

# **SPECIALTY GUIDELINES FOR FORENSIC PSYCHOLOGY** (Draft 2.0 of 2-13-05)

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## **SPECIALTY GUIDELINES FOR FORENSIC PSYCHOLOGY**

## **1. INTRODUCTION**

### **1.01 History of the *Specialty Guidelines for Forensic Psychology***

This document replaces the 1991 *Specialty Guidelines for Forensic Psychologists* which had been approved by the American Psychology-Law Society, Division 41 of the American Psychological Association and the American Board of Forensic Psychology. The current revision has also been approved by the Council of Representatives of the American Psychological Association as an advisory statement describing desirable practice in the field of forensic psychology. A fuller discussion of the revision process, enactment, and current status of these *Guidelines* can be found in the Appendix.

### **1.02 Nature of Forensic Psychology**

For the purposes of these *Guidelines*, a psychologist who is engaged in the professional practice of forensic psychology is referred to as a forensic psychologist. The practice of forensic psychology refers to all forms of professional psychological conduct in which the psychologist is

retained for the purpose of providing expertise on explicitly psycholegal issues. Such professional conduct is considered forensic from the time the psychologist agrees to or is court-ordered to provide expertise on explicitly psycholegal issues. This may occur when the psychologist is providing assistance or service to courts, legal representatives, parties, and correctional and forensic mental health facilities and to administrative, judicial, and legislative agencies and tribunals acting in an adjudicative capacity. Professional psychological conduct and its product is not ordinarily considered forensic prior to the time that the psychologist agrees to, or is court-ordered to, undertake a forensic or psycholegal role and is not considered forensic solely because the conduct takes place, or the product is presented, in a legal forum.

### **1.03 Roles and Functions**

The practice of forensic psychology may include a wide variety of psycholegal roles and functions. As a researcher, the forensic psychologist may participate in the collection and dissemination of empirical and scientific data that may be relevant to the answering of various legal questions. As an advisor, a forensic psychologist may provide a legal representative with an informed understanding of the role that psychology can play in the client's case. As a consultant, the forensic psychologist may explain the practical implications of relevant research, examination findings, and the opinions of psycholegal experts. As a forensic examiner, the forensic psychologist may examine a party's functioning and report findings to the client, to a legal tribunal or others. As a mediator or negotiator, the forensic psychologist may serve in a third-party neutral role and assist parties in resolving a dispute. As an arbiter, special master, or case manager with decision-making authority, the forensic psychologist may, by agreement or court order, serve the parties or the court in a decision-making role as defined by the agreement or the court order. As a forensic therapist, the forensic psychologist may assist the parties or the court by providing legally mandated treatment and making a report to the court as appropriate to the particular function or appointment.

### **1.04 Definitions and Terminology**

For the purposes of these *Guidelines*:

“Attorney” refers to an individual admitted and licensed to practice law in the jurisdiction of the matter. See also “Legal representative” below.

“Appropriate,” when used in relation to conduct by a forensic psychologist means that, according to the prevailing professional judgment of competent psychologists, the conduct is apt and pertinent and is considered befitting, suitable and proper for a particular person, place, or condition. “Inappropriate” denotes not suitable, undesirable, or ill-timed for a particular person or occasion; and may also denote improper, impropriety, out of keeping, or discrepant.

“Assent” refers to agreement, approval, or permission, especially regarding verbal or nonverbal conduct reasonably intended and interpreted as expressing willingness, even in the absence of unmistakable consent. Psychologists attempt to secure assent when consent and informed consent can not be obtained.

“Conflict of interest” refers to a real or perceived situation or circumstance in which the forensic psychologist's objectivity, impartiality, or judgment is jeopardized due to relationship, financial,

or other self-interest that would reasonably be expected to affect a forensic psychologist's decision-making.

“Consent” refers to agreement, approval, or permission as to some act or purpose. See also “informed consent” below.

“Court ordered” refers to a proper order from the tribunal or court of competent jurisdiction directing certain action or conduct which the forensic psychologist is legally required to follow.

“Decision maker” refers to the person or entity with the authority to enter a judicial, agency, or contractual determination after consideration of the facts and the law.

“Examinee” refers to a legal party or other person who is the subject of a forensic examination for the purpose of informing a decision maker or legal representative regarding the psychological condition of that examinee.

“Forensic” indicates the application of a particular subject to the law and the use of scientific, technical, or other specialized knowledge assist in solving legal and administrative problems.

“Forensic examiner” refers to a forensic psychologist who examines the psychological condition of a person whose psychological condition is in controversy or at issue.

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

“Party” refers to the person or other entity who is, or who reasonably anticipates becoming, a participant in or the subject or focus of a judicial, administrative, contractual, or other legal or quasi-legal matter, process, or proceeding involving a tribunal.

“Reasonable” or “reasonably” when used in relation to conduct by a forensic psychologist denotes the conduct of a reasonably prudent and competent forensic psychologist who is engaged in the practice of forensic psychology as defined above. The term reasonable means the prevailing professional judgment of competent psychologists engaged in similar activities in similar circumstances.

“Record” or “records” refers to all documents in any form or on any media contained in, or specifically related to, the forensic matter in question or the service provided. This includes recordings, transcriptions and notes made before, during, or after interviews with persons in connection with services that were provided; assessment instruments attempted or completed; raw test data, scoring reports, and interpretations; billing records pertaining to the service provided; and reports, evaluations, letters, declarations and other written communications received or sent in connection with a matter. See also “written record” below.

“Legal representative” refers to the counsel of record to a party in a legal proceeding. This will typically be an attorney, but may also include individuals who act as their own legal representatives, *Pro Se* or *Pro Per*.

“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.

“Trust Relationship” refers to an association based on one person’s reliance on the other person’s specialized training. It is also termed a fiducial relationship.

“Writing,” “written,” or “written record” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photocopying, photography, audio or video-recording and e-mail.

## **2. RESPONSIBILITIES**

### **2.01 Integrity**

Forensic psychologists hold trust relationships with clients, legal representatives, courts, all other participants in forensic matters, professional bodies, and society. These trust relationships can be put at risk by lack of integrity, lack of responsibility, lack of respect, or conflicts of interest that may compromise independence, objectivity, or other professional responsibilities.

#### **2.01.01 Impartiality**

When offering expert opinion to be relied upon by a decision maker, teaching, or conducting research, the forensic psychologist embraces nonpartisanship and demonstrates commitment to the goals of accuracy, objectivity, fairness, and independence. The forensic psychologist treats all participants and weighs all data, opinions, and rival hypotheses impartially

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

When providing educational services, forensic psychologists represent alternate perspectives in an accurate, fair and professional manner, with a demonstrated inclination to weigh and present all views, facts, or opinions impartially.

When conducting forensic examinations, forensic psychologists recognize that partisan advocacy is inconsistent with impartiality and subverts the attempt to make available unbiased and helpful information to the tribunal in question. When assisting the finder of fact, the forensic psychologist offers facts and opinions impartially and irrespectively of who retains, compensates, or calls the expert to present the evidence to the judicial process. Forensic examiners 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.

### **2.01.02 Trust**

Forensic psychologists identify and address real or apparent conflicts of interest to maintain trust relationships, the public confidence and trust, discharge professional obligations, and ensure responsibility, objectivity, and accountability. The forensic psychologist recognizes that damage caused by the appearance of a conflict may be as damaging as that caused by a real conflict and determines whether to proceed in a matter due to the potential effects of a conflict of interest. The forensic psychologist considers two questions: 1) whether an independent public observer would reasonably question the ability of the forensic psychologist to make a proper decision despite possible considerations of private or personal interests and relationships and 2) whether the client, the parties, and the members of the relevant tribunal would reasonably believe that the trust relationship between the forensic psychologist and all relevant persons could reasonably be maintained if all relevant persons had accurate information on the potential sources of the conflict of interest.

If an independent observer would not reasonably question the forensic psychologist's judgment and if all persons involved would reasonably believe that trust could be maintained if all relevant facts were known, then the forensic psychologist may conclude that the risk of harm from a real or apparent conflict of interest is likely to be manageable and may proceed to provide the service. Otherwise, the forensic psychologist discontinues the proposed or anticipated service as soon as is practical. Even when a conflict of interest is determined by the forensic psychologist 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.

### **2.01.03 Respect**

Forensic psychologists conform their conduct to the requirements of the law. Forensic psychologists do not use their knowledge of psychology and the legal system to harass, intimidate, or inappropriately mislead others. Forensic psychologists demonstrate respect for the legal system and for those who serve it, including judges, lawyers, parties, witnesses and other participants, and public officials. Although, in some roles, forensic psychologists may challenge the accuracy and validity of the claims of others, forensic psychologists do so with respect for the individual and the legal process.

## **2.02 Community and Professional Service**

A forensic psychologist, as a member of the profession of psychology, has a special responsibility for the quality of psychology practiced in the legal system. Forensic psychologists seek to improve the field of forensic psychology and the quality of service rendered by forensic psychologists. In addition, forensic psychologists attempt to further the public's understanding of and confidence in the profession, and avoid acting in ways that might undermine that confidence. Forensic psychologists aid the profession 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 ideals of public and professional service.

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

### **3. NATURE AND SCOPE OF THE *GUIDELINES***

#### **3.01 Intended Users**

The *Guidelines* apply to members of the American Psychological Association and the American Psychology-Law Society, and to Diplomates of the American Board of Forensic Psychology in matters in which 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, professions, entities, and individuals are encouraged to adopt these *Guidelines* as guiding principles for the provision of forensic services and other work products.

#### **3.02 Goals**

The *Guidelines* provide guidance intended to improve the quality of forensic psychological services that are offered to parties, their legal representatives, and the legal system, and thereby enhance forensic psychology as a discipline and a profession. The goal of providing the information contained in the *Guidelines* is to facilitate the continued systematic development of the profession, to encourage a high level of professional practice by forensic psychologists, to sensitize forensic psychologists to those who are affected by their services, and to encourage forensic psychologists to acknowledge and respect the rights of those whom they serve.

#### **3.03 Aspirational Model**

The *Guidelines* provide an aspirational model of professional practice by any psychologist working within any sub-discipline of psychology (e.g., clinical, developmental, social, cognitive) when engaged in administrative or legal matters in the anticipation of litigation, arbitration, legislation, disability determination, or other judicial or administrative adjudication. Application of the *Guidelines* does not depend on the psychologist's typical areas of practice or areas of expertise, but rather on the services provided in the case at hand. This includes all matters in which psychologists provide professional psychological expertise to the judicial system including, but not limited to, examining persons in anticipation of legal or administrative proceedings; providing assessment and treatment services in forensic mental health systems; 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 legal representatives, parties, or courts; or conducting research for the purpose, or in anticipation, of litigation.

#### **3.04 Guidance**

The *Guidelines* is an advisory statement that recommends professional behavior, endeavors, or conduct for psychologists when engaged in forensic practice. The *Guidelines* are intended to educate, not mandate. They are not intended to override the judgment of psychologists, but rather to inform their judgment. In the process of making decisions regarding their professional behavior in forensic contexts, psychologists consider the *Guidelines*, all appropriate sources of professional authority, applicable codes of ethics, and applicable laws, rules, and regulations operating in the relevant jurisdiction. Experts in other professions should consider the *Guidelines* and all appropriate sources of legal and professional authority and expertise in their

respective fields of practice.

### **3.05 Discretion**

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 psychologists who are members of the American Psychological Association, the EPPCC, and not the *Guidelines*, contain enforceable rules of conduct. Such rules of the EPPCC define the proper conduct of psychologists, including forensic psychologists, for purposes of professional discipline. In contrast to the EPPCC, the *Guidelines* are advisory and are not to be understood as providing further guidance for forensic psychologists, their clients, the judiciary, and the general public. The *Guidelines* are not intended to be 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 psychologist has discretion to exercise professional judgment that is not prohibited by the EPPCC or by law. The *Guidelines* do not add obligations to the EPPCC, but provide additional guidance for psychologists practicing in compliance with the EPPCC.

The modifiers used in the *Guidelines* (e.g., reasonably, appropriate, potentially) are included in order to: 1) allow professional judgment on the part of psychologists; 2) eliminate injustice or inequality that would occur without the modifier; 3) ensure applicability across the broad range of activities conducted by psychologists; and 4) reduce the likelihood of enacting an inflexible set of *Guidelines* that would be unable to evolve as generally accepted practices evolve.

### **3.06 Context**

The *Guidelines* presuppose a larger legal context that also shapes the forensic psychologist's role and conduct. That context includes law relating to matters of licensure, court rules, rules of legal procedure and evidence, and other sources of law defining specific obligations of participants in the legal system. The *Guidelines* are intended to be consistent with these and may be helpful in guiding and alerting forensic psychologists to their responsibilities under such laws and in such contexts.

The forensic psychologist is likely to encounter facts and circumstances not anticipated by the *Guidelines* and the forensic psychologist often has 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 a forensic psychologist, for no complex activity can be completely defined by legal rules, codes of conduct, and aspirational guidelines. The *Guidelines* help to provide a further framework for the practice of forensic psychology.

### **3.07 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. These Guidelines

may assist in the establishment of such standards of care, but they not intended to establish 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 psychologist not acting in a manner advised by these *Guidelines*. Whether a forensic psychologist has acted in a manner contrary to these *Guidelines* should not by itself determine whether the forensic psychologist is liable in a court action, whether a contract is enforceable, or whether other legal consequences should occur.

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

Although the *Guidelines* are concerned with a model of desirable professional practice, to the extent that they 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.

## **4. COMPETENCE**

### **4.01 Scope of Competence**

Forensic psychologists 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 a forensic psychologist possesses the requisite knowledge and skill required to proceed in a particular matter, relevant factors include the relative complexity and specialized nature of the service required, the forensic psychologist's general experience, the forensic psychologist's training and experience in the field and specialty area in question, the preparation and study the forensic psychologist is able to devote to the matter, and the opportunities for the forensic psychologist to consult with another forensic psychologist of established competence in the area in question.

### **4.02 Gaining and Maintaining Competence**

Forensic psychologists provide services only within the boundaries of their competence. Competence can be acquired through education, training, supervised experience, consultation, study, or professional experience. Competent services can also be provided through consultation with, and as appropriate, supervision by, another forensic psychologist of established competence in the field in question.

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

Forensic psychologists 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.

#### **4.03 Representation of Competencies**

Forensic psychologists fully and accurately inform clients, examinees, judges, legal representatives, parties, triers of fact, and other recipients of their services about the nature and extent of their experience, training, credentials, and qualifications. Forensic psychologists 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**

Forensic psychologists are responsible for a fundamental and reasonable level of knowledge and understanding of the legal and professional standards, laws, and rules that govern their participation as experts in legal proceedings. Unless otherwise qualified in the jurisdiction to do so, forensic psychologists do not provide legal advice, and they consult with, and refer others to, qualified legal counsel on matters of law and legal process.

#### **4.05 Knowledge of the Rights of Individuals**

Forensic psychologists are responsible for a fundamental and reasonable level of knowledge and understanding of the legal rights of individuals who may be affected by the services they provide. Forensic psychologists manage all of their professional conduct in a manner that does not threaten or impair the rights of such individuals.

#### **4.06 Knowledge of the Scientific Foundation for Testimony and Sworn Statements**

Through reports, written statements, and testimony, forensic psychologists 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. The forensic psychologist only offers opinions to the court in those areas where the forensic psychologist is competent to do so based on adequate knowledge, skill, experience, and education. The forensic psychologist only provides opinions and testimony that are sufficiently based upon sufficient facts or data and on adequate scientific foundation, that are the product of reliable principles and methods, and which are based on principles and methods that have been applied reliably to the facts of the case.

#### **4.07 Knowledge of the Scientific Foundation for Teaching and Research**

Forensic psychologists 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.

#### **4.08 Considering Impact of Personal Beliefs and Experience**

Forensic psychologists recognize that their own attitudes, values, beliefs, opinions, or biases may interfere with their ability to practice in a competent and objective manner. Under such

circumstances, forensic psychologists either correct the effects of such attitudes, values, beliefs, opinions, or biases, or decline participation, or limit their assistance in a manner that is consistent with professional obligations.

#### **4.09 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 psychologists gain the training, experience, consultation, or supervision necessary.

Forensic psychologists 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. Forensic psychologists try to eliminate the effect on their work of biases based on those factors, and they avoid participating in or condoning activities of others based upon such prejudices.

In their work, forensic psychologists do not engage in unfair discrimination based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, socioeconomic status, or any basis proscribed by law.

#### **4.10 Competence of Supervisees and Trainees**

Forensic psychologists are responsible for their own conduct and for the conduct of those individuals whom they employ or directly supervise. Forensic psychologists who delegate work to employees, supervisees, students, or research or teaching assistants, or who use the services of others, such as interpreters: 1) avoid delegating work to persons who have multiple relationships with those being served that would be likely to result in exploitation or loss of objectivity; 2) 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 3) see that such persons perform these services competently and diligently.

#### **4.11 Competent Use of Services and Products**

Forensic psychologists 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 legal representatives to adequately represent them.

### **5. DILIGENCE**

#### **5.01 Provision of Services**

A forensic psychologist acts with reasonable diligence and promptness in providing agreed-upon and reasonably anticipated services subject to the psychologist's agreement with that client. A

forensic psychologist is not bound, however, to provide services not reasonably anticipated at the time of being retained, nor to provide every possible aspect or variation of service, but rather retains and exercises professional discretion in determining the extent and means by which services are provided and retainer agreements are fulfilled.

### **5.02 Thoroughness and Preparation**

Competent provision of a particular service includes adequate preparation and inquiry into and analysis of the factual, psychological, and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. An agreement between the forensic psychologist and the client will help define the scope and timeliness of the services for which the forensic psychologist will be responsible.

### **5.03 Responsiveness**

Forensic psychologists manage their workload so that services can be provided thoroughly, competently, and promptly. Acting with reasonable promptness, however, does not include acquiescing to service demands that could not have been reasonably anticipated to occur at the time the service is requested, nor does it include the provision of services if the client has not acted in a manner consistent with the retainer agreement, including with regard to the payment of fees to the forensic psychologist.

### **5.04 Communication**

Reasonable communication between the forensic psychologist and the client is necessary for the client effectively to conduct the legal representation of the party. The guiding principle is that the forensic psychologist fulfills reasonable client expectations for information consistent with the *Guidelines*, with applicable codes of ethics, with the agreement for the forensic psychologist to be retained, and with the overall requirements of the matter.

The forensic psychologist keeps the client reasonably informed about the status of the psychologist's services, promptly complies with the client's reasonable requests for information, and consults with the client about any relevant limitation on the psychologist's conduct or performance that may arise when the forensic psychologist knows that the client anticipates assistance that may not be consistent with the *Guidelines* or with applicable codes of ethics. The forensic psychologist attempts to keep the client reasonably informed regarding new facts, opinions, or other potential evidence that may be salient, whether that information is helpful to the client's desired outcome of the matter or not.

A forensic psychologist may withhold information from a party but, ordinarily, would not withhold information from the retaining legal representative. If a forensic psychologist reasonably believes that disclosing information to a party would likely result in harm to that party or to others, the legal representative is so informed.

### **5.05 Availability**

At the time of agreeing to be retained by the client, the forensic psychologist and the client agree on the scope of the service that is to be provided. Unless the forensic psychologist-client

relationship is terminated pursuant to the retainer agreement, the forensic psychologist carries through to conclusion all matters undertaken for a client. If a forensic psychologist's employment is limited to a specific matter, the relationship terminates when the matter has been resolved or when anticipated services have been provided. Doubts about whether a client-forensic psychologist relationship still exists are clarified by the forensic psychologist, preferably in writing, so that the client will not mistakenly suppose the forensic psychologist remains available when the forensic psychologist has ceased to be available.

## **6. RELATIONSHIPS**

The forensic psychologist may, in separate matters, establish a forensic psychologist-client relationship with a variety of persons and entities in legal and administrative proceedings and tribunals including legal representatives and other officers of the court, parties, patients, organizations, insurers, employers, and governmental agencies.

### **6.01 Responsibilities**

Most of the responsibilities flowing from the forensic psychologist-client relationship attach only after the client has requested the forensic psychologist to render professional services and the forensic psychologist has agreed to do so. There are some responsibilities, such as privacy, confidentiality, and privilege that may attach when the forensic psychologist agrees to consider whether a forensic psychologist-client relationship shall be established.

Whether a forensic psychologist-client relationship exists for any specific purpose depends on the circumstances. At the initiation of any contact with an individual for whom the forensic psychologist might provide services, the forensic psychologist clarifies the nature of the relationship and the services to be provided. This includes clarifying: 1) the role of the forensic psychologist (e.g., forensic therapist, trial consultant, forensic examiner, expert witness); 2) who is the client; 3) the probable uses of the services provided or information obtained; and 4) any limitations to privacy, confidentiality, or privilege.

Whether a forensic psychologist-client relationship exists is determined by a number of factors including the information provided to the individual by the forensic psychologist prior to, or at the initiation of any contact or service, the nature of the interaction, and the purpose of the interaction.

### **6.02 Common Forensic Relationships**

#### **6.02.01 Legal Representative-Party Relationships**

The relationship between the legal representative and the party is usually referred to as the attorney-client relationship. Forensic psychologists recognize that, different from their own role of assisting the court, legal representatives in their roles as advocates, are to zealously assert their clients' positions under the rules of the adversary system.

#### **6.02.02 Legal Representative-Forensic Psychologist Relationships**

The legal representative-forensic psychologist relationship refers to the relationship between the

party's legal representative and the forensic psychologist who the representative has retained on behalf of the representative's client in the matter. Typically, the legal representative retains the forensic psychologist on behalf of the representative's client. This legal representative is to be considered the client of the forensic psychologist.

In those cases where the forensic psychologist agrees to be retained by a party in a legal proceeding, the forensic psychologist does so only after encouraging the party to consult with counsel regarding the legal implications of the forensic psychologist not being retained by a legal representative on behalf of the party.

### **6.02.03 Party-Forensic Psychologist Relationships**

The party in litigation is typically the client of the legal representative and not the client of the forensic psychologist. The forensic psychologist relates to the party knowing that the party has retained counsel whose duty it is to defend and protect the party's legal rights and to zealously pursue the party's interests. These are not the duties of the forensic psychologist. At the request of the legal representative or by order of the court, the forensic psychologist provides services to the party or provides services to others who impact the party.

### **6.02.04 Party-Forensic Therapist Relationships**

Parties may be ordered into treatment with a forensic psychologist who, when functioning as a forensic therapist, provides treatment to the party. Forensic therapists abide by court orders that govern their work.

## **6.03 Multiple Relationships**

A multiple relationship occurs when a forensic psychologist is in a professional role with a person and: 1) at the same time is in another role with the same person; 2) at the same time is in a relationship with a person closely associated with or related to the person with whom the forensic psychologist has the professional relationship; or 3) 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 psychologists recognize potential conflicts of interest and threats to objectivity inherent in multiple relationships with legal representatives, judges, parties, examinees, and other participants to a legal proceeding. Forensic psychologists recognize that personal and professional relationships may interfere with their ability to practice in a competent and objective manner and they seek to minimize their 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 psychologists recognize that engaging in both forensic and therapeutic practice with 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 psychologists ordinarily avoid engaging in both activities either

concurrently or sequentially. Nevertheless, it will sometimes be necessary to provide both forensic and therapeutic services, such as when another reasonably skilled and competent provider is unavailable to provide either service or when providing both services is mandated by court, law, contract, or statute. When requested or ordered by a court to provide either concurrent or sequential forensic and therapeutic services, the forensic psychologist avoids providing both services when another reasonably skilled and competent provider of either service is available.

If the forensic psychologist determines that it is reasonable, appropriate, or required to provide both types of service either concurrently or sequentially, the forensic psychologist takes 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 process of treatment and evaluation. In making that determination of whether the provision of such multiple services is reasonable, the forensic psychologist considers 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 seeking consultation with other experts.

### **6.03.02 Testimony by Psychologists Providing Therapeutic Services**

A treating psychologist may testify about a patient without necessarily engaging in the practice of forensic psychology. The guiding principle, as with all expert opinion testimony, is for the treating psychologist to provide testimony only on those issues for which the treating expert has adequate foundation. When providing testimony regarding a patient who is also a party, a treating psychologist may generally testify as an expert on matters such as the patient's reported history or other statements, mental status, diagnosis, and care provided, as well as the therapist's expert opinion regarding the patient's response to treatment, prognosis, and likelihood of relapse or remission. Because of the potential lack of adequate foundation and the potential for harm to both patients and to the legal system, treating psychologists ordinarily avoid testifying about psycholegal issues such as legal causation, trial competency, and relative merits of parenting arrangements.

In some cases, expert opinion formed by the treating psychologist will explicitly embrace a psycholegal issue that is before the decision maker. As is the case with all expert testimony, the treating psychologist notes any 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.

When requested to provide both treatment and testimony for a patient who is also a party in a legal proceeding, the psychologist informs the legal representative who is calling the psychologist to testify and informs the patient regarding relevant risks both to the patient's therapy and to the legal proceeding. These risks may include risks to the patient's mental status and the therapeutic alliance. Risks to the rights of all parties may also include those of engaging in multiple relationships; risks to privacy, confidentiality, and privilege; and risks to the processes of treatment and testimony.

### **6.05 Mandated Examination and Treatment Services**

A forensic psychologist delivering court-ordered or otherwise mandated examination or treatment service provides information beforehand to those directly affected by the service regarding: 1) who is the identified client; 2) the nature and objectives of the service; 3) the probable uses of services provided and information obtained; 4) who will have access to the information; and 5) associated limits on privacy, confidentiality, and privilege. The forensic psychologist only provides information regarding such services to the persons indicated in the mandate. If the forensic psychologist is precluded by law or organizational rule(s) from providing such information to particular individuals or groups, he or she informs those individuals or groups at the outset of the service.

## **6.06 Emergency Mental Health Services**

A forensic psychologist conducting an examination may also provide emergency mental health services to a party when there are reasonable grounds to believe that such emergency services are needed to prevent risk of serious psychological harm or where failure to provide or arrange for such mental health services would constitute a substantial risk of imminent harm to the party or to others, consistent with the law of the jurisdiction in which the services are provided. If providing such services, the forensic psychologist informs the retaining legal representative or the court, if court-retained, in a manner consistent with the requirements of the emergency situation.

In an emergency and in an attempt to avoid imminent harm, a forensic psychologist may provide advice, service, or other assistance in a matter in which the forensic psychologist does not have the skill ordinarily required, where referral to or consultation with another forensic psychologist would be impractical. Forensic psychologist's limit such assistance to that reasonably necessary in the circumstances.

After emergency treatment services have been provided, the forensic psychologist determines whether forensic examination services can be provided after considering whether doing so is likely to impair the psychologist's objectivity, competence, or effectiveness, or otherwise risk exploitation or harm to the individual or the legal system.

## **7. FEES**

### **7.01 Factors in Determining Fees**

When determining the reasonableness of a fee, the forensic psychologist considers salient factors such as: 1) the experience and ability of the forensic psychologist performing the services; 2) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the service properly; 3) the fee customarily charged in the locality, regionally, or nationally for similar forensic services; 4) the likelihood that the acceptance of the particular employment will preclude other employment by the forensic psychologist; 5) the time limitations imposed by the client or by the circumstances; and 6) the nature and length of the professional relationship with the client.

### **7.02 Fee Arrangements**

Upon being retained, forensic psychologists 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 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 psychologists' fee practices are consistent with law.

Forensic psychologists 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 contingent fees, forensic psychologists avoid providing professional services to parties to a legal proceeding on the basis of "contingent fees" when those services involve the offering of evidence to a court or administrative body, or when they call upon the forensic psychologist to make affirmations or representations intended to be helpful to a court or to be relied upon by third parties. Forensic psychologist may accept contingent fees when the services delivered do not involve the forensic psychologist making affirmations or representations intended to be helpful to a court or to be relied upon by third parties.

"Letters of Protection" and other promises of future payment are not considered contingent fees unless payment is promised to originate from future proceeds or settlement benefits from the matter. In order to not be considered a contingent fee, future payment must be guaranteed in a manner that is not dependent on the outcome of the matter and must not constitute an interest free loan by the forensic psychologist to the client. Such letters and other fee agreements are to be considered part of the psychologist's billing and financial records and are to be disclosed pursuant to a properly noticed and served subpoena or other proper request for production of such documents.

### **7.03 Representation of Fees**

Billing statements from forensic psychologists either to the parties or to third party payors accurately reflect the forensic nature, extent, and purpose of the services provided and the context in which the service was provided.

### **7.04 Pro Bono Activities**

Forensic psychologists are encouraged to devote professional time and resources to allow greater access to those who cannot afford it. Forensic psychologists who derive a substantial portion of their 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 limited by insufficient financial resources.

## **8. NOTIFICATION, ASSENT, CONSENT, AND INFORMED CONSENT**

That the forensic psychologist informs service recipients about the nature and parameters of such service is important because: 1) the public as well as many legal representatives may not accurately anticipate the professional practices and conduct of forensic psychologists; 2) the public as well as many legal representatives may anticipate incorrectly that the task and responsibility of the forensic psychologist is to provide partisan advocacy; 3) substantial rights, liberties, and properties are frequently and immediately at risk in forensic matters; 4) there are a wide variety of services that may be provided by a forensic psychologist; 5) many of these services may be properly conducted in a variety of ways; 6) rules regarding the limits of privacy,

confidentiality, and privilege are complex and unanticipated by many individuals; 7) many laws and statutes do not adequately differentiate between psychological information that is acquired secondary to therapy from psychological information that is acquired secondary to forensic examination; 8) billing practices, costs, and opportunities for reimbursement for forensic services are ordinarily different from what would be anticipated for therapeutic services; and 9) many professional licensing laws, codes of ethics, and practice standards are oriented toward provision of therapeutic services rather than provision of forensic services.

### **8.01 Timing and Substance**

The forensic psychologist notifies clients, examinees, and others who are the recipients of forensic services as soon as is feasible regarding the provision of all reasonably anticipated services or other professional conduct.

The specific communication necessary varies according to the process, service, or conduct involved and the circumstances giving rise to the need to obtain informed consent. The forensic psychologist makes reasonable efforts to ensure that the client or other recipient of forensic services possesses information reasonably adequate to make an informed decision. This ordinarily involves disclosure of: 1) the facts and circumstances giving rise to the professional contact; 2) any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed service or conduct; 3) any actual, perceived or potential conflicts of interest; 4) any substantial limitations of the forensic psychologist in providing the service or conduct; 5) a discussion of the client's or other person's options and alternatives; 6) the voluntary or involuntary nature of participation; and, 7) if the cost of the service is the responsibility of the recipient, the anticipated cost of the service and the means by which the cost will be calculated.

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, such persons need less information to provide adequate informed consent than would others. When questions or uncertainties remain after having been informed by and having received explanations from the forensic psychologist, the forensic psychologist refers the person to a legal representative to advise them and the forensic psychologist considers seeking legal advice if indicated by the circumstances.

### **8.02 Communication with Legal Representatives Seeking to Retain a Forensic Psychologist**

During initial consultation with legal representatives seeking forensic services, forensic psychologists inform the representative of factors that might reasonably affect the decision to contract with the forensic psychologist. These factors include, but are not limited to: 1) the fee structure for anticipated services; 2) 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; 3) the psychologist's knowledge, skill, experience, and education that is the foundation for competence to offer the forensic services in the matter being considered; 4) any significant limitations of the expert's competence in these areas; and 5) the substantial scientific bases and limitations of the methods and procedures which will be employed.

When anticipated forensic service includes evidence that is to be relied on by a tribunal or other adjudicative body, forensic psychologists inform their prospective and current clients: 1) of the foreseeable limitations on their ability to testify; 2) that their opinions will be based on sufficient facts or data and are the product of reliable principles and methods; 3) that they can apply such principles and methods reliably to the facts of the case; 4) that they will perform as an impartial expert with the goal of providing independent opinions that will assist the trier of fact to understand the evidence or to determine a fact in issue; and 5) that they will act in accordance with the *Guidelines* and applicable codes of ethics.

As part of the initial process of being retained, or as soon thereafter as previously unknown information becomes available, the forensic psychologist discloses to the client all information that would reasonably be anticipated to effect a decision to retain or continue the services of the forensic psychologist. This disclosure includes all information that the reasonably prudent recipient of service would desire to know.

### **8.03 Communication with Forensic Examinees**

Unless court-ordered, forensic psychologists obtain the informed consent of the examinee, or the examinee's legal representative, before proceeding with examinations and procedures. If the examinee appears unwilling to proceed after receiving a thorough notification of the purposes, general methods, and intended uses of the forensic examination, the forensic psychologist postpones the examination, advises the examinee to contact his or her legal representative, and notifies the legal representative who retained him or her about the examinee's unwillingness to proceed.

In cases where the forensic service has been ordered by the court, the forensic psychologist may engage in the professional activity over the objection, and without the consent, of the examinee. In such cases, however, the forensic psychologist discloses: 1) the facts and circumstances giving rise to the professional contact; 2) any explanation reasonably necessary to inform the examinee of the material advantages and disadvantages of the proposed service or conduct; 3) any actual, perceived or potential conflicts of interest; 4) any substantial limitations of the forensic psychologist in providing the service or conduct; 5) a discussion of the examinee's options and alternatives; 6) the voluntary or involuntary nature of participation; and, 7) if the cost of the service is the responsibility of the examinee, the anticipated cost of the service and the means by which the cost will be calculated.

For examinees adjudicated or presumed by law to lack the capacity to provide informed consent for the anticipated forensic service, the forensic psychologist nevertheless: 1) provides an appropriate explanation (as indicated above); 2) seeks the examinee's assent; 3) considers the examinee's preferences and best interests; and 4) obtains appropriate permission from a legally authorized person or legal representative, if such substitute consent is permitted or required by law.

For examinees whom the forensic psychologist 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 psychologist takes reasonable steps to protect their rights and welfare. This may be accomplished by suspending the proposed service, notifying the examinee's legal representative or other interested legal representative, or notifying the court or

agency.

After a forensic psychologist has advised an examinee about the intended uses of the examination and its work product, the forensic psychologist 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.

#### **8.04 Communication with Persons Receiving Treatment in Forensic Settings and Contexts**

Psychologists providing treatment in forensic settings and contexts, in addition to obtaining informed consent in a way consistent with general therapeutic practice, take steps to inform therapy patients of unique aspects of therapy in forensic settings in ways that are salient and important to them. This may include, for example, that statements made in therapy may become evidence in trial through the testimony of the therapist who may be obligated to disclose them; or that statements made during the course of court-ordered treatment or treatment provided during a supervised diversion may be provided to a Court or its officers as directed by the Court.

Psychologists providing treatment in forensic settings and contexts are sensitive to the unique aspects of treatment that may occur under such circumstances including, but not limited to, mandated treatment; limitations on privacy, confidentiality, and privilege; and the provision of treatment that, if successful, may have potentially unwanted implications and consequences for the patient.

#### **8.05 Communication with Other Direct Recipients of Forensic Services**

Forensic psychologists inform recipients of services who are not identified above: 1) that they have the right to consult with a legal representative in connection with the anticipated forensic service; 2) of the purposes of any forensic examination or other procedure; 3) of the nature of the procedures to be employed; 4) of the intended uses of any product of their services; and 5) of the client who has retained or the entity who has employed the forensic psychologist.

#### **8.06 Communication in Research Contexts**

When a forensic psychologist engages in research or scholarly activities conducted as a service to a client in a legal proceeding, the forensic psychologist clarifies any anticipated further use of such research or scholarly product, discloses the forensic psychologist's role in the resulting research or scholarly products, and obtains whatever consent or agreement is required by law and applicable codes of ethics.

Forensic psychologists obtain informed consent from participants in forensic research by explaining: 1) the purpose of the research, expected duration, and procedures; 2) their right to decline to participate and to withdraw from the research once participation has begun; 3) the foreseeable consequences of declining or withdrawing; 4) reasonably foreseeable factors that may be expected to influence their willingness to participate such as potential risks, discomfort, or adverse effects; 5) any prospective research benefits; 6) limits of privacy, confidentiality, and privilege; 7) incentives for participation; and 8) whom to contact for questions about the research and research participants' rights. They provide opportunity for the prospective participants to ask questions and receive answers.

These procedures apply whether the forensic psychologist is 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 psychologists maintain a disciplined, fair, courteous and civil attitude toward all persons involved in the matter. In resolving conflicts, forensic psychologists 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**

If the responsibilities of forensic psychologists conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to the *Guidelines* and take steps to resolve the conflict. If the conflict cannot be resolved via such means, psychologists 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**

If the demands of an organization with which a forensic psychologist is affiliated or for whom they are working conflict with the *Guidelines*, the forensic psychologist clarifies the nature of the conflict, makes known the recommendations of the *Guidelines*, and to the extent feasible, resolves the conflict in a way consistent with the *Guidelines*.

### **9.03 Conflicts with Fellow Professionals**

If an apparent or potential ethical or practice standards violation has substantially harmed or is likely to substantially harm a person or organization, forensic psychologists take further action appropriate to the situation. When considering appropriate actions to take and the timing of such actions, forensic psychologists consider a number of factors including: 1) the nature and the immediacy of the potential harm, applicable privacy, confidentiality, and legal privileges; 2) how the rights of the relevant parties may be affected by various courses of action; and 3) the legal obligations imposed on the forensic psychologist.

When retained by a fellow professional in a consultative or supervisory capacity, or the professional's legal representative, the forensic psychologist incurs no necessary responsibility for bringing perceived ethical or practice standards violations to the attention of third parties. When retained in any other capacity, forensic psychologists take further action appropriate to the situation, including consideration of making a report to third parties of the perceived ethical or practice standards violation.

When the forensic psychologist believes 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, the forensic psychologist will consult with the retaining legal representative before attempting to resolve an ethical or professional issue with another professional in such a circumstance.

Steps to resolve professional conflicts may include, but are not limited to, obtaining the consultation of fellow forensic professionals, obtaining the advice of independent counsel, and conferring directly with the legal representatives involved.

## **10. PRIVACY, CONFIDENTIALITY, AND PRIVILEGE**

A forensic psychologist keeps 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 psychologists are 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 known rights and privileges.

### **10.02 Record Keeping**

Forensic psychologists 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.

### **10.03 Release of Information**

Forensic psychologists maintain active control over records and information. During the initial consultation with each participant, forensic psychologists make known who is authorized to release or access the information contained in the forensic psychologist's records. Forensic psychologists' decision making regarding access to and release of information in the record is informed by the jurisdiction of the matter.

When others request the release of the records of the forensic psychologist, the forensic psychologist complies with a properly noticed and served subpoena or court order, 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 might include 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 psychologist's records. Absent compelling reason otherwise, forensic psychologists make available all records specified in the subpoena or order. When in doubt about an appropriate response or course of action, forensic psychologists may formally notify the drafter of subpoena of their uncertainty, defer to and request direction from the court or other tribunal, seek assistance from counsel that has retained the forensic psychologist in the matter, or seek independent counsel retained by the forensic psychologist.

### **10.04 Notice of Privacy, Confidentiality, and Privilege**

Forensic psychologists inform the potential client, and each participant with whom the forensic psychologist has contact, of the applicable limitations to privacy, confidentiality, and privilege related to their services and their products at the outset of the professional relationship, or as soon as is feasible. Forensic psychologists provide an understandable explanation of privacy, confidentiality, and privilege, and any limitations. Forensic psychologists recommend that persons with questions regarding privacy, confidentiality, or privilege seek legal advice.

#### **10.05 Access to Information**

Forensic psychologists provide their clients access to, and a meaningful explanation of, all information that is in the psychologist's 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 is not to be provided access to the psychologist'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.

#### **10.06 Acquiring Third Party Information**

When forensic psychologists request information or records from third parties, they do so with the consent of the relevant legal representative or as a consequence of an order of a court to conduct the forensic examination or to access the information being requested.

#### **10.07 Re-release of Records**

When others request the re-release of records acquired from others by the forensic psychologist, the forensic psychologist complies with a properly noticed and served subpoena or court order, or other legally proper request specifically identifying the production of third party records, unless there is a compelling reason to object to doing so. Reasons to object might include 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 for the psychologist's records. Absent compelling reason otherwise, forensic psychologists make available all records specified in the subpoena or order which are under their control, and they make known all specified records to which they have had access if those records are not under their control at the time the subpoena is received. When in doubt about an appropriate response or course of action, forensic psychologists may formally notify the drafter of subpoena of their uncertainty, defer to and request direction from the court or other tribunal, seek assistance from counsel that has retained the forensic psychologist in the matter, or seek independent counsel retained by the forensic psychologist.

#### **10.08 Use of Case Materials Teaching, Continuing Education, and Other Scholarly Activities**

Forensic psychologists using case materials for purposes of teaching, training, or research: 1) disguise the identities of all persons and entities who would reasonably claim a privacy interest in such a manner that the identities are not recognizable to the audience; or 2) they obtain 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; or 3) they use only those aspects of the case information that currently is readily available in the public domain to the proposed

audience recipients. Forensic psychologists present such information in a fair, balanced, and respectful manner.

## **11 METHODS AND PROCEDURES**

### **11.01 Use of Appropriate Methods**

Forensic psychologists practice in a competent manner and consistent with accepted clinical and scientific standards. They utilize forensically appropriate data collection methods and procedures when providing examinations, treatment, consultation, educational activities or scholarly investigations.

### **11.02 Avoiding Bias**

When providing examinations, treatment, consultation, educational activities or scholarly investigations, forensic psychologists 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 accounts, observations, records, or sworn statements provided by others form a basis of an opinion, evidence or professional product, forensic psychologists disclose the source of, and minimize sole reliance upon, such information. Forensic psychologists attempt to corroborate data that form a substantial basis of their professional product. Corroboration may include interviewing the original source of secondhand information, or seeking related information in other ways. When relying upon data that have not been corroborated, forensic psychologists identify the origin and acknowledge the uncorroborated status of that data, any associated strengths and limitations, and the reasons for relying upon it.

### **11.04 Opinions Regarding Persons Not Examined**

Forensic psychologists 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 psychologists make every reasonable effort to obtain such information or data, and they document their efforts to obtain it.

When a forensic psychologist conducts a record review or provides consultation or supervision, and an individual examination is not warranted or necessary for the opinion, forensic psychologists explain this and the sources of information on which they are basing their opinions and recommendations, including all substantial caveats and limitations to their opinions and recommendations.

When it is not possible or feasible to examine individuals about whom they are offering an opinion, forensic psychologists make clear the impact of such limitations on the reliability and validity of their professional products, evidence or testimony.

## **12. ASSESSMENT**

### **12.01 Forensic Examiners 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 is directly related to the psycholegal issue, as is identified by court order or applicable law, precedent, statute, administrative code, or contractual agreement. Forensic examiners typically provide information about examinees' functional abilities, capacities, knowledge, and beliefs, depending on the legal issue in question.

#### **12.01.02 Use of Diagnostic Classification Procedures**

Forensic psychologists consider the strengths, cautions, and risks of utilizing diagnostic categorization procedures in forensic assessment tasks, including: 1) the limits of category validation studies in forensic contexts; 2) that impairments, abilities, and disabilities vary widely within each diagnostic category; and 3) 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 Techniques**

Forensic psychologists administer, adapt, score, interpret, or use assessment techniques, interviews, tests, or instruments in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques.

Forensic psychologists 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, psychologists describe the strengths and limitations of any test results and interpretation and explain the extrapolation of this data to the forensic context.

### **12.03 Appreciation of Individual Differences**

When interpreting assessment results, including clinical and automated interpretations, forensic psychologists 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 psychologists' judgments or reduce the accuracy of their interpretations, and they identify any significant strengths and limitations of their procedures and interpretations.

### **12.04 Appreciation of Contextual Differences**

Assessment in forensic contexts differs from more commonly practiced assessment in therapeutic contexts in important ways that forensic psychologists take into account when conducting forensic examinations. Forensic psychologists 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 assessment performance. Forensic psychologists consider and make known that forensic examination results can be affected by factors unique to or differentially present in forensic contexts including: 1) issues of response style; 2) voluntariness of participation; and 3) situational stress associated with involvement in the forensic or legal matters and its impact on the examinee and his or her assessment responses. Because of the many differences between forensic and therapeutic contexts, forensic psychologists 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 psychologists 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 precludes provision of an explanation of results, and this fact has been clearly explained to the person being assessed in advance.

Forensic psychologists provide information about professional work to clients and 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 results of tests and the bases for conclusions is provided in language that the client can understand.

## **13. DOCUMENTATION**

### **13.01 Documentation, Compilation and Provision of Data Reviewed**

Forensic psychologists document and are prepared to make available all data, records, and other information which they review during the course of providing professional services. They document all data they independently gather with enough detail and quality that will allow for reasonable judicial scrutiny and adequate discovery by all parties. This level of documentation ordinarily exceeds the level of documentation typically employed during the course of providing non-forensic assessment and therapeutic services.

Forensic psychologists make available all data which they reviewed during the course of providing professional services subject to and consistent with court order, relevant rules of evidence, and professional standards.

These guidelines regarding documentation and compilation of data apply from the moment the forensic psychologist knows or reasonably knows that the data and evidence derived from it may be relied upon by a trier of fact or other decision maker.

### **13.02 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 psychologists 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 psychologists make reasonable effort 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 will promote understanding and avoid deception, given the particular characteristics, roles, and abilities of various recipients of the communications.

When in the role of “expert to the court,” forensic psychologists bear special responsibility for fairness and accuracy. Forensic psychologists are aware that, when in these roles, they are to facilitate understanding of the evidence or dispute of fact. Forensic psychologists do not distort or withhold relevant evidence or opinion in reports or testimony because this is potential misleading, and is incompatible with their role as experts to the court or other tribunals.

When providing professional reports and other sworn statements or testimony in any form, forensic psychologists 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 psychologists 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 psychologists recognize that, to the extent consistent with the rules of the adversary system, a retaining legal representative’s opposing counsel and opposing party are as fully entitled to all the benefit that might reasonably be implied or concluded from the psychologist’s products and opinions as are the retaining legal representative and client.

#### **14.02 Commenting Upon Other Professionals and Participants**

When evaluating or commenting upon the professional work product or qualifications of other professionals involved in a legal proceeding, forensic psychologists represent their disagreements in a professional and respectful tone, and based on a fair and accurate examination of the data, theories, standards and opinions of the other expert or party.

When describing or commenting upon an examinee or other participant in a legal proceeding, the forensic psychologist does so in a fair, accurate, and objective manner. The forensic psychologist fairly and accurately reports the representations, opinions, and statements of forensic examinees or other participants in the legal proceedings.

#### **14.03 Differentiating Observations, Conclusions, and Opinions**

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

#### **14.04 Disclosing Sources of Information and Bases of Opinions**

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

#### **14.05 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, the forensic psychologist offers a complete statement of all relevant opinions that he or she reasonably expects are of interest, 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.

Forensic psychologists 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 psychologists 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 psychologists 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.

#### **14.06 Out of Court Statements**

Ordinarily, forensic psychologists 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, psychologists 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, the forensic psychologist's primary goal is to educate the public about the role of psychologists in the legal system and the appropriate practice of forensic psychology. Forensic psychologists 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 psychologists: 1) offer opinions for which there is sufficient information or data, and 2) make clear the limitations of their statements and opinions resulting from having had no direct knowledge of or involvement with the case.

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## 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 Specialty Guidelines, 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 Psychologists, 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 <sup>1</sup> of each organization and a Chairperson <sup>2</sup>.

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*

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<sup>1</sup> Drs. Solomon Fulero, Stephen Golding, Stuart A. Greenberg, and Christina Studebaker

<sup>2</sup> Dr. Randy K. Otto

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.

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 Psychologists* 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.

A forensic psychologist, as a member of the profession of psychology, has a special responsibility for the quality of psychology practiced in the legal system.

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