

# **Is Adjudication Psychology a New Proficiency Area? <sup>1</sup>**

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## **Introduction**

Psychologists who serve on national or state ethics committees, state licensing boards, and quality assurance panels for health organizations or other agencies have undertaken an important responsibility to investigate and judge other psychologists in a fair, just and respectful manner. Like the judiciary in legal settings, they must apply the laws, rules and regulations that govern their group in a non-biased manner. This means that they must know the laws, how they have been interpreted, and the psychology ethics code and then, apply both judiciously. They must also understand that the process of being investigated and judged by one's peers, is something that most psychologists take very seriously, especially given the potential outcome on the psychologist's reputation, mental health, and career. Most psychologists incorporate their professional reputation together with their personal self-esteem so that the investigation of a complaint filed against them will trigger psychological issues that they will spend time coping with for at least as long as the process lasts. In many cases this can be from one to two years. This emotional impact occurs even when the psychologist has not committed any violations. If the outcome is unsatisfactory to them, then the psychological injuries may be even greater than the economic ones.

Few psychologists who serve on licensing boards, ethics committees, and hospital or other health organization quality assurance panels understand and acknowledge the

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<sup>1</sup> Symposium Presentation in Grossman, L. (2005). The Licensing Board Blues: Fact or Fiction? APA Annual Convention, Washington, D.C. August 18<sup>th</sup>.

anguish that befalls most psychologists under investigation. Often they dismiss the psychologists' concern as an over reaction because so few complaints are sustained or worse yet, they have no compassion for the psychologist charged because they believe he or she is guilty of harming a patient. This often occurs simply because a complaint is filed, with psychologists on the boards and committees using the supposition that 'where there is smoke there must be fire' rather than the dictum that 'a person is innocent until proven guilty'. Rarely are psychologists seen as human, with all the frailties that human beings possess, when they admit they have engaged in harmful behavior towards others and it is not unusual to hear labels such as 'psychopath' or 'narcissistic' used to ignore the impact that subsequent discipline might have on the person and his or her family, friends, and colleagues. This does not mean the public should not be protected by psychologists participating in these groups, but rather, it is a call for psychologists to be better trained in the adjudication process prior to serving on one of these boards or committees.

From my years serving in various capacities on A.P.A. governance, I have been concerned that the very people who accept the responsibility of protecting the consumer and the general public do not always behave with respect towards those colleagues who admittedly are guilty of terrible acts, whether they acted in that way due to intentional self-gratification or a tragic mistake in judgment. They also do not treat someone under investigation with the same respect they would like to have for themselves. Some of these same psychologists would never treat a forensic or clinical client in the same way, even understanding that the Ethics Code calls for the psychologist to act with respect. In some cases, it is the structure of the board or committee that hampers the psychologist from

acting as he or she would wish to do. In other cases, especially licensing boards, the state regulator or administrator, may have such tight control over the members, that the psychologists quickly become socialized into 'agents of the state' rather than psychologists. It is my professional opinion that one way we can help psychologists who have agreed to serve as judges of their colleagues' behavior remain objective and respectful, is to train them first as psychologists with a proficiency in adjudication psychology under the specialty area of forensic psychology. This would involve developing a curriculum that is similar to the training that judges in courts of law receive as outlined below.

A literature search has yielded no evidence those psychologists who serve in the role of a judge ever get training in the psychology curriculum to do so. Even professional schools do not offer a course in adjudication psychology. Although they do not associate the qualities with being a judge, the curriculum of most of the professional schools do list the qualities needed as part of their training, often in association with supervision. Most state licensing boards and ethics committees provide some minimal training to be a judge, usually informal and after the psychologist's selection but prior to the taking his or her seat on the board or committee. This socialization process simply produces homogeneity on the board but may well stifle diverse opinions and open-mindedness that are needed by judges. It is not unusual for those reformist psychologists who agree to serve on a board to quickly perform like they are expected to from their socialization or else drop off the board, usually citing a heavy work load or other personal reasons when their efforts get rejected by others.

One way to recognize the extent to which adjudication psychologists believe that are not accountable to anyone but the state or other authority who appoints and monitors them is the language that they have been reported as using when discussing colleagues in the community, sometimes even when observers are present. In one case, the psychologist was heard to state to other board members that he believed the psychologist was a manipulative liar even though the complaint against him could not be substantiated. Sometimes, the complaints against the alleged offender are made by direct competitors in the marketplace with others on the board or committee not recusing themselves when they have heard rumors or other innuendo that could bias their decisions.

For example, I worked with a psychologist who had a complaint filed against her from a client's abusive husband in several venues. The state licensing board used a member of the national ethics committee's panel to give an opinion but then decided to dismiss the case. The complainant then filed an ethics complaint with A.P.A. This psychologist then gave information gleaned from the earlier complaint and tainted the next group to hear the case when the complainant went there. The fact that most boards require closed sessions when discussing possible complainants provides secrecy and further lack of accountability although members who have resigned or rotated off boards may make reports. Too often they are simply dismissed as being disgruntled and difficult to please.

It is my belief and the belief of others within psychology today that many of these adjudication groups have gone too far in attempting to protect the public and no longer believe that they have *accountability* to their colleagues in psychology, also. Further, it appears that the other criteria that is seen as important for a judge to be fair, honest,

respectful, and just is *independence*. The legal profession has found that without independence and training for judges, they will most probably, “... decide cases in a way likely to provoke the disfavor of those who will decide whether that judge will remain on the bench” (Webster, 1995, p 4). In fact, the state and its representatives in the regulatory board arena, have an interest in psychologists on the board opening and investigating a sufficient number of cases and adjudicating them, in order to justify its existence. This is prima facie evidence that the psychologist who serves at the pleasure of the state and its representatives, will have a conflict between the state’s goal and the goal of not wanting to open or investigate a case where there is insufficient evidence to start.

Webster (1995) suggests that the power and authority of the judiciary in a democracy depend upon the respect and support of the people being judged. He further suggests that judges who are not independent or accountable pose a threat to [their] society in that there is the potential to become “anti-majoritarian, anti-democratic, elite, bent on pursuing goals which are not only inconsistent with those of the majority, but are also a real danger to the political foundation upon which this nation was built” (p.5). It appears that the argument can be translated to psychologists who sit in judgment of other psychologists. There is no fair and independent selection process of these adjudication psychologists, no accountability to the group they are judging for retention, secrecy encouraged during closed meetings, limited due process, limited or no training from psychology<sup>2</sup>, and the use of an ethics code or rules and regulations that have been politically determined and need much interpretation.

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<sup>2</sup> In fact, the Association of State and Provincial Psychology Boards (ASPPB) which provides guidance and assistance to state licensing boards claims in its mission statement to provide training for psychologists who serve on boards as one of their goals, but there is nothing on their website to indicate what kind of training, when it takes place, and what areas it covers. Rather, their materials all focus on the licensing of

Further, like much of our legal system, where a psychologist selects to practice often determines what laws must be followed. In some states, the media create a political climate that makes it difficult to accurately investigate and judge psychologists. Sometimes, using the same board members to investigate, charge and adjudicate creates multiple relationships that would be considered unethical in any other setting because of the probability of causing a loss of objectivity and bias. Although some have suggested that the Administrative Law Judge who conducts the only hearing where oral sworn testimony is presented from the accused, is the judge and not the members of the board, in fact, her or his findings are not binding on licensing board members. Nor does the board have an affirmative duty to disclose the charges, the evidence to be used, or even all the accusers prior to the hearing making defense difficult especially in cases where the psychologist denies an intentional wrongdoing. The board may use as evidence other unsubstantiated charges and reports which makes it even more important that psychologists understand the forensic implications of such questionable practices. For example, in one case, the board tried to use statements of an employee of a complainant without disclosing his relationship to the original client. In another case, the board gave unsubstantiated information to the news media resulting in a number of people coming forward to testify against a psychologist who were never clients and to whom the psychologist had no fiduciary duty and therefore, had no standing in court. One person claimed the psychologist's character was flawed because once he took that person's parking place in a busy shopping center.

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psychologists. The A.P.A. Office on Ethics will answer questions from psychologists and handles complaints but does not provide formal training for those members who are elected by the Council of Representatives to sit on the committee or appointed to sit on its adjudication panels. This office could work together with the A.P.A. Office on Education to design a curriculum such as suggested in this paper for all psychologists who are interested in becoming adjudication psychologists.

### Judges' Responses: Selection and Retention

The situation that psychologists who choose to sit on adjudication boards and committees find themselves in today is similar although not exactly parallel to the prior situations of members of the various local, state, and national judiciary before they made certain reforms. A review of their literature finds numerous articles discussing the pitfalls and some solutions as well as a complete description of the characteristics necessary for a competent judge to possess. These articles suggest that psychologists who serve in similar capacities must have the same proficiencies that judges are required to have. Studies have found that not all lawyers will make a good judge (e.g. See the American Bar Association *Judges' Journal*, Fall 2003, 42 (4) for articles designed to assist judges in judging themselves). Further, the way a judge is selected also seems to be important as studies have compared the rate of discipline among judges who are appointed, elected, and selected by what is called the 'merit plan' (Webster, 1995) The League of Women Voters among others in each state have published numerous articles describing how judges are selected and retained along with the American Bar Association and some state and local bar associations that can be found on their websites. Only 6 states still have the governor with or without consultation with others appoint a judge unless it is to fill an unexpired vacancy on the court. Popular election of judges are so fraught with politics, whether or not they are on partisan slates, that 32 states have gone to what is referred to as the 'merit plan' as what is considered a compromise to try to keep judicial selection independent (Webster, 1995). Retention of judges is usually by a popular vote of the citizens it serves, but in most states there is no one permitted to run opposing the incumbent judge. However, a commission or committee made up of attorneys usually

publishes the judges' records on cases prior to the retention election so that the electorate can become educated rather than influenced by disgruntled losers in one case that the judge served on.

In the 'merit plan', a commission selects members of the bar that meet the criteria publicized and indicate their willingness to serve as a judge. For example, in Colorado, the commission selects two to six members while in Florida (which only does the merit plan for the governor to select from to fill vacancies as it uses the non-partisan elections for regular openings) usually three names are sent up to the governor. If the governor does not choose someone, then the Chief Justice of the State Supreme Court may do so or the commission may be required to send up more names. Those who like this plan believe that more women and minorities are selected using it, especially since they do not have to raise significant sums of money to finance an election campaign. In many states, such as Colorado, the newly selected judge is on probation for two years, and then must sit for retention for the next four years of the total six year term. While some argue that voters often do not possess the requisite information to make a meaningful choice to retain or not, in fact, sometimes judges who become too controversial and do not reflect the values of their community, do get deselected, or simply get lower approval ratings which should be taken as a cautionary warning that the judge is not meeting the public's needs.

Obviously none of this exists yet in the world of adjudication psychology. Most psychologists do not know what characteristics would be helpful for someone to have if they are to make judgments about their and their colleagues' behavior. However, there is a body of knowledge that judges are exposed to and this knowledge is also known by others in the forensic and public interest fields. Judges must protect the rights of the



individuals who come before them and make decisions that follow the rules of law in many different areas. They must be intelligent enough to learn about things they do not know and able to listen carefully to the evidence brought before them. They must be able to sort out what is evidence under the law and not pay attention to rumor and innuendo that often slips into legal cases despite the attempts to keep it out. So, too, must adjudication psychologists protect the rights of the individuals who come before them, even if they are fewer than accorded to criminals or civil litigants protecting their property or others in our judicial system. Psychologists often believe they have the same rights as seen in television shows but this is not true in administrative board hearings. See Shapiro (2005) for a discussion of the problems caused by the limited due process afforded psychologists who must defend against a licensing board complaint.

Like judges in the criminal courts, adjudication psychologists must also protect the general safety and especially the safety of the consumer of psychological services. They must be intelligent enough to learn about things they do not know and judge using the 'reasonable' standard described in the ethics code and not just their own theoretical position. Like the judge in a court of law, the adjudication psychologist must know the law including the rules and regulations of that state and the psychology ethics code. They too must sort out the legitimate evidence, know when it is insufficient, and not pay attention to rumor or innuendo about psychologists, especially when charges are brought by competitors or board members themselves. They must remember that what the Assistant Attorney General tells them is not evidence and she or he must prove what is said, usually by a preponderance of the evidence. This means more likely than not or

51% that what happened was against the law or ethics code standards, not the aspirational guidelines.

Those sitting on ethics committees who get their information from licensing boards must be sure to look at the evidence carefully without bias especially if the charges are found substantiated by the board without adequate evidence because the psychologist accepted a plea. It is very common for psychologists who believe they have not done anything wrong to accept a plea and a letter of admonition in their file, fearing the expense and embarrassment of going to a public hearing will be prohibitive to their families. In fact, defense lawyers often recommend accepting a plea if they can work out favorable terms since even if the psychologist is found not to have violated the laws or code at hearing, the licensing boards are not bound to accept the ALJ's findings.

#### Application to a Proficiency in Adjudication Psychology

The A.P.A. Committee for the Recognition of Specialty and Proficiency in Professional Psychology (CRSPPP) has already approved a specialty area in clinical forensic psychology. It is argued in this paper that psychologists who serve on adjudication boards and committees are in fact a subspecialty or proficiency within the area of forensic psychology and should be so recognized. The definition of a proficiency in the CRSPPP Principles for the Recognition of Proficiencies in Professional Psychology states that:

A proficiency is a circumscribed activity in the general practice of professional psychology or one or more of its specialties. The relationship between a body of knowledge and a set of the parameters of practice specified in Criterion III below represents the most critical definition of a proficiency (p. 1).

There are ten principles that must be met when petitioning for a new proficiency area. They are (I) distinctiveness, (II) acquisition of knowledge and skills, (III) parameters of practice including (a) populations served, (b) psychological, biological and/or social problems, and (c) specific procedures and techniques, (IV) public need for the proficiency, (V) representation by administrative organizations, (VI) effectiveness of its work, (VII) promotion of quality improvement to its constituents, (VIII) guidelines for proficiency service delivery, (IX) provider identification and evaluation, and (X) continuing professional development and education (CRSPPP Principles for the Recognition of Proficiencies in Professional Psychology, approved by COR, 2/95).

While adjudication psychology does not meet all of the proficiency principles, at this time, it seems that it would not be difficult to move towards this goal within the next few years. Table 1 demonstrates how these principles can be met.

#### Model Selection and Retention Process

Earlier, the merit plan was described as the most common way to select judges from the general body of lawyers. A similar plan could be put into practice to choose psychologists who could serve on state boards and committees to judge their colleagues. First, a commission or committee of psychologists, lawyers and public members could be selected to serve as a screening committee for those candidates who have completed the psychology part of the training and wish to be selected by the governor or appropriate political body. This would assure that the adjudication psychologist has the knowledge and skills to represent psychology on these boards and committees. Then, the commission could send three names to the group that does the final selection. The commission would be responsible for screening so that there is diversity represented on the board or

committee. Most judicial commissions that perform selection functions look for the following qualities in addition to knowledge:

Integrity

Application of the relevant laws, rules, regulations and ethical standards

Communication and listening skills

Preparation, attentiveness and control over meetings

Ability to be fair and just in discipline recommendations.

Ability to manage cases and dispose of them in a timely manner.

Good administrative skills

Punctuality

Effectiveness in working with participants in the judicial process

Record of service in the legal and public arenas.

A survey that I recently did on the internet with advocates, mental health professionals, and judges asking them to select five qualities and behaviors they thought important for a good judge to have included those in the above list and the following:

Understanding of real life and the complexities of human nature

Openness to one's own mistakes

Empathy

Compassion

Willingness to explain

Humility

Lack of gender bias or prejudice

Ability to see things from everyone's point of view

Keeping current on case law as well as the law itself

Willingness to make a decision without undue delay even if unpopular

Wisdom

Willingness to work hard and read everything that is submitted carefully

Willingness to wrestle with difficult, nuanced, complex issues

Knowing how to evaluate the expert's opinions

Civility

Not deferring own opinion to others in the court

In evaluating all these statements, it is apparent that some are about judicial temperament and qualities of character while others are skills and knowledge that should be gained from a specific curriculum. Those dealing with temperament and character can be used to select persons into the adjudication proficiency concentration while the others can become part of the knowledge base taught in the coursework and practicum experiences. A graduate of the adjudication proficiency can then list him or herself as willing and capable of serving on a board or committee, so that the agencies and groups can make their selections from that published group. This list can be maintained by the state psychological associations or other groups that wish to do so. Another possibility is to have the National Register or the American Board of Professional Psychology maintain a certification process. Until there is a group of psychologists trained and ready to accept appointments, the commission can accept nominations from the psychology groups in their location.

## Accountability and Retention

Once the psychologist is selected, he or she should have a probationary period to see if this is an appropriate selection. Like judges, a two year probation period may be sufficient time to make this self-evaluation and also be evaluated by the commission and state agency. If those so authorized recommend retention, then the psychologist should spend an additional two years on that board or committee for a total of four years. The selection commission could also serve as a retention commission although in some cases a separate group may be more appropriate. Again, the group should have members representing psychology, law, and the public interest. Those serving as a retention commission should obtain information from other sectors to help determine if the psychologist is performing adequately. Thus, psychologists who have been investigated and no cause to open a case was found, as well as those who have been disciplined for errors they have made should be queried. Also, complainants should be surveyed to determine how the process worked for them. In this case, they represent the general public. Finally, the state representatives such as administrators, assistant attorney generals, and administrative law judges who work with the particular board or committee should be questioned to get their opinion.

If retention is recommended by the commission, service should be limited to two terms of four years. This is to make sure that fairness and justice are served as the adjudication psychologist often has a practice or other job as a psychologist, also. Too many years in this position would have a high risk to make someone believe that they are better than their colleagues and that sense of importance often leads to adjudication errors according to ABA and other judicial organization studies. Publication of retention

recommendations in the state psychological association and state bar association would be another way to hold people accountable for their performance.

The above procedure for selection and retention is a first step towards assuring that adjudication psychologists are independent and accountable. A quality assurance committee should be established that deals with possible violations of the rules and ethics by the adjudication psychologist him or herself. We are all human and make mistakes, even though we would think such a person should know better. There needs to be a formal mechanism for dealing with those who sit in judgment of others, especially if their behavior calls for their immediate removal and this committee could do it. It is similar to those commissions in many states. More information on judicial selection and discipline can be found on the following websites:

<http://www.courts.state.co.us/supct/committees/judicialdiscipline.htm>.

<http://www.courts.state.co.us/exec/pubed/brochures/howajudge.pdf>

#### Model Curriculum for Adjudication Psychologists

The training program specifying the curriculum to develop a knowledge and skills base must also be developed. Here the models from the judiciary in the legal community would be most helpful. The Colorado Office of the State Court Administrator publishes a curriculum for students in grades 7 to 12 which can be easily adapted. They have had students and instructors put forth a list of characteristics that are seen in a good judge.

These qualities are positive for an adjudication psychologist also:

A good judge has:	A good judge is:
Common sense	Civil
Ability to learn	Humble

Balance	Courteous
Appropriate temperament	Patient
Good listening skills	Empathetic
Sense of humor	Trustworthy
Communication skills	Honest
Integrity	Skeptical yet trusting
People skills	Open-minded
Strength of conviction	Fair
Awareness of personal biases	Unbiased
Decorum on and off the bench	Perceptive
Strong management skills	Helpful
Good time management	Realistic
Good work ethic	Efficient
Knowledge of the law	Firm and in control
Commitment to the law	Self Confident
Litigation Experience	Diligent
Private Practice Experience	Reputable
Commitment to Community Service	Responsive
Recognition of importance of	Deliberative
Public Outreach	Diversity conscious
	A recognized member of the community
	A good role model



The knowledge base necessary will be a combination of the enforceable standards in the current APA Ethics Code, the variety of theoretical orientations by which psychologists practice today, and the laws, rules and regulations that govern the practice of psychology in that state or community. Also important will be the forensic specialty knowledge that the adjudication psychologist must learn. This includes those areas of due process that are afforded to psychologists going through a licensing board or ethics investigation, an understanding of what is the legal standard of proof in that jurisdiction, and a clear understanding of what constitutes evidence in these cases. As so much of law in regulatory board situations is not clear as it is in criminal, civil, and family matters, psychologists will have to be familiar with this branch of the judiciary. Obviously, this knowledge base will change from time to time so that continuing education will be required to keep one's certification as an adjudication psychologist.

Forensic psychologists also learn how to utilize the general psychology knowledge base to assist courts in answering legal questions. These are specialty area skills that adjudication psychologists like other forensic and clinical specialists are expected to know. The skills include learning to work collaboratively in an interdisciplinary team where there are different ways of looking at the information presented. Forensic psychologists are expected to bring their scientific training and background into the legal arena where reason and case history are often seen as more persuasive than empirical or clinical data. They need to be willing to learn new interventions and techniques in order to judge whether or not someone is meeting the current standard of practice.

Clinical forensic psychologists are also trained to understand the emotional toll that being investigated by the state licensing board, ethics committee or quality assurance teams whether or not someone is guilty as charged. They are trained to believe in the democratic principle that someone is innocent until proven guilty by the state. Many psychologists charged with a complaint in this age of litigation are not guilty of any violation. The APA Division 42 and 31 Interdisciplinary Task Force on Licensing Board Complaints has found that even those psychologists who are not guilty and whose cases are eventually dismissed are likely to have a negative emotional response to the process itself. Adjudication psychologists can help persuade licensing boards make some changes that could be helpful to their innocent colleagues such as arguing for a faster turn around when reviewing a complaint, better training of investigators who often spend many months and sometimes years in deciding which complaints to send to the board before a psychologist even sees it, and treating all psychologists who come before the board with the respect and dignity with which they would treat their clients.

### **Conclusion**

In conclusion, there are many parallels between the duties of a judge and psychologist who agrees to serve on a state licensing board, national or state ethics committee, or other quality assurance panel that judges colleagues. When reviewing some of the problems that professional psychologists have had with being investigated by any of these groups, it appears that the most egregious problems might be overcome if the selection and retention process paralleled the selection and retention process for judges. Much attention is paid to these two areas when selecting members of the judiciary to assure that independence of the judge from partisan loyalties that could cause bias and

accountability to the people the judge serves is met. Currently, the psychologist on a board or committee has loyalties that are developed with the training and socialization with other members of the board or committee rather than independently to psychology. Reports of psychologists who are investigated by these groups state that their colleagues serving as judges often behave in unethical and emotionally damaging ways whether they are innocent or guilty of what is charged.

This paper argues that declaring adjudication psychology as a proficiency under the clinical forensic specialty area will assist in making important changes in the ways these boards and committees function. A body of knowledge and skills will be more carefully developed creating clear selection and retention criteria. Adjudication psychologists will be held accountable for their behavior by formalized surveys of psychologists, consumers, and state or other regulatory agencies. A sample of the application of proficiency principles established by APA CRSPPP to adjudication psychology is discussed as is a sample curriculum that could be adapted from the judicial arena.

**Table 1. Principles of Adjudication Psychology as a Proficiency**

<b>Principle</b>	<b>Adjudication Psychology</b>
<b>I. Distinctiveness</b>	<b>This is a separate field for only those who Serve on state licensing boards, national and State ethics committees, and other quality Assurance groups to judge other psychologists.</b>
<b>II. Acquisition of a Core Of Psychological Knowledge and Skills</b>	<b>A sample curriculum is presented but there are a variety of judge's training programs that can be adapted to psychologists.</b>
<b>III. Parameters of Practice</b>	<p><b>a) Adjudication psychologists serve both the state in its goal to protect the consumer and their colleagues in psychology.</b></p> <p><b>b) They must understand the biopsychosocial model of those who violate ethical and legal rules as well as those who do not but have a complaint filed against them.</b></p> <p><b>c) Judges use specific techniques and procedures some of which are described.</b></p>
<b>IV. Public Need for Proficiency Practice</b>	<b>There is a compelling need for the public to better understand what is and is not permitted by professional psychologists. There is also a compelling need to educate adjudication psychologists how to apply the ethics code in an adjudication setting.</b>
<b>V. Administrative Organizations</b>	<b>The APA has an Office of Ethics and Divisions 31, 41, and 42 that can deal with the proficiency. ASPPB can also deal with this proficiency.</b>
<b>VI. Effectiveness</b>	<b>There is a body of evidence that accepts the effectiveness of psychologists sitting in judgment of other psychologists although there is room for improvement if they were held accountable by their colleagues.</b>
<b>VII. Quality Improvement</b>	<b>A proficiency in adjudication psychology would develop more programs for training and improve the ability of psychologists to adjudicate</b>
<b>VIII. Guidelines</b>	<b>Guidelines would have to be developed.</b>

**IX. Provider Identification  
And Evaluation**

**Adjudication psychologists who complete the required training programs would be identified and evaluated as to their competency.**

**X. Continuing Professional  
Development & Education**

**This already exists and will be expanded upon by inclusion of forensic material from judges and Lawyers.**