with respect to SPR11-48, which would amend California Rules of Court, rule 5.645(d) on juvenile competency. We appreciate the well-reasoned and thorough “Discussion” section that accompanies the proposed changes. Generally speaking, we agree with the proposed changes to Rule 5.645, but we have several small requests for modification, and one suggestion for an additional expert qualification.</p> <p>The Youth Law Center has a long history of interest in juvenile competence issues. In 2006/07 our office undertook a statewide survey of juvenile competence in California in order to better understand the prevalence of incompetence, county responses to incompetence, and policy issues that might need attention. In 2008 we published Incompetent Youth in California Juvenile Justice in the Stanford Law & Policy Review. In 2009 we met with the Judicial Council Task Force for Criminal Justice Collaboration on Mental Health Issues, Subcommittee on Juvenile Issues and Strategies issues to discuss juvenile competence, and in 2010 drafted a Protocol for Competence in Juvenile Justice Proceedings to provide guidance to county juvenile systems developing their own protocols. Our attorneys were actively involved in helping to shape A.B. 2212, which called for the promulgation of the proposed rule.</p>	No response required.

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Juvenile Law: Qualifications for Experts Evaluating Child’s Competency to Participate in Juvenile Proceedings (amend Cal. Rules of Court, rule 5.645(d))

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	Commentator	Position	Comment	Committee Response
			<p>The comments follow the section order of Rule 5.645.</p> <p>Rule 5.645(d)(1): We agree with the proposed changes. They are consistent with the language in newly enacted Welfare and Institutions Code 709, and will eliminate potential confusion.</p> <p>Rule 5.645(d)(1)(A) : We agree with the proposed changes. They are consistent with the language in newly enacted Welfare and Institutions Code 709, and also codify the holding in Tyrone B. v. Superior Court (2008) 164 Cal.App.4th 227, 231, that if substantial evidence is shown, the court must appoint an expert.</p> <p>Rule 5.645(d)(1)(B): We agree with the proposal to require the expert who evaluates competence to be a psychologist or psychiatrist, but ask that a clarification be considered. Training for those professions is the most likely to focus on forensic evaluation, testing, and education about mental illness, developmental disabilities and other cognitive impairment. However, it may be useful to clarify that clinicians with other professional qualifications may be called as a witness in relation to establishing or contesting competence, or as resources in helping to develop services for incompetent youth. For example, a social worker or MFCC who has worked with the child may be able to shed light on cognitive functioning even</p>	<p>The Committee agrees with this suggestion and has modified its recommendation in response.</p>

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Juvenile Law: Qualifications for Experts Evaluating Child’s Competency to Participate in Juvenile Proceedings (amend Cal. Rules of Court, rule 5.645(d))

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			<p>though they are not the actual evaluator. That person might also serve as a resource in developing services for the attainment of competence. The clarification could be something simple, for example:</p> <p style="padding-left: 40px;">Nothing in this rule is intended to restrict the involvement of clinicians with other professional qualifications from participating as consultants, witnesses, or in other capacities relevant to the case.</p> <p>Rule 5.645(d)(1)(C): We agree with most of the training requirements for evaluators, but request consideration of the following modifications and the addition of one further qualification for experts:</p> <ol style="list-style-type: none"> 1. In subsection iv, consider whether to add the word “juvenile” to each clause so it reads, “be familiar with the juvenile competency standards and accepted criteria used in evaluating juvenile incompetence. <p>While the enactment of Welfare and Institutions Code section 709 defines juvenile competency more broadly than California’s adult statutory scheme (Penal Code § 1367, et seq.), a surprising number of professionals still refer to juvenile competency in terms of the adult statutes. Thus, in the first clause, please consider</p>	<p>The committee agrees with and has recommended this change.</p>

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			<p>whether inserting the word “juvenile” would help to reduce such confusion.</p> <p>In the second clause, consider whether insertion of the word “juvenile” would help to assure that evaluators use an instrument designed for evaluating juvenile incompetence. In speaking with Dr. Thomas Grisso and his colleagues, there are some important differences in the way juveniles “appreciate” what is happening in their court case, and this needs to be factored into the evaluation. These differences are reflected in tools such as the Juvenile Adjudicative Competence Interview (JACI) - that assists clinicians in obtaining essential data related to youths’ strengths and deficits with relevance for their competence to stand trial. Evaluators should be familiar with the juvenile-specific criteria outlined in such instruments.</p> <p>2. In subsection v, consider slightly changing the language by removing the final two words “in California.”</p> <p>The point of requiring familiarity with services to assist in the attainment of competence is that the evaluator will be asked whether the child may attain competence in the foreseeable future. This requires knowledge of what kinds of services exist and whether they would be able to</p>	<p>The committee agrees with and has recommended this change.</p> <p>The committee agrees with and has recommended this change.</p>

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			<p>assist a person with this particular sort of cognitive impairment. At the evaluation stage, it is not important to know whether the services are available – only whether services exist that could address this child’s incompetence. Removing “in California” would address this issue.</p> <p>Having said this, knowledge about the existence of local services is important if the evaluator is also assisting the court in developing services for the child. Thus, consideration should also be given to adding a sentence that reads,</p> <p style="padding-left: 40px;">If the evaluator is assisting in identifying or recommending services for the attainment of competence, he or she shall be familiar with effective interventions as well as treatment, training and programs for the attainment of competency available to children and adolescents in California.</p> <p>3. A new subsection vi should be added to address language issues:</p> <p>A significant number of youth in the California juvenile justice system are limited English</p>	<p>The committee agrees with this suggestion and has modified its recommendation to require the use of certified interpreters if the evaluator is not proficient in the child’s preferred language.</p>

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			<p>proficient or come from homes where English is not the first language⁸ Since one of the most important areas in competence evaluation is the use and comprehension of language, this is a critical area of the competence assessment. Two issues need to be addressed:</p> <p style="padding-left: 40px;">a. The verbal part of the evaluation.</p> <p>The best way to assure valid evaluation is to have an evaluator who speaks the language preferred by the youth. Even using an interpreter may skew the results. The American Academy of Psychiatry and the Law Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial,⁹ observes:</p> <p style="padding-left: 40px;">Although it might be ideal for defendants to be assessed in their native languages, it is often impossible to do so. Moreover, given the way that criminal justice proceedings are conducted in North America, it may be important to assess how a defendant who is not a native English speaker can communicate and understand criminal proceedings conducted in English. Interpreters can help bridge the language gap for defendants who do not speak English</p>	

⁸ The California Department of Education (“CDE”) reports that 42% of all youth enrolled in California schools come from homes where English is not the first language. See report found at <http://data1.cde.ca.gov/dataquest/>

⁹ **Douglas Mossman, et al., AAPL Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial**, Journal of the American Academy of Psychiatry and the Law, vol. 35:Supplement 4:S3-S72 (2007), available at http://www.jaapl.org/cgi/content/full/35/Supplement_4/S3

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			<p>well or are not comfortable or confident about their English skills. However, psychiatrists should recognize that the interaction between psychiatrist and evaluatee is altered by involving a third party in the evaluative dialogue. Interpreters may introduce other forms of bias related to their own perspectives. Such bias may be introduced through translation choices that omit, add, condense, or replace some of the content expressed by the interviewer or the evaluatee.</p> <p>Despite the potential for invalid results through the use of interpreters, the reality is that bilingual clinicians are not available in all languages and in all locations. Having said this, given the size and wide geographic distribution of the Spanish-speaking population in California, Spanish language bilingual evaluators should be available throughout California. The same holds true for other impacted language groups in certain California counties.¹⁰ Accordingly, the rule should require evaluators who speak the child’s primary language for the largest or most frequently encountered languages in a particular county, but for other languages provide for the use of a certified interpreter when such a clinician cannot</p>	<p>The committee agrees with this suggestion and has modified its recommendation in response.</p>

¹⁰ Latino youth comprise the largest ethnic group in California’s juvenile justice system and of the 1.2 million California students identified as limited English proficient, 85% are Spanish speaking. The other four largest student language groups are: Vietnamese, Filipino, Cantonese and Hmong. See CDE enrollment reports at <http://data1.cde.ca.gov/dataquest/>

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			<p>be made available. Such a change would ensure that the rule is consistent with federal law and regulations governing language access.¹¹</p> <p>b. The part of the evaluation that uses tests or assessment tools.</p> <p>Also, evaluators should use tests and assessment tools designed for use with persons speaking the child’s primary language. While some tests (e.g., the WISC-IV for measuring intellectual ability and cognitive processing) are available in Spanish, many are not. And unfortunately, most tests have not been validated for use with anyone other than persons who speak the language that was involved in the test’s validation. In speaking with clinicians about this issue, there are additional problems when interpreters are used. First, the validity of a test in English that is administered through an interpreter to a person whose primary language is not English may be affected by the inherent imprecision in translation. And second, even if translation is uniform among interpreters, there is no way to know whether the elements of the test have a similar meaning to people with non-English linguistic and cultural backgrounds. The</p>	

¹¹ See attached, “[Language Access Guidance Letter to State Courts from Assistant Attorney General Thomas E. Perez - August 17, 2010](http://www.lep.gov/final_courts_ltr_081610.pdf)” and found at http://www.lep.gov/final_courts_ltr_081610.pdf. See also, “Language Barriers to Justice in California - A Report of the California Commission on Access to Justice” (Sept. 2005). <http://www.calbar.ca.gov/LinkClick.aspx?fileticket=79bAIYydnho%3d&tabid=216>.

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			<p>American Academy of Psychiatry and the Law Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial notes that,</p> <p>It is often the case that these instruments have been neither translated nor normed in languages other than standard American English. Individuals from other cultures vary in their use of local or idiomatic terms that may not correspond well with a particular way of translating an instrument, making it important to be sure that an evaluatee actually understands the concepts and knowledge areas being assessed. Also, it may be misleading to interpret test results from evaluatees of other cultures according to norms established by administering the tests to North Americans.</p> <p>While these are complex issues that will surely play out further in the forensic world, the court rule should at least acknowledge that linguistic issues are important to the validity of the evaluation, and provide a path to successful evaluation of children whose primary language is not English and/or those children who are immigrants or refugees to this country.¹²</p> <p>Similar issues exist in the field of special</p>	

¹² See, “Screening and Assessing Immigrant and Refugee Youth in School-Based Mental Health Programs” (The Center for Health and Health Care in Our Schools – 2008) <http://www.rwjf.org/files/research/3320.32211.0508issuebriefno.1.pdf>

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			<p>education, which also faces shortages of bilingual evaluators, and uses verbal evaluations and standardized assessments to determine the presence of disabilities. With respect to language issues in evaluation, federal special education law provides:</p> <p>Each local educational agency shall ensure that—“(1) assessments and other evaluation materials used to assess a child under this section—(i) are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer; (iii) are used for purposes for which the assessment or measures are valid and reliable; (iv) are administered by trained and knowledgeable personnel; and (v) are administered in accordance with any instructions provided by the producer of such assessments.” (34 Code of Federal Regulations, Part 300.304(c): Evaluation procedures.)</p> <p>The following are two possible ways to handle the issue in SPR11-48 – the first option more directly addresses the evaluator and assessment</p>	

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			<p>tools issues; the second is appealing because it mirrors the existing federal regulation on linguistic evaluation of disabilities:</p> <ul style="list-style-type: none"> <li data-bbox="909 451 1409 683">vi be proficient in the language preferred by the child, or if that is not feasible employ the services of a certified interpreter; and use assessment tools that are linguistically and culturally appropriate for that child. or <li data-bbox="909 727 1409 1027">vi be able to provide and administer the evaluation in the language and form most likely to yield accurate information on competency, unless it is not feasible to so provide or administer; and use the services of a certified interpreter when appropriate. <p>Rule 5.645, old subsection (2): We very much agree with the proposal to take out the references to section 6500. That section only applies to youth who are wards of the court, so it is not very useful for incompetent youth, who are almost never wards by virtue of the proceedings having been suspended prior to adjudication. The previously existing section has been a source of confusion and it will be good to be rid of it.</p> <p>Rule 5.645(d), substituting a new (2) and</p>	<p>The committee agrees with this suggestion and has modified the language of its recommendation .</p>

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			<p>repealing old (3): We agree with the proposal to direct practitioners to Welfare and Institutions Code section 709.</p> <p>Thank you for your consideration of these comments. We are grateful for the excellent work that has gone into the proposed language, and feel sure that this will be immensely useful to juvenile court practitioners. Please let us know if we can clarify anything in these comments or otherwise be of assistance in the rulemaking process.</p>	

Attachment A

**List of 161 individuals joined in the comment from the National Association of Social Workers
(#16 on the chart of comments)**

Eugene Alper, LCSW Los Angeles	Paul Burton Northridge	Jeanette Sylvester Cryer, LCSW Chino Hills
Lori Anderson Salinas	Kara Carlos Los Angeles	Lorraine E. Cummings, LCSW Montrose
Jennifer Ankele Chino Hills	Yun Jin Carson Chico	Roseann Day Anaheim
Nicole L. Arkadie Rancho Cucamonga	Dennis Cassan, LCSW Laguna Niguel	Robert Delpino Riverside
Steven Armijo Long Beach	Shearly Chambless Mission Viejo	Joni Diamond Van Nuys
Charlene Atkins San Diego	Nicole Chan Los Angeles	Toni Dougherty Bakersfield
Antonio Banuelos	Minhae Cheeley Blue Jay	Robi-Ann Doyle Ceres
Anthony Barreiro, LCSW San Francisco	Ronald Chicoine Indio	Lori Durand San Jose
Jules E. Beuck, LCSW San Bernardino	Denise Christensen	Leslie Easton San Diego
Joshua Bienenfeld Toluca Lake	Cathleen Christensen, LCSW San Francisco	James R. Elliott, LCSW San Dimas
Donald C. Bliss San Francisco	Mandy Chuey Oakland	Karen Ellison, LCSW Santa Rosa
Debbie Boerbaitz Del Mar	Maria Cisneros Santa Fe Springs	Jennifer Escalera, LCSW Los Angeles
Michael Boretz Janesville	Carly Collins Playa del Rey	Adele Fergusson Ventura
Kristin Brada Bakersfield	Janice Conroy Glendale	Margaret Fitzer, LCSW Winnetka
Iris Brooks Oakland	Terry Cook Long Beach	Christine Ford Fullerton
Aspen Burnett, LCSW Los Angeles	Victor Cota Irvine	Maureen Forman Palm Desert

Attachment A

**List of 161 individuals joined in the comment from the National Association of Social Workers
(#16 on the chart of comments)**

Steve Fouke Ventura	Janice Hayward Sacramento	Lila Khalili Anaheim
Michelle Fox Downey	Ronit Hazon-Mizrahi Encino	Yumiko Kodama Torrance
Karina Freibergs Sebastopol	Karen Heidebrecht Sacramento	Amy Kohl Los Angeles
Constance Galford Palm Desert	Elizabeth Helm Lancaster	E. Barbara Koretz Encino
Betty Garcia, PhD Clovis	Pini Herman, PhD Los Angeles	Charles Krugman Fresno
Victoria Garrison, LCSW San Jose	Eduardo Hernandez San Leandro	Mavis Laughlin Ventura
Anne K. Geeding, LCSW San Diego	Stacy Hicks Chatsworth	Sherri Lawson Imperial Beach
Linda Gehre Walnut Creek	Paulette Holt Children's Hospital Los Angeles	Leslie Laxson, ACSW Bakersfield
Marisol Geivet Bakersfield	Lorene Ibbetson Carlsbad	Wilfred Lee San Diego
Dianne Golden, LCSW Irvine	Mara Jackson San Luis Obispo	Lashawn Lenbird Compton
Lana Goldshmit Encino	Cheryl Jackson Sacramento/Altadena	Stephanie Linsao Sacramento
Sylvia Gonzalez Perris	Nancy James San Diego	Katherine Lopez-Avitia Whittier
Kimya Green Los Angeles	Claribel Jimenez Norwalk	Candida Madrigal San Francisco
Debra Harder Bakersfield	Frances Lewis Johnese San Jose	Steve Manos La Mesa
Tommy Hawk Sacramento	Lori Karny Los Angeles	Terri Martin San Diego
Andrea Hayes Sonora	Daniel Keyser San Diego	Amy Mass El Cerrito

Attachment A

**List of 161 individuals joined in the comment from the National Association of Social Workers
(#16 on the chart of comments)**

Wanda McIntosh, LCSW Fresno	Samuel Prentice Anaheim	Dave Sherlock Roseville
Allison Meyers Cupertino	Lisa Rapallo Long Beach	Virginia Sikorszky, LCSW Inglewood
Wendy Murphy Oakland	Hector Reyes Los Angeles	Bonnie Silverman Los Angeles
Rosemary Nakamura San Diego	Valerie Anne Riddel, LCSW Glendale	Holly Simpson Fresno
Kwamina Neizer Pasadena	Brenna Rizan Sacramento	Kathy Sniffen Modesto
Khanh Ninh Los Angeles	Patricia Robertson Coalinga	Jeremy Stein San Diego
Marie O'Meara Galt	Tom Rooker Walnut Creek	Lisa Stratford Los Angeles
Frank Orozco Santa Ana	Claudia Joan Rosa-Bienenfeld, MSW, LCSW Toluca Lake	John Stuart Los Alamitos
Dara Papo San Francisco	Rhona Rosenblatt Pacific Palisades	Melinda Swanson San Jose
Mary Payette San Francisco	Geri Rossen, LCSW Berkeley	Nathan Thomas Santa Clara
Donna Pedroza Alameda	Stephanie Sabar Los Angeles	Heidi Tragesser, LCSW Palm Desert
Agris Petersons Santa Barbara	Regina Safdie, LCSW Los Angeles	Georgina Vallejo Live Oak
Rebecca Poage, LCSW San Diego	Albert Schafer San Diego	Kathleen Villagomez, LCSW Long Beach
Margaret Polinsky Altadena	Rosalyn Schreiman Los Gatos	Heather Waddle Sacramento
Krystal Powell Hermosa Beach	Joy Sedlock Napa	Lynn Waldman San Diego
Elizabeth Powers Pasadena	Veronique Semple Bayside	Anita Ware, LCSW Ventura

Attachment A

**List of 161 individuals joined in the comment from the National Association of Social Workers
(#16 on the chart of comments)**

David Weikel
Fresno

Jeremy Winn
Torrance

Kevin Yoshida
Los Angeles

Heidi Weinreich
Los Angeles

J. Winningham, LCSW
Porterville

Elizabeth Zenker
Arcata

Kent Weishaus
Los Angeles

Lisa Winslow
Chico

Andrea Zimmer
Sacramento

Rob Weisskirch
Seaside

Kimberly Wong
South Pasadena

Ethel Zivotofsky
Oakland

Eva Westholm
Los Angeles

Evelyn Wright, LCSW
Rolling Hills Estates

Elizabeth Suzuki Zuckerwise
Calabasa

Leslie Wind
Los Angeles

Alice Xiao
Alhambra