

Rule 12.1. Mental Competency; Definition.

Mississippi Court Rules

Mississippi Rules of Criminal Procedure [Effective July 1, 2017]

Rule 12. Mental Examinations

As amended through January 12, 2017

Rule 12.1. Mental Competency; Definition

- (a) **Mental Competency.** There is a presumption of mental competency. In order to be deemed mentally competent, a defendant must have the ability to perceive and understand the nature of the proceedings, to communicate rationally with the defendant's attorney about the case, to recall relevant facts, and to testify in the defendant's own defense, if appropriate. The presence of a mental illness, defect, or disability alone is not grounds for finding a defendant incompetent to stand trial. If as a result of mental illness, defect, or disability, a defendant lacks mental competency, then the defendant shall not be tried, convicted, or sentenced for a criminal offense.
- (b) **Mental Illness, Defect, or Disability.** Mental illness, defect, or disability means a psychiatric or neurological disorder that is evidenced by behavioral or emotional symptoms, including congenital mental conditions, conditions resulting from injury or disease, or developmental disabilities.

History. Adopted eff. July 1, 2017.

Note:

Comment

" [T]he criminal trial of an incompetent defendant violates due process." **Cooper v. Oklahoma**, 517 U.S. 348, 354, 116 S. Ct. 1373, 1376, 134 L. Ed. 2d 498 (1996) (citation omitted). See also **Caylor v. State**, 437 So. 2d 444, 445 (Miss. 1983) (citing **Emanuel v. State**, 412 So. 2d 1187, 1188 (Miss. 1982)). The Mississippi Supreme Court has outlined the requisite abilities for a defendant to be deemed mentally competent. See **Jay v. State**, 25 So. 3d 257, 261 (Miss. 2009); **Martin v. State**, 871 So. 2d 693, 697-98 (Miss. 2004). In that analysis, there is a presumption of mental competency. See **Evans v. State**, 725 So. 2d 613, 660 (Miss. 1997). Rule 12.1 addresses only the defendant's competency to stand trial, and not the defendant's possible insanity at the time of the alleged offense. See **Parker v. State**, 30 So. 3d 1222, 1230-31 (Miss. 2010); **Medina v. California**, 505 U.S. 437, 448, 112 S. Ct. 2572, 2579, 120 L. Ed. 2d 353 (1992) ("there are significant differences between a claim of incompetence and a plea of not guilty by reason of insanity."); **Caylor**, 437 So. 2d at 447 n.1. If reasonable grounds exist to doubt the defendant's competence to stand trial, the procedures in Rules 12.2 through 12.6 should be followed.

Rule 12.2. Examination of Defendant's Mental Condition.

Mississippi Court Rules

Mississippi Rules of Criminal Procedure [Effective July 1, 2017]

Rule 12. Mental Examinations

As amended through January 12, 2017

Rule 12.2. Examination of Defendant's Mental Condition

- (a) **Competency to Stand Trial or Be Sentenced.** If at any time before or after indictment, the court, on its own motion or the motion of any party, has reasonable grounds to believe that the defendant is mentally incompetent, the court shall order the defendant to submit to a mental examination.
- (b) **Insanity Defense.** If the defendant has timely raised a defense of insanity pursuant to Rule 17.4(b), the court, on its own motion or the motion of any party, may order the defendant to submit to a mental examination to investigate the defendant's mental condition at the time of the offense.
- (c) **Intellectual Disability in Death Penalty Cases.** If at any time the court, on its own motion or the motion of any party, has reasonable grounds to believe that the defendant's intellectual disability bars imposition of a sentence of death, the court may order the defendant tested and/or examined to determine whether the defendant is intellectually disabled.
- (d) **Contents of Motion; Order.** The motion shall state the facts upon which the mental examination is sought. The mental examination shall be conducted by a competent psychiatrist and/or psychologist approved by the court.
- (e) **Medical and Criminal History Records.** All available medical and criminal history records shall be provided to the examining mental health expert as and when ordered by the court. A certificate of compliance shall be filed with the court documenting that the records were submitted as ordered.

History. Adopted eff. July 1, 2017.

Note:

Comment

Rule 12.2 includes standards provided in former Rules 9.06 and 9.07 of the Uniform Rules of Circuit and County

Court. The determination of the defendant's mental competency should be made at the earliest practicable date. The United States Supreme Court has held that the failure to make a determination of competency when there are reasonable grounds to doubt such is fundamental constitutional error. See **Drope v. Missouri**, 420 U.S. 162, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975); **Pate v. Robinson**, 383 U.S. 375, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966). See also **House v. State**, 754 So. 2d 1147, 1152 (Miss. 1999).

Sections (a) and (b) make clear that the determination of the defendant's competency to stand trial is separate and distinct from the determination of the defendant's sanity at the time of the offense. An examination to investigate competency may be combined with an examination to investigate the defendant's sanity at the time of the offense, provided that the judicial order makes a clear distinction between the two purposes for evaluation to ensure that the correct legal criteria are applied. While the test for competency is distinct, as a matter of law, from the test for sanity at the time of the offense, the reports prepared may contain information having a substantial bearing on both issues.

Section (c) extends this process to cases in which there are reasonable grounds to believe the defendant's intellectual disability precludes the imposition of a death sentence. See **Chase v. State**, 873 So. 2d 1013, 1027 (Miss. 2004) (citing **Atkins v. Virginia**, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002)).

Rule 12.3. Appointment of Experts.

Mississippi Court Rules

Mississippi Rules of Criminal Procedure [Effective July 1, 2017]

Rule 12. Mental Examinations

As amended through January 12, 2017

Rule 12.3. Appointment of Experts

- (a) **Grounds for Appointment.** If the court determines that reasonable grounds for a mental examination exist, it shall appoint a competent psychiatrist and/or psychologist to examine the defendant and, if necessary, to testify regarding the defendant's mental condition. The court has discretion to appoint more than one (1) examiner.
- (b) **Examination; Commitment.** The court may order that a defendant be examined in an appropriate mental health facility, and it may commit a defendant to the Mississippi State Hospital or other appropriate mental health facility for no longer than reasonably necessary to conduct the examination if:
 - (1) the defendant cannot be examined on an outpatient basis;
 - (2) examination in an outpatient setting is unavailable; or
 - (3) commitment for examination is indispensable to a clinically valid diagnosis and

report.

The examination and inpatient consultation shall be in the least restrictive appropriate setting.

(c) **Reports.**

- (1) *Opinion on Competency.* A psychiatrist and/or psychologist appointed by the court pursuant to this Rule shall submit a report containing an opinion as to whether the defendant is competent, and the basis therefor. The report may also include additional findings and opinions concerning whether the defendant's mental condition creates a present danger to the defendant and/or others.
- (2) *Cause and Treatment of Incompetency.* If the opinion referenced in (c)(1) is that the defendant is incompetent under the standards in Rule 12.1, the report shall also state the psychiatrist's and/or psychologist's opinion of:
 - (A) the condition causing the defendant's incompetency and the nature thereof;
 - (B) the treatment, if any, required for the defendant to attain competency;
 - (C) the most appropriate form and place of treatment, in view of the defendant's therapeutic needs and potential danger to the defendant and/or others, and an explanation of appropriate treatment alternatives;
 - (D) the likelihood of the defendant's attaining competency under treatment and the probable duration of the treatment; and
 - (E) the availability of the various types of acceptable treatment in the local geographic area, specifying the agencies or the settings in which the treatment might be obtained and whether the treatment would be available on an outpatient basis.
- (3) *Opinion on Mental Condition at Time of the Offense.* In addition, if the court so orders, the report shall contain a statement of the psychiatrist's and/or psychologist's opinion of the following:
 - (A) the mental condition of the defendant at the time of the alleged offense;
 - (B) if the psychiatrist's and/or psychologist's opinion is that at the time of the alleged offense the defendant suffered from a mental disease or defect, the relation, if any, of such to the alleged offense, including:
 - (i) whether the defendant knew the nature and quality of the defendant's actions; and
 - (ii) if so, whether the defendant knew that the actions were wrong.
and

(C) such other matters as the court may deem appropriate.

(4) *Opinion on Intellectual Disability in Death Penalty Cases.* In addition, if the court so orders in a death penalty case, the report shall contain a statement of the psychiatrist's and/or psychologist's opinion as to whether the defendant is intellectually disabled and, if so, to what extent.

(d) **Additional Expert Assistance.** For good cause shown, the court may appoint additional experts and order the defendant to submit to physical, neurological, psychiatric, or psychological examinations, if necessary for an adequate determination of the defendant's mental condition.

(e) **Costs.** Any cost or expense in connection with the court-ordered mental examination(s) shall be paid by the county in which such criminal action originated.

History. Adopted eff. July 1, 2017.

Note:

Comment

Consistent with former Rule 9.06 of the Uniform Rules of Circuit and County Court and Mississippi Code Section 99-13-11, Rule 12.3(a) provides that where "reasonable grounds" exist, the court must appoint a competent psychiatrist and/or psychologist to examine the defendant and testify regarding the defendant's mental condition.

Section (b) ensures that a defendant will not be subjected to confinement in a mental health facility, unless a less restrictive alternative (such as local outpatient services) is unavailable, and it ensures that any confinement will be for only the minimum time required to conduct necessary examinations. See **Jackson v. Indiana**, 406 U.S. 715, 92 S. Ct. 1845, 32 L. Ed. 2d 435 (1972) (indefinite commitment based solely on incompetence to stand trial is unconstitutional). Once a court-ordered examination is completed, the examiner's report shall be filed with the court clerk, as provided in Rule 12.4.

Because the Rule 12.3 examination may also provide information concerning a possible insanity defense, the psychologist and/or psychiatrist may be required, pursuant to Rule 12.3(c)(3), to report on the mental condition of the defendant at the time of the alleged offense and on the relationship, if any, of the defendant's mental disease or defect to the alleged criminal act. Rule 12.3(c)(3) is not intended to establish a new legal test for insanity, or to change the test that was in use before adoption of these Rules. See **Nolan v. State**, 61 So. 3d 887, 895-97 (Miss. 2011) (citations omitted) ("Mississippi follows the **M'Naghten** standard for determining whether a defendant was sane at the time of the crime[,] and has repeatedly declined to abandon that standard). Rule 12.3 merely requires the psychiatrist and/or psychologist to describe the defendant's mental condition in broad medical language. See **Roundtree v. State**, 568 So. 2d 1173 (Miss. 1990). Whether a person is mentally ill, and to what extent, is a medical judgment that a psychologist and/or psychiatrist should make; whether the defendant is sufficiently ill to be exonerated of criminal responsibility, i.e., whether the defendant is legally insane, is a legal judgment for the jury or trier of fact to make after proper instructions. Section (c)(4) extends these procedures to the question of the defendant's possible intellectual

disability in death penalty cases. See **Chase v. State**, 873 So. 2d 1013, 1027 (Miss. 2004) (citing **Atkins v. Virginia**, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002)).

Section (e) expressly provides for payment of the expenses of such professionals, within limits provided by law. See Miss. Code Ann. § 99-13-11. **Ake v. Oklahoma**, 470 U.S. 68, 105 S. Ct. 1087, 84 L. Ed. 2d 53 (1985), which holds that an indigent defendant is constitutionally entitled to a psychiatrist provided at state expense, is applicable when the defendant demonstrates to the trial judge that the defendant's sanity (or insanity) at the time of the offense is to be a significant factor at trial or that the defendant's mental state is likely to be a significant factor. Where a defense-consultant psychologist and/or psychiatrist is constitutionally required, such an expert may be appointed under Rule 12.3(a).

Rule 12.4. Disclosure of Mental Health Evidence; Reports of Appointed Experts.

Mississippi Court Rules

Mississippi Rules of Criminal Procedure [Effective July 1, 2017]

Rule 12. Mental Examinations

As amended through January 12, 2017

Rule 12.4. Disclosure of Mental Health Evidence; Reports of Appointed Experts

- (a) **Generally.** The reports of experts made pursuant to Rule 12.3 shall be submitted to the court clerk within ten (10) working days of the completion of the examination. All original reports shall be filed with the clerk, under seal. Upon receipt, the clerk shall copy and distribute the expert's report to the trial judge and to defense counsel. Defense counsel may redact any statements of the defendant (or summaries thereof) concerning the offense charged. A copy of the redacted report must be returned to the clerk within five (5) working days of its receipt and made available to the State. Any dispute regarding the extent of redaction shall be resolved by the trial judge.
- (b) **Mandatory Disclosure.** If the defendant raises the affirmative defense of insanity, the State shall be furnished unredacted copies of the reports of experts made pursuant to Rule 12.3.

History. Adopted eff. July 1, 2017.

Note:

Comment

Under Rule 12.4, all expert reports produced pursuant to Rule 12 are to be disclosed to the court, to the defendant's

attorney, and to the prosecuting attorney. Only one item of the report is excepted -- the defendant's statements concerning the actual offense charged. The United States Supreme Court has recognized that use of a defendant's statements during a court-ordered examination may compromise the defendant's right against self-incrimination. See **Estelle v. Smith**, 451 U.S. 454, 101 S. Ct. 1866, 68 L. Ed. 2d 359 (1981) (defendant's privilege against self-incrimination was violated when he was not advised of right to remain silent during court-ordered examination and prosecution introduced statements). See also MRE 503 cmt. ("No statement made by an accused in the course of an examination into competency to stand trial is admissible on the issue of guilt"). Thus, the prosecution may not make use of evidence obtained by compulsory mental examination of the defendant unless the defendant offers, either directly or through cross-examination, evidence in support of the affirmative defense of insanity. See **Powell v. Texas**, 492 U.S. 680, 683-84, 109 S. Ct. 3146, 3149, 106 L. Ed. 2d 551 (1989) (defendant waives the privilege if the defendant introduces expert testimony on mental condition).

Rule 12.5. Hearing and Orders.

Mississippi Court Rules

Mississippi Rules of Criminal Procedure [Effective July 1, 2017]

Rule 12. Mental Examinations

As amended through January 12, 2017

Rule 12.5. Hearing and Orders

- (a) **Hearing.** After submission of the reports, the court, upon its own motion or the motion of any party, shall promptly hold a hearing to determine the defendant's competency. The parties may introduce other evidence regarding the defendant's mental condition or, by stipulation (either written or stated on the record in open court), submit the matter on the experts' reports.
- (b) **Procedure.** The competency hearing is a critical stage of the proceedings, at which the defendant shall be represented by counsel. The defendant shall be afforded an opportunity to testify, to present evidence, to subpoena witnesses, and to confront and cross-examine witnesses who appear at the hearing.
- (c) **Finding of Competence.** If the court finds that the defendant is competent to stand trial, then the court shall make the finding a matter of record and order the case to proceed to trial.
- (d) **Finding of Incompetence.** If the court finds that the defendant is incompetent to stand trial, then the court may commit the defendant to the Mississippi State Hospital, other appropriate mental health facility, or other place of treatment, either inpatient or outpatient, based on the report of a psychiatrist or psychologist pursuant to Rule 12.3(c)(2)(C) and

(E). The order of commitment shall be filed with the court clerk and shall require that the defendant be examined by staff psychiatrist(s) and/or psychologist(s), and a written report be furnished to the court not less than every four (4) calendar months, stating:

- (1) Whether there is a substantial probability that the defendant will become mentally competent to stand trial within the foreseeable future; and
- (2) Whether progress toward competency is being made.

(e) **Release from Commitment.** If, within a reasonable time after entry of a commitment order, there is neither a determination that there is a substantial probability that the defendant will become mentally competent to stand trial nor progress toward competency, the court shall order that civil proceedings as provided in Mississippi Code Section 41-21-61, *et. seq.*, be instituted. Said proceedings shall advance notwithstanding that the defendant has criminal charges pending against him/her. The defendant shall remain in custody until determination of the civil proceedings.

History. Adopted eff. July 1, 2017.

Note:

Comment

Under Rule 12.5(a), upon the court's own motion or the motion of any party, a competency hearing shall be conducted. But in the absence of such motion, a hearing is permissible, but not mandatory. This represents a departure from practice under former Rule 9.06 of the Uniform Rules of Circuit and County Court.

Under section (d), if the court finds the defendant to be incompetent, it shall commit the defendant to an appropriate mental health facility or other place of treatment. No order made under this section is to be effective for longer than four (4) months, thereby insuring a frequent review of each incompetent defendant's status and progress. See **O'Connor v. Donaldson**, 422 U.S. 563, 575, 95 S. Ct. 2486, 2493, 45 L. Ed. 2d 396 (1975) ("even if . . . involuntary confinement was initially permissible, it could not constitutionally continue after that basis no longer existed"); **Jackson v. Indiana**, 406 U.S. 715, 720, 92 S. Ct. 1845, 1849, 32 L. Ed. 2d 435 (1972) (a state "cannot constitutionally commit [a] petitioner for an indefinite period simply on account of his incompetency to stand trial on the charges filed against him"). Sections (d) and (e) largely continue the procedure applicable under former Rule 9.06 of the Uniform Rules of Circuit and County Court.

Rule 12.6. Subsequent Hearings.

Mississippi Court Rules

Mississippi Rules of Criminal Procedure [Effective July 1, 2017]

Rule 12. Mental Examinations

As amended through January 12, 2017

Rule 12.6. Subsequent Hearings

- (a) **Grounds.** The court shall hold a hearing to assess the defendant's competency:
- (1) on receiving a written report from a treating mental health professional stating that, in his/her opinion, the defendant has become competent to stand trial;
 - (2) on motion of either party, accompanied by the certificate of a mental health expert stating that, in the expert's opinion, the defendant is competent to stand trial; or
 - (3) on the court's own motion.
- The parties may, by stipulation (either written or stated on the record in open court), submit the matter on the experts' reports.
- (b) **Finding of Competency.** If the court finds that the defendant is competent to stand trial, the regular proceedings shall recommence without delay. The defendant shall be entitled to a rehearing of any proceeding if there are reasonable grounds to believe the defendant was prejudiced by the defendant's previous incompetency.
- (c) **Finding of Continuing Incompetency.** If the court finds that the defendant remains incompetent, the court shall proceed in accordance with Rules 12.5(d) or (e).

History. Adopted eff. July 1, 2017.

Note:

Comment

Section (c) directs the court, upon finding that the defendant remains incompetent, to reconsider the alternatives presented in Rules 12.5(d) and (e). **Jackson v. Indiana**, 406 U.S. 715, 92 S. Ct. 1845, 32 L. Ed. 2d 435 (1972), held that the continuing commitment of a defendant must be justified by an appropriate showing by the state. Accordingly, the initial findings of the trial court are not relevant at this point, and questions regarding the continued incompetency of the defendant are to be considered by the trial court de novo.