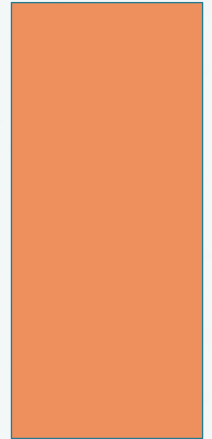


COMPETENCE TO STAND TRIAL

**OSPD NORTHERN REGIONAL JUVENILE
DEFENDER TRAINING
WHISPERING WOODS HOTEL
OLIVE BRANCH, MISSISSIPPI
FRIDAY, JUNE 16, 2017**



- Mississippi does **NOT** have a juvenile competency statute.
- Competency is **NOT** mentioned in the Mississippi Uniform Rules of Youth Court Practice.
- There is **NO** case law on the issue of juvenile competency to stand trial.

QUESTION

Do you have a right to raise the issue of competency for your juvenile client in youth court?

- The Mississippi Uniform Rules of Youth Court Practice, Rule 24(a)(4) states:

Adjudication hearings shall be conducted:

...(ii) under the rules of evidence and *rules of court* as may comply with *applicable constitutional standards; ...*

- Adjudication Hearings In Delinquency Cases Are Quasi-Criminal Proceedings.
- Examples:
 - Rules of Evidence Apply
 - Petition must cite factual allegations with the same particularity required in a criminal indictment
 - Burden of Proof is “beyond a reasonable doubt”

- The due process clause of the Fourteenth Amendment requires that juvenile court delinquency hearings measure up to the essentials of due process and fair treatment. *In Re Gault*, 387 U.S. 1, 30
- The United States Supreme Court has repeatedly and consistently recognized that “the criminal trial of an incompetent defendant violates due process.” *Medina v. California*, 505 U.S. 437, 453; *Drope v. Missouri*, 420 U.S. 162, 171-172.

- Competence to stand trial is rudimentary, for upon it depends the main part of those rights deemed essential to a fair trial, including the right to effective assistance of counsel, the rights to summon, to confront, and to cross-examine witnesses, and the right to testify on one's own behalf or to remain silent without penalty for doing so. *Drope v. Missouri*, 420 U.S. 162, 171-172.

QUESTION

Do you have a right to raise the issue of competency for your juvenile client in youth court?

ANSWER: **YES**

FYI – AMENDED RULES

- On December 13, 2016 the Mississippi Supreme Court entered an order to combine all of the requirements governing criminal procedure in the courts of this State into a singular set of rules. In it's order, the Court stated that “we adopt the rules attached hereto as the Mississippi Rules of Criminal Procedure, which shall govern the procedure in all criminal proceedings in the Circuit, County, Justice and Municipal Courts of this State. These rules shall take effect on July 1, 2017.”

QUESTION

What does it mean to be competent to stand trial?

M.R.Cr.P. RULE 12.1

- MS has 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.
- Section (b) of the rule defines “mental illness, defect, or disability”.

CASE LAW

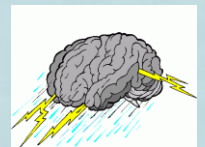
- For a criminal defendant to be deemed mentally competent to stand trial, he must have “the sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding ... and ... a rational as well as factual understanding of the proceedings against him.” *Hollie v. State*, 174 So.3rd 824, 829 (Miss. 2015) citing *Dusky v. United States*, 362 U.S. 402.

MORE CASE LAW

- The Mississippi Supreme Court has further defined a competent defendant as one:
 - 1) Who is able to perceive and understand the nature of the proceedings;
 - 2) Who is able to rationally communicate with his attorney about the case;
 - 3) Who is able to recall relevant facts;
 - 4) Who is able to testify in his own defense if appropriate; and
 - 5) Whose ability to satisfy the foregoing criteria is commensurate with the severity of the case. *Hearn v. State*, 3 So.3d 722, 728 (Miss. 2008).

QUESTION

What are some factors that should prompt the juvenile defender to consider whether a competence evaluation is necessary?





- Client's inability to communicate with the defender about the case
- Age, especially in cases involving very young adolescents
- Limited intellectual functioning
- Limited verbal or comprehension skills
- Poor academic achievement record and/or placement in special education
- History of emotional or behavioral problems

DOES CLIENT HAVE A FACTUAL AND RATIONAL UNDERSTANDING OF THE PROCEEDINGS

- **Factual understanding** is the youth's ability to understand the nature and purpose of the proceedings, including:
 - The nature and seriousness of the charges;
 - The purpose of a trial and possible consequences;
 - Nature of an admission; and
 - The role of various participants in the court process (judge, prosecutor, defense counsel, etc.)

Rational understanding is the youth's ability to apply the above information in a way that does not impair decision-making. The youth must "appreciate" the significance of his or her factual understanding about the proceedings.

DOES CLIENT HAVE THE ABILITY TO ASSIST THE DEFENDER

- Youth must be able to **communicate with the defender**. Abilities that are associated with communication might include:
 - The ability to comprehend the defender's questions;
 - The ability to figure out what information is relevant to the defender's questions; and/or
 - The ability to articulate the relevant information related to the defender's questions.

- The youth must be able to **manage the demands of the proceedings**, such as:
 - Endure the stress of the trial
 - Maintain demeanor
 - Testify relevantly, if necessary, and
 - Follow the flow of the proceedings.

- The youth must be able to **make their own decisions** throughout the trial process. Deficits in these abilities or problems with immaturity will reduce the client's ability to assist the defender in his case.

DECISION TO CHALLENGE COMPETENCY

QUESTION

What are some of the concerns or disadvantages a juvenile defender must consider in deciding whether or not to challenge competence in juvenile court?

CONCERNS & DISADVANTAGES TO THINK ABOUT

- If a mental evaluation for purposes of competency determination is ordered all available medical & youth court history records of the defendant shall be provided to the examining mental health expert as ordered by the court.
- The court may order that a child be held in an appropriate mental health facility in order for the evaluation to be completed if outpatient examination can't be done.

- Could/would child be held in detention facility until evaluation is conducted? If detained, how long will they be incarcerated waiting on the issue to be determined?
- Competency proceedings would significantly delay the child case due to the scheduling of the expert to perform the evaluation and render an opinion in a report.
- Child's case would be delayed in order to schedule and conduct the hearing.

More Things To Consider cont'd

- Can statements or admissions made in evaluations be used against your client?
- § 43-21-207. Statements, admissions, confessions, or incriminatory information obtained from child in course of screening or assessment; inadmissibility
- (1) No statements, admissions or confessions made by or incriminatory information obtained from a child in the course of a screening or assessment that is undertaken in conjunction with any proceedings under this chapter, including, but not limited to, that which is court-ordered, shall be admitted into evidence against the child on the issue of whether the child committed a delinquent act under the Youth Court Act or on the issue of guilt in any criminal proceedings.
- (2) The provisions of subsection (1) of this section are in addition to and do not override any existing statutory and constitutional prohibition on the admission into evidence in delinquency or criminal proceedings of information obtained during screening, assessment or treatment.

More Things To Consider Cont'd

- The standards for determining incompetence and who has the burden of proof.
- The possible remedies should your client be found incompetent.

QUESTION

What are the possible remedies if your client is found incompetent?

M.R.Cr.P. RULE 12.5

- (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, ... (emphasis added)
- “shall” in MCCR 9.06 has changed to “may”. New rule is effective July 1, 2017.



- The court may at any time terminate the proceedings and dismiss the petition if the court finds such action to be conducive to the welfare of the child and in the best interests of the state. MS R YCP Rule 24(9), MS Code Ann. §43-21-557(4)

PROCEDURE

Procedure for Mental Competency is set out in the Mississippi Rules of Criminal Procedure, Rules 12.1 through 12.6, effective July 1, 2017.

∞ The end ∞

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