

RULE 3.811 | INSANITY AT TIME OF EXECUTION: CAPITAL CASES

(a) Insanity to Be Executed. A person under sentence of death shall not be executed while insane to be executed.

(b) Insanity Defined. A person under sentence of death is insane for purposes of execution if the person lacks the mental capacity to understand the fact of the impending execution and the reason for it.

(c) Stay of Execution. No motion for a stay of execution pending hearing, based on grounds of the prisoner's insanity to be executed, shall be entertained by any court until such time as the Governor of Florida shall have held appropriate proceedings for determining the issue pursuant to the appropriate Florida Statutes.

(d) Motion for Stay after Governor's Determination of Sanity to Be Executed. On determination of the Governor of Florida, subsequent to the signing of a death warrant for a prisoner under sentence of death and pursuant to the applicable Florida Statutes relating to insanity at time of execution, that the prisoner is sane to be executed, counsel for the prisoner may move for a stay of execution and a hearing based on the prisoner's insanity to be executed.

(1) The motion shall be filed in the circuit court of the circuit in which the execution is to take place and shall be heard by one of the judges of that circuit or such other judge as shall be assigned by the chief justice of the supreme court to hear the motion. The state attorney of the circuit shall represent the State of Florida in any proceedings held on the motion.

(2) The motion shall be in writing and shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the prisoner is insane to be executed.

(3) Counsel for the prisoner shall file, along with the motion, all reports of experts that were submitted to the governor pursuant to the statutory procedure for executive determination of sanity to be executed. If any of the evidence is not available to counsel for the prisoner, counsel shall attach to the motion an affidavit so stating, with an explanation of why the evidence is unavailable.



(4) Counsel for the prisoner and the state may submit such other evidentiary material and written submissions including reports of experts on behalf of the prisoner as shall be relevant to determination of the issue.

(5) A copy of the motion and all supporting documents shall be served on the Florida Department of Legal Affairs and the state attorney of the circuit in which the motion has been filed.

(e) Order Granting. If the circuit judge, upon review of the motion and submissions, has reasonable grounds to believe that the prisoner is insane to be executed, the judge shall grant a stay of execution and may order further proceedings which may include a hearing pursuant to rule 3.812.

Committee Notes

1988 Adoption. This rule is not intended to preclude the Office of the Attorney General or the state attorney of the circuit in which the trial was held from appearing on behalf of the State of Florida under circumstances when permitted by law.

