



**FLORIDA RULES OF CRIMINAL PROCEDURE
SECTION V
[ALL-IN-ONE DOCUMENT]**

PRETRIAL MOTIONS AND DEFENSES

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FLORIDA RULES OF CRIMINAL PROCEDURE

V PRETRIAL MOTIONS AND DEFENSES

RULES: 3.190 through 3.219



RULE 3.190 | PRETRIAL MOTIONS

(a) In General. Every pretrial motion and pleading in response to a motion shall be in writing and signed by the party making the motion or the attorney for the party. This requirement may be waived by the court for good cause shown. Each motion or other pleading shall state the ground or grounds on which it is based. A copy shall be served on the adverse party. A certificate of service must accompany the filing of any pleading.

(b) Motion to Dismiss; Grounds. All defenses available to a defendant by plea, other than not guilty, shall be made only by motion to dismiss the indictment or information, whether the same shall relate to matters of form, substance, former acquittal, former jeopardy, or any other defense.

(c) Time for Moving to Dismiss. Unless the court grants further time, the defendant shall move to dismiss the indictment or information either before or at arraignment. The court in its discretion may permit the defendant to plead and thereafter to file a motion to dismiss at a time to be set by the court. Except for objections based on fundamental grounds, every ground for a motion to dismiss that is not presented by a motion to dismiss within the time hereinabove provided shall be considered waived. However, the court may at any time entertain a motion to dismiss on any of the following grounds:

- (1) The defendant is charged with an offense for which the defendant has been pardoned.
- (2) The defendant is charged with an offense for which the defendant previously has been placed in jeopardy.
- (3) The defendant is charged with an offense for which the defendant previously has been granted immunity.
- (4) There are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the defendant.

The facts on which the motion is based should be alleged specifically and the motion sworn to.

(d) Traverse or Demurrer. The state may traverse or demur to a motion to dismiss that alleges factual matters. Factual matters alleged in a motion to dismiss under subdivision



(c)(4) of this rule shall be considered admitted unless specifically denied by the state in the traverse. The court may receive evidence on any issue of fact necessary to the decision on the motion. A motion to dismiss under subdivision (c)(4) of this rule shall be denied if the state files a traverse that, with specificity, denies under oath the material fact or facts alleged in the motion to dismiss. The demurrer or traverse shall be filed a reasonable time before the hearing on the motion to dismiss.

(e) Effect of Sustaining a Motion to Dismiss. If the motion to dismiss is sustained, the court may order that the defendant be held in custody or admitted to bail for a reasonable specified time pending the filing of a new indictment or information. If a new indictment or information is not filed within the time specified in the order, or within such additional time as the court may allow for good cause shown, the defendant, if in custody, shall be discharged therefrom, unless some other charge justifies a continuation in custody. If the defendant has been released on bail, the defendant and the sureties shall be exonerated; if money or bonds have been deposited as bail, the money or bonds shall be refunded.

(f) Motion for Continuance.

(1) Definition. A continuance within the meaning of this rule is the postponement of a cause for any period of time.

(2) Cause. On motion of the state or a defendant or on its own motion, the court may grant a continuance, in its discretion for good cause shown.

(3) Time for Filing. A motion for continuance may be made only before or at the time the case is set for trial, unless good cause for failure to so apply is shown or the ground for the motion arose after the cause was set for trial.

(4) Certificate of Good Faith. A motion for continuance shall be accompanied by a certificate of the movant's counsel that the motion is made in good faith.

(5) Affidavits. The party applying for a continuance may file affidavits in support of the motion, and the adverse

party may file counter-affidavits in opposition to the motion.

(g) Motion to Suppress Evidence in Unlawful Search.

(1) Grounds. A defendant aggrieved by an unlawful search and seizure may move to suppress anything so obtained for use as evidence because:

(A) the property was illegally seized without a warrant;

(B) the warrant is insufficient on its face;

(C) the property seized is not the property described in the warrant;

(D) there was no probable cause for believing the existence of the grounds on which the warrant was issued; or

(E) the warrant was illegally executed.

(2) Contents of Motion. Every motion to suppress evidence shall state clearly the particular evidence sought to be suppressed, the reasons for suppression, and a general statement of the facts on which the motion is based.

(3) Hearing. Before hearing evidence, the court shall determine if the motion is legally sufficient. If it is not, the motion shall be denied. If the court hears the motion on its merits, the defendant shall present evidence supporting the defendant's position and the state may offer rebuttal evidence.

(4) Time for Filing. The motion to suppress shall be made before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court may entertain the motion or an appropriate objection at the trial.

(h) Motion to Suppress a Confession or Admission Illegally Obtained.

(1) Grounds. On motion of the defendant or on its own motion, the court shall suppress any confession or admission obtained illegally from the defendant.



(2) Contents of Motion. Every motion made by a defendant to suppress a confession or admission shall identify with particularity any statement sought to be suppressed, the reasons for suppression, and a general statement of the facts on which the motion is based.

(3) Time for Filing. The motion to suppress shall be made before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion or an appropriate objection at the trial.

(4) Hearing. The court shall receive evidence on any issue of fact necessary to be decided to rule on the motion.

(i) Motion to Take Deposition to Perpetuate Testimony.

(1) After the filing of an indictment or information on which a defendant is to be tried, the defendant or the state may apply for an order to perpetuate testimony. The application shall be verified or supported by the affidavits of credible persons that a prospective witness resides beyond the territorial jurisdiction of the court or may be unable to attend or be prevented from attending a trial or hearing, that the witness's testimony is material, and that it is necessary to take the deposition to prevent a failure of justice. The court shall order a commission to be issued to take the deposition of the witnesses to be used in the trial and that any nonprivileged designated books, papers, documents, or tangible objects be produced at the same time and place. If the application is made within 10 days before the trial date, the court may deny the application.

(2) If the defendant or the state desires to perpetuate the testimony of a witness living in or out of the state whose testimony is material and necessary to the case, the same proceedings shall be followed as provided in subdivision (i) (1), but the testimony of the witness may be taken before an official court reporter, transcribed by the reporter, and filed in the trial court.

(3) If the deposition is taken on the application of the state, the defendant and the defendant's attorney shall



be given reasonable notice of the time and place set for the deposition. The officer having custody of the defendant shall be notified of the time and place and shall produce the defendant at the examination and keep the defendant in the presence of the witness during the examination. A defendant not in custody may be present at the examination, but the failure to appear after notice and tender of expenses shall constitute a waiver of the right to be present. The state shall pay to the defendant's attorney and to a defendant not in custody the expenses of travel and subsistence for attendance at the examination. The state shall make available to the defendant for examination and use at the deposition any statement of the witness being deposed that is in the possession of the state and that the state would be required to make available to the defendant if the witness were testifying at trial.

(4) The application and order to issue the commission may be made either in term time or in vacation. The commission shall be issued at a time to be fixed by the court.

(5) Except as otherwise provided, the rules governing the taking and filing of oral depositions, the objections thereto, the issuing, execution, and return of the commission, and the opening of the depositions in civil actions shall apply in criminal cases.

(6) No deposition shall be used or read into evidence when the attendance of the witness can be procured. If the court determines that any person whose deposition has been taken is absent because of procurement, inducement, or threats of any person on behalf of the state or of the defendant or of any person on the defendant's behalf, the deposition shall not be read in evidence on behalf of the defendant.

(j) Motion to Expedite. On motion by the state, the court, in the exercise of its discretion, shall take into consideration the dictates of sections 825.106 and 918.0155, Florida Statutes (1995).



Committee Notes

1968 Adoption. (a) New; devised by committee.

(b) Substantially the same as section 909.02, Florida Statutes, except changes name of “motion to quash” to “motion to dismiss.” This conforms to the terminology of the Federal Rules of Criminal Procedure. The statute authorizing the state to appeal from certain orders, section 924.07, Florida Statutes, should be amended by substituting the words “motion to dismiss” for “motion to quash.”

(c) Combines the substance of sections 909.01 and 909.06, Florida Statutes. Subdivision (4) affords a new remedy to an accused. Although there is now a conclusive presumption of probable cause once an indictment or information is filed (see *Sullivan v. State*, 49 So.2d 794 (Fla. 1951)), it is felt that this rule is necessary. Primarily, this procedure will permit a pretrial determination of the law of the case when the facts are not in dispute. In a sense, this is somewhat similar to summary judgment proceedings in civil cases, but a dismissal under this rule is not a bar to a subsequent prosecution.

(d) New; based on *Marks v. State*, 115 Fla. 497, 155 So. 727 (1934), and what is generally regarded as the better practice. Hearing provision based on federal rule 41(e).

(e) Combines federal rule 12(b)(5) and section 909.05, Florida Statutes. With reference to the maximum time that a defendant will be held in custody or on bail pending the filing of a new indictment or information, the trial court is given discretion in setting such time as to both the indictment and information. This proposal differs from section 909.05, Florida Statutes, with reference to the filing of a new indictment in that the statute requires that the new indictment be found by the same grand jury or the next grand jury having the authority to inquire into the offense. If the supreme court has the authority to deviate from this statutory provision by court rule, it seems that the trial court should be granted the same discretion with reference to the indictment that it is granted concerning the information. The statute is harsh in that under its provisions a person can be in custody or on bail for what may be an unreasonable length of time before a grand jury is required to return an indictment in order that the custody or bail be continued.

(g)(1) This subdivision is almost the same as section 916.02(1), Florida Statutes.

(g)(2) This subdivision is almost the same as section 916.02(2), Florida Statutes.

(g)(3) This subdivision is almost the same as section 916.03, Florida Statutes.

(g)(4) This subdivision rewords a portion of section 916.04, Florida Statutes.

(g)(5) This subdivision rewords section 916.07, Florida Statutes.

(h) Same as federal rule 41(e) as to the points covered.

(i) This rule is based on 38-144-11 of the Illinois Code of Criminal Procedure and federal rule 41(e).



(j) This subdivision rewords and adds to federal rule 14. It covers the subject matter of section 918.02, Florida Statutes.

(k) This rule is almost the same as federal rule 13, with provision added for trial by affidavit.

(l) Substantially same as section 916.06, Florida Statutes, with these exceptions: application cannot be made until indictment, information, or trial affidavit is filed; application must be made at least 10 days before trial; oral deposition in addition to written interrogatories is permissible.

1972 Amendment. Subdivision (h) is amended to require the defendant to specify the factual basis behind the grounds for a motion to suppress evidence. Subdivision (l) is amended to permit the state to take depositions under the same conditions that the defendant can take them. Former subdivisions (j) and (k) transferred to rules 3.150, 3.151, and 3.152. Subdivisions (l) and (m) renumbered (j) and (k) respectively. Otherwise, same as prior rule.

1977 Amendment. This amendment resolves any ambiguity in the rule as to whether the state must file a general or a specific traverse to defeat a motion to dismiss filed under the authority of rule 3.190(c)(4).

See *State v. Kemp*, 305 So.2d 833 (Fla. 3d DCA 1974).

The amendment clearly now requires a specific traverse to specific material fact or facts.

1992 Amendment. The amendments, in addition to gender neutralizing the wording of the rule, make a minor grammatical change by substituting the word “upon” for “on” in several places. The amendments also delete language from subdivision (a) to eliminate from the rule any reference as to when pretrial motions are to be served on the adverse party. Because rule 3.030 addresses the service of pleadings and papers, such language was removed to avoid confusion and reduce redundancy in the rules.

2002 Amendment. If the trial court exercises its discretion to consider the motion to suppress during trial, the court may withhold ruling on the merits of the motion, and motion for a judgment of acquittal, and allow the case to be submitted to the jury. If the defendant is acquitted, no further proceedings regarding the motion to suppress or motion for a judgment of acquittal would be necessary. However, if the jury finds the defendant guilty of the crime charged, the trial court could then consider the motion to suppress post-trial in conjunction with the defendant’s renewed motion for a judgment of acquittal or motion for new trial.



RULE 3.191 | SPEEDY TRIAL

(a) Speedy Trial without Demand. Except as otherwise provided by this rule, and subject to the limitations imposed under subdivisions (e) and (f), every person charged with a crime shall be brought to trial within 90 days of arrest if the crime charged is a misdemeanor, or within 175 days of arrest if the crime charged is a felony. If trial is not commenced within these time periods, the defendant shall be entitled to the appropriate remedy as set forth in subdivision (p). The time periods established by this subdivision shall commence when the person is taken into custody as defined under subdivision (d). A person charged with a crime is entitled to the benefits of this rule whether the person is in custody in a jail or correctional institution of this state or a political subdivision thereof or is at liberty on bail or recognizance or other pretrial release condition. This subdivision shall cease to apply whenever a person files a valid demand for speedy trial under subdivision (b).

(b) Speedy Trial upon Demand. Except as otherwise provided by this rule, and subject to the limitations imposed under subdivisions (e) and (g), every person charged with a crime by indictment or information shall have the right to demand a trial within 60 days, by filing with the court a separate pleading entitled "Demand for Speedy Trial," and serving a copy on the prosecuting authority.

(1) No later than 5 days from the filing of a demand for speedy trial, the court shall hold a calendar call, with notice to all parties, for the express purposes of announcing in open court receipt of the demand and of setting the case for trial.

(2) At the calendar call the court shall set the case for trial to commence at a date no less than 5 days nor more than 45 days from the date of the calendar call.

(3) The failure of the court to hold a calendar call on a demand that has been properly filed and served shall not interrupt the running of any time periods under this subdivision.

(4) If the defendant has not been brought to trial within 50 days of the filing of the demand, the defendant shall



have the right to the appropriate remedy as set forth in subdivision (p).

(c) Commencement of Trial. A person shall be considered to have been brought to trial if the trial commences within the time herein provided. The trial is considered to have commenced when the trial jury panel for that specific trial is sworn for voir dire examination or, on waiver of a jury trial, when the trial proceedings begin before the judge.

(d) Custody. For purposes of this rule, a person is taken into custody (1) when the person is arrested as a result of the conduct or criminal episode that gave rise to the crime charged, or (2) when the person is served with a notice to appear in lieu of physical arrest.

(e) Prisoners outside Jurisdiction. A person who is in federal custody or incarcerated in a jail or correctional institution outside the jurisdiction of this state or a subdivision thereof, and who is charged with a crime by indictment or information issued or filed under the laws of this state, is not entitled to the benefit of this rule until that person returns or is returned to the jurisdiction of the court within which the Florida charge is pending and until written notice of the person's return is filed with the court and served on the prosecutor. For these persons, the time period under subdivision (a) commences on the date the last act required under this subdivision occurs. For these persons the time period under subdivision (b) commences when the demand is filed so long as the acts required under this subdivision occur before the filing of the demand. If the acts required under this subdivision do not precede the filing of the demand, the demand is invalid and shall be stricken upon motion of the prosecuting attorney. Nothing in this rule shall affect a prisoner's right to speedy trial under law.

(f) Consolidation of Felony and Misdemeanor. When a felony and a misdemeanor are consolidated for disposition in circuit court, the misdemeanor shall be governed by the same time period applicable to the felony.

(g) Demand for Speedy Trial; Accused Is Bound. A demand for speedy trial binds the accused and the state. No demand for speedy trial shall be filed or served unless the accused has a bona fide desire to obtain a trial sooner than otherwise might be provided. A demand for speedy trial shall be



considered a pleading that the accused is available for trial, has diligently investigated the case, and is prepared or will be prepared for trial within 5 days. A demand filed by an accused who has not diligently investigated the case or who is not timely prepared for trial shall be stricken as invalid on motion of the prosecuting attorney. A demand may not be withdrawn by the accused except on order of the court, with consent of the state or on good cause shown. Good cause for continuances or delay on behalf of the accused thereafter shall not include nonreadiness for trial, except as to matters that may arise after the demand for trial is filed and that reasonably could not have been anticipated by the accused or counsel for the accused. A person who has demanded speedy trial, who thereafter is not prepared for trial, is not entitled to continuance or delay except as provided in this rule.

(h) Notice of Expiration of Time for Speedy Trial; When Timely. A notice of expiration of speedy trial time shall be timely if filed and served after the expiration of the periods of time for trial provided in this rule. However, a notice of expiration of speedy trial time filed before expiration of the period of time for trial is invalid and shall be stricken on motion of the prosecuting attorney.

(i) When Time May Be Extended. The periods of time established by this rule may be extended, provided the period of time sought to be extended has not expired at the time the extension was procured. An extension may be procured by:

- (1) stipulation, announced to the court or signed in proper person or by counsel, by the party against whom the stipulation is sought to be enforced;
- (2) written or recorded order of the court on the court's own motion or motion by either party in exceptional circumstances as hereafter defined in subdivision (1);
- (3) written or recorded order of the court with good cause shown by the accused;
- (4) written or recorded order of the court for a period of reasonable and necessary delay resulting from proceedings including but not limited to an examination and hearing to determine the mental competency or physical ability of the defendant to stand trial, for

hearings on pretrial motions, for appeals by the state, for DNA testing ordered on the defendant's behalf upon defendant's motion specifying the physical evidence to be tested pursuant to section 925.12(2), Florida Statutes, and for trial of other pending criminal charges against the accused; or

(5) administrative order issued by the chief justice, under Florida Rule of Judicial Administration 2.205(a)(2)(B)(iv), suspending the speedy trial procedures as stated therein.

(j) Delay and Continuances; Effect on Motion. If trial of the accused does not commence within the periods of time established by this rule, a pending motion for discharge shall be granted by the court unless it is shown that:

(1) a time extension has been ordered under subdivision (i) and that extension has not expired;

(2) the failure to hold trial is attributable to the accused, a codefendant in the same trial, or their counsel;

(3) the accused was unavailable for trial under subdivision (k); or

(4) the demand referred to in subdivision (g) is invalid.

If the court finds that discharge is not appropriate for reasons under subdivisions (j)(2), (3), or (4), the pending motion for discharge shall be denied, provided, however, that trial shall be scheduled and commence within 90 days of a written or recorded order of denial.

(k) Availability for Trial. A person is unavailable for trial if the person or the person's counsel fails to attend a proceeding at which either's presence is required by these rules, or the person or counsel is not ready for trial on the date trial is scheduled. A person who has not been available for trial during the term provided for in this rule is not entitled to be discharged. No presumption of nonavailability attaches, but if the state objects to discharge and presents any evidence tending to show nonavailability, the accused must establish, by competent proof, availability during the term.



(1) Exceptional Circumstances. As permitted by subdivision (i) of this rule, the court may order an extension of the time periods provided under this rule when exceptional circumstances are shown to exist. Exceptional circumstances shall not include general congestion of the court's docket, lack of diligent preparation, failure to obtain available witnesses, or other avoidable or foreseeable delays. Exceptional circumstances are those that, as a matter of substantial justice to the accused or the state or both, require an order by the court. These circumstances include:

(1) unexpected illness, unexpected incapacity, or unforeseeable and unavoidable absence of a person whose presence or testimony is uniquely necessary for a full and adequate trial;

(2) a showing by the state that the case is so unusual and so complex, because of the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate investigation or preparation within the periods of time established by this rule;

(3) a showing by the state that specific evidence or testimony is not available despite diligent efforts to secure it, but will become available at a later time;

(4) a showing by the accused or the state of necessity for delay grounded on developments that could not have been anticipated and that materially will affect the trial;

(5) a showing that a delay is necessary to accommodate a codefendant, when there is reason not to sever the cases to proceed promptly with trial of the defendant; and

(6) a showing by the state that the accused has caused major delay or disruption of preparation of proceedings, as by preventing the attendance of witnesses or otherwise.

(m) Effect of Mistrial; Appeal; Order of New Trial. A person who is to be tried again or whose trial has been delayed by an appeal by the state or the defendant shall be brought to trial within 90 days from the date of declaration of a mistrial by the trial court, the date of an order by the trial

court granting a new trial, the date of an order by the trial court granting a motion in arrest of judgment, or the date of receipt by the trial court of a mandate, order, or notice of whatever form from a reviewing court that makes possible a new trial for the defendant, whichever is last in time. If a defendant is not brought to trial within the prescribed time periods, the defendant shall be entitled to the appropriate remedy as set forth in subdivision (p).

(n) Discharge from Crime; Effect. Discharge from a crime under this rule shall operate to bar prosecution of the crime charged and of all other crimes on which trial has not commenced nor conviction obtained nor adjudication withheld and that were or might have been charged as a result of the same conduct or criminal episode as a lesser degree or lesser included offense.

(o) Nolle Prosequi; Effect. The intent and effect of this rule shall not be avoided by the state by entering a nolle prosequi to a crime charged and by prosecuting a new crime grounded on the same conduct or criminal episode or otherwise by prosecuting new and different charges based on the same conduct or criminal episode whether or not the pending charge is suspended, continued, or is the subject of entry of a nolle prosequi.

(p) Remedy for Failure to Try Defendant within the Specified Time.

(1) No remedy shall be granted to any defendant under this rule until the court has made the required inquiry under subdivision (j).

(2) At any time after the expiration of the prescribed time period, the defendant may file a separate pleading entitled "Notice of Expiration of Speedy Trial Time," and serve a copy on the prosecuting authority.

(3) No later than 5 days from the date of the filing of a notice of expiration of speedy trial time, the court shall hold a hearing on the notice and, unless the court finds that one of the reasons set forth in subdivision (j) exists, shall order that the defendant be brought to trial within 10 days. A defendant not brought to trial within the 10-day period through no fault of the

defendant, on motion of the defendant or the court, shall be forever discharged from the crime.

Committee Notes

1972 Amendment. Same as prior rule. The schedule is omitted as being unnecessary.

1977 Amendment. An appeal by the state from an order dismissing the case constitutes an interlocutory appeal and should be treated as such. The additional phrase removes any ambiguities in the existing rule.

1980 Amendment.

(a)(1). Speedy Trial without Demand.

1. Prisoners in Florida institutions are now treated like any other defendant [formerly (b)(1)].
2. Federal prisoners and prisoners outside Florida may claim the benefit of this subdivision once special prerequisites are satisfied under (b)(1).
3. Before a court can discharge a defendant, the court must make complete inquiry to ensure that discharge is appropriate.

(a)(2). Speedy Trial upon Demand.

1. Trial cannot be scheduled within 5 days of the filing of the demand without the consent of both the state and the defendant.
2. Before a court can discharge a defendant, the court must make complete inquiry to ensure that discharge is appropriate.
3. Prisoners in Florida are now treated like any other defendant [formerly (b)(2)].
4. Federal prisoners and prisoners outside Florida may claim the benefit of this subdivision once special prerequisites are satisfied under (b)(1).

(a)(3). Commencement of Trial.

1. Minor change in language to reflect case law.

(a)(4). Custody. [NEW]

1. Custody is defined in terms tantamount to arrest. This definition was formerly contained in (a)(1).
2. Where a notice to appear is served in lieu of arrest, custody results on the date the notice is served.



(b)(1). Prisoners outside Jurisdiction. [NEW]

1. Prisoners outside the jurisdiction of Florida may claim benefit under (a)(1) and (a)(2) after the prisoner returns to the jurisdiction of the court where the charge is pending and after the prisoner files and serves a notice of this fact.
2. As an alternative, certain prisoners may claim the benefit of sections 941.45–941.50, Florida Statutes (1979).
3. Former (b)(1) is repealed.

(b)(2). [NEW]

1. Where a misdemeanor and felony are consolidated for purposes of trial in circuit court, the misdemeanor is governed by the same time period applicable to the felony. To claim benefit under this provision, the crimes must be consolidated before the normal time period applicable to misdemeanors has expired.
2. Former (b)(2) is repealed.

(b)(3). Repealed and superseded by (b)(1).

(c). Demand for Speedy Trial.

1. The subdivision recognizes that an invalid (spurious) demand must be stricken.
2. The subdivision now puts a 5-day limit on the time when a defendant must be prepared.

(d)(1). Motion for Discharge.

1. Under the amended provision, a prematurely filed motion is invalid and may be stricken.

(d)(2). When Time May Be Extended.

1. The terms “waiver,” “tolling,” or “suspension” have no meaning within the context of the subdivision as amended. The subdivision addresses extensions for a specified period of time.
2. Except for stipulations, all extensions require an order of the court.
3. The term “recorded order” refers to stenographic recording and not recording of a written order by the clerk.

(d)(3). Delay and Continuances.



1. Even though the normal time limit has expired under (a)(1) or (a)(2), a trial court may not properly discharge a defendant without making a complete inquiry of possible reasons to deny discharge. If the court finds that the time period has been properly extended and the extension has not expired, the court must simply deny the motion. If the court finds that the delay is attributable to the accused, that the accused was unavailable for trial, or that the demand was invalid, the court must deny the motion and schedule trial within 90 days. If the court has before it a valid motion for discharge and none of the above circumstances are present, the court must grant the motion.

(e). Availability for Trial.

1. Availability for trial is now defined solely in terms of required attendance and readiness for trial.

(f). Exceptional Circumstances.

1. The 2 extension limit for unavailable evidence has been discarded.
2. The new trial date paragraph was eliminated because it simply was unnecessary.

(g). Effect of Mistrial; Appeal; Order of New Trial.

1. Makes uniform a 90-day period within which a defendant must be brought to trial after a mistrial, order of new trial, or appeal by the state or defendant.

(h)(1). Discharge from Crime.

1. No change.

(h)(2). Nolle Prosequi.

1. No change.

1984 Amendment.

(a)(1). Repeals the remedy of automatic discharge from the crime and refers instead to the new subdivision on remedies.

(a)(2). Establishes the calendar call for the demand for speedy trial when filed. This provision, especially sought by prosecutors, brings the matter to the attention of both the court and the prosecution. The subdivision again repeals the automatic discharge for failure to meet the mandated time limit, referring to the new subdivision on remedies for the appropriate remedy.

(i). The intent of (i)(4) is to provide the state attorney with 15 days within which to bring a defendant to trial from the date of the filing of the motion for discharge.



This time begins with the filing of the motion and continues regardless of whether the judge hears the motion.

This subdivision provides that, upon failure of the prosecution to meet the mandated time periods, the defendant shall file a motion for discharge, which will then be heard by the court within 5 days. The court sets trial of the defendant within 10 additional days. The total 15-day period was chosen carefully by the committee, the consensus being that the period was long enough that the system could, in fact, bring to trial a defendant not yet tried, but short enough that the pressure to try defendants within the prescribed time period would remain. In other words, it gives the system a chance to remedy a mistake; it does not permit the system to forget about the time constraints. It was felt that a period of 10 days was too short, giving the system insufficient time in which to bring a defendant to trial; the period of 30 days was too long, removing incentive to maintain strict docket control in order to remain within the prescribed time periods.

The committee further felt that it was not appropriate to extend the new remedy provisions to misdemeanors, but only to more serious offenses.

1992 Amendment. The purpose of the amendments is to gender neutralize the wording of the rule. In addition, the committee recommends the rule be amended to differentiate between 2 separate and distinct pleadings now referred to as “motion for discharge.” The initial “motion for discharge” has been renamed “notice of expiration of speedy trial time.”



RULE 3.192 | MOTIONS FOR REHEARING

When an appeal by the state is authorized by Florida Rule of Appellate Procedure 9.140, or sections 924.07 or 924.071, Florida Statutes, the state may file a motion for rehearing within 10 days of an order subject to appellate review. A motion for rehearing shall state with particularity the points of law or fact that, in the opinion of the state, the court has overlooked or misapprehended in its decision, and shall not present issues not previously raised in the proceeding. A response may be filed within 10 days of service of the motion. The trial court's order disposing of the motion for rehearing shall be filed within 15 days of the response but not later than 40 days from the date of the order of which rehearing is sought. A timely filed motion for rehearing shall toll rendition of the order subject to appellate review and the order shall be deemed rendered upon the filing of a signed, written order denying the motion for rehearing. This rule shall not apply to postconviction proceedings pursuant to rule 3.800(a), 3.801, 3.850, 3.851, or 3.853. Nothing in this rule precludes the trial court from exercising its inherent authority to reconsider a ruling while the court has jurisdiction of the case.



RULE 3.200 | NOTICE OF ALIBI

On the written demand of the prosecuting attorney, specifying as particularly as is known to the prosecuting attorney the place, date, and time of the commission of the crime charged, a defendant in a criminal case who intends to offer evidence of an alibi in defense shall, not less than 10 days before trial or such other time as the court may direct, file and serve on the prosecuting attorney a notice in writing of an intention to claim an alibi, which notice shall contain specific information as to the place at which the defendant claims to have been at the time of the alleged offense and, as particularly as is known to the defendant or the defendant's attorney, the names and addresses of the witnesses by whom the defendant proposes to establish the alibi. Not more than 5 days after receipt of defendant's witness list, or any other time as the court may direct, the prosecuting attorney shall file and serve on the defendant the names and addresses (as particularly as are known to the prosecuting attorney) of the witnesses the state proposes to offer in rebuttal to discredit the defendant's alibi at the trial of the cause. Both the defendant and the prosecuting attorney shall be under a continuing duty to promptly disclose the names and addresses of additional witnesses who come to the attention of either party subsequent to filing their respective witness lists as provided in this rule. If a defendant fails to file and serve a copy of the notice as herein required, the court may exclude evidence offered by the defendant for the purpose of providing an alibi, except the defendant's own testimony. If the notice is given by a defendant, the court may exclude the testimony of any witness offered by the defendant for the purpose of proving an alibi if the name and address of the witness as particularly as is known to the defendant or the defendant's attorney is not stated in the notice. If the prosecuting attorney fails to file and serve a copy on the defendant of a list of witnesses as herein provided, the court may exclude evidence offered by the state in rebuttal to the defendant's alibi evidence. If notice is given by the prosecuting attorney, the court may exclude the testimony of any witness offered by the prosecuting attorney for the purpose of rebutting the defense of alibi if the name and address of the witness as particularly as is known to the prosecuting attorney is not stated in the notice. For good cause shown the court may waive the requirements of this rule.



Committee Notes

1968 Adoption. The rule is completely new in Florida. Fourteen states have adopted notice of alibi statutes or rules: Arizona Supreme Court Rules of Criminal Procedure 192 (enacted in 1940); Ind. Ann. Stat. 9-1631, 9-1632, 9-1633 (1956) (enacted in 1935); Iowa Code Ann. 777 18 (1958) (enacted in 1941); Kan. Gen. Stat. Ann. 62-1341 (1949) (enacted in 1935); Mich. Stat. Ann. 630.14 (1947) (enacted in 1935); N.J. Superior and County Court Criminal Practice Rule 3:5-9 (1948) (enacted in 1934); N.Y. Code of Crim. Proc. 295-L (1935) (enacted in 1935); Ohio Rev. Code Ann. 2945.58 (1953) (enacted in 1929); Okla. Stat. Ann. 22-585 (1937) (enacted in 1935); S.D. Code 34.2801 (1939) (enacted in 1935); Utah Code Ann. 77-22-17 (1953) (enacted in 1935); Vt. Stat. Ann. 13-6561, 6562 (1958) (enacted in 1935); Wis. Stat. Ann. 955.07 (1958) (enacted in 1935).

The rule is modeled after the Ohio, New York, and New Jersey statutes:

(1) The requirement of notice in writing is taken from the Ohio statute.

(2) The requirement of an initial demand by the prosecuting attorney is based on the New York and New Jersey statutes.

(3) The requirement of a mutual exchange of witness lists is based on those statutes which require the defendant to disclose alibi witnesses. In the interest of mutuality, the requirement of a reciprocal exchange of witness lists has been added. The enforcement provision is based on the Ohio and New York statutes. In New York, a defendant who fails to give advance notice of alibi may still give alibi testimony himself. *People v. Rakiec*, 23 N.Y.S.2d 607, aff'd 45 N.E.2d 812 (1942).

For an excellent article on notice of alibi statutes, court decisions thereunder, and some empirical data on the practical effect of the rules, see David M. Epstein, "Advance Notice of Alibi," 55 J. Crim. L. & Criminology 29 (1964).

1972 Amendment. Same as prior rule.

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



RULE 3.201 | BATTERED-SPOUSE SYNDROME DEFENSE

(a) Battered-Spouse Syndrome. When in any criminal case it shall be intention of the defendant to rely on the defense of battered-spouse syndrome at trial, 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.

(b) Time for Filing Notice. The defendant shall give notice of intent to rely on the defense of battered-spouse syndrome no 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 show battered-spouse syndrome, insofar as possible.



RULE 3.202 | EXPERT TESTIMONY OF MENTAL MITIGATION DURING PENALTY PHASE OF CAPITAL TRIAL; NOTICE AND EXAMINATION BY STATE EXPERT

(a) Notice of Intent to Seek Death Penalty. The provisions of this rule apply only in those capital cases in which the state gives timely written notice of its intent to seek the death penalty.

(b) Notice of Intent to Present Expert Testimony of Mental Mitigation. When in any capital case, in which the state has given notice of intent to seek the death penalty under subdivision (a) of this rule, it shall be the intention of the defendant to present, during the penalty phase of the trial, expert testimony of a mental health professional, who has tested, evaluated, or examined the defendant, in order to establish statutory or nonstatutory mental mitigating circumstances, the defendant shall give written notice of intent to present such testimony.

(c) Time for Filing Notice; Contents. The defendant shall give notice of intent to present expert testimony of mental mitigation not less than 20 days before trial. The notice shall contain a statement of particulars listing the statutory and nonstatutory mental mitigating circumstances the defendant expects to establish through expert testimony and the names and addresses of the mental health experts by whom the defendant expects to establish mental mitigation, insofar as is possible.

(d) Appointment of State Expert; Time of Examination. After the filing of such notice and on the motion of the state indicating its desire to seek the death penalty, the court shall order that, within 48 hours after the defendant is convicted of capital murder, the defendant be examined by a mental health expert chosen by the state. Attorneys for the state and defendant may be present at the examination. The examination shall be limited to those mitigating circumstances the defendant expects to establish through expert testimony.

(e) Defendant's Refusal to Cooperate. If the defendant refuses to be examined by or fully cooperate with the state's mental health expert, the court may, in its discretion:



(1) order the defense to allow the state's expert to review all mental health reports, tests, and evaluations by the defendant's mental health expert; or

(2) prohibit defense mental health experts from testifying concerning mental health tests, evaluations, or examinations of the defendant.

Committee Notes

2016 Amendment. This is a new rule, in response to legislation, and intended to complement Florida Rules of Criminal Procedure 3.181 (Notice to Seek Death Penalty) and 3.780 (Sentencing Hearing for Capital Cases).



RULE 3.203 | DEFENDANT'S INTELLECTUAL DISABILITY AS A BAR TO IMPOSITION OF THE DEATH PENALTY

(a) Scope. This rule applies in all first-degree murder cases in which the state attorney has not waived the death penalty on the record and the defendant's intellectual disability becomes an issue.

(b) Definition of Intellectual Disability. As used in this rule, the term "intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this rule, means performance that is two or more standard deviations from the mean score on a standardized intelligence test authorized by the Department of Children and Family Services in rule 65G-4.011 of the Florida Administrative Code. The term "adaptive behavior," for the purpose of this rule, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.

(c) Motion for Determination of Intellectual Disability as a Bar to Execution: Contents; Procedures.

(1) A defendant who intends to raise intellectual disability as a bar to execution shall file a written motion to establish intellectual disability as a bar to execution with the court.

(2) The motion shall state that the defendant is intellectually disabled and, if the defendant has been tested, evaluated, or examined by one or more experts, the names and addresses of the experts. Copies of reports containing the opinions of any experts named in the motion shall be attached to the motion. The court shall appoint an expert chosen by the state attorney if the state attorney so requests. The expert shall promptly test, evaluate, or examine the defendant and shall submit a written report of any findings to the parties and the court.

(3) If the defendant has not been tested, evaluated, or examined by one or more experts, the motion shall state



that fact and the court shall appoint two experts who shall promptly test, evaluate, or examine the defendant and shall submit a written report of any findings to the parties and the court.

(4) Attorneys for the state and defendant may be present at the examinations conducted by court-appointed experts.

(5) If the defendant refuses to be examined or fully cooperate with the court appointed experts or the state's expert, the court may, in the court's discretion:

(A) order the defense to allow the court-appointed experts to review all mental health reports, tests, and evaluations by the defendant's expert;

(B) prohibit the defense experts from testifying concerning any tests, evaluations, or examinations of the defendant regarding the defendant's intellectual disability; or

(C) order such relief as the court determines to be appropriate.

(d) Time for filing Motion for Determination of Intellectual Disability as a Bar to Execution. The motion for a determination of intellectual disability as a bar to execution shall be filed not later than 90 days prior to trial, or at such time as is ordered by the court.

(e) Hearing on Motion to Determine Intellectual Disability. The circuit court shall conduct an evidentiary hearing on the motion for a determination of intellectual disability. At the hearing, the court shall consider the findings of the experts and all other evidence on the issue of whether the defendant is intellectually disabled. The court shall enter a written order prohibiting the imposition of the death penalty and setting forth the court's specific findings in support of the court's determination if the court finds that the defendant is intellectually disabled as defined in subdivision (b) of this rule. The court shall stay the proceedings for 30 days from the date of rendition of the order prohibiting the death penalty or, if a motion for rehearing is filed, for 30 days following the rendition of the order denying rehearing, to allow the state the opportunity to appeal the order. If the



court determines that the defendant has not established intellectual disability, the court shall enter a written order setting forth the court's specific findings in support of the court's determination.

(f) Waiver. A claim authorized under this rule is waived if not filed in accord with the time requirements for filing set out in this rule, unless good cause is shown for the failure to comply with the time requirements.

(g) Finding of Intellectual Disability; Order to Proceed. If, after the evidence presented, the court is of the opinion that the defendant is intellectually disabled, the court shall order the case to proceed without the death penalty as an issue.

(h) Appeal. An appeal may be taken by the state if the court enters an order finding that the defendant is intellectually disabled, which will stay further proceedings in the trial court until a decision on appeal is rendered. Appeals are to proceed according to Florida Rule of Appellate Procedure 9.140(c).

(i) Motion to Establish Intellectual Disability as a Bar to Execution; Stay of Execution. The filing of a motion to establish intellectual disability as a bar to execution shall not stay further proceedings without a separate order staying execution.



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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