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**FLORIDA RULES OF CRIMINAL PROCEDURE  
'COMPETENCE'  
[ALL-IN-ONE DOCUMENT]**

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RULES 3.210 THROUGH 3.219

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## **FLORIDA RULES OF CRIMINAL PROCEDURE**

### **V PRETRIAL MOTIONS AND DEFENSES**

**RULES:** 3.190 through 3.219



**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.



**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.

**RULE 3.212 | COMPETENCE TO PROCEED: HEARING AND DISPOSITION**

**(a) Admissibility of Evidence.** The experts preparing the reports may be called by either party or the court, and additional evidence may be introduced by either party. The experts appointed by the court shall be deemed court witnesses whether called by the court or either party and may be examined as such by either party.

**(b) Finding of Competence.** The court shall first consider the issue of the defendant's competence to proceed. If the court finds the defendant competent to proceed, the court shall enter its order so finding and shall proceed.

**(c) Commitment on Finding of Incompetence.** If the court finds the defendant is incompetent to proceed, or that the defendant is competent to proceed but that the defendant's competence depends on the continuation of appropriate treatment for a mental illness or intellectual disability, the court shall consider issues relating to treatment necessary to restore or maintain the defendant's competence to proceed.

(1) The court may order the defendant to undergo treatment if the court finds that the defendant is mentally ill or intellectually disabled and is in need of treatment and that treatment appropriate for the defendant's condition is available. If the court finds that the defendant may be treated in the community on bail or other release conditions, the court may make acceptance of reasonable medical treatment a condition of continuing bail or other release conditions.

(2) If the defendant is incarcerated, the court may order treatment to be administered at the custodial facility or may order the defendant transferred to another facility for treatment or may commit the defendant as provided in subdivision (3).

(3) A defendant may be committed for treatment to restore a defendant's competence to proceed if the court finds that:

(A) the defendant meets the criteria for commitment as set forth by statute;

(B) there is a substantial probability that the mental illness or intellectual disability causing



the defendant's incompetence will respond to treatment and that the defendant will regain competency to proceed in the reasonably foreseeable future;

(C) treatment appropriate for restoration of the defendant's competence to proceed is available; and

(D) no appropriate treatment alternative less restrictive than that involving commitment is available.

(4) If the court commits the defendant, the order of commitment shall contain:

(A) findings of fact relating to the issues of competency and commitment addressing the factors set forth in rule 3.211 when applicable;

(B) copies of the reports of the experts filed with the court pursuant to the order of examination;

(C) copies of any other psychiatric, psychological, or social work reports submitted to the court relative to the mental state of the defendant; and

(D) copies of the charging instrument and all supporting affidavits or other documents used in the determination of probable cause.

(5) The treatment facility shall admit the defendant for hospitalization and treatment and may retain and treat the defendant. No later than 6 months from the date of admission, the administrator of the facility shall file with the court a report that shall address the issues and consider the factors set forth in rule 3.211, with copies to all parties. If, at any time during the 6-month period or during any period of extended commitment that may be ordered pursuant to this rule, the administrator of the facility determines that the defendant no longer meets the criteria for commitment or has become competent to proceed, the administrator shall notify the court by such a report, with copies to all parties.

(A) If, during the 6-month period of commitment and treatment or during any period of extended commitment that may be ordered pursuant to this





rule, counsel for the defendant shall have reasonable grounds to believe that the defendant is competent to proceed or no longer meets the criteria for commitment, counsel may move for a hearing on the issue of the defendant's competence or commitment. The motion shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the defendant is now competent to proceed or no longer meets the criteria for commitment. To the extent that it does not invade the attorney-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.

(B) If, upon consideration of a motion filed by counsel for the defendant or the prosecuting attorney and any information offered the court in support thereof, the court has reasonable grounds to believe that the defendant may have regained competence to proceed or no longer meets the criteria for commitment, the court shall order the administrator of the facility to report to the court on such issues, with copies to all parties, and shall order a hearing to be held on those issues.

(6) The court shall hold a hearing within 30 days of the receipt of any such report from the administrator of the facility on the issues raised thereby. If, following the hearing, the court determines that the defendant continues to be incompetent to proceed and that the defendant meets the criteria for continued commitment or treatment, the court shall order continued commitment or treatment for a period not to exceed 1 year. When the defendant is retained by the facility, the same procedure shall be repeated prior to the expiration of each additional 1-year period of extended commitment.

(7) If, at any time after such commitment, the court decides, after hearing, that the defendant is competent to proceed, it shall enter its order so finding and shall proceed.



(8) If, after any such hearing, the court determines that the defendant remains incompetent to proceed but no longer meets the criteria for commitment, the court shall proceed as provided in rule 3.212(d).

**(d) Release on Finding of Incompetence.** If the court decides that a defendant is not mentally competent to proceed but does not meet the criteria for commitment, the defendant may be released on appropriate release conditions. The court may order that the defendant receive outpatient treatment at an appropriate local facility and that the defendant report for further evaluation at specified times during the release period as conditions of release. A report shall be filed with the court after each evaluation by the persons appointed by the court to make such evaluations, with copies to all parties. The procedure for determinations of the confidential status of reports is governed by Rule of Judicial Administration 2.420.

### Committee Notes

**1980 Adoption.** This rule sets forth the procedure for the hearing itself. If other experts have been involved who were not appointed pursuant to this rule, provision is made that such experts may then be called by either party. Those experts appointed by the court to conduct the examination, if called by the court or by either party to testify at the hearing, will be regarded as court experts. Either party may then examine such experts by leading questions or may impeach such experts. If a party calls an expert witness other than those appointed by the court pursuant to these rules, the usual evidentiary rules of examining such witnesses shall then apply. Following the hearing, the court may come to one of 3 conclusions: (a) the defendant is competent to stand trial, rule 3.212(a); (b) the defendant is incompetent to stand trial and is in need of involuntary hospitalization, rule 3.212(b); or (c) the defendant is incompetent to stand trial but is not in need of involuntary hospitalization, rule 3.212(c).

(a) This provision has been contained in every prior rule or statute relating to the issues of competency to stand trial and provides that if the defendant is competent the trial shall commence. No change is recommended.

(b) This subdivision provides for the second possible finding of the court, namely that the defendant is found incompetent to stand trial and is in need of involuntary hospitalization. It is designed to track the provisions of chapter 394, Florida Statutes, relating to involuntary hospitalization and the provisions of chapter 393 relating to residential services insofar as they may apply to the defendant under criminal charges. In this way, the procedures to be set up by the institution to which a criminal defendant is sent should not vary greatly from procedures common to the institution in the involuntary hospitalization or residential treatment of those not subject to criminal charges.



The criteria for involuntary hospitalization are set forth in section 394.467(1), Florida Statutes (1979). As to involuntary hospitalization for mental retardation, see section 393.11, Florida Statutes (1979); definition of treatment facility, see section 394.455, Florida Statutes (1979); involuntary admission to residential services, see section 393.11, Florida Statutes (1979).

(2) The requirement that there be certain contents to the order of commitment is set forth in order to give greater assistance to the personnel of the treatment facility. The information to be included in the order should give them the benefit of all information that has been before the trial judge and has been considered by that judge in making the decision to involuntarily hospitalize the defendant. This information should then assist the personnel of the receiving institution in making their initial evaluation and in instituting appropriate treatment more quickly. The last requirement, that of supporting affidavits or other documents used in the determination of probable cause, is to give some indication of the nature of the offense to the examining doctors to enable them to determine when the defendant has reached a level of improvement that he or she can discuss the charge with “a reasonable degree of rational understanding.”

(3) This subdivision is designed to correspond with a complementary section of the Florida Statutes. It mandates, as does the statute, that the treatment facility must admit the defendant for hospitalization and treatment. The time limitations set forth in this subdivision are designed to coincide with those set forth in chapter 394, Florida Statutes. If, however, the defendant should regain competence or no longer meets hospitalization criteria prior to the expiration of any of the time periods set, the administrator of the facility may report to the court and cause a re-evaluation of the defendant’s mental status. At the end of the 6-month period, and every year thereafter, the administrator must report to the court. These time periods are set forth so as to coincide with chapter 394, Florida Statutes.

(i) Permits the defendant’s attorney, in an appropriate case, to request a hearing if the attorney believes the defendant to have regained competency. The grounds for such belief are to be contained in the motion, as is a certificate of the good faith of counsel in filing it. If the motion is sufficient to give the court reasonable grounds to believe that the defendant may be competent or no longer meets the criteria for hospitalization, the court can order a report from the administrator and hold a hearing on the issues.

(4) The rule is meant to mandate that the court hold a hearing as quickly as possible, but the hearing must be held at least within 30 days of the receipt of the report from the administrator of the facility.

(c) This rule provides for the disposition of the defendant who falls under the third of the alternatives listed above, that is, one who is incompetent to stand trial but does not meet the provisions for involuntary hospitalization. It is meant to provide as great a flexibility as possible for the trial judge in handling such defendant.

As to criteria for involuntary hospitalization, see section 394.467(1), Florida Statutes (1979).



Section 916.13, Florida Statutes complements this rule and provides for the hospitalization of defendants adjudicated incompetent to stand trial.

**1988 Amendment.** Title. The title has been amended to reflect changes in rules 3.210 and 3.211.

(a) This provision was formerly the introductory paragraph to this rule. It has been labeled subdivision (a) for consistency in form.

(b) This provision was former subdivision (a). It has been amended to reflect changes in rules 3.210 and 3.211. The former subdivisions (b) and (b)(1) have been deleted because similar language is now found in new subdivision (c).

(c) This new provision, including all its subdivisions, is designed to reflect the commitment criteria in section 916.13(1), Florida Statutes, and to reflect that commitment to the Department of Health and Rehabilitative Services is to be tied to specific commitment criteria when no less restrictive treatment alternative is available.

(1) This provision provides for available community treatment when appropriate.

(2) This provision provides for treatment in a custodial facility or other available community residential program.

(3) This provision, and its subdivisions, outlines when a defendant may be committed and refers to commitment criteria under the provisions of section 916.13(1), Florida Statutes.

(4) This provision, and its subdivisions, was formerly subdivision (b)(2). The language has been amended to reflect changes in chapter 916 relating to the commitment of persons found incompetent to proceed and changes in rules 3.210 and 3.211.

(5) This provision, and its subdivisions, was formerly subdivision (b)(3). The amendments are for the same reasons as (4) above.

(6) This provision was formerly subdivision (b)(4). The amendments are for the same reasons as (4) above.

(7) This provision was formerly subdivision (b)(5). The amendments are for the same reasons as (4) above.

(8) This provision was formerly subdivision (b)(6). The amendments are for the same reasons as (4) above.

(d) The amendments to the provision are for the same reasons as (4) above.

**1992 Amendment.** The amendments substitute “shall” in place of “may” in subdivision (c)(5)(B) to require the trial court to order the administrator of the facility where an incompetent defendant has been committed to report to the court on the issue of competency when the court has reasonable grounds to believe that the defendant may have regained competence to proceed or no longer meets the criteria for commitment. The amendments also 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.



**RULE 3.213 | CONTINUING INCOMPETENCY TO PROCEED, EXCEPT INCOMPETENCY TO PROCEED WITH SENTENCING: DISPOSITION**

**(a) Dismissal without Prejudice during Continuing Incompetency.**

(1) If at any time after 5 years following a determination that a person is incompetent to stand trial or proceed with a probation or community control violation hearing when charged with a felony, or 1 year when charged with a misdemeanor, the court, after hearing, determines that the defendant remains incompetent to stand trial or proceed with a probation or community control violation hearing, that there is no substantial probability that the defendant will become mentally competent to stand trial or proceed with a probation or community control violation hearing in the foreseeable future, and that the defendant does not meet the criteria for commitment, it shall dismiss the charges against the defendant without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future.

(2) If the incompetency to stand trial or to proceed is due to intellectual disability or autism, the court shall dismiss the charges within a reasonable time after such determination, not to exceed 2 years for felony charges and 1 year for misdemeanor charges, unless the court specifies in its order the reasons for believing that the defendant will become competent within the foreseeable future and specifies the time within which the defendant is expected to become competent. The dismissal shall be without prejudice to the state to refile should the defendant be declared competent to proceed in the future.

**(b) Commitment or Treatment during Continuing Incompetency.**

(1) If at any time after 5 years following a determination that a person is incompetent to stand trial or proceed with a probation or community control violation hearing when charged with a felony, or 1 year when charged with a misdemeanor, the court, after hearing, determines that the defendant remains incompetent to stand trial or proceed with a probation or community control violation hearing, that there is no



substantial probability that the defendant will become mentally competent to stand trial or proceed with a probation or community control violation hearing in the foreseeable future, and that the defendant does meet the criteria for commitment, the court shall dismiss the charges against the defendant and commit the defendant to the Department of Children and Family Services for involuntary hospitalization or residential services solely under the provisions of law or may order that the defendant receive outpatient treatment at any other facility or service on an outpatient basis subject to the provisions of those statutes. In the order of commitment, the judge shall order that the administrator of the facility notify the state attorney of the committing circuit no less than 30 days prior to the anticipated date of release of the defendant. If charges are dismissed pursuant to this subdivision, the dismissal shall be without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future.

(2) If the continuing incompetency is due to intellectual disability or autism, and the defendant either lacks the ability to provide for his or her well-being or is likely to physically injure himself or herself, or others, the defendant may be involuntarily admitted to residential services as provided by law.

**(c) Applicability.** This rule shall not apply to defendants determined to be incompetent to proceed with sentencing, which is addressed in rule 3.214.

### Committee Notes

**1980 Adoption.** As to involuntary hospitalization, see section 394.467(1), Florida Statutes (1979); as to involuntary admission to residential services, see chapter 393, Florida Statutes (1979).

(b) This provision is meant to deal with the defendant who remains incompetent after 5 years, and who does meet the criteria for involuntary hospitalization. It provides that the criminal charges will be dismissed and the defendant will be involuntarily hospitalized. It further provides that the administrator of the facility must notify the state attorney prior to any release of a defendant committed pursuant to this subdivision.



As to criteria for involuntary hospitalization, see section 394.467(1), Florida Statutes (1979); in case of retardation, see chapter 393, Florida Statutes (1979).

(c) Since commitment criteria for a defendant determined to be incompetent to stand trial are the same as for civil hospitalization, there is no need to continue the difference between felony and misdemeanor procedure.

Section 916.14, Florida Statutes, makes the statute of limitations and defense of former jeopardy inapplicable to criminal charges dismissed because of incompetence of defendant to stand trial.

**1988 Amendment.** Title. The title has been amended to comply with changes in rule 3.210, but specifically excludes competency to proceed with sentencing, which is addressed in the new rule 3.214.

(a) This provision was amended to reflect changes in rules 3.210 and 3.211. New language is added which specifies that, if charges are dismissed under this rule, it is without prejudice to the state to refile if the defendant is declared competent to proceed in the future. Similar language was previously found in rule 3.214(d), but is more appropriate under this rule.

(b) This provision has been amended for the same reasons as (a) above.

(c) This new provision specifically exempts this rule from being used against a defendant determined to be incompetent to be sentenced, which is now provided in the new rule 3.214. It is replaced by the new rule 3.214.

**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.** See notes following rule 3.210 for the text of this note.



### **RULE 3.214 | INCOMPETENCY TO PROCEED TO SENTENCING: DISPOSITION**

If a defendant is determined to be incompetent to proceed after being found guilty of an offense or violation of probation or community control or after voluntarily entering a plea to an offense or violation of probation or community control, but prior to sentencing, the court shall postpone the pronouncement of sentence and proceed pursuant to rule 3.210 (et seq.) and the following rules.

#### **Committee Notes**

**1988 Amendment.** Title. This new rule replaces the former rule 3.740. It was felt to be more appropriately addressed in this sequence. The former rule 3.214 is now renumbered 3.215. The former rule 3.740 used the inappropriate phrase “(p)rocedures when insanity is alleged as cause for not pronouncing sentence.” Insanity is an affirmative defense to a criminal charge. The more correct term is “incompetence to proceed to sentencing.”

(a) This new provision reiterates amendments to rule 3.210 and provides that sentencing shall be postponed for a defendant incompetent to proceed with disposition of a criminal matter — to include a finding of guilt at trial, after entry of a voluntary plea, or after a violation of probation or community control proceeding.

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

**RULE 3.215 | EFFECT OF ADJUDICATION OF INCOMPETENCY TO PROCEED:  
PSYCHOTROPIC MEDICATION**

**(a) Former Jeopardy.** If the defendant is declared incompetent to stand trial during trial and afterwards declared competent to stand trial, the defendant's other uncompleted trial shall not constitute former jeopardy.

**(b) Limited Application of Incompetency Adjudication.** An adjudication of incompetency to proceed shall not operate as an adjudication of incompetency to consent to medical treatment or for any other purpose unless such other adjudication is specifically set forth in the order.

**(c) Psychotropic Medication.** A defendant who, because of psychotropic medication, is able to understand the proceedings and to assist in the defense shall not automatically be deemed incompetent to proceed simply because the defendant's satisfactory mental condition is dependent on such medication, nor shall the defendant be prohibited from proceeding solely because the defendant is being administered medication under medical supervision for a mental or emotional condition.

(1) Psychotropic medication is any drug or compound affecting the mind, behavior, intellectual functions, perception, moods, or emotion and includes anti-psychotic, anti-depressant, anti-manic, and anti-anxiety drugs.

(2) If the defendant proceeds to trial with the aid of medication for a mental or emotional condition, on the motion of defense counsel, the jury shall, at the beginning of the trial and in the charge to the jury, be given explanatory instructions regarding such medication.

**Committee Notes**

**1980 Adoption.** (c) As to psychotropic medications, see section 916.12(2), Florida Statutes (1980).

(d) This subdivision is intended to provide specific exceptions to the speedy trial rule.

**1988 Amendment.** Title. This rule was formerly rule 3.214.

The amendments to this rule, including the title, are designed to reflect amendments to rules 3.210 and 3.211.



(d) Matters contained in former subsection (d) are covered by the provisions of rule 3.191. That subsection has therefore been deleted.

**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.** See notes following rule 3.210 for the text of this note.



**RULE 3.216 | INSANITY AT TIME OF OFFENSE OR PROBATION OR COMMUNITY CONTROL VIOLATION: NOTICE AND APPOINTMENT OF EXPERTS**

**(a) Expert to Aid Defense Counsel.** When in any criminal case a defendant is adjudged to be indigent or partially indigent, and is not represented by the public defender or regional counsel, and counsel has reason to believe that the defendant may be incompetent to proceed or that the defendant may have been insane at the time of the offense or probation or community control violation, counsel may so inform the court who shall appoint 1 expert to examine the defendant in order to assist counsel in the preparation of the defense. The expert shall report only to the attorney for the defendant and matters related to the expert shall be deemed to fall under the lawyer-client privilege.

**(b) Notice of Intent to Rely on Insanity Defense.** When in any criminal case it shall be the intention of the defendant to rely on the defense of insanity either at trial or probation or community control violation hearing, no evidence offered by the defendant for the purpose of establishing that defense shall be admitted in the case unless advance notice in writing of the defense shall have been given by the defendant as hereinafter provided.

**(c) Time for Filing Notice.** The defendant shall give notice of intent to rely on the defense of insanity no later than 15 days after the arraignment or the filing of a written plea of not guilty in the case when the defense of insanity is to be relied on at trial or no later than 15 days after being brought before the appropriate court to answer to the allegations in a violation of probation or community control proceeding. If counsel for the defendant shall have reasonable grounds to believe that the defendant may be incompetent to proceed, the notice shall be given at the same time that the motion for examination into the defendant's competence is filed. The notice shall contain a statement of particulars showing the nature of the insanity the defendant expects to prove and the names and addresses of the witnesses by whom the defendant expects to show insanity, insofar as is possible.

**(d) Court-Ordered Evaluations.** On the filing of such notice and on motion of the state, the court shall order the defendant to be examined by the state's mental health expert(s) as to the sanity or insanity of the defendant at



the time of the commission of the alleged offense or probation or community control violation. Attorneys for the state and defendant may be present at the examination.

**(e) Time for Filing Notice of Intent to Rely on a Mental Health Defense Other than Insanity.** The defendant shall give notice of intent to rely on any mental health defense other than insanity as soon as a good faith determination has been made to utilize the defense but in no event later than 30 days prior to trial. The notice shall contain a statement of particulars showing the nature of the defense the defendant expects to prove and the names and addresses of the witnesses by whom the defendant expects to prove the defense, insofar as possible. If expert testimony will be presented, the notice shall indicate whether the expert has examined the defendant.

**(f) Court-Ordered Experts for Other Mental Health Defenses.** If the notice to rely on any mental health defense other than insanity indicates the defendant will rely on the testimony of an expert who has examined the defendant, the court shall upon motion of the state order the defendant be examined by one qualified expert for the state as to the mental health defense raised by the defendant. Upon a showing of good cause, the court may order additional examinations upon motion by the state or the defendant. Attorneys for the state and defendant may be present at the examination. When the defendant relies on the testimony of an expert who has not examined the defendant, the state shall not be entitled to a compulsory examination of the defendant.

**(g) Waiver of Time to File.** On good cause shown for the omission of the notice of intent to rely on the defense of insanity, or any mental health defense, the court may in its discretion grant the defendant 10 days to comply with the notice requirement. If leave is granted and the defendant files the notice, the defendant is deemed unavailable to proceed. If the trial has already commenced, the court, only on motion of the defendant, may declare a mistrial in order to permit the defendant to raise the defense of insanity pursuant to this rule. Any motion for mistrial shall constitute a waiver of the defendant's right to any claim of former jeopardy arising from the uncompleted trial.

**(h) Evaluating Defendant after Pretrial Release.** If the defendant has been released on bail or other release conditions, the court may order the defendant to appear at a



designated place for evaluation at a specific time as a condition of the release provision. If the court determines that the defendant will not submit to the evaluation provided for herein or that the defendant is not likely to appear for the scheduled evaluation, the court may order the defendant taken into custody until the evaluation is completed. A motion made for evaluation under this subdivision shall not otherwise affect the defendant's right to pretrial release.

**(i) Evidence.** Any experts appointed by the court may be summoned to testify at the trial, and shall be deemed court witnesses whether called by the court or by either party. Other evidence regarding the defendant's insanity or mental condition may be introduced by either party. At trial, in its instructions to the jury, the court shall include an instruction on the consequences of a verdict of not guilty by reason of insanity.

### Committee Notes

#### 1980 Adoption.

(a) This subdivision is based on *Pouncy v. State*, 353 So.2d 640 (Fla. 3d DCA 1977), and provides that an expert may be provided for an indigent defendant. The appointment of the expert will in this way allow the public defender or court-appointed attorney to screen possible incompetency or insanity cases and give a basis for determining whether issues of incompetency or insanity ought to be raised before the court; it will also permit the defense attorney to specify in greater detail in the statement of particulars the nature of the insanity that attorney expects to prove, if any, and the basis for the raising of that defense.

(b) Essentially the same as in prior rules; provides that written notice must be given in advance by the defendant.

(c) Since counsel for indigents often are not appointed until arraignment and since it is sometimes difficult for a defendant to make a determination on whether the defense of insanity should be raised prior to arraignment, a 15-day post-arraignment period is provided for the filing of the notice. The defendant must raise incompetency at the same time as insanity, if at all possible. With the appointment of the expert to assist, the defendant should be able to raise both issues at the same time if grounds for both exist. The remainder of the rule, providing for the statement to be included in the notice, is essentially the same as that in prior rules.

(d) The appointment of experts provision is designed to track, insofar as possible, the provisions for appointment of experts contained in the rules relating to incompetency to stand trial and in the Florida Statutes relating to appointment of expert witnesses. Insofar as possible, the single examination should include incompetency, involuntary commitment issues where there are



reasonable grounds for their consideration, and issues of insanity at time of the offense. Judicial economy would mandate such a single examination where possible.

(g) In order to obtain more standardized reports, specific items relating to the examination are required of the examining experts. See note to rule 3.211(a).

(h) Essentially the substance of prior rule 3.210(e)(4) and (5), with some changes. Both prior provisions are combined into a single provision; speedy trial time limits are no longer set forth, but waiver of double jeopardy is mandated.

(i) Same as rule 3.210(b)(3), relating to incompetency to stand trial. See commentary to that rule.

(j) A restatement of former rule 3.210(e)(7). The provision that experts called by the court shall be deemed court witnesses is new. The former provision relating to free access to the defendant is eliminated as unnecessary.

As to appointment of experts, see section 912.11, Florida Statutes.

**1988 Amendment.** The amendments to this rule, including the title, provide for the affirmative defense of insanity in violation of probation or community control proceedings as well as at trial.

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

**1996 Amendment.** Subdivisions (e) and (f) were added to conform to *State v. Hickson*, 630 So.2d 172 (Fla. 1993). These amendments are not intended to expand existing case law.

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

**RULE 3.217 | JUDGMENT OF NOT GUILTY BY REASON OF INSANITY:  
DISPOSITION OF DEFENDANT**

**(a) Verdict of Not Guilty by Reason of Insanity.** When a person is found by the jury or the court not guilty of the offense or is found not to be in violation of probation or community control by reason of insanity, the jury or judge, in giving the verdict or finding of not guilty judgment, shall state that it was given for that reason.

**(b) Treatment, Commitment, or Discharge after Acquittal.** When a person is found not guilty of the offense or is found not to be in violation of probation or community control by reason of insanity, if the court then determines that the defendant presently meets the criteria set forth by law, the court shall commit the defendant to the Department of Children and Family Services or shall order outpatient treatment at any other appropriate facility or service, or shall discharge the defendant. Any order committing the defendant or requiring outpatient treatment or other outpatient service shall contain:

- (1) findings of fact relating to the issue of commitment or other court-ordered treatment;
- (2) copies of any reports of experts filed with the court; and
- (3) any other psychiatric, psychological, or social work report submitted to the court relative to the mental state of the defendant.

**Committee Notes**

**1980 Adoption.**

(a) Same substance as in prior rule.

(b) The criteria for commitment are set forth in chapter 394, Florida Statutes. This rule incorporates those statutory criteria by reference and then restates the other alternatives available to the judge under former rule 3.210.

See section 912.18, Florida Statutes, for criteria.

(1) This subdivision is equivalent to rule 3.212(b)(2); see commentary to that rule.

**1988 Amendment.** The amendments to this rule provide for evaluation of a defendant found not guilty by reason of insanity in violation of probation or community control proceedings





as well as at trial. The amendments further reflect 1985 amendments to chapter 916, Florida Statutes.

**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.** See notes following rule 3.210 for the text of this note.



**RULE 3.218 | COMMITMENT OF A DEFENDANT FOUND NOT GUILTY BY REASON OF INSANITY**

**(a) Commitment; 6-Month Report.** The Department of Children and Family Services shall admit to an appropriate facility a defendant found not guilty by reason of insanity under rule 3.217 and found to meet the criteria for commitment for hospitalization and treatment and may retain and treat the defendant. No later than 6 months from the date of admission, the administrator of the facility shall file with the court a report, and provide copies to all parties, which shall address the issues of further commitment of the defendant. If at any time during the 6 month period, or during any period of extended hospitalization that may be ordered under this rule, the administrator of the facility shall determine that the defendant no longer meets the criteria for commitment, the administrator shall notify the court by such a report and provide copies to all parties. The procedure for determinations of the confidential status of reports is governed by Rule of Judicial Administration 2.420.

**(b) Right to Hearing if Committed upon Acquittal.** The court shall hold a hearing within 30 days of the receipt of any report from the administrator of the facility on the issues raised thereby, and the defendant shall have a right to be present at the hearing. If the court determines that the defendant continues to meet the criteria for continued commitment or treatment, the court shall order further commitment or treatment for a period not to exceed 1 year. The same procedure shall be repeated before the expiration of each additional 1 year period in which the defendant is retained by the facility.

**(c) Evidence to Determine Continuing Insanity.** Before any hearing held under this rule, the court may, on its own motion, and shall, on motion of counsel for the state or defendant, appoint no fewer than 2 nor more than 3 experts to examine the defendant relative to the criteria for continued commitment or placement of the defendant and shall specify the date by which the experts shall report to the court on these issues and provide copies to all parties.



### Committee Notes

**1980 Adoption.** This provision provides for hospitalization of a defendant found not guilty by reason of insanity and is meant to track similar provisions in the rules relating to competency to stand trial and the complementary statutes. It provides for an initial 6 month period of commitment with successive 1-year periods; it provides for reports to the court and for the appointment of experts to examine the defendant when such hearings are necessary. The underlying rationale of this rule is to make standard, insofar as possible, the commitment process, whether it be for incompetency to stand trial or following a judgment of not guilty by reason of insanity.

For complementary statute providing for hospitalization of defendant adjudicated not guilty by reason of insanity, see section 912.15, Florida Statutes.

**1988 Amendment.** The amendments to this rule, including the title, provide for commitment of defendants found not guilty by reason of insanity in violation of probation or community control proceedings, as well as those so found at trial. The amendments further reflect 1985 amendments to chapter 916, Florida Statutes.

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



### **RULE 3.219 | CONDITIONAL RELEASE**

**(a) Release Plan.** The committing court may order a conditional release of any defendant who has been committed according to a finding of incompetency to proceed or an adjudication of not guilty by reason of insanity based on an approved plan for providing appropriate outpatient care and treatment. When the administrator shall determine outpatient treatment of the defendant to be appropriate, the administrator may file with the court, and provide copies to all parties, a written plan for outpatient treatment, including recommendations from qualified professionals. The plan may be submitted by the defendant. The plan shall include:

- (1) special provisions for residential care, adequate supervision of the defendant, or both;
- (2) provisions for outpatient mental health services; and
- (3) if appropriate, recommendations for auxiliary services such as vocational training, educational services, or special medical care.

In its order of conditional release, the court shall specify the conditions of release based on the release plan and shall direct the appropriate agencies or persons to submit periodic reports to the court regarding the defendant's compliance with the conditions of the release, and progress in treatment, and provide copies to all parties. The procedure for determinations of the confidential status of reports is governed by Rule of Judicial Administration 2.420.

**(b) Defendant's Failure to Comply.** If it appears at any time that the defendant has failed to comply with the conditions of release, or that the defendant's condition has deteriorated to the point that inpatient care is required, or that the release conditions should be modified, the court, after hearing, may modify the release conditions or, if the court finds the defendant meets the statutory criteria for commitment, may order that the defendant be recommitted to the Department of Children and Family Services for further treatment.

**(c) Discharge.** If at any time it is determined after hearing that the defendant no longer requires court-supervised follow-up care, the court shall terminate its jurisdiction in the cause and discharge the defendant.

### **Committee Notes**

**1980 Adoption.** This rule implements the prior statutory law permitting conditional release.

For complementary statute providing for conditional release, see section 916.17, Florida Statutes.

**1988 Amendment.** The amendments to this rule are designed to reflect amendments to rules 3.210, 3.211, and 3.218 as well as 1985 amendments to chapter 916, Florida Statutes.

(b) This provision has been amended to permit the court to recommit a conditionally released defendant to HRS under the provisions of chapter 916 only if the court makes a finding that the defendant currently meets the statutory commitment criteria found in section 916.13(1), Florida Statutes.

**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.** See notes following rule 3.210 for the text of this note.



## APPENDIX



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