

SPECIALTY GUIDELINES FOR FORENSIC PSYCHOLOGY

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Division 41 American Psychological Association and American Board of Forensic Psychology

SECOND OFFICIAL DRAFT - RELEASED JANUARY 11, 2006

OUTLINE

1. INTRODUCTION

- 1.01 History of the *Specialty Guidelines for Forensic Psychology*
- 1.02 Definitions and Terminology
- 1.03 Nature of Forensic Psychology
- 1.04 Services and Functions

2. NATURE AND SCOPE OF THE *GUIDELINES*

- 2.01 Intended Users
- 2.02 Aspirational Model

3. RESPONSIBILITIES

- 3.01 Integrity
 - 3.01.01 Impartiality and Fairness
 - 3.01.02 Respect
 - 3.01.03 Avoidance of Conflicts of Interest
- 3.02 Community and Professional Service
- 3.03 Pro Bono Activities

4. COMPETENCE

- 4.01 Scope of Competence
- 4.02 Gaining and Maintaining Competence
- 4.03 Representation of Competencies
- 4.04 Knowledge of the Legal System and the Legal Rights of Individuals
- 4.05 Knowledge of the Scientific Foundation for Testimony and Sworn Statements
- 4.06 Knowledge of the Scientific Foundation for Teaching and Research
- 4.07 Considering Impact of Personal Beliefs and Experience
- 4.08 Appreciation of Individual Differences
- 4.09 Competence of Supervisees and Trainees
- 4.10 Appropriate Use of Services and Products

5. DILIGENCE

- 5.01 Provision of Services
- 5.02 Responsiveness
- 5.03 Communication
- 5.04 Availability

6. RELATIONSHIPS

- 6.01 Common Forensic Relationships
 - 6.01.01 Attorney-Client Relationships
 - 6.01.02 Attorney-Forensic Practitioner Relationships
 - 6.01.03 Party-Forensic Practitioner Relationships
- 6.02 Responsibilities
- 6.03 Multiple Relationships
 - 6.03.01 Therapeutic-Forensic Role Conflicts
 - 6.03.02 Expert Testimony by Practitioners Providing Therapeutic Services
- 6.05 Provision of Emergency Mental Health Services

7. FEES

- 7.01 Determining Fees
- 7.02 Fee Arrangements
- 7.03 Representation of Fees

8. NOTIFICATION, ASSENT, CONSENT, AND INFORMED CONSENT

- 8.01 Timing and Substance
- 8.02 Communication with Attorneys Seeking to Retain a Forensic Practitioner
- 8.03 Communication with Forensic Examinees

8.03.01 Persons Not Ordered or Mandated to Undergo Examination

- 8.03.02 Persons Ordered or Mandated to Undergo Examination
- 8.03.03 Persons Lacking Capacity to Provide Informed Consent
- 8.04 Communication with Other Direct Recipients of Forensic Services Such As Collaterals and Non-Party Examinees
- 8.05 Communication in Research Contexts

9. CONFLICTS IN PRACTICE

- 9.01 Conflicts with Legal Authority
- 9.02 Conflicts with Organizational Demands
- 9.03 Conflicts with Fellow Professionals

10. PRIVACY, CONFIDENTIALITY, AND PRIVILEGE

- 10.01 Knowledge of Legal Standards
- 10.02 Release of Information
- 10.03 Access to Information
- 10.04 Acquiring Third Party Information
- 10.05 Use of Case Materials in Teaching, Continuing Education, and Other Scholarly Activities

11. METHODS AND PROCEDURES

- 11.01 Use of Appropriate Methods
- 11.02 Avoiding Bias
- 11.03 Use of and Reliance on Second Hand Information and Data
- 11.04 Opinions Regarding Persons Not Examined

12. ASSESSMENT

- 12.01 Focus on Legally Relevant Factors
 - 12.01.01 Assessment of Functional Abilities
 - 12.01.02 Use of Diagnostic Classification Procedures
- 12.02 Appropriate Use of Assessment Procedures
- 12.03 Appreciation of Individual Differences
- 12.04 Appreciation of Contextual Differences
- 12.05 Providing Assessment Feedback

13. DOCUMENTATION

- 13.01 Documentation and Compilation of Data Considered
- 13.02 Provision of Documentation
- 13.03 Record Keeping and Retention
- 13.04 Knowledge of Applicable Rules

14. PROFESSIONAL AND OTHER PUBLIC COMMUNICATIONS

- 14.01 Accuracy, Fairness, and Avoidance of Deception
- 14.02 Differentiating Observations, Inferences, and Conclusions
- 14.03 Disclosing Sources of Information and Bases of Opinions
- 14.04 Comprehensive and Accurate Presentation of Opinions in Reports and Testimony
- 14.05 Commenting Upon Other Professionals and Participants
- 14.06 Out of Court Statements

APPENDIX I: BACKGROUND OF THE *GUIDELINES* AND THE REVISION PROCESS

- A. History of the *Guidelines*
- B. Revision Process
- C. Need for the Guidelines
- D. Developers and Support
- E. Background Literature
- F. Current Status

APPENDIX II: DEFINITIONS AND TERMINOLOGY

SPECIALTY GUIDELINES FOR FORENSIC PSYCHOLOGY

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1. INTRODUCTION

1.01 History of the *Specialty Guidelines for Forensic Psychology*

This document replaces the 1991 *Specialty Guidelines for Forensic Psychologists* which was approved by the American Psychology-Law Society, Division 41 of the American Psychological Association (APA) and the American Board of Forensic Psychology. The current revision has also been approved by the Council of Representatives of the American Psychological Association. Appendix I includes a discussion of the revision process, enactment, and current status of these *Guidelines*.

1.02 Definitions and Terminology

Appendix II includes definitions and terminology as used for the purposes of these *Guidelines*.

1.03 Nature of Forensic Psychology

For the purposes of these *Guidelines*, forensic psychology refers to all professional practice by any psychologist working within any sub-discipline of psychology (e.g., clinical, developmental, social, cognitive) when the intended purpose of the service is to apply the scientific, technical, or specialized knowledge of psychology to the law and to use that knowledge to assist in solving legal, contractual, and administrative problems. Application of the *Guidelines* does not depend on the practitioner's typical areas of practice or expertise, but rather on the services provided in the case at hand. These *Guidelines* apply all matters in which practitioners provide forensic psychological expertise to judicial, administrative, and educational systems including, but not limited to examining persons in anticipation of legal, contractual, administrative, or disability determination proceedings; offering expert opinion about psychological issues in the form of amicus briefs or testimony to a judicial, legislative or administrative body acting in an adjudicative capacity; serving as a trial consultant or otherwise offering expertise to attorneys, the courts, or others; conducting research for the purpose of, or in the anticipation of, litigation; or involvement in educational activities to forensic practitioners and the legal system.

Professional psychological conduct is not considered forensic practice solely because the conduct takes place in, or the product is presented in, a tribunal or other judicial, legislative, or administrative forum. Similarly, when a party (such as a civilly or criminally detained individual) or another individual (such as a child whose parents are involved in divorce proceedings) is ordered into treatment with a practitioner, that treatment is not necessarily the practice of forensic psychology. Psychological testimony that is solely, reasonably, and reliably based on the provision of psychotherapy would not ordinarily be considered forensic practice.

For the purposes of these *Guidelines*, "forensic practitioner" refers to a psychologist when engaged in the practice of forensic psychology as described above. Such professional conduct is considered forensic from the time the practitioner reasonably anticipates or agrees to, or is legally mandated to, provide expertise on an explicitly psycholegal issue.

1.04 Services and Functions

Forensic practitioners recognize that a) the nature of forensic services and functions may be unfamiliar to many clients and service recipients, b) the substantial rights, liberties, and properties may be at risk in

forensic matters, and c) attorneys and their clients may incorrectly believe that forensic practitioners are retained to provide partisan advocacy.

The provision of forensic services and functions may appropriately include a wide variety of psycholegal roles and functions. As researchers, forensic practitioners may participate in the collection and dissemination of empirical and scientific data that is intended to be relevant to the answering of various legal questions. As advisors, forensic practitioners may provide an attorney with an informed understanding of the role that psychology can play in the attorney's case. As consultants, forensic practitioners may explain the practical implications of relevant research, examination findings, and the opinions of other psycholegal experts. As forensic examiners, forensic practitioners may examine a party's functioning and report findings to the attorney, to a legal tribunal, or to others. As mediators or negotiators, forensic practitioners may serve in a third-party neutral role and may assist parties in resolving a dispute. As arbiters, special masters, or case managers with decision-making authority, forensic practitioners may, by agreement or court order, serve the parties, the attorneys, and the court in a decision-making role.

2. NATURE AND SCOPE OF THE *GUIDELINES*

2.01 Intended Users

These *Guidelines* are intended for use by members of the APA, members of the American Psychology-Law Society, and Diplomates of the American Board of Forensic Psychology when they are engaged in the practice of forensic psychology as described above (1.02, 1.03, and 1.04). The *Guidelines* may also provide guidance on professional conduct to the legal system, other organizations and professions, and independent professionals. Other organizations, disciplines, professionals, entities, and individuals are encouraged to consider these *Guidelines* as guiding principles for the provision of forensic services and other work products.

2.02 Aspirational Model

The *Guidelines* are an advisory statement that recommend professional behavior, endeavors, and conduct for forensic practitioners. The *Guidelines* are intended to educate, not mandate. They are not intended to override the judgment of forensic practitioners, but rather to inform their judgment. In the process of making decisions regarding their professional behavior in forensic contexts, forensic practitioners consider the *Guidelines*, all appropriate sources of professional authority, applicable codes of ethics, and applicable laws, rules, and regulations operating in the relevant jurisdiction.

2.03 Goals

The goals of the *Guidelines* are to improve the quality of forensic psychological services; enhance the practice and facilitate the systematic development of forensic psychology; encourage a high level of quality in professional practice; and encourage forensic practitioners to acknowledge and respect the rights of those whom they serve.

2.04 Professional Discretion and Judgment

Guidelines differ from practice standards and other required codes of conduct. Standards are mandatory and may be accompanied by an enforcement mechanism; guidelines reflect aspirations for accomplishment and are not accompanied by an enforcement mechanism.

For forensic practitioners who are members of the APA, the Ethical Principles of Psychologists and Code of Conduct (EPPCC), and not the *Guidelines*, contain rules of conduct enforceable by the APA. Such rules of

the EPPCC define the proper conduct of psychologists, including forensic practitioners, for purposes of professional discipline. In contrast to the EPPCC, the *Guidelines* are advisory and are to be understood only as providing further guidance for forensic practitioners, their clients, parties, the judiciary, and the general public.

The *Guidelines* are not mandatory or exhaustive and may not be applicable to every forensic situation or jurisdiction. As such, and regardless of the specific language used, the *Guidelines* are to be understood as advisory, permissive, and facilitative in areas in which the forensic practitioner has discretion to exercise professional judgment that is not prohibited or mandated by the EPPCC or by law. The *Guidelines* neither add obligations to nor eliminate obligations from the EPPCC, but provide additional guidance for psychologists subject to compliance with the EPPCC. To the extent that the *Guidelines* make statements similar to those in the EPPCC, members of APA should consider those statements as discretionary with regard to the *Guidelines*, even if they are mandatory with regard to the APA and the EPPCC.

The modifiers used in the *Guidelines* (e.g., reasonably, appropriate, potentially) are included in order to allow professional judgment on the part of forensic practitioners; eliminate injustice or inequality that would occur without the modifier; ensure applicability across the broad range of activities conducted by forensic practitioners; and reduce the likelihood of enacting an inflexible set of *Guidelines* that would be unable to evolve as conceptualizations of generally accepted and desirable practices evolve.

The use of these modifiers, and the recognition of the role of professional discretion and judgment, also reflects that forensic practitioners are likely to encounter facts and circumstances not anticipated by the *Guidelines* and they may have to act upon uncertain or incomplete evidence in an immediate situation. The *Guidelines* may provide general or conceptual guidance in such circumstances. The *Guidelines* do not, however, exhaust the legal, professional, moral, and ethical considerations that inform forensic practitioners, for no complex activity can be completely defined by legal rules, codes of conduct, and aspirational guidelines.

2.05 Limitations

The *Guidelines* are not intended to serve as a basis for disciplinary action or civil liability. The standard of care is established by the competent authority in a legal tribunal, not by the *Guidelines*. The *Guidelines* may assist in establishing standards of care in their attempt to identify the best possible practice, but they do not, in and of themselves, identify what other conduct may also be competent practice and what may be the standard of care in a particular case. No ethical, licensure, or other administrative action or remedy, nor any other cause of action, should be taken *solely* on the basis of a forensic practitioner acting or not acting in a manner advised by these *Guidelines*. Whether a forensic practitioner has acted in a manner contrary to that advised in these *Guidelines* should not, in and of itself, determine whether the forensic practitioner is liable in a legal action, whether an agreement or contract is enforceable, or whether other legal or administrative consequences should occur.

The *Guidelines* do recognize that a competent authority may reference the *Guidelines* when formulating standards. In that context, the *Guidelines* advise that the authority consider that a) the *Guidelines* attempt to identify a high level of quality in practice in common forensic contexts; b) competent practice is defined as the conduct of a reasonably prudent forensic practitioner engaged in similar activities in similar circumstances; c) professional conduct evolves and may be viewed along a continuum of adequacy, and d) “minimally competent” and “best possible” are usually different points along that continuum.

The *Guidelines* are designed to be national in scope and are intended to be consistent with state and federal law. Although their scope may be more limited outside of the United States, they nonetheless may provide some direction that informs forensic practitioners in other countries and jurisdictions.

To the extent that the *Guidelines* may be construed as being applicable to the advertisement of services or the solicitation of clients, they are intended to prevent false or deceptive advertisement or solicitation, and should be construed in a manner consistent with that intent.

3. RESPONSIBILITIES

3.01 Integrity

Forensic practitioners seek to promote accuracy, honesty, and truthfulness in the science, teaching, and practice of forensic psychology and they resist partisan pressures to provide services in any ways that might tend to be misleading or inaccurate.

3.01.01 Impartiality and Fairness

When offering expert opinion to be relied upon by a decision maker, or when teaching or conducting research, forensic practitioners demonstrate commitment to the goals of accuracy, objectivity, fairness, and independence. Forensic practitioners treat all participants and weigh all data, opinions, and rival hypotheses impartially.

When conducting forensic examinations, forensic practitioners are unbiased and nonpartisan, and they eschew partisan presentation of unrepresentative, incomplete, or inaccurate evidence that might mislead finders of fact. This principle does not preclude forceful representation of the data and reasoning upon which a conclusion or professional product is based. When assisting the finder of fact, forensic practitioners offer facts and opinions impartially and irrespectively of who retains, compensates, or calls them to present the evidence to the judicial process.

When providing forensic educational services, forensic practitioners represent alternative perspectives in an accurate, fair and professional manner and demonstrate a willingness to weigh and present all views, facts, or opinions impartially.

When conducting research, forensic practitioners represent results in a fair and objective manner. Forensic practitioners utilize research designs and scientific methods that adequately and fairly test the questions at hand, and they resist partisan pressures to develop designs or report results in ways that might be misleading.

3.01.02 Respect

Forensic practitioners do not use their knowledge of psychology and the legal system inappropriately to harass, intimidate, or mislead others. Forensic practitioners demonstrate respect for the legal system and all its participants. When challenging the accuracy and validity of the claims of others, forensic practitioners do so with respect for the individual and the legal process, and in a responsible manner.

3.01.03 Avoidance of Conflicts of Interest

Forensic practitioners refrain from taking on a professional role when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to impair their objectivity, competence, or effectiveness in providing forensic services.

Forensic practitioners identify and address real or apparent conflicts of interest in an attempt to maintain the public confidence and trust, discharge professional obligations, and maintain responsibility, objectivity, and accountability. Forensic practitioners recognize that harm caused by the appearance of a conflict may be as damaging as that caused by a real conflict, and they consider this when deciding whether to proceed in a

matter. Forensic practitioners consider whether a prudent and competent forensic practitioner engaged in similar circumstances would determine that the ability to make a proper decision is likely to become impaired under the immediate circumstances.

When a conflict of interest is determined to be manageable, continuing services are provided in an even more stringent and fully documented manner to help ensure that conflicts are managed appropriately, that accountability is maintained, and that the trust of all relevant persons is preserved.

3.02 Community and Professional Service

Forensic practitioners seek to improve the field of forensic psychology, the quality of services rendered, and the public's understanding of and confidence in forensic practice. Forensic practitioners aid in pursuing these objectives, assist the profession of psychology in general, assist in the regulation of forensic psychology in the public interest, and exemplify the profession's ideal of public and professional service.

Because of the value of educating the public about forensic psychology practice, forensic practitioners make available the *Guidelines* on request.

3.03 Pro Bono Activities

Forensic practitioners are encouraged to devote professional time and resources to allow greater access to forensic services for those whose ability to pay customary fees is limited. Forensic practitioners who derive substantial income from the delivery of forensic services are encouraged to offer some portion of their professional services on a pro bono or reduced fee basis where the public interest or the welfare of parties may be constrained by insufficient financial resources.

4. COMPETENCE

4.01 Scope of Competence

Forensic practitioners provide competent services to clients and other recipients of forensic services in a manner consistent with the standards of their profession. Competent provision of services includes the psychological and legal knowledge, skill, thoroughness, and preparation reasonably necessary for the provision of those services.

In determining whether to proceed in a particular matter, forensic practitioners consider factors including the relative complexity and specialized nature of the service required, their general training and experience, their training and experience in the specialty area in question, the preparation and study they are able to devote to the matter, and the opportunities for consultation with a professional of established competence in the subject matter in question. Even with regard to subjects in which they are competent, forensic practitioners are encouraged to consult with other experts in particularly complex or contentious matters.

4.02 Gaining and Maintaining Competence

Forensic practitioners provide services only within the boundaries of their competence. Competence can be acquired through various combinations of education, training, supervised experience, consultation, study, and professional experience. Competent services can also be provided through consultation with, and as appropriate, supervision by, another professional of established competence in the subject matter in question. Forensic practitioners planning to provide services, teach, or conduct research involving populations, areas, techniques, or technologies that are new to them undertake relevant education, training, supervised experience, consultation, or study.

Forensic practitioners undertake ongoing efforts to develop and maintain their competencies. To maintain the requisite knowledge and skill, forensic practitioners keep abreast of developments in the fields of psychology and the law, engage in continuing study and education, and comply with any continuing education requirements to which they may be subject.

4.03 Representation of Competencies

Forensic practitioners adequately inform clients, examinees, judges, attorneys, parties, triers of fact, and other recipients of their services about relevant aspects of the nature and extent of their experience, training, credentials, and qualifications. The amount and type of information provided will vary according to the service involved and the context in which it is provided. Forensic practitioners do not, by either commission or omission, participate in misrepresentation of their abilities, training, credentials, or qualifications or the manner in which they were obtained.

4.04 Knowledge of the Legal System and the Legal Rights of Individuals

Forensic practitioners are responsible for a fundamental and reasonable level of knowledge and understanding of the legal and professional standards, laws, rules, and precedents that govern their participation in legal proceedings and that guide the impact of their services on service recipients. Forensic practitioners manage their professional conduct in a manner that does not threaten or impair the rights of effected individuals. They consult with, and refer others to, qualified legal counsel on matters of law and legal process.

In their role as forensic practitioners, forensic practitioners do not provide formal legal advice or formal legal opinion. When forensic practitioners provide legal information to examinees or other parties, they explain to parties that legal information is not the same as legal advice or legal opinion. The legal information provided by forensic practitioners may be based on their knowledge and experience in forensic practice. Forensic practitioners encourage parties to consult with an attorney for guidance regarding relevant legal issues and applicability of any legal information provided regarding the most advisable course of action for the person's particular situation.

4.05 Knowledge of the Scientific Foundation for Testimony and Other Sworn Statements

Through reports, written statements, and testimony, forensic practitioners provide scientific, technical and other specialized knowledge to the court that may assist the trier of fact to understand evidence or to determine a fact in issue. Forensic practitioners only offer opinions to the court in those areas for which they are competent to do so, based on adequate knowledge, skill, experience, and education. When providing opinions and testimony that are based on novel or emerging principles and methods, forensic practitioners make clear the known limitations of these principles and methods. Forensic practitioners typically provide opinions and testimony that are a) sufficiently based upon facts or data and on adequate scientific foundation; b) the product of reliable principles and methods; and c) based on principles and methods that have been applied reliably to the facts of the case.

4.06 Knowledge of the Scientific Foundation for Teaching and Research

Forensic practitioners engage in teaching and research activities in which they have adequate knowledge, experience, and education. They adhere to recognized and accepted principles of research design and scientific method, and acknowledge substantial relevant limitations and caveats inherent in their procedures and conclusions.

4.07 Considering Impact of Personal Beliefs and Experience

Forensic practitioners recognize that their own attitudes, values, beliefs, opinions, or biases may have the effect of diminishing their ability to practice in a competent and impartial manner. Under such circumstances, forensic practitioners take steps to correct or limit such effects; decline participation in the matter; or limit their participation in a manner that is consistent with professional obligations.

4.08 Appreciation of Individual Differences

When scientific or professional knowledge in the discipline of psychology establishes that an understanding of factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, socioeconomic status, or other relevant individual differences affects implementation or use of their services or research, forensic practitioners gain the training, experience, consultation, or supervision necessary.

Forensic practitioners are aware of and respect cultural, individual, and role differences, including those based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, and socioeconomic status and consider these factors when working with members of such groups. They do not engage in unfair discrimination based on such factors or on any basis proscribed by law. They take steps to correct or limit the effects of such factors on their work; decline participation in the matter; or limit their participation in a manner that is consistent with professional obligations. They also avoid participating in or condoning prejudicial activities of others based upon such factors.

4.09 Competence of Supervisees and Trainees

Forensic practitioners are responsible for the conduct of those individuals whom they employ or directly supervise. When delegating work to employees, supervisees, students, or research or teaching assistants, or using the services of others, such as interpreters, forensic practitioners avoid using persons who have multiple relationships with those being served that would be likely to result in diminished or impaired performance, exploitation, or loss of objectivity; authorize only those responsibilities that such persons can be expected to perform competently on the basis of their education, training, or experience, either independently or with the level of supervision that is provided; and take reasonable steps to ensure that such persons perform these services competently and diligently.

4.10 Appropriate Use of Services and Products

Forensic practitioners make a reasonable effort to ensure that their services and the products of their services are used in a competent and responsible manner, balancing this consideration with the need not to threaten or impair the legal rights of parties or to interfere with the ability of their attorneys to adequately represent them. Forensic practitioners are not bound to correct all possible misuses of their services but to exercise professional discretion in determining the extent and means by which misuses may be addressed.

When asked to engage in conduct or provide a product that they believe is unethical, unprofessional, or falls below the standard of care, forensic practitioners decline to provide the service or product and, if appropriate, inform the person making the request of the reason for doing so.

5. DILIGENCE

5.01 Provision of Services

Forensic practitioners act with reasonable diligence and promptness in providing agreed-upon and reasonably anticipated services subject to their agreement with their clients. Forensic practitioners are not bound, however, to provide services not reasonably anticipated when retained, nor to provide every possible

aspect or variation of service. Instead, forensic practitioners exercise professional discretion in determining the extent and means by which services are provided and agreements are fulfilled.

5.02 Responsiveness

Forensic practitioners manage their workload so that services can be provided thoroughly, competently, and promptly. Acting with reasonable promptness, however, does not require acquiescing to service demands that could not have been reasonably anticipated to occur at the time the service was requested, nor does it include the provision of services if the client has not acted in a manner consistent with existing agreements, including with regard to the payment of fees. Explicit agreements between forensic practitioners and their clients will help define the scope and timeliness of the services for which forensic practitioners are responsible.

5.03 Communication

Forensic practitioners keep their clients reasonably informed about the status of their services, comply with their clients' reasonable requests for information, and consult with their clients about any substantial limitation on their conduct or performance that may arise when they reasonably believe that their clients anticipate a service that may not be consistent with the *Guidelines*. Forensic practitioners attempt to keep their clients reasonably informed regarding new facts, opinions, or other potential evidence that may be salient, whether that information is helpful to their clients' desired outcomes of their matters or not.

Forensic practitioners may withhold information from a party, but ordinarily would not withhold information from the retaining attorney or entity. When forensic practitioners reasonably believe that disclosing information to a party would likely result in substantial and otherwise avoidable harm to that party or to others, the retaining attorney or entity is so informed.

5.04 Availability

When being retained, forensic practitioners and their clients agree on the terms of compensation and the scope of the services that are to be provided. Unless the forensic practitioner-client relationship is terminated pursuant to the retainer agreement, the forensic practitioner carries through to conclusion all matters undertaken for a client. When a forensic practitioner's employment is limited to a specific matter, the relationship terminates when the matter has been resolved, when anticipated services have been provided, or when the retainer agreement has been violated. Doubts about whether a valid and binding client-forensic practitioner relationship still exist are clarified by the forensic practitioner so that the client will not mistakenly assume that the previously existing agreement remains in effect.

6. RELATIONSHIPS

Whether a forensic practitioner-client relationship exists for any specific purpose depends on the circumstances and is determined by a number of factors which may include the information exchanged between the potential client by the forensic practitioner prior to, or at the initiation of any contact or service, the nature of the interaction, and the purpose of the interaction.

6.01 Common Forensic Relationships

6.01.01 Attorney-Client Relationships

The relationship between the attorney and the legal party is usually the relationship referred to as the attorney-client relationship. The legal party retains the attorney whose duty it is to defend and protect the

party's legal rights and to zealously assert and pursue the party's interests and positions under the rules of the adversary system.

6.01.02 Attorney-Forensic Practitioner Relationships

The attorney-forensic practitioner relationship refers to the relationship between the party's attorney and the forensic practitioner who the attorney has retained on behalf of the attorney's client in the matter. Typically, the attorney retains the forensic practitioner on behalf of the attorney's client and is to be considered the client of the forensic practitioner.

The forensic practitioner may also be retained by a *pro se* litigant or other party. The forensic practitioner encourages a *pro se* litigant or other party to consult with an attorney before entering into a retainer agreement.

6.01.03 Party-Forensic Practitioner Relationships

The party is typically the client of the attorney and not the client of the forensic practitioner. At the request of the retaining attorney or by order of the court, forensic practitioners provide services to the party or to others who impact the party. Forensic practitioners relate to represented parties knowing that the duties of the attorney are to be distinguished from the duties of the forensic practitioner.

6.02 Responsibilities

Most of the responsibilities flowing from the forensic practitioner-client relationship attach only after a) the client has requested the forensic practitioner to render professional services, b) the forensic practitioner has agreed to do so, and c) an agreement regarding compensation has been reached. Forensic practitioners are aware that there are some responsibilities, such as privacy, confidentiality, and privilege that may attach when the forensic practitioner agrees to consider whether a forensic practitioner-client relationship shall be established.

At the initiation of any contact with an individual for whom they might provide services, forensic practitioners clarify the nature of the relationship and the services to be provided including the role of the forensic practitioner (e.g., trial consultant, forensic examiner, expert witness); which person or entity is the client; the probable uses of the services provided or information obtained; and any limitations to privacy, confidentiality, or privilege.

6.03 Multiple Relationships

A multiple relationship occurs when a forensic practitioner is in a professional role with a person and at the same time or at a subsequent time is in a conflicting role with the same person; is involved in a personal, fiscal, or other relationship with an adverse party; at the same time is in a relationship with a person closely associated with or related to the person with whom the forensic practitioner has the professional relationship; or offers or agrees to enter into another relationship in the future with the person or a person closely associated with or related to the person.

Forensic practitioners are vigilant in recognizing the potential conflicts of interest and threats to objectivity inherent in multiple relationships with attorneys, judges, parties, examinees, patients, and other participants to a legal proceeding. Forensic practitioners recognize that some personal and professional relationships may interfere with their ability to practice in a competent and objective manner and they seek to minimize any detrimental effects by avoiding involvement in such matters whenever feasible or limiting their assistance in a manner that is consistent with professional obligations.

6.03.01 Therapeutic-Forensic Role Conflicts

Forensic practitioners recognize that providing both forensic and therapeutic services with regard to the same individual, or with closely related individuals, is likely to create a role conflict and an apparent conflict of interest. Because forensic and therapeutic roles are fundamentally different and conflicting, forensic practitioners ordinarily avoid engaging in both activities with the same person either concurrently or sequentially. Nevertheless, it is sometimes necessary to provide both forensic and therapeutic services, such as when another reasonably skilled and competent provider is otherwise unavailable to provide either service or when providing both services is mandated by court, law, contract, statute, or job requirements. When requested or ordered by a court to provide either concurrent or sequential forensic and therapeutic services, forensic practitioners avoid providing both services when another reasonably skilled and competent provider of either service is available and they advise the requestor of the reasons that such provision of services is ill-advised.

Upon determining that it is reasonable, appropriate, or required to provide both types of service either concurrently or sequentially, forensic practitioners take reasonable steps to minimize the potential negative effects of these circumstances on the rights of the party; on privacy, confidentiality, and privilege; and on the processes of treatment and evaluation. In determining whether the provision of such multiple services is reasonable and appropriate, forensic practitioners consider risks and benefits to all parties and to the legal system or entity likely to be impacted, the availability of alternative providers, the possibility of separating each service widely in time, seeking judicial review and direction, and consulting with knowledgeable colleagues.

6.03.02 Expert Testimony by Practitioners Providing Therapeutic Services

Providing expert testimony about a patient who is a participant in a legal matter does not necessarily involve the practice of forensic psychology even when that testimony explicitly embraces a psycholegal issue that is before the decision-maker. For example, providing testimony on matters such as a patient's reported history or other statements, mental status, diagnosis, and treatment provided, as well as expert opinion regarding the patient's response to treatment, prognosis, and likelihood of relapse or remission would not ordinarily be considered forensic practice even when the testimony is related to a psycholegal issue before the decision-maker. Rendering opinions and providing testimony about a person on psycholegal issues (e.g., criminal responsibility, legal causation, proximate cause, trial competence, testamentary capacity, the relative merits of parenting arrangements) would ordinarily be considered the practice of forensic psychology.

Forensic practitioners provide testimony only on those issues for which they have adequate foundation and only when a reasonable forensic practitioner engaged in similar circumstances would determine that the ability to make a proper decision is unlikely to be impaired. As with testimony regarding forensic examinees, the testimony identifies any substantial lack of corroboration or other substantive limitation that may affect the reliability and validity of the fact or opinion offered and communicates these to the decision maker.

6.05 Provision of Emergency Mental Health Services

In an emergency and in an attempt to avoid imminent harm, forensic practitioners may provide advice, service, or other assistance in a matter in which they do not have the skill ordinarily required, where referral to or consultation with another forensic practitioner would be impractical. Forensic practitioners limit such assistance to that reasonably necessary in the circumstances and limit disclosures of information to that which is consistent with applicable law, code, statute, and order of the court. When providing such services, forensic practitioners inform the retaining attorney, legal representative, or the court (if court-retained) in a manner consistent with the requirements of the emergency situation.

Upon providing emergency treatment services, forensic practitioners determine whether forensic examination services can be provided after considering whether doing so is likely to impair their objectivity, competence, or effectiveness, or otherwise risk exploitation or harm to the individual or the legal system.

7. FEES

7.01 Determining Fees

When determining the reasonableness of a fee, forensic practitioners may consider salient factors such as the experience and ability of the forensic practitioner performing the services; the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the service properly; the fee customarily charged in the locality, regionally, or nationally for similar forensic services; the likelihood that the acceptance of the particular employment will preclude other employment by the forensic practitioner; the time limitations imposed by the client or by the circumstances; and the nature and length of the professional relationship with the client.

7.02 Fee Arrangements

As part of the retention process, forensic practitioners and recipients of their services reach an agreement specifying the scope and timing of the service to be provided, the compensation to be paid for the study and testimony, and all billing and service arrangements. If limitations to forensic services can be anticipated because of limitations in financing, this is discussed with the recipient of the services as early as is feasible.

Forensic practitioners avoid undue influence upon their methods, procedures and products that might result from financial compensation or other gains. Because of the threat to objectivity presented by the acceptance of contingent fees, forensic practitioners avoid providing professional services on the basis of contingent fees when those services involve the offering of evidence to a court or administrative body, or when called upon to make sworn statements or other affirmations to be relied upon directly by a court or tribunal.

Letters of protection, financial guarantees, and other security for payment of fees in the future are not considered contingent fees unless payment is promised to originate from future proceeds or settlement benefits from the matter. Future payment that is guaranteed in a manner not dependent on the outcome of the matter does not constitute a contingent fee. Such letters and other fee agreements are to be considered part of the forensic practitioner's billing and financial records.

7.03 Representation of Fees

Billing statements from forensic practitioners accurately reflect the forensic nature, extent, and purpose of the service provided and the context in which the service was provided.

8. NOTIFICATION, ASSENT, CONSENT, AND INFORMED CONSENT

Because substantial rights, liberties, and properties are frequently, immediately, and irrevocably at risk in forensic matters and because the methods and procedures of forensic practitioners are complex and may not be accurately anticipated by the recipients of forensic services, forensic practitioners inform service recipients about the nature and parameters of the services to be provided.

8.01 Timing and Substance

Forensic practitioners notify clients, examinees, and others who are the recipients of forensic services as soon as is feasible regarding the provision of all reasonably anticipated forensic services and all relevant

professional conduct.

In determining whether the information and subsequent explanation provided as the basis for consent are reasonably adequate, relevant factors include whether the person is experienced or trained in psychological and legal matters of the type involved and whether the person is represented by counsel when providing the consent. Normally, more experienced persons need less information to provide adequate informed consent than would others. When questions or uncertainties remain after the forensic practitioner has made the effort to communicate the necessary information, forensic practitioners recommend the person seek legal advice regarding the possible consequences of the forensic services.

8.02 Communication with Legal Representatives Seeking to Retain a Forensic Practitioner

Forensic practitioners seek to insure that attorneys and others considering to contract with them for services are knowledgeable about factors that might reasonably affect the decision to retain them.

As part of the initial process of being retained, or as soon thereafter as previously unknown information becomes available, forensic practitioners disclose to the client all information that would reasonably be anticipated to affect a decision to retain or continue the services of the forensic practitioner. This disclosure includes all information that the reasonably prudent recipient of service would desire to know. The factors to disclose may include a) the fee structure for anticipated services; b) prior and current personal or professional activities, obligations and relationships that would reasonably lead to the fact or the appearance of a conflict of interest; c) the forensic practitioner's knowledge, skill, experience, and education relevant to forensic services in the matter being considered, including any significant limitations; d) the substantial scientific bases and limitations of the methods and procedures which are expected to be employed, including any limitations; and e) any other factor that might reasonably be anticipated to substantially limit the forensic practitioner's ability or qualification to testify or that might substantially limit the weight accorded to the forensic practitioner's opinions.

8.03 Communication with Forensic Examinees

Forensic practitioners disclose to the examinee who is the identified client; the purpose, nature, and anticipated use of the examination; any factor reasonably expected to substantially impair the objectivity, competence, or effectiveness of the forensic practitioner; who will have access to the information; associated limits on privacy, confidentiality, and privilege including who is authorized to release or access the information contained in the forensic practitioner's records; the voluntary or involuntary nature of participation, including potential consequences of non-participation, if known; and if the cost of the service is the responsibility of the examinee, the anticipated cost of the service, the means by which the cost will be calculated, and the billing arrangements.

8.03.01 Persons Not Ordered or Mandated to Undergo Examination

If the examinee is not ordered by the court to participate in a forensic examination, the forensic practitioner obtains the informed consent of the examinee, or the examinee's attorney, before proceeding with examinations and procedures. If the examinee declines to proceed after receiving a notification of the purposes, general methods, and intended uses of the forensic examination, the forensic practitioner postpones the examination, advises the examinee to contact his or her attorney, and notifies the retaining attorney about the examinee's unwillingness to proceed.

After advising an examinee about the intended uses of the examination and its work product, the forensic practitioner avoids using information gained from the examination or work product for other purposes unless the examinee or organization has consented to such use or there is legal authorization to do so.

8.03.02 Persons Ordered or Mandated to Undergo Examination

If the examinee is ordered by the court to participate, the forensic practitioner may engage in the professional activity over the objection, and without the consent, of the examinee. If the examinee declines to proceed after receiving a notification of the purposes, general methods, and intended uses of the forensic examination, the forensic practitioner may attempt to conduct the examination, postpone the examination, advise the examinee to contact his or her attorney, or notify the retaining attorney about the examinee's unwillingness to proceed.

Forensic practitioners attempt to secure assent when consent and informed consent can not be obtained because of the examinee's unwillingness or limited capacity.

When, due to law, court order, contract, mandate, or organizational rule, the product of the service is not to be provided to an examinee or other party by the forensic practitioner, the forensic practitioner makes this known to the recipient of services at the time of attempting to acquire initial informed consent or as soon thereafter as is practical.

8.03.03 Persons Lacking Capacity to Provide Informed Consent

For examinees adjudicated or presumed by law to lack the capacity to provide informed consent for the anticipated forensic service, the forensic practitioner nevertheless provides an appropriate explanation (as indicated above); seeks the examinee's assent; considers the examinee's preferences and best interests; and obtains appropriate permission from a legally authorized person or attorney, if such substitute consent is permitted or required by law.

For examinees whom the forensic practitioner has concluded lack capacity to provide informed consent to a proposed, non-court-ordered service, but who nonetheless have not been adjudicated as lacking such capacity, the forensic practitioner takes reasonable steps to protect their rights and welfare. This may be accomplished by suspending the proposed service, notifying the examinee's attorney or the referral source.

8.04 Communication with Other Direct Recipients of Forensic Services Such As Collaterals and Non-Party Examinees

Forensic practitioners disclose to all service recipients who is the identified client; who has retained or the entity who has employed the forensic practitioner; the nature, purpose, and intended use of the forensic examination or other procedure; associated limits on privacy, confidentiality, and privilege; and whether participation is voluntary.

8.05 Communication in Research Contexts

When engaging in research or scholarly activities conducted as a service to a client in a legal proceeding, forensic practitioners clarify any anticipated further use of such research or scholarly product, disclose their role in the resulting research or scholarly products, and obtain whatever consent or agreement is required. This applies whether forensic practitioners are conducting research in the laboratory or in a field setting and whether the research is being conducted for general educational purposes or in connection with specific legal proceedings.

9. CONFLICTS IN PRACTICE

In forensic psychology practice, conflicting responsibilities and demands may be encountered. When conflicts occur, forensic practitioners maintain a disciplined, fair, and professional attitude toward all

persons involved in the matter. In resolving conflicts, forensic practitioners are guided by the law, any applicable codes of ethics, these *Guidelines*, and their understanding of their relationship to the profession and to the legal system.

9.01 Conflicts with Legal Authority

When their responsibilities conflict with law, regulations, or other governing legal authority, forensic practitioners make known their commitment to the *Guidelines* and take steps to resolve the conflict. When the conflict cannot be resolved via such means, forensic practitioners may adhere to the requirements of the law, regulations, or other governing legal authority. In situations where the *Guidelines* may be in conflict with the requirements of law, attempts to resolve the conflict are made in accordance with the procedures set forth below.

9.02 Conflicts with Organizational Demands

When the demands of an organization with which they are affiliated or for whom they are working conflict with the *Guidelines*, forensic practitioners clarify the nature of the conflict, make known the recommendations of the *Guidelines*, and to the extent feasible, resolve the conflict in a way consistent with the *Guidelines*.

9.03 Conflicts with Fellow Professionals

When an apparent or potential ethical or practice standards violation has substantially harmed or is likely to substantially harm a person or organization, forensic practitioners take further action appropriate to the situation. When considering appropriate actions to take and the timing of such actions, forensic practitioners consider a number of factors including the nature and the immediacy of the potential harm; applicable privacy, confidentiality, and legal privileges; how the rights of the relevant parties may be affected by various courses of action; and the legal obligations imposed on forensic practitioners.

When retained by fellow professionals in consultative or supervisory capacities, or attorneys representing fellow professionals, forensic practitioners incur no obligation to bring perceived ethical violations to the attention of third parties. When retained in any other capacity, forensic practitioners take further action appropriate to the situation, including consideration of making a report to third parties of the perceived ethical violation.

When forensic practitioners believe that there may have been an ethical violation by another professional, an attempt is made to resolve the issue by bringing it to the attention of that individual, if that attempt at resolution does not violate any rights or privileges that may be involved and if an informal resolution appears appropriate. In most instances, in order to minimize unforeseen risks to the party's rights in the legal matter, forensic practitioners will consult with the retaining attorney before attempting to resolve a perceived ethical violation with another professional in such a circumstance.

Steps to resolve perceived ethical conflicts may include, but are not limited to, obtaining the consultation of knowledgeable colleagues, obtaining the advice of independent counsel, and conferring directly with the attorneys involved.

10. PRIVACY, CONFIDENTIALITY, AND PRIVILEGE

Forensic practitioners keep private and in confidence information relating to a client or party except so far as disclosure is consented to by the client or required or allowed by law.

10.01 Knowledge of Legal Standards

Forensic practitioners are reasonably aware of the legal standards that may affect or limit the privacy, confidentiality, or privilege that may attach to their services or their products, and they conduct their professional activities in a manner that respects those rights and privileges.

10.02 Release of Information

Forensic practitioners comply with properly noticed and served subpoenas or court orders directing release of records, or other legally proper consent from duly authorized persons, unless there is a compelling reason not to do so. Reasons to offer an objection to complying include, but are not limited to, contractual obligations, or federal or state privacy, confidentiality, or privilege regulations, or notice by another counsel of counsel's intent to quash or otherwise petition the court to amend or void the subpoena or order for the records. Absent compelling reason otherwise, forensic practitioners make available all records specified in the consent, subpoena, or order. Their decision-making regarding access to and release of information in the record is informed by the relevant jurisdiction(s) of the matter. When in doubt about an appropriate response or course of action, forensic practitioners seek assistance from the attorney, agency or court that has retained them, retain and seek legal advice from their own attorney, or formally notify the drafter of the subpoena of their uncertainty.

10.03 Access to Information

If requested, forensic practitioners provide their clients access to, and a meaningful explanation of, all information that is in their records for the matter at hand, consistent with existing federal and state statutes, applicable codes of ethics and professional standards, and institutional rules and regulations. Unless the party is the client, the party typically is not provided access to the forensic practitioner's records without the consent of the client. Non-client access to records is governed by legal process, usually subpoena or court order, or by explicit consent of the client. Forensic practitioners may charge a reasonable fee for the costs associated with the storage, reproduction, review, and provision of records.

10.04 Acquiring Third Party Information

When forensic practitioners request information or records from collateral sources, they do so with the consent of the relevant attorney, the relevant party, or as a consequence of an order of a court to conduct the forensic examination or to access the information being requested.

10.05 Use of Case Materials in Teaching, Continuing Education, and Other Scholarly Activities

Forensic practitioners using case materials for purposes of teaching, training, or research, present such information in a fair, balanced, and respectful manner. They attempt to protect the privacy of persons by disguising the confidential, personally identifiable information of all persons and entities who would reasonably claim a privacy interest; using only those aspects of the case information available in the public domain; obtaining consent from the relevant clients, parties, participants, and organizations to use the materials for such purposes and in ways that might serve to identify them.

11 METHODS AND PROCEDURES

11.01 Use of Appropriate Methods

Forensic practitioners practice in a competent manner, consistent with accepted forensic and scientific standards. They utilize forensically appropriate data collection methods and procedures when providing

examinations, consultation, educational activities or scholarly investigations.

11.02 Avoiding Bias

When providing examinations, consultation, educational activities or scholarly investigations, forensic practitioners maintain integrity by examining the issue at hand from all reasonable perspectives and actively seeking information that will differentially test plausible rival hypotheses.

11.03 Use of and Reliance on Second Hand Information and Data

When considering accounts, observations, records, or sworn statements provided by others, forensic practitioners disclose the source of, and minimize sole reliance upon, such information. Forensic practitioners attempt to corroborate data that form a substantial basis of their professional product. Corroboration may include interviewing or reviewing the original source of secondhand information, or seeking related information in other reasonable ways. When relying upon data that have not been corroborated, forensic practitioners identify the origin and acknowledge the uncorroborated status of that data, any associated strengths and limitations, and the reasons for relying upon it. When seeking corroboration, forensic practitioners distinguish corroboration that something was said from corroboration of the truth of what was said.

11.04 Opinions Regarding Persons Not Examined

Forensic practitioners only provide written or oral evidence about the psychological characteristics of particular individuals when they have sufficient information or data to form an adequate foundation for those opinions or to substantiate their findings. Forensic practitioners make reasonable effort to obtain such information or data, and they document their efforts to obtain it. When it is not possible or feasible to examine individuals about whom they are offering an opinion, forensic practitioners make clear the impact of such limitations on the reliability and validity of their professional products, evidence or testimony.

When conducting record reviews or providing consultation or supervision, and an individual examination is not warranted or necessary for the opinion, forensic practitioners explain this and the sources of information on which they are basing their opinions and recommendations, including the substantial caveats and limitations to their opinions and recommendations.

12. ASSESSMENT

12.01 Focus on Legally Relevant Factors

12.01.01 Assessment of Functional Abilities

Forensic examiners assist the trier of fact to understand evidence or to determine a fact in issue. They provide information that are most relevant to the psycholegal issue. In reports and testimony forensic practitioners typically provide information about examinees' functional abilities, capacities, knowledge, and beliefs, depending on the psycholegal issue in question and address their opinions and recommendations to the factors identified in the court order, law, rule, or contract relevant to the matter.

12.01.02 Use of Diagnostic Classification Procedures

Forensic practitioners consider the strengths and weaknesses of utilizing diagnostic categorization procedures in forensic assessment tasks, including the limits of category validation studies in forensic contexts; that impairments, abilities, and disabilities vary widely within each diagnostic category; and that

being diagnosed may result in unfair prejudice and may carry unwarranted implications beyond the intended meaning of the actual diagnosis.

12.02 Appropriate Use of Assessment Procedures

Forensic practitioners use assessment procedures in the manner and for the purposes that are appropriate in light of the research on or evidence of their usefulness and proper application. This includes assessment techniques, interviews, tests, instruments, and other procedures and their administration, adaptation, scoring, interpreting, and employing computerized scoring and interpretation systems.

Forensic practitioners ordinarily use assessment instruments whose validity and reliability have been established for use with members of the population tested or other representative populations. When such validity or reliability has not been adequately established in the forensic context or with this population, forensic practitioners describe the strengths and limitations of any test results and interpretation and explain the extrapolation of this data to the forensic context. Forensic practitioners explain the strengths and limitations of extrapolating such data and interpretation to forensic contexts.

12.03 Appreciation of Individual Differences

When interpreting assessment results, including automated interpretations, forensic practitioners take into account the purpose of the assessment as well as the various test factors, test-taking abilities, and other characteristics of the person being assessed, such as situational, personal, linguistic, and cultural differences, that might affect their judgments or reduce the accuracy of their interpretations. Forensic practitioners identify any significant strengths and limitations of their procedures and interpretations.

12.04 Appreciation of Contextual Differences

Assessment in forensic contexts differs from assessment in therapeutic contexts in important ways that forensic practitioners take into account when conducting forensic examinations. Forensic practitioners consider the strengths and limitations of employing traditional assessment procedures in forensic examinations and are mindful of the cautions and risks inherent in this process. They take into account and make known potential effects of the context and of demand characteristics on the examinee's presentation and performance. Forensic practitioners consider and make known that forensic examination results can be affected by factors unique to, or differentially present in, forensic contexts including response style; voluntariness of participation; and situational stress associated with involvement in the forensic or legal matters.

Because of the many differences between forensic and therapeutic contexts, forensic practitioners are aware and make known that some examination results may warrant substantially different interpretation when administered in forensic and therapeutic contexts.

12.05 Providing Assessment Feedback

Forensic practitioners conducting examinations take reasonable steps to explain assessment results to the individual being assessed or to a designated representative, unless the nature of the relationship or circumstances precludes provision of an explanation of results, and this fact has been clearly explained to the examinee in advance.

Forensic practitioners provide information about professional work to clients and other parties in a manner consistent with professional and legal standards for the disclosure of test results, interpretation of data, and the factual bases for conclusions. A full explanation of the test results and the bases for conclusions is

provided in language that the intended recipient can understand.

13. DOCUMENTATION

13.01 Documentation and Compilation of Data Considered

From the moment they reasonably know that the data and potential evidence derived from their services may be subject to discovery or relied upon by a trier of fact or other decision maker, forensic practitioners document all data they consider with enough detail and quality to allow for reasonable judicial scrutiny and adequate discovery by all parties. This documentation includes, but is not limited to, letters and consultations; notes, recordings, and transcriptions; assessment and test data, scoring reports, and interpretations; and all other records in any form or medium that were created or exchanged in connection with a matter.

13.02 Provision of Documentation

Pursuant to proper subpoenas or court orders, or other legally proper consent from duly authorized persons, forensic practitioners make available all documentation described in 13.01, all financial records related to the matter, and any other records, including reports, that might reasonably be related to the opinions to be expressed. Forensic practitioners are not obligated to include draft reports not yet considered final, unless such has previously been provided to a party, attorney, or other entity for review.

13.03 Record Keeping and Retention

Forensic practitioners establish and maintain a system of record-keeping and professional communication that is consistent with law, rules, and regulations, and that safeguards applicable privacy, confidentiality, and legal privileges. Forensic practitioners maintain all records, notes, and data that they have generated for the full length of time that is proper for the jurisdiction in which the matter was heard or the jurisdiction of the forensic practitioner's practice, whichever is longer. When indicated by the extent of the rights, liberties, and properties that may be at risk, the complexity of the case, the amount and legal significance of unique evidence in the care and control of the forensic practitioner, and the likelihood of future appeal, forensic psychologists inform the retaining attorney or entity of the limits of record-keeping times. If requested to do so, forensic practitioners either maintain such records until notified that all appeals in the matter have been exhausted or they send a copy of any unique components/aspects of the record that are in their care and control to the requesting attorney before destruction of the record.

13.04 Knowledge of Applicable Rules

Documentation of data reviewed and relied upon is subject to the applicable rules of discovery, disclosure, privacy, confidentiality, and privilege. Forensic practitioners have a reasonable understanding and awareness of those rules, and regulate their conduct in accordance with them.

14. PROFESSIONAL AND OTHER PUBLIC COMMUNICATIONS

14.01 Accuracy, Fairness, and Avoidance of Deception

Forensic practitioners make reasonable efforts to ensure that the products of their services, as well as their own public statements and professional reports and testimony, are communicated in ways that promote understanding and avoid deception.

Regardless of who is the client, forensic practitioners are aware that, when in their role as expert to the court

or other tribunals, their task is to facilitate understanding of the evidence or dispute of fact. Forensic practitioners do not distort or withhold relevant evidence or opinion in reports or testimony because this is potentially misleading, and is incompatible with their role as experts to the court or other tribunals. When responding to discovery requests and when providing sworn testimony, forensic practitioners have readily available for inspection all data which they considered during the course of providing professional services, subject to and consistent with court order, relevant rules of evidence, test security issues, and professional standards.

When providing professional reports and other sworn statements or testimony in any form, forensic practitioners present their conclusions, evidence, opinions, or other professional products in a fair manner. This principle does not preclude forceful representation of the data and reasoning upon which a conclusion or professional product is based. It does, however, preclude an attempt, whether active or passive, to engage in partisan distortion or misrepresentation.

Forensic practitioners do not, by either commission or omission, participate in a misrepresentation of their evidence, nor do they participate in partisan attempts to avoid, deny or subvert the presentation of evidence contrary to their own position or opinion. Forensic practitioners recognize that, to the extent consistent with the rules of the adversary system, a retaining attorney's opposing counsel and opposing party are as fully entitled to all the benefit that might reasonably be implied or concluded from their products and opinions as are the retaining attorney and client.

14.02 Differentiating Observations, Inferences, and Conclusions

In their communications, forensic practitioners are careful to differentiate among their observations, inferences, and conclusions. Forensic practitioners are prepared to explain the relationship between their expert reports or testimony and the legal issues and facts of an instant case.

14.03 Disclosing Sources of Information and Bases of Opinions

Forensic practitioners affirmatively disclose all sources of information obtained in the course of their professional services. Forensic practitioners affirmatively disclose which information from which source was considered and relied upon in formulating a particular conclusion, evidence, opinion, or other professional product.

14.04 Comprehensive and Accurate Presentation of Opinions in Reports and Testimony

Consistent with relevant law and rules of evidence, when providing professional reports and other sworn statements or testimony in any form, forensic practitioners offer a complete statement of all relevant opinions that they formed within the scope of their retention, the basis and reasoning underlying the opinions, the salient data or other information that was considered in forming the opinions, and an indication of any additional evidence that may be used in support for the opinions to be offered. The specific areas to be included in forensic reports are determined by the type of psycholegal issue and any relevant laws or rules in the jurisdiction in which the work is completed.

Forensic practitioners limit discussion of background information that does not bear directly upon the legal purpose of the examination or consultation. With respect to evidence of any type, forensic practitioners avoid offering information from investigations or examinations that is irrelevant to the legal purpose of the services and that does not provide a substantial basis of support for their product, evidence, or testimony, except where such disclosure is required by law.

Forensic practitioners organize and communicate their opinions, the data upon which such opinions are

based, and the rationale that connects their data and opinions in a manner that is consistent with the psycholegal issue raised by the nature of the referral and in conformity with the rules, regulations, statutes and case law of the jurisdiction in which the opinion is offered. Reports, evidence, and testimony are organized and communicated for the purpose of informing and not misleading the intended recipient. Schemas that serve partisan attempts to avoid impartial, equitable, and representative presentation of reports, opinions, or other evidence are to be avoided.

14.05 Commenting Upon Other Professionals and Participants

When evaluating or commenting upon the work product or qualifications of other professionals involved in a legal proceeding, or otherwise when acting as a rebuttal expert, forensic practitioners represent their disagreements in a professional and respectful tone, and base them on a fair examination of the data, theories, standards and opinions of the other expert or party.

When describing or commenting upon examinees or other participants in a legal proceeding, forensic practitioners do so in a fair and objective manner. Forensic practitioners also report the representations, opinions, and statements of forensic examinees or other participants in the legal proceedings in a fair and objective manner. When they are retained to provide limited services, such as rebuttal testimony or a critique in anticipation of cross-examination of another professional's work product, forensic practitioners make the limited scope of their task clear to the trier of fact [see also 14.01].

14.06 Out of Court Statements

Ordinarily, forensic practitioners avoid making detailed public (out-of-court) statements about particular legal proceedings in which they have been involved. When adequate justification for such public statements exists, forensic practitioners refrain from releasing private, confidential, or privileged information and attempt to protect persons from harm, misuse, or misrepresentation as a result of their statements.

When making public statements, forensic practitioners' primary goals are to educate the public about the role of forensic practitioners in the legal system, the appropriate practice of forensic psychology, and clinical and forensic issues that are relevant to the matter at hand. Forensic practitioners refrain from making self-serving and self-aggrandizing public statements. Forensic practitioners address particular legal proceedings in publications or communications only to the extent that the information relied upon is part of a public record or when consent for that use has been properly obtained from the party holding any privilege.

When offering public statements about specific cases in which they have not been involved, forensic practitioners offer opinions for which there is sufficient information or data and make clear the limitations of their statements and opinions resulting from having had no direct knowledge of or involvement with the case.

APPENDIX I: BACKGROUND OF THE *GUIDELINES* AND THE REVISION PROCESS

A. History of the *Guidelines*

The previous version of the *Specialty Guidelines for Forensic Psychologists* (Committee on Ethical Guidelines for Forensic Psychologists, 1991) was approved by the American Psychology-Law Society, Division 41 of the American Psychological Association, and the American Board of Forensic Psychology in 1991. The current revision, now called the *Specialty Guidelines for Forensic Psychology* (referred to as *Guidelines* throughout this document), replace the 1991 *Specialty Guidelines for Forensic Psychologists*.

B. Revision Process

This revision of the *Guidelines* was coordinated by the Committee for the Revision of the Specialty Guidelines for Forensic practitioners, which was established by the American Board of Forensic Psychology and the American Psychology-Law Society/Division 41 of the American Psychological Association in 2002 and operated through 200x. This Committee consisted of two representatives ¹ of each organization and a Chairperson ².

This document was revised in accordance with American Psychological Association Rule 30.08 and the APA policy document *Criteria for the development and evaluation of practice guidelines* (APA, 2001). The Committee posted announcements regarding the revision process to relevant electronic discussion lists and professional publications [insert footnote to all list servers and publications here]. In addition, an electronic discussion list devoted solely to issues concerning revision of the *Guidelines* was established in December 2002, and all interested individuals were invited to subscribe to the list. Individuals could provide input and commentary on the existing *Guidelines* or proposed revisions via the list. Any messages posted to the list were automatically distributed to all subscribers. In addition, [insert number] public meetings were held throughout the revision process at conferences sponsored by the American Psychological Association and the American Psychology-Law Society.

Upon development of a draft that the Revisions Committee deemed suitable, the revised *Guidelines* were submitted for review to the Executive Committee of the American Psychology-Law Society and Division 41 of the American Psychological Association, and to the American Board of Forensic Psychology. Once the revised *Guidelines* were approved by these two organizations, they were submitted to the American Psychological Association for review, commentary, and acceptance, consistent with the American Psychological Association's Criteria for Practice Guideline Development and Evaluation (Committee on Professional Practice and Standards, 2001) and Rule 30-8. The *Guidelines* were adopted by the American Psychological Association Council of Representatives on [insert date here].

C. Need for the *Guidelines*

Professional standards for the ethical practice of psychology as a discipline are addressed in the Ethical Principles of Psychologists and Code of Conduct (American Psychological Association, 2002, hereinafter EPPCC). As such, codes of ethics are intended to describe standards for competent and adequate professional conduct. In contrast to applicable codes of ethics, these *Guidelines* are intended to describe the most desirable and highest level professional conduct for psychologists when engaged in the practice of forensic psychology.

¹ Drs. Solomon Fulero, Stephen Golding, Stuart A. Greenberg, vice-chair, and Christina Studebaker

² Dr. Randy K. Otto, chair

The *Guidelines*, although informed by applicable codes of ethics and meant to be consistent with them, are designed to be educative and to provide more specific and thorough guidance to psychologists who are determining their professional forensic conduct.

The 1991 *Specialty Guidelines for Forensic practitioners* needed revision due to advancements in the field that have taken place since the framing of the original guidelines and due to the need for a broader and more thorough document that addresses the wide variety of professional forensic practice areas that have developed and expanded since the adoption of the original guidelines.

D. Developers and Support

The *Specialty Guidelines for Forensic Psychology* were developed by the American Psychology-Law Society, Division 41 of the American Psychological Association, and the American Board of Forensic Psychology.

E. Background Literature

Resources reviewed in the development of the *Guidelines* include:

American Academy of Child & Adolescent Psychiatry: Code of Ethics; American Board of Forensic Psychology: Specialty Guidelines for Forensic Psychologists; American Academy of Psychiatry & Law: Ethical Guidelines for the Practice of Forensic Psychiatry; American Bar Association: Model Rules of Professional Conduct; American Board of Examiners in Clinical Social Work: Code of Ethics; American Psychiatric Association: The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry; American Psychological Association: Ethical Principles of Psychologists and Code of Conduct; American Psychological Association: Guidelines for Child Custody Evaluations in Divorce Proceedings; American Psychological Association: Guidelines for Psychological Evaluations in Child Protection Matters; American Psychological Association: Guidelines for Psychotherapy with Lesbian, Gay, & Bisexual Clients; American Psychological Association: Guidelines on Multicultural Education, Training, Research, Practice, and Organizational Change for Psychologists; American Psychological Association: Professional, Ethical, and Legal Issues Concerning Interpersonal Violence, Maltreatment, and Related Trauma; American Psychological Association: Record Keeping Guidelines; American Psychological Association: Rights and Responsibilities of Test Takers: Guidelines and Expectations; Association for the Treatment of Sexual Abusers: Professional Code of Ethics; Association of State & Provincial Psychology Boards: Supervision Guidelines; Joint Committee on Testing Practices: Code of Fair Testing Practices in Education; Mental Health Patient's Bill of Rights; National Association of Social Workers: Code of Ethics; Guidelines for Dealing with Faculty Conflicts of Commitment and Conflicts of Interest in Research, the Association of American Medical Colleges, 1990.

F. Current Status

These *Guidelines* are scheduled to expire [insert date here]. After this date, users are encouraged to contact the American Psychological Association Practice Directorate to confirm that this document remains in effect.

APPENDIX II: DEFINITIONS AND TERMINOLOGY

For the purposes of these *Guidelines*:

Appropriate, when used in relation to conduct by a forensic practitioner means that, according to the prevailing professional judgment of competent forensic practitioners, the conduct is apt and pertinent and is considered befitting, suitable and proper for a particular person, place, condition, or function.

“Inappropriate” means that, according to the prevailing professional judgment of competent forensic practitioners, the conduct is not suitable, desirable, or properly timed for a particular person, occasion, or purpose; and may also denote improper conduct, improprieties, or conduct that is discrepant for the circumstances.

Agreement refers to the objective and mutual understanding between the forensic and the person or persons seeking the professional service and/or agreeing to participate in the service. See also Assent, Consent, and Informed Consent.

Assent refers to the agreement, approval, or permission, especially regarding verbal or nonverbal conduct, that is reasonably intended and interpreted as expressing willingness, even in the absence of unmistakable consent. Forensic practitioners attempt to secure assent when consent and informed consent can not be obtained or when, because of mental state, the examinee may not be able to consent.

Consent refers to agreement, approval, or permission as to some act or purpose.

Informed Consent denotes the knowledgeable, voluntary, and competent agreement by a person to a proposed course of conduct after the forensic practitioner has communicated adequate information and explanation about the material risks and benefits of, and reasonably available alternatives to, the proposed course of conduct.

Client refers to the attorney, law firm, court, agency, entity, party, or other person who has retained, and who has a contractual relationship with, the forensic practitioner to provide services.

Conflict of Interest refers to a situation or circumstance in which the forensic practitioner’s objectivity, impartiality, or judgment may be jeopardized due to a relationship, financial, or any other interest that would reasonably be expected to substantially affect a forensic practitioner’s professional judgment, impartiality, or decision-making.

Decision-maker refers to the person or entity with the authority to make a judicial decision, agency determination, arbitration award, or other contractual determination after consideration of the facts and the law.

Examinee refers to a person who is the subject of a forensic examination for the purpose of informing a decision maker or attorney regarding the psychological condition of that examinee.

Forensic Examiner refers to a forensic practitioner who examines the psychological condition of a person whose psychological condition is in controversy or at issue.

Forensic Practice refers to the application of the scientific, technical, or specialized knowledge of psychology to the law and the use that knowledge to assist in resolving legal, contractual, and administrative disputes.

Forensic Practitioner refers to a psychologist when engaged in forensic practice.

Forensic Psychology refers to all forensic practice by any psychologist working within any sub-discipline of psychology (e.g., clinical, developmental, social, cognitive).

Party person or entity named in litigation, or who is involved in, or is witness to, an activity or relationship that may be reasonably anticipated to result in litigation.

Reasonable or **Reasonably**, when used in relation to conduct by a forensic practitioner, denotes the conduct of a prudent and competent forensic practitioner who is engaged in similar activities in similar circumstances.

Record or **Written Record** refers to all notes, records, documents, memorializations, and recordings of considerations and communications, be they in any form or on any media, tangible, electronic, hand-written, or mechanical, that are contained in, or are specifically related to, the forensic matter in question or the forensic service provided.

Legal Representative refers to a person who has the legal authority to act on behalf of another.

Tribunal denotes a court or an arbitrator in an arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of legal argument or evidence by a party or parties, renders a judgment directly affecting a party's interests in a particular matter.

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