

## 7.8 Obtaining an Expert Evaluation

- A. Procedures to Obtain Expert Evaluation
  - B. Choosing which Motion to Make
  - C. Choosing an Expert
  - D. Basis for Motion
- 

## 7.8 Obtaining an Expert Evaluation

### A. Procedures to Obtain Expert Evaluation

There are three ways that counsel may obtain expert assistance to evaluate capacity.

**Ex parte motion.** Counsel may obtain the assistance of a mental health expert for the juvenile by filing an ex parte motion with the court. *See* 1 NORTH CAROLINA DEFENDER MANUAL § 5.5, Obtaining an Expert Ex Parte in Noncapital Cases (2d ed. 2013). The motion does not ask the court to determine the defendant's capacity. Rather, it seeks funds for counsel to hire an expert of counsel's choosing to provide assistance on all applicable mental health issues. Once the expert has evaluated the juvenile, counsel will be in a better position to determine whether there are grounds for questioning capacity to proceed. Moving for funds for an expert affords counsel the best opportunity to obtain an expert who is well versed in evaluating, diagnosing, and treating children and adolescents. Counsel should include in the ex parte motion the amount necessary to pay for expert's services. A sample ex parte motion and order for funds for an expert is available on the [Juvenile Defender website](#).

One of the principal benefits of the above procedure is greater confidentiality. Because the motion is ex parte, it does not reveal to the prosecution that counsel has a question about the juvenile's mental condition. Also, if counsel decides not to raise lack of capacity or call the expert as a witness, the prosecution generally does not have a right to the results of the examination. *See* 1 NORTH CAROLINA DEFENDER MANUAL § 4.8C, Results of Examinations and Tests (2d ed. 2013) (discussing general prohibition in criminal cases on disclosure to State of nontestifying expert's report and circumstances in which disclosure may be allowed).

**Motion requesting court to appoint a particular expert.** Typically, courts use state facilities or local mental health centers to perform evaluations of capacity to proceed, discussed next, but counsel may request appointment of a specific expert as part of a motion questioning the juvenile's capacity to proceed. *See* G.S. 15A-1002(b)(1a) (court may appoint one or more impartial medical experts). While uncommon in adult criminal cases, in juvenile cases such an appointment may help ensure that the examiner has the necessary qualifications to evaluate children and adolescents.

**Motion for examination by local examiner or state facility.** Counsel may begin the evaluation of the juvenile's capacity to proceed by obtaining an examination of the juvenile at a state or local mental health facility rather than moving for funds for an

expert. *See infra* § 7.9, Examination by Local Examiner or State Facility. Examination by a local examiner or state facility may be the only means of obtaining an expert's assistance in some cases. Counsel should ask if the local examiners use testing designed to evaluate children and adolescents and request that testing and techniques designed especially for children and adolescents be employed.

### **B. Choosing which Motion to Make**

In appropriate cases, counsel should consider obtaining an evaluation of the juvenile by moving *ex parte* for funds for an expert rather than moving initially for an examination at a state or local mental health facility. In determining whether to seek funds for the juvenile's own expert, counsel should consider factors such as the seriousness of the charges, the presence of other mental health issues, the importance of keeping the juvenile's statements confidential, the likelihood that the case will proceed to adjudication, and the opportunity to obtain an examiner who employs tools and techniques specifically tailored to evaluate children and adolescents.

### **C. Choosing an Expert**

Most examiners have much more experience evaluating the capacity to proceed of adult defendants. Counsel should consider using an evaluator who employs tools and techniques specifically tailored to evaluate children and adolescents. *See* THOMAS GRISSE, *What is Different about Evaluating Youths' Competence to Stand Trial?*, in CLINICAL EVALUATION FOR JUVENILES' COMPETENCE TO STAND TRIAL: A GUIDE FOR LEGAL PROFESSIONALS 15 (2005). When searching for an examiner, counsel should consider the [database of experts](#) compiled by the Forensic Resource Counsel at the Office of Indigent Defense Services. Counsel can use the database to identify psychiatric or psychological experts who have experience working with juveniles. The Forensic Resource Counsel cannot guarantee that any individual expert is qualified or is the appropriate expert for a specific case. Consequently, if the database includes an expert who has experience working with juveniles, counsel should independently evaluate the expert to determine whether he or she is appropriate for conducting a capacity evaluation of the juvenile.

### **D. Basis for Motion**

Counsel should detail the specific conduct or information that warrants funds for an expert or a capacity examination at a state or local facility, including observations of counsel. If the showing for a capacity examination contains confidential information, including information obtained in the course of privileged attorney-client communications, counsel may ask the court to review the information *in camera*. *See infra* "Contents of motion" in § 7.9A, Moving for Examination. If the motion is for funds for an expert, the motion and accompanying showing should always be made *ex parte*. *See* 1 NORTH CAROLINA DEFENDER MANUAL Ch. 5, Experts and Other Assistance (2d ed. 2013).