

# 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.