

Affidavit Regarding Opposition to the Presence of Third Party Observers
and Recording of Neuropsychological and Psychological Assessments
Performed in the State of Illinois

This statement has been endorsed by Clinical Neuropsychologists who are board certified by the American Board of Clinical Neuropsychology and who are currently residing and practicing in the State of Illinois.

Created by Jerry J. Sweet, Ph.D., ABPP and Leslie Guidotti Breting, Ph.D. in June 2012.

Clinical neuropsychologists are often asked to evaluate an individual who is involved in some form of civil or administrative proceeding (e.g., related to personal injury litigation, medical malpractice litigation, application for disability benefits, worker's compensation claim) in which an attorney formally requests that a third party (i.e., lawyer, lawyer's representative, and/or recording device) be present to observe the entire evaluation.

It is very problematic to be asked to allow either third party observation or recording of a neuropsychological evaluation. This issue has been discussed in great detail within the field of neuropsychology. Basically, the opposition within the field can be categorized as involving two issues: validity of test results and test security. Upon request, this affidavit can be accompanied by a number of relevant supporting materials that have been published on this topic, including pages from current test manuals by test publishers that specifically discourage the practice of third party observations related to lawsuits. An official statement from the American Academy of Clinical Neuropsychology on the subject of opposition to third party observers and recording has been published and can be provided. A separate professional organization, the National Academy of Neuropsychology has also developed an official position against these practices and can be provided. Relevant citations on the topic of third party observation and recording, as well as test security have been placed at the conclusion of this affidavit.

With regard to validity of test results, a neuropsychological evaluation is not the same as a medical examination. Our procedures (unlike the physician's straightforward evaluation of basic reflexes and balance, for example) require an environment free of distractions within which the examiner and examinee can develop a comfortable working relationship that lasts over a period of hours and is intended to optimize the validity of information gathered in the clinical interview and via formal testing procedures. The presence of a third party observer or recording equipment interrupts the normal focus of the examiner and the examinee on the assessment procedures, and in so doing makes the differential diagnosis more complex, increasing the likelihood that certainty of some specific conclusions would be reduced. There is a considerable scientific literature on the deleterious effects of the presence of observation or recording on an individual's task performance, despite best efforts to remain unobtrusive. This effect is known as "social facilitation" (i.e., the effect or effects of the presence of a person on an individual's task performance).

The second issue is that of test security, which relates to the rights of the publishers of test materials to not have their work rendered useless by the potential public release of questions and answers to psychological and neuropsychological tests. For this same reason, publishers of

testing materials require proof of being a licensed psychologist before tests can be purchased. Test security issues pertain to attorneys or their representatives observing or recording the evaluation process, and to release of the raw data once the evaluation is complete. The appropriate manner in which to share or allow discovery of all aspects of neuropsychological evaluations is to release all of the information gathered during the course of the evaluation directly to the plaintiff's or claimant's expert.

There is no intent on the part of clinical neuropsychologists to withhold information gained during the evaluation by not allowing third party observation and recording. In fact, all the examinee's responses salient to the bases of our opinions will be written down and scored according to standardized procedures. A detailed formal report will describe the entire evaluation process and all results. The attorney's own expert neuropsychologist can review all these materials at a later date and the attorney can ask detailed questions about all parts of our evaluation as part of the discovery process. Observing or recording of our evaluation is simply not necessary to ensure adequate discovery of facts from our evaluation. Moreover, as noted earlier, the presence of a third party observer or recording can invalidate portions of the results; the presence of a video or audio recording device violates the copyrights of the test publishers.

The issue of test security is not restricted to the immediate case at hand. Again referring to two separate relevant surveys of attorneys (Wetter & Corrigan, 1995; Essig et al., 2001), it is known that attorneys spend substantial time preparing clients for neuropsychological examinations, including sharing information pertaining to test content, methods of detecting malingering, and common symptoms of brain injury. Apparently, attorneys feel obligated to use whatever information they have in their possession, which would have the effect of invalidating or undermining future evaluations as well (Victor & Abeles, 2004). The guidance on ethics from the American Psychological Association and related organizations in the form of Standards for Educational and Psychological Testing and the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct are clear in requiring limited access to questions and answers of copyrighted and normed tests that would undermine future use (e.g., Duff & Fisher, 2005; Kaufman, 2005, 2009; Sweet, Grote, & van Gorp, 2002).

To summarize, our standard practice is not to have any person or recording equipment present for the examination, other than the examinee and the examiner. This is the standardized and accepted practice in the specialty of clinical neuropsychology, which enhances our ability to obtain valid performances, upon which we base our interpretations and conclusions.

References relevant to third party observers and the related issue of test security.

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The individuals listed below comprise the entire group of clinical neuropsychologists who as of June 1, 2012 are board-certified by the American Board of Clinical Neuropsychology (ABCN), which is one of 14 psychology specialties operating under the auspices of the American Board of Professional Psychology (ABPP). All signatories are licensed as clinical psychologists in Illinois, reside in Illinois, and actively practice in Illinois.

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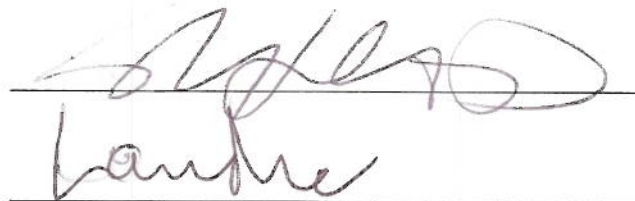
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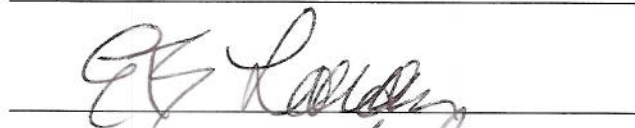
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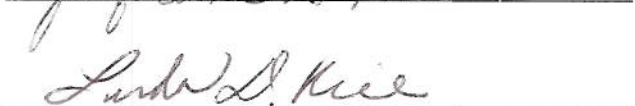
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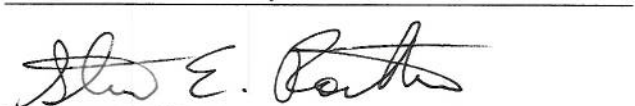
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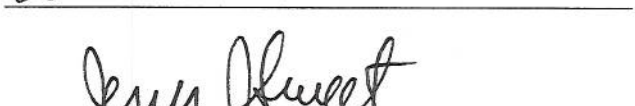
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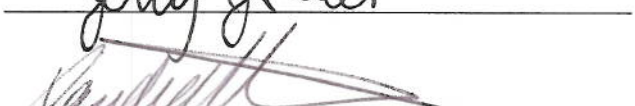
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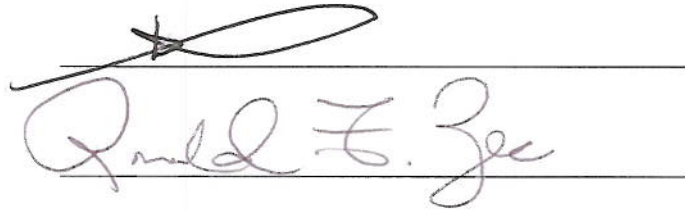


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