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Effective Date: 06/09/2010

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

<b>Agency/Board/Commission:</b>	Tennessee Department of Mental Health and Developmental Disabilities
<b>Division:</b>	Division of Mental Health Services
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0940-03-03	Forensics
Rule Number	Rule Title
0940-03-03-.01	Scope
0940-03-03-.02	Forensic Certification
0940-03-03-.03	Evaluation of and Expert Testimony on Competence to Stand Trial under Title 33, Chapter 7, Part 3
0940-03-03-.04	Evaluation of and Expert Testimony on Mental Condition at the Time of the Offense under Title 33, Chapter 7, Part 3

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

0940-03-03-.01 Scope

- (1) These rules specify certification criteria for forensic evaluators who are employees of the Department of Mental Health and Developmental Disabilities (TDMHDD); or, who are under contract with TDMHDD through an agency or as a private practitioner.

Authority: T.C.A. §§ 4-4-103; 33-1-201; 33-1-202; 33-1-203; 33-1-204; 33-1-302; 33-1-305; and Title 33, Chapter 7.

0940-03-03-.02 Forensic Certification.

- (1) Forensic evaluator certification is awarded at the discretion of TDMHDD to a professional who meets education and licensure requirements and who satisfactorily completes forensic training offered by TDMHDD.
- (2) Forensic evaluator certification is valid for two full fiscal years and shall be renewed by attending a TDMHDD forensic recertification training session. A forensic training session approved by TDMHDD may be substituted for the recertification training.

Authority: T.C.A. §§ 4-4-103; 33-1-201; 33-1-202; 33-1-203; 33-1-204; 33-1-302; 33-1-305; and Title 33, Chapter 7.

0940-03-03-.03 Evaluation of and Expert Testimony on Competence to Stand Trial under T.C.A. Title 33, Chapter 7, Part 3.

- (1) Persons performing mental health evaluations and/or providing expert witness testimony to determine competence to stand trial under T.C.A. Title 33, Chapter 7, Part 3 shall:
  - (a) Meet the qualification requirements specified in Rule 0940-03-03-.03(2)(a)-(h);
  - (b) Be certified as a forensic evaluator as described in Rule 0940-03-03-.02; and
  - (c) Participate in the assessment of the defendant.
- (2) A person with any of the following qualifications may seek certification to determine competence to stand trial:
  - (a) A physician licensed in the State of Tennessee with expertise in psychiatry as determined by training, education, or experience;
  - (b) A psychologist licensed in Tennessee with health service provider designation;
  - (c) A psychological examiner licensed in Tennessee with health service provider designation;
  - (d) A master's social worker licensed in Tennessee under the supervision of a clinical social worker licensed in Tennessee;
  - (e) A clinical social worker licensed in Tennessee;
  - (f) A nurse clinical specialist licensed to practice nursing in Tennessee who has earned a master's degree in psychiatric nursing;
  - (g) A professional counselor licensed in Tennessee;
  - (h) A person who has received a master's degree or its equivalent, in a human service or behavioral science related field, and who has completed at least one year of practical

forensic experience under the supervision of a certified forensic evaluator subject to review and approval by the Director of the Office of Forensic Services of TDMHDD.

- (3) A licensed physician with expertise in psychiatry as determined by training, education, or experience shall participate in the evaluation of and/or provide expert witness testimony about a person charged with first degree murder, as defined by T.C.A. § 39-13-202.
- (4) All notices of recommendations to the court for an inpatient evaluation under T.C.A. § 33-7-301(a) shall be signed by either a physician licensed in the State of Tennessee with expertise in psychiatry as determined by training, education, or experience or a psychologist licensed in Tennessee with health service provider designation. The physician or psychologist signing the notice of recommendations to the court shall have participated in the assessment of the defendant.

Authority: T.C.A. §§ 4-4-103; 33-1-201; 33-1-202; 33-1-203; 33-1-204; 33-1-302; 33-1-305; and Title 33, Chapter 7.

0940-03-03-.04 Evaluation of and Expert Testimony on Mental Condition at the Time of the Offense under Title 33, Chapter 7, Part 3.

- (1) Persons performing mental health evaluations and/or providing expert witness testimony regarding mental condition at the time of the offense under Title 33, Chapter 7, Part 3 shall:
  - (a) Meet the qualification requirements specified in Rule 0940-03-03-.04(2);
  - (b) Be certified as a forensic evaluator as described in Rule 0940-03-03-.02; and
  - (c) Participate in the assessment of the defendant.
- (2) Mental health evaluations and expert testimony regarding mental condition at the time of the offense may be provided only by persons who meet the following minimum qualifications:
  - (a) A physician licensed in Tennessee with expertise in psychiatry as determined by training, education or experience; or
  - (b) A psychologist licensed in Tennessee with health service provider designation.
- (3) A licensed physician with expertise in psychiatry as determined by training, education, or experience shall participate in the evaluation of and/or provide expert witness testimony about a person charged with first degree murder, as defined by T.C.A. § 39-13-202.

Authority: T.C.A. §§ 4-4-103; 33-1-201; 33-1-202; 33-1-203; 33-1-204; 33-1-302; 33-1-305; and Title 33, Chapter 7.

#### Repeals

Chapter 0940-03-03 Forensics is repealed in its entirety.

Authority: T.C.A. §§ 4-4-103; 33-1-201; 33-1-202; 33-1-203; 33-1-204; 33-1-302; 33-1-305; and Title 33, Chapter 7.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Mental Health and Developmental Disabilities on 1/20/2010, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/28/2009

Rulemaking Hearing(s) Conducted on: (add more dates). 10/21/2009



Date: 1/20/10

Signature: [Handwritten Signature]

Name of Officer: Virginia Trotter Betts, MSN, JD, RN, FAAN

Title of Officer: Commissioner

Subscribed and sworn to before me on: January 20, 2010

Notary Public Signature: [Handwritten Signature]

My commission expires on: July 8, 2013

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]

Robert E. Cooper, Jr.  
Attorney General and Reporter

3-10-10  
Date

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Filed with the Department of State on: 3/11/10

Effective on: 6/9/10

[Handwritten Signature]  
Tre Hargett  
Secretary of State

## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

### Memorandum

To: Department of State

From: Karen Edwards, Rules Coordinator  
Tennessee Department of Mental Health and Developmental Disabilities

Subject: Public Hearing Responses and Comments to Rules Chapter 0940-03-03 Forensics

Date: October 27, 2009

A public hearing on Rules Chapter 0940-03-03 Forensics was held on October 21, 2009 at 1:30 p.m. in the first floor conference room of the Andrew Johnson Tower in Nashville, Tennessee. The following staff of the Tennessee Department of Mental Health and Developmental Disabilities (TDMHDD) attended the hearing: Richard Prybilla, Attorney; Karen Edwards, Rules Coordinator; Jeff Feix, Director, Office of Forensics and Juvenile Court Services; and Rachel Jones, Administrative Assistant. Other than TDMHDD staff, no one came to the hearing. No written or oral comments were received at or before the hearing.

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

Rules Chapter 0940-03-03 Forensics affects TDMHDD employees and persons contracting with TDMHDD who provide forensic evaluations to determine competence to stand trial or mental condition at the time of an offense. Some contracting agencies or individuals in private practice may be a small business. All businesses providing these specialized services will be required to adhere to the rules consistent with the state's responsibilities.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Historically, this chapter specified certification requirements for forensic evaluators and procedural safeguards for transferring mentally ill service recipients to/from the Forensic Services Program at Middle Tennessee Mental Health Institute. The rules describing procedural safeguards for transfers have been removed from this chapter and placed in Rules Chapter 0940-03-11.

Rule 0940-03-03-.01 specifies that these rules apply to employees or persons contracting with the Department of Mental Health and Developmental Disabilities.

Rule 0940-03-03-.02 specifies the requirements for forensic certification.

Rule 0940-03-03-.03 describes the qualification requirements for persons serving as evaluators of and/or providing expert testimony on competence to stand trial.

Rule 0940-03-03-.04 describes the qualification requirements for persons serving as evaluators of and/or providing expert testimony on mental condition at the time of an offense.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 33-7-301 et seq. requires all evaluations of competency to stand trial and mental condition at the time of the offense to be done by a community mental health center or licensed practitioner designated by the Commissioner of the Department of Mental Health and Developmental Disabilities.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rules directly affect community mental health centers and licensed practitioners certified by the Commissioner to evaluate and/or provide expert testimony about competency to stand trial or mental condition at the time of the offense. These rules also affect state owned and operated regional mental health institutes, criminal defendants, and the criminal justice system. The rules were sent to forensic evaluators and state hospitals for review and comment. There were no comments from those directly affected by this rule urging the adoption or rejection of these rules.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

No opinions of the attorney general and reporter or judicial ruling relating to the rule have been identified.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The fiscal impact of these rules is judged to be minimal.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Karen Edwards, Ph.D, Rules Coordinator  
Jeff Feix, Ph.D., Director, Forensics and Juvenile Court Services

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Jeff Feix, Ph.D., Director, Forensics and Juvenile Court Services

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Jeff Feix, Ph.D., Director, Forensics and Juvenile Court Services  
Cordell Hull Building, Third Floor  
425 Fifth Avenue North  
Nashville, TN 37243  
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Jeff.Feix@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

n/a