

Alabama Rules of Criminal Procedure

Rule 11. Incompetency and mental examinations.

Rule 11.1. Definition of incompetency.

A defendant is mentally incompetent to stand trial or to be sentenced for an offense if that defendant lacks sufficient present ability to assist in his or her defense by consulting with counsel with a reasonable degree of rational understanding of the facts and the legal proceedings against the defendant.

[Amended 10-1-96.]

Committee Comments to Rule 11.1 as Amended Effective October 1, 1996

This rule states the underlying concept upon which Rule 11 is based, i.e., that no defendant should be prosecuted or sentenced if, because of mental incompetence, he or she lacks the present ability to consult with counsel with a reasonable degree of rational comprehension or is unable to understand the nature of the proceedings. Once evidence exists to doubt the defendant's competency to stand trial, the procedures in Rules 11.2 through 11.8 should be followed. The procedures for ordering mental examinations and conducting competency hearings are applicable in the circuit court and are available to any defendant within the court's jurisdiction.

Prior statutes prescribed the procedure for dealing with the problem of the mentally incompetent defendant, but were strictly limited to felony offenders confined in jail and were applicable only after an indictment had been returned. Ala.Code 1975, § 15-16-21, states:

"If any person charged with any felony is held in confinement under indictment and the trial court shall have reasonable ground to doubt his sanity, the trial of such person for such offense shall be suspended until the jury shall inquire into the fact of such sanity, such jury to be impaneled from the regular jurors in attendance for the week or from a special venire, as the court may direct. If the jury shall find the accused sane at the time of its verdict, it shall make no other inquiry, and the trial in chief shall proceed. If it finds that he is insane at that time, the court shall make an order committing him to the Alabama state hospitals, where he must remain until he is restored to his right mind. When the superintendent of the hospitals shall be of opinion that such person is so restored, he shall forthwith, in writing, inform the judge and sheriff of such court of the fact, whereupon such person must be remanded to jail on an order of such judge and the criminal proceedings resumed. In no event shall such a

person be set at large so long as such prosecution is pending or so long as he continues to be insane.”

The rule tracks the definition of “incompetency” suggested by the United States Supreme Court in *Dusky v. United States*, 362 U.S. 402, 402-03, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960), and is substantially similar to the definition provided in § 22-52-30(1). In a per curiam opinion, the Court in *Dusky* held:

“[I]t is not enough ... that ‘the defendant [is] oriented to time and place and [has] some recollection of events[;]’ ... the ‘test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.’ ”

The provisions of Rule 11.1 conform with Rule 463(a) and (b), Unif.R.Crim.P. (1992), and ABA Standards for Criminal Justice, *Criminal Justice and Mental Health Standards* 7-4.1(a), (b), and (c) (1989), and recognize the distinction between the standard for determining competency to stand trial and the “mental disease or defect” standard by which criminal responsibility (insanity) is determined. *Lyles v. United States*, 254 F.2d 725 (D.C.Cir.1957). Although some States require that the defendant’s mental incompetence be attributable to a “mental disease or defect,” the majority view is that the mere presence of a mental disorder, whatever its severity, is not a sufficient basis for a finding of incompetency to stand trial. As noted in Thomas Grisso’s book *Evaluating Competencies*, p. 64:

“Questions of criminal responsibility ... refer to mental state at the time of the offense, whereas competency to stand trial refers to a defendant’s current mental state and functional capacities as they relate to a pending trial process. A defendant may be competent to stand trial yet have good grounds for an insanity defense. Incompetency and insanity questions are often raised in the same case, but they are distinctly separate questions controlled by different legal standards.”

In cases decided before the decisions of *Ex parte LaFlore*, 445 So.2d 932 (Ala.1983), and *Ex parte Neal*, 551 So.2d 933 (Ala.1989), the Alabama Supreme Court had ruled that Ala.Code 1975, § 15-16-21, was no more than an authorization to the trial court to exercise its discretion to suspend the trial and to submit to a jury the question of the defendant’s competency to stand trial. A decision by the trial court not to hold a competency determination was not reviewable on appeal. See, e.g., *Rohn v. State*, 186 Ala. 5, 65 So. 42 (1914); *Burns v. State*, 246 Ala. 135, 19 So.2d 450 (1944), cert. denied, 324 U.S. 843, 65 S.Ct. 589, 89 L.Ed. 1405, and 326 U.S. 765, 66 S.Ct. 137, 90 L.Ed. 491 (1945). In *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966), the United States Supreme Court held that if “sufficient doubt” exists as to the defendant’s present competency to stand trial, then the defendant is

constitutionally entitled to a hearing on that question. See *Tillis v. State*, 292 Ala. 521, 296 So.2d 892 (1975). Since *Pate v. Robinson*, supra, the Court of Criminal Appeals in *Pierce v. State*, 52 Ala.App. 422, 293 So.2d 483 (1973), writ quashed, 292 Ala. 745, 293 So.2d 489 (1974); and *Edgerson v. State*, 53 Ala.App. 581, 302 So.2d 556 (1974), concluded that once evidence exists sufficient to create a “bona fide doubt” as to present competency, the defendant is entitled to a jury determination of his or her competency to stand trial. Following the law set out in these holdings, the Alabama Supreme Court in *Ex parte LaFlore*, 445 So.2d 932 (Ala.1983), noted that the right to a jury trial on the issue of competency is preserved by § 11, Alabama Constitution of 1901, and thus concluded that the statutes in Article 2, Chapter 16, Title 15, Ala.Code 1975, are modified to the extent they conflict with this right. At issue was Ala.Code 1975, § 15-16-21, which provided a right to a jury trial on the issue of competency only to defendants confined in jail. See also *Ex parte Neal*, 551 So.2d 933 (Ala.1989). Following *Pate*, supra, the United States Supreme Court in *Drope v. Missouri*, 420 U.S. 162, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975), further opined that a competency hearing is not limited to pretrial procedures, but exists where the defendant’s present competency is brought into question during trial and reasonable grounds exist to doubt the defendant’s competency to stand trial.

It should be noted that Rule 11.1 goes only to the problem of the defendant’s competency to stand trial, and not to the question of the defendant’s possible insanity at the time of the alleged offense.

Rule 11 expresses the present policy of the Alabama courts concerning the mentally incompetent defendant. Rule 11 is not intended to change the substantive law regarding incompetency, but rather to prescribe the procedure for making the determination. The procedures for determining and disposing of competency issues established in this rule can be classified into six main categories: 1) a request for a competency determination (raising the issue), which is governed by Rule 11.2; 2) the competency evaluation stage, provided for by Rules 11.3, 11.4, and 11.5; 3) judicial review of the examining psychiatrist’s or psychologist’s reports and determination if there exist reasonable grounds to doubt the defendant’s competency to stand trial, which would require further inquiry in a competency hearing, pursuant to Rule 11.6(a); 4) a determination of competency or incompetency by the judge or jury, as provided in Rule 11.6(c); 5) disposition and provision for treatment, pursuant to Rule 11.6(c); and 6) rehearings on the question of competency, which are governed by Rule 11.7.