

## Alabama Rules of Criminal Procedure

### Rule 11. Incompetency and mental examinations.

*Rule 11.2. Examination of defendant's mental condition; demand for jury.*

(a) MOTIONS.

(1) *Competency to Stand Trial.* When a person charged with a crime is before a circuit court, the defendant, the defendant's attorney, or the district attorney may petition for, or the court on its own motion may order, an examination to assist in the determination of the defendant's present mental condition and competency to stand trial.

(2) *Mental Condition at Time of Offense.* If the defendant has timely raised a defense of "not guilty by reason of mental disease or defect" either by the entry of a plea or by filing a pre-trial motion pursuant to Rule 15, the court on its own motion may order, or the defendant, the defendant's attorney, or the district attorney may move for an examination into the defendant's mental condition at the time of the offense.

(b) ADMISSIBILITY OF MENTAL EXAMINATIONS.

(1) The results of examinations conducted pursuant to subsection (a)(1) of this rule, Rule 11.3, or Rule 11.4 on the defendant's mental competency to stand trial shall not be admissible as evidence in a trial for the offense charged and shall not prejudice the defendant in entering a plea of not guilty by reason of mental disease or defect.

(2) The results of mental examinations made pursuant to subsection (a)(2) of this rule and the results of similar examinations regarding the defendant's mental condition at the time of the offense conducted pursuant to Rule 11.4 shall be admissible in evidence on the issue of the defendant's mental condition at the time of the offense only if the defendant has not subsequently withdrawn his or her plea of not guilty by reason of mental disease or defect. Whether the examination is conducted with or without the defendant's consent, no statement made by the defendant during the course of the examination, no testimony by an examining psychiatrist or psychologist based upon such a statement, and no other evidence directly derived from the defendant's statement shall be admitted against the defendant in any criminal proceeding, except on an issue respecting mental condition on which the defendant has testified.

(c) GROUNDS FOR MOTIONS AND DEMAND FOR JURY. A motion filed pursuant to this rule shall state facts upon which the mental examination is sought, and such a motion filed by the defendant or the defendant's attorney must include a written demand for a jury in order to preserve the right to a jury in a subsequent

competency hearing conducted pursuant to Rule 11.6; see also Rule 11.6(b)(1) and Rule 11.7(c).

[Amended 6-11-91; Amended 1-1-96.]

**Committee Comments to Rule 11.2 as Amended  
Effective October 1, 1996**

Those defendants as to whom the circuit court has jurisdiction to determine competency to stand trial include: (1) a defendant who is before the court on appeal for trial de novo on a misdemeanor charge or a charge of violating a municipal ordinance; (2) a defendant charged with a misdemeanor or with violating a municipal ordinance, who is within the court's jurisdiction after an indictment has been returned; and (3) a defendant charged with a felony within the court's jurisdiction.

Rule 11.2(a)(1) contemplates that a procedure to have the defendant's mental competency determined should be set in motion at the earliest practicable date. Although the competency issue will generally be raised before a hearing on the criminal allegations, in some instances the question will arise in the midst of a trial or during the sentencing stage. Also implicit in the rule is the recognition that it is the duty of the district attorney and the trial judge to make appropriate inquiry concerning the mental responsibility of the accused and the accused's mental competency to waive and plead or to stand trial on the charges.

Ordering an examination pursuant to this rule shall not be viewed as a perfunctory or ministerial act, but rather as a discretionary one, that should be exercised only if the circuit court has reasonable cause to believe the defendant may not be mentally competent. In exercising judicial discretion, the circuit judge is authorized to deny the motion if there is no reasonable basis shown for questioning or examining the defendant's competency.

The provisions of subsections (a)(1) and (a)(2) of Rule 11.2 are similar to Rule 12.2, Fed.R.Crim.P. The motions made under subsection (a)(2) of this rule may prompt an investigation into the defendant's mental condition at the time of the offense, whether or not the competency question is raised. There is no apparent reason why an examination to investigate competency cannot 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 (the "understand and defend" test) is distinct, as a matter of law, from the test for sanity at the time of the offense (the "distinguish wrong" test), the reports prepared by the examining psychiatrist(s) and/or psychologist(s) and their testimony will necessarily contain information having a substantial bearing on both issues. Compare subsection (a)(2) with Ala.Code

1975, § 13A-3-1, regarding the “affirmative defense” of “insanity,” i.e., that the defendant, “as a result of severe mental disease or defect, was unable to appreciate the nature and quality or wrongfulness of his acts.”

Subsection (b)(1), which is similar to Rule 12.2(c), Fed.R.Crim.P., and 18 U.S.C. § 4241, makes it clear that the determination of the defendant’s competency to stand trial is separate and distinct from the determination of his sanity at the time of the offense. To ensure this factual distinction and to avoid any prejudice to the defendant, the finding of the defendant’s competency to stand trial is specifically made inadmissible in the trial for the offense charged.

Rule 11.2(c) requires that the factual basis in support of the requested mental examination be included in the motions that are filed and that motions filed by the defendant or the defendant’s attorney include a jury demand to preserve the right to have the defendant’s competency to stand trial determined by a jury at a competency hearing. If the competency issue is raised by the court or by motion of the district attorney, the defendant, in order to have a jury trial on the issue, must file a written demand for a jury trial within seven (7) days. Rule 11.6(b). Demand for a jury to determine competency in subsequent hearings must be made pursuant to Rule 11.7(c).