

Interaction with Court Systems: **8/8/14**

Judge Linda Rogers- Metro Mental Health Specialty Court

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Discussion: Competency

Evaluators:

Paid by HSD, contracted out

Not required to testify in court, ethically obligated, not reimbursed for their time

Competency pursuant to Court Order; Yes or No to competency; Indigent defendant follows APA Standards

Metro:

In custody cases set for forensic evaluation in one week, out of custody forensic evaluation within 2 weeks.

Different standard than full Forensic Evaluation.

Misd. Competency – if case is dismissed; concern- no referral to treatment and the cycle begins again

Some competency cases are placed on Pre-Trial Services to enable the defendant to be connected to services.

Some competency cases are referred to Mental Health Specialty Court- connected to services and a dismissal given unless DWI.

Two designated psychologists and two back- ups for competency evaluations.

District Court:

Each Judge has their own docket for competencies- One Judge with a back- up was recommended, as there are ten judges with different perspectives and interpreting the law.

District Court Judges do not transfer cases- they sentence the case- they keep it.

State can raise dangerousness with Incompetent case

Competency can be raised at any time(Defense strategy) –longer delays

- even the eve of the Trial – there is no rule or statute

Proposed:

Exparte Order: Dr. sees the client –no more than 2 weeks from the order; the report is to be completed in 45 days.

Private Attorney: another process- Packet of information is secured and is given to the Dr., it may take time to receive the medical information, the Dr. schedules the evaluation, the Dr. may not get the order in 2 weeks, which delays the evaluation date, the report, etc.

Problems that occur with the competency appointment- if the defendant is in custody- the appointment is kept, if the defendant is released- the attorney needs to locate the client, Subpoena- which causes another delay from 60-90 days.

There are two providers at 2nd Judicial (subcontracted).

In Custody:

- Upon receipt of competency evaluation the Court : shall have a hearing in 30 days for dismissal if the defendant is in custody ; Shall be held in 30 days and the Judge could reset the hearing.

Out of Custody:

- No time limit for out of custody cases. It could take up to 6 months before the hearing is held and by that time the DA could state that the evaluation is old.
- If they decompensate a Certificate of Evaluation is needed.

Treatment Guardians:

- They assist with evaluation by bringing medical documents.
- They can approve medications; they cannot force the person to take them. This is good until the client can follow up with their own mental health needs.
- There are not enough treatment guardians; reimbursement is low, 6 months following up with a client

In custody in Jail or Hospitalized:

- Psychiatrist- needs to be present in court
- Client needs to be willing to get to court
- DA's office to go to court

Outpatient:

- Psychiatrist, Court, Person to show up for court

Mentally Challenged vs. Incompetency -

- A defendant's IQ does not change and anything below a 70 IQ is likely considered incompetent
- IQ testing is not a part of the evaluation at Metro
- IQ testing- money needs to be allocated to address this issue

Housing-

- Needed for incompetent clients to be monitored 24/7 with medication management, case management for appointments and court hearings. State would not fight dismissals.

Clarification needed for raising competency uniformly:

31-9-2 Upon motion of any defendant, the court shall order a mental examination of the defendant before making any determination of competency under Sections 41-13-3 (NMSA1953) or 31-9-1 NMSA 1978. Where the defendant is determined to be indigent, the court shall pay for the costs of the examination from funds available to the court.

Rule 5-602B Determination of competency to stand trial- (a) If a reasonable doubt as to the defendant's competency to stand trial is raised prior to trial, the court shall order the defendant to be evaluated as provided by law. Within sixty (60) days after receiving an evaluation of the defendant's competency, the court, without a jury, may determine the issue of competency to stand trial; or, in its discretion, may submit the issue of competency to stand trial to a jury, other than the trial jury.

Interaction with the Court systems cont.

Rule 5-602 C Mental Examination- Upon motion and upon good cause shown, the court shall order a mental examination of the defendant before making any determination of competency under this rule. If a defendant is determined to be indigent, the court shall pay for the costs of the examination from funds available to the court.

Complications with Competency cases:

Domestic Violence cases:

- i.e.) Stalking case- victim is informed the defendant is not competent, he is getting out of jail and the victim has no protection from the law. The restraining order may be filed, however, it is not enforceable due to the defendant not being competent.

Medications:

- The defendant could be stable prior to being arrested and become incompetent while in custody, due to being on the wrong medication. By the time the trial occurs the defendant could be incompetent.

AOC:

- Recommendation to have 2 Competency Judges, a Mental Health Court Judge and a Vet Court Judge at District Court.
- Recommendation to have a Presiding Judge over Specialty Court at Metro

Funding:

- Needed for more evaluators – permanent or transitory
- Needed for IQ testing for TBI/MR cases