

RULE 3.210 | INCOMPETENCE TO PROCEED: PROCEDURE FOR RAISING THE ISSUE

(a) Proceedings Barred during Incompetency. A person accused of an offense or a violation of probation or community control who is mentally incompetent to proceed at any material stage of a criminal proceeding shall not be proceeded against while incompetent.

(1) A "material stage of a criminal proceeding" shall include the trial of the case, pretrial hearings involving questions of fact on which the defendant might be expected to testify, entry of a plea, violation of probation or violation of community control proceedings, sentencing, hearings on issues regarding a defendant's failure to comply with court orders or conditions, or other matters where the mental competence of the defendant is necessary for a just resolution of the issues being considered. The terms "competent," "competence," "incompetent," and "incompetence," as used in rules 3.210-3.219, shall refer to mental competence or incompetence to proceed at a material stage of a criminal proceeding.

(2) The incompetence of the defendant shall not preclude such judicial action, hearings on motions of the parties, discovery proceedings, or other procedures that do not require the personal participation of the defendant.

(b) Motion for Examination. If, at any material stage of a criminal proceeding, the court of its own motion, or on motion of counsel for the defendant or for the state, has reasonable ground to believe that the defendant is not mentally competent to proceed, the court shall immediately enter its order setting a time for a hearing to determine the defendant's mental condition, which shall be held no later than 20 days after the date of the filing of the motion, and may order the defendant to be examined by no more than 3 experts, as needed, prior to the date of the hearing. Attorneys for the state and the defendant may be present at any examination ordered by the court.

(1) A written motion for the examination made by counsel for the defendant shall contain a certificate of counsel that the motion is made in good faith and on reasonable

grounds to believe that the defendant is incompetent to proceed. To the extent that it does not invade the lawyer-client privilege, the motion shall contain a recital of the specific observations of and conversations with the defendant that have formed the basis for the motion.

(2) A written motion for the examination made by counsel for the state shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe the defendant is incompetent to proceed and shall include a recital of the specific facts that have formed the basis for the motion, including a recitation of the observations of and statements of the defendant that have caused the state to file the motion.

(3) If the defendant has been released on bail or other release provision, the court may order the defendant to appear at a designated place for evaluation at a specific time as a condition of such release. If the court determines that the defendant will not submit to the evaluation or that the defendant is not likely to appear for the scheduled evaluation, the court may order the defendant taken into custody until the determination of the defendant's competency to proceed. A motion made for evaluation under this subdivision shall not otherwise affect the defendant's right to release.

(4) The order appointing experts shall:

- (A) identify the purpose or purposes of the evaluation, including the nature of the material proceeding, and specify the area or areas of inquiry that should be addressed by the evaluator;
- (B) specify the legal criteria to be applied; and
- (C) specify the date by which the report should be submitted and to whom the report should be submitted.

Committee Notes

1968 Adoption. (a) Same as section 917.01, Florida Statutes, except it was felt that court cannot by rule direct institution officials. Thus words, “he shall report this fact to the court which conducted the hearing. If the officer so reports” and concluding sentence, “No defendant committed by a court to an institution, by reason of the examination referred to in this paragraph, shall be released therefrom, without the consent of the court committing him,” should be omitted from the rule but retained by statute.

(b) Same as section 909.17, Florida Statutes.

(c) Same as section 917.02, Florida Statutes.

1972 Amendment. Subdivision (a)(3) refers to *Jackson v. Indiana*, 406 U.S. 715, 730, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972); also, *United States v. Curry*, 410 F.2d 1372 (4th Cir. 1969). Subdivision (d) is added to give the court authority to confine an insane person who is likely to cause harm to others even if the person is otherwise entitled to bail. The amendment does not apply unless the defendant contends that he or she is insane at the time of trial or at the time the offense was committed. The purpose of the amendment is to prevent admittedly insane persons from being at large when there is a likelihood they may injure themselves or others.

1977 Amendment. This language is taken, almost verbatim, from existing rule 3.210(a). The word “insane” is changed to reflect the new terminology, “competence to stand trial.” The definition of competence to stand trial is taken verbatim from the United States Supreme Court formulation of the test in *Dusky v. United States*, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960).

(a)(2) The first part of this paragraph is taken, almost verbatim, from the existing rule. The right of counsel for the state to move for such examination has been added.

(b)(1) In order to confine the defendant as incompetent to stand trial, the defendant must be confined under the same standards as those used for civil commitment. These criteria were set forth in the recent U.S. Supreme Court case of *Jackson v. Indiana*, 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972), in which it was held to be a denial of equal protection to subject a criminal defendant to a more lenient commitment standard than would be applied to one not charged with a crime. Therefore, the criteria for involuntary civil commitment should be incorporated as the criteria for commitment for incompetence to stand trial.

In this subdivision is found the most difficult of the problems to resolve for the rule. The head-on conflict between the Department of Health and Rehabilitative Services, a part of the executive branch of the government, and the courts occurs when the administrator determines that a defendant no longer should be confined, but the trial judge does not wish the defendant released because the trial judge feels that further commitment is necessary. Under the civil commitment model, the administrator has the power to release a committed patient at such time as the administrator feels the patient no longer meets the standards for commitment. Obviously, since a defendant in a criminal case is under the jurisdiction of the court, such immediate release is unwarranted.



The time period of the initial commitment parallels that of civil commitment.

(b)(2) treats the problem of what the court should do with a defendant who is not competent to stand trial, but who fails to meet the criteria for commitment. If incompetent, but not in need of treatment and not dangerous, then the defendant cannot be committed. The present rule provides for dismissal of the charges immediately. There appears to be no reason why someone in this situation should not be released pending trial on bail, as would other defendants.

The finding of “not guilty by reason of insanity,” required under the present rule when a defendant cannot be tried by reason of incompetence, seems inappropriate since such a defense admits the commission of the fact of the crime but denies the defendant’s mental state. Since no such finding has been made (and cannot be made), the verdict entered of not guilty by reason of insanity is not appropriate. Further, it would give a defendant, later competent, a res judicata or double jeopardy defense, the verdict being a final determination of guilt or innocence. It would seem far more appropriate to withdraw the charges. A defendant who regains competence within the period of the statute of limitations could still be tried for the offense, if such trial is warranted.

One of the major problems confronting the institution in which an incompetent person is being held is that of obtaining consent for medical procedures and treatment, not necessarily mental treatment. Generally, under the statute, the patient civilly committed is not thereby deemed incompetent to consent. At the commitment hearing in the civil proceedings, the judge may make the general competency determination. It is recommended that the same process apply in the hearing on competency to stand trial, and that, if the trial judge does not find the defendant incompetent for other purposes, the defendant be legally considered competent for such other purposes.

1980 Amendment.

(a) This provision is identical to that which has been contained in all prior rules and statutes relating to competence to stand trial. No change is suggested.

(b) In order to ensure that the proceedings move quickly the court is required to set a hearing within 20 days. This subdivision should be read in conjunction with rule 3.211 which requires the experts to submit their report to the court at such time as the court shall specify. The court therefore determines the time on which the report is to be submitted. The provision requiring at least 2 but no more than 3 experts is meant to coincide with section 394.02, Florida Statutes (1979), in which the legislature provides for the number of experts to be appointed and that at least 1 of such experts be appointed from a group of certain designated state-related professionals. This legislative restriction on appointment will ensure that the Department of Health and Rehabilitative Services will, to some extent, be involved in the hospitalization decision-making process. Other possible procedures were discussed at great length both among members of the committee and with representatives of the legislature, but it was decided that any more specific procedures should be developed on the local level in the individual circuits and that it would be inappropriate to mandate such specific procedures in a statewide court rule. Since it was felt by the committee to be a critical stage in the proceedings and subject to Sixth Amendment provisions, and since no

psychiatrist-patient privilege applies to this stage of the proceeding, the committee felt that attorneys for both sides should have the right to be present at such examinations.

(1) and (2) A motion for examination relative to competency to stand trial should not be a “boiler plate” motion filed in every case. The inclusion of specific facts in the motion will give the trial judge a basis on which to determine whether there is sufficient indication of incompetence to stand trial that experts should be appointed to examine the defendant. Provision was made that conversations and observations need not be disclosed if they were felt to violate the lawyer-client privilege. Observations of the defendant were included in this phrase in that these may, in some cases, be considered “verbal acts.”

(3) The mere filing of a motion for examination to determine competence to stand trial should not affect in any way the provision for release of a defendant on bail or other pretrial release provision. If a defendant has been released on bail, the judgment already having been made that he or she is so entitled, and as long as the defendant will continue to appear for appropriate evaluations, the mere fact that the motion was filed should not abrogate the right to bail. Obviously, if other factors would affect the defendant’s right to release or would affect the right to release on specific release conditions, those conditions could be changed or the release revoked. By making the requirement that the defendant appear for evaluation a condition of release, the court can more easily take back into custody a defendant who has refused to appear for evaluation, and the defendant can then be evaluated in custody.

1988 Amendment. Title. The title is amended to reflect change in subdivision (a)(1), which broadens the issue of competency in criminal proceedings from the narrow issue of competency to stand trial to competency to proceed at any material stage of a criminal proceeding.

(a) This provision is broadened to prohibit proceeding against a defendant accused of a criminal offense or a violation of probation or community control and is broadened from competency to stand trial to competency to proceed at any material stage of a criminal proceeding as defined in subdivision (1).

(1) This new provision defines a material stage of a criminal proceeding when an incompetent defendant may not be proceeded against. This provision includes competence to be sentenced, which was previously addressed in rule 3.740 and is now addressed with more specificity in the new rule 3.214. Under the Florida Supreme Court decision of *Jackson v. State*, 452 So.2d 533 (Fla. 1984), this definition would not apply to a motion under rule 3.850.

(2) This new provision allows certain matters in a criminal case to proceed, even if a defendant is determined to be incompetent, in areas not requiring the personal participation of the defendant.

(b) This provision is amended to reflect the changes in subdivision (a) above.

(1) Same as above.

(2) Same as above.



(3) Same as above. This provision also changes the phrase “released from custody on a pre-trial release provision” to “released on bail or other release provision” because the term “custody” is subject to several interpretations.

(4) This new provision is designed to specify and clarify in the order appointing experts, the matters the appointed experts are to address, and to specify when and to whom their reports are to be submitted. Court-appointed experts often do not understand the specific purpose of their examination or the specifics of the legal criteria to be applied. Specifying to whom the experts’ reports are to be submitted is designed to avoid confusion.

1992 Amendment. The purpose of the amendment is to gender neutralize the wording of the rule.

Introductory Note Relating to Amendments to Rules 3.210 to 3.219. In 1985, the Florida Legislature enacted amendments to part I of chapter 394, the “Florida Mental Health Act,” and substantial amendments to chapter 916 entitled “Mentally Deficient and Mentally Ill Defendants.” The effect of the amendments is to avoid tying mentally ill or deficient defendants in the criminal justice system to civil commitment procedures in the “Baker Act.” Reference to commitment of a criminal defendant found not guilty by reason of insanity has been removed from section 394.467, Florida Statutes. Chapter 916 now provides for specific commitment criteria of mentally ill or mentally retarded criminal defendants who are either incompetent to proceed or who have been found not guilty by reason of insanity in criminal proceedings.

In part, the following amendments to rules 3.210 to 3.219 are designed to reflect the 1985 amendments to chapters 394 and 916.

Florida judges on the criminal bench are committing and the Department of Health and Rehabilitative Services (HRS) mental health treatment facilities are admitting and treating those mentally ill and mentally retarded defendants in the criminal justice system who have been adjudged incompetent to stand trial and defendants found to be incompetent to proceed with violation of probation and community control proceedings. Judges are also finding such defendants not guilty by reason of insanity and committing them to HRS for treatment, yet there were no provisions for such commitments in the rules.

Some of the amendments to rules 3.210 to 3.219 are designed to provide for determinations of whether a defendant is mentally competent to proceed in any material stage of a criminal proceeding and provide for community treatment or commitment to HRS when a defendant meets commitment criteria under the provisions of chapter 916 as amended in 1985.

