

RULE 3.211 | COMPETENCE TO PROCEED: SCOPE OF EXAMINATION AND REPORT

(a) Examination by Experts. Upon appointment by the court, the experts shall examine the defendant with respect to the issue of competence to proceed, as specified by the court in its order appointing the experts to evaluate the defendant, and shall evaluate the defendant as ordered.

(1) The experts shall first consider factors related to the issue of whether the defendant meets the criteria for competence to proceed; that is, whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational, as well as factual, understanding of the pending proceedings.

(2) In considering the issue of competence to proceed, the examining experts shall consider and include in their report:

(A) the defendant's capacity to:

(i) appreciate the charges or allegations against the defendant;

(ii) appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;

(iii) understand the adversary nature of the legal process;

(iv) disclose to counsel facts pertinent to the proceedings at issue;

(v) manifest appropriate courtroom behavior;

(vi) testify relevantly; and

(B) any other factors deemed relevant by the experts.

(b) Factors to Be Evaluated. If the experts should find that the defendant is incompetent to proceed, the experts shall report on any recommended treatment for the defendant to attain competence to proceed. In considering the issues relating to treatment, the examining experts shall report on:

- (1) the mental illness or intellectual disability causing the incompetence;
- (2) the treatment or treatments appropriate for the mental illness or intellectual disability of the defendant and an explanation of each of the possible treatment alternatives in order of choices;
- (3) the availability of acceptable treatment. If treatment is available in the community, the expert shall so state in the report; and
- (4) the likelihood of the defendant attaining competence under the treatment recommended, an assessment of the probable duration of the treatment required to restore competence, and the probability that the defendant will attain competence to proceed in the foreseeable future.

(c) Written Findings of Experts. Any written report submitted by the experts shall:

- (1) identify the specific matters referred for evaluation;
- (2) describe the evaluative procedures, techniques, and tests used in the examination and the purpose or purposes for each;
- (3) state the expert's clinical observations, findings, and opinions on each issue referred for evaluation by the court, and indicate specifically those issues, if any, on which the expert could not give an opinion; and
- (4) identify the sources of information used by the expert and present the factual basis for the expert's clinical findings and opinions.

The procedure for determinations of the confidential status of reports is governed by Rule of Judicial Administration 2.420.

(d) Limited Use of Competency Evidence.

- (1) The information contained in any motion by the defendant for determination of competency to proceed or in any report of experts filed under this rule insofar as the report relates solely to the issues of competency to proceed and commitment, and any information elicited during a hearing on competency to proceed or commitment



held pursuant to this rule, shall be used only in determining the mental competency to proceed or the commitment or other treatment of the defendant.

(2) The defendant waives this provision by using the report, or portions thereof, in any proceeding for any other purpose, in which case disclosure and use of the report, or any portion thereof, shall be governed by applicable rules of evidence and rules of criminal procedure. If a part of the report is used by the defendant, the state may request the production of any other portion of that report that, in fairness, ought to be considered.

Committee Notes

1980 Adoption. This rule provides for appointment of experts and for the contents of the report which the experts are to render. Since the issue of competency has been raised, the experts will, of course, report on this issue. If there is reason to believe that involuntary hospitalization is also required, the court should order the experts to make this evaluation as well during their initial examination. It was felt, however, that the experts should not inquire into involuntary hospitalization as a matter of course, but only if sufficient reasonable grounds to do so were alleged in the motion, comparing the procedure to that required by the civil commitment process.

(a) Certain factors relating to competency to stand trial have been determined to be appropriate for analysis by examining experts. Often, with different experts involved, the experts do not use the same criteria in reaching their conclusions. The criteria used by experts who testify at the competency and commitment hearings may not be the same as those used by persons involved in the treatment process or later hearings after treatment. This subdivision, therefore, addresses those factors which, at least, should be considered by experts at both ends of the spectrum. Additional factors may be considered, and these factors listed may be addressed in different ways. At least the requirement that these specific factors be addressed will give a common basis of understanding for the experts at the competency hearing, the trial judge, and the experts who will later receive a defendant who is found to be incompetent to stand trial and in need of involuntary hospitalization. The test for determining competency to stand trial is that which has been contained in both the prior rules and statutes developed from *Dusky v. United States*, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960).

(1) The factors set forth in this section have been developed by the Department of Health and Rehabilitative Services (HRS) in its Competency Evaluation Instrument, a refinement of the McGarry Competency Evaluation Procedure.

(b) The issue of involuntary hospitalization is to be considered only if the court has ordered the experts to consider this issue; the court would do so if it found that there existed reasonable grounds to believe that the defendant met the criteria for involuntary hospitalization. The factors



set forth in order to determine this issue are those that have been developed through prior statutes relating to involuntary hospitalization, from the case of *Jackson v. Indiana*, 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972), and *In Re: Beverly*, 342 So.2d 481 (Fla. 1977).

As to criteria for involuntary hospitalization, see chapter 394, Florida Statutes, or, in the case of mental retardation, see chapter 393, Florida Statutes.

Section 394.467(1), Florida Statutes (1979), prescribes criteria for involuntary hospitalization or placement. In case of mental retardation, section 393.11, Florida Statutes (1979), governs.

(c) In most instances, the issues of incompetency at time of trial and insanity at time of the offense will be raised at the same time or, at least, in the same case. In the event that the 2 are not raised in the same case, there would be no reason for the examining experts to inquire into the mental status of the defendant at the time of the offense itself at the incompetency examination. However, if insanity as a defense is raised, it would be most appropriate for judicial efficiency to have the examining experts inquire into all issues at the same time. This provision permits such inquiry by the experts in the event that notice of intent to rely on the defense of insanity has been filed by the defendant.

(d) This provision is meant to permit local circuits to develop their own forms for such reports if they feel that such forms are appropriate. It does not preclude HRS from suggesting a form that would be of particular assistance to them and requesting its adoption, but adoption is not mandated.

(e) This subdivision provides for the confidentiality of the information obtained by virtue of an examination of the defendant pursuant to this subdivision. Cf. §90.108, Fla.Stat. (1979); Fla.R.Civ.P. 1.330(6).

Section 916.12, Florida Statutes is a companion statute relating to mental competence to stand trial.

1988 Amendment. Title. The title is amended to reflect changes in rule 3.210.

(a) This subdivision, which was originally an introductory paragraph, is amended to reflect changes in rule 3.210. The deletions related to the extent of the evaluation and when and to whom the experts' reports are to be submitted have been placed in rule 3.210(4) above.

(1) This subdivision, which was formerly subdivision (a), has been amended to reflect changes in rule 3.210 above.

(2) This provision has been amended to reflect the changes to rule 3.210. In addition, the 11 factors previously numbered (i) through (xi) have been reduced to 6 factors. Numbers (v), (vi), (vii), (x), and (xi) have been removed. Those 5 factors were felt to not be directly related to the issue of a defendant having the mental capacity to communicate with his or her attorney or to understand the proceedings against him or her and may have had the effect of confusing the issues the experts are to address in assessing a defendant's competency to proceed. The terms "ability" and "capacity" which were used interchangeably in the prior version of this provision have been

changed to the single term “capacity” for continuity. A provision has been added which allows the appointed expert to also include any other factors deemed relevant to take into account different techniques and points of view of the experts.

(b) This subdivision, including its 4 subdivisions, is amended to reflect the changes in rule 3.210. It also expands the determination from the limited area of whether an incompetent defendant should be voluntarily committed to treatment to recommended treatment options designed to restore or maintain competence. Subdivision (v) has been deleted because consideration of less restrictive alternatives is addressed in other amendments. [See rule 3.212(c)(3)(iv).] The amendments further reflect 1985 legislative amendments to chapters 394 and 916, Florida Statutes.

(ii) Appropriate treatment may include maintaining the defendant on psychotropic or other medication. See rule 3.215.

(c) This provision is amended to take into account the defense of insanity both at trial and in violation of probation/community control hearings.

(d) This provision deletes the old language relating to the use of standardized forms. The new provision, with its 4 subdivisions, outlines in detail what the written report of an expert is to include, to ensure the appointed expert understands what issues are to be addressed, and that the report identifies sources of information, tests or evaluation techniques used, and includes the findings and observations upon which the expert’s opinion is based. It requires the expert to specify those issues on which the expert could not render an opinion.

(e) This provision is amended to comply with changes in rule 3.210. In addition, the second paragraph has been expanded to clarify under what circumstances the reports of experts in a competency evaluation may be discovered by the prosecution and used as evidence in a hearing other than the hearing on the issue of a defendant’s competency to proceed.

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

Introductory Note Relating to Amendments to Rules 3.210 to 3.219. See notes following rule 3.210 for the text of this note.