

**IN THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT  
IN AND FOR PASCO AND PINELLAS COUNTIES, FLORIDA**

ADMINISTRATIVE ORDER NO. 2017-034 PA/PI-CIR

**RE: SELECTION AND PAYMENT OF EXPERTS**

Expert witnesses and other professionals provide a range of services in civil, criminal, juvenile delinquency, juvenile dependency, family, and involuntary civil commitment of sexual predator cases. These services include competency examinations, mental health evaluations, and investigative services. In certain situations, the court system is responsible for the selection and payment of experts.

In order to identify which experts and professional are appointed and paid by the Court as required by § 916.301, and clarified by Florida Supreme Court Administrative Order AOSC17-12, and in accordance with Article V, § 2, Florida Constitution, Rule of Judicial Administration 2.215, and § 43.26, Florida Statutes, it is

**ORDERED:**

1. When, on written motion of counsel for the defendant, a *pro se* defendant, the State Attorney, or on the court's own motion, the Court orders an adult competency evaluation pursuant to § 916.115(2), Florida Statutes, the Court shall appoint and pay for the experts. Pursuant to AOSC17-12, the Court shall initially appoint only one expert.

2. When the Court orders an adult competency evaluation pursuant to § 916.301, Florida Statutes, for a defendant whose suspected mental condition is intellectual disability or autism, the Court shall appoint the following experts, who shall be paid by the Court:

- a. One, or, at the request of any party, two experts selected by the Court to evaluate whether the defendant meets the definition of intellectual disability or autism and, if so, whether the defendant is competent to proceed;
- b. A psychologist selected by the Agency for Persons with Disabilities who is licensed or authorized by law to practice in this state, with experience in evaluating persons suspected of having an intellectual disability or autism; and
- c. A social service professional selected by the Court, with experience in working with persons who have an intellectual disability or autism.

3. When an expert is appointed by the Court pursuant to § 916.115(2), Florida Statutes, to evaluate the competence of the defendant to proceed and the defense also requests that the defendant be examined for sanity at the time of the offense, the Court will pay for that portion of the expert's fees relating to the evaluation of competency to proceed.

4. When an indigent criminal defendant is represented by a court appointed attorney or is indigent for costs and a request is made in the following circumstances, the defense selects the expert:

- a. a confidential examination to determine whether to file a motion pursuant to § 916.301, Florida Statutes;

- b. pursuant to Florida Rules of Criminal Procedure 3.216(a) to determine sanity or insanity;
- c. for appointment of an expert as an aid for sentencing in accordance with § 921.0026, Florida Statutes, or other mental health defenses in accordance with Florida Rules of Criminal Procedure 3.216(f); or
- d. in a capital case where the state has given notice of intent to seek the death penalty and the defense intends to present expert testimony of mental mitigation in accordance with Florida Rules of Criminal Procedure 3.202.

Prior court approval is required for such experts. Payment of experts selected by court appointed attorneys or attorneys for persons determined to be indigent for costs is to be made by the Justice Administrative Commission.

5. When the State Attorney requests an expert pursuant to Florida Rules of Criminal Procedure 3.216(d) to determine sanity or insanity, or in accordance with Florida Rules of Criminal Procedure 3.216(f) on mental health defenses, or in accordance with Florida Rules of Criminal Procedure 3.202(d) following a conviction of capital murder, the State Attorney selects the expert and is responsible for payment.

6. Intellectual Disability as a Bar to Execution:

- a. When experts are appointed by the Court pursuant to § 921.137, Florida Statutes, and Florida Rules of Criminal Procedure 3.203(c)(3) to evaluate a defendant or prisoner to determine whether the defendant or prisoner is intellectually disabled and barred from execution, the Court shall select and pay for the experts.
- b. When an expert is appointed pursuant to § 921.137, Florida Statutes, on request of the State Attorney under Florida Rules of Criminal Procedure 3.203(c)(2), the State Attorney shall select and pay for the expert.
- c. When an expert is otherwise appointed to determine a defendant's or prisoner's intellectual disability as a bar to execution, the Court shall select and pay for the expert(s).

7. Juvenile Evaluations:

- a. When an evaluation of a juvenile defendant is ordered pursuant to § 985.19(d), Florida Statutes, to determine if the juvenile defendant is incompetent to proceed due to mental illness, the Court will select and pay for the expert.
- b. When an evaluation of a juvenile defendant is ordered pursuant to § 985.19(e), Florida Statutes, to determine if the juvenile defendant is incompetent to proceed due to intellectual disability, the Agency for Persons with Disabilities shall examine the juvenile in accordance with Florida Rule of Juvenile Procedure 8.095.

8. When an independent examination is requested pursuant to § 394.4655 or § 394.467, Florida Statutes, by an indigent respondent in a Baker Act proceeding, the Public Defender shall select and pay for the expert, or if the indigent respondent is represented by court-appointed counsel, the counsel shall select the expert who will be paid by the Justice Administrative Commission for the services. In accordance with § 394.4655(6)(a)2 or § 394.467(6)(a)2, Florida Statutes, the respondent shall pay for the independent expert examination if he or she can afford such examination.

9. When an expert is appointed or reappointed by the Court pursuant to Florida Rules of Criminal Procedure 3.212 to perform a periodic evaluation of a defendant who has been found incompetent to proceed or appointed or reappointed by the Court pursuant to Florida Rules of Criminal Procedure 3.218 after an adjudication of not guilty by reason of insanity, the Court shall select and pay for the expert(s). Provided the same expert is under contract with the Court, for subsequent evaluations the Court will generally reappoint the same expert who performed the last examination of the defendant. However, on the court's own motion or a motion of the State or defense showing good cause, the Court may appoint a new expert by rotation from the list of experts under contract with the Sixth Judicial Circuit.

10. Except when the Court appoints the court psychologist, whenever counsel for the defendant or the State Attorney requests the appointment of an expert to determine competence to proceed or insanity, the Administrative Office of the Courts shall prepare an order for the Court's signature. A form Order Directing Examination For Competence to Proceed is Attachment A to this Administrative Order. A form Order Directing Examination of Defendant's Mental Condition On Motion of Defendant is Attachment B to this Administrative Order. A form Order Directing Examination of Defendant's Mental Condition Upon Motion of the State is Attachment C to this Order. The Order should be prepared and submitted to the Court within five days. The form Orders may be amended without further amendment to this Administrative Order.

11. Except where an expert is reappointed to do an examination or evaluation, the appointment of an expert by the Court will be by rotation from the list of experts under contract with the Sixth Judicial Circuit.

12. Experts appointed by the Court will be entitled to the appropriate compensation determined in Administrative Order Number 2017-033 Re: Expert and Professional Fees, or as provided in any subsequent applicable Administrative Order(s). For an expert to be paid for services rendered, the expert's report and testimony must explicitly address each of the factors and follow the procedures set out in the applicable chapter of the Florida Statutes and in the applicable Florida Rules of Court.

13. Except as otherwise provided herein, experts retained by the Public Defender or the Office of Regional Counsel pursuant to § 29.006, Florida Statutes, or by the State Attorney pursuant to § 29.005, Florida Statutes, shall be selected by the respective offices and paid from the respective budgets of the Public Defender, Regional Counsel, or the State Attorney. An expert retained by court-appointed counsel, by counsel for a defendant who is indigent for costs, or by a pro se defendant who is indigent shall, pursuant to § 29.007, Florida Statutes, be paid by

the Justice Administrative Commission; prior court approval is required for experts retained pursuant to § 29.007, Florida Statutes.

14. This Administrative Order does not restrict the ability of the Court to otherwise appoint an expert pursuant to the Family Law Rules of Procedure, Florida Rules of Juvenile Procedure, or other Florida Rules of Court.

This Administrative Order is effective July 1, 2017. Effective July 1, 2017, Administrative Order 2017-014 is hereby rescinded.

**DONE AND ORDERED** in Chambers at St. Petersburg, Pinellas County, Florida, this \_\_\_\_\_ day of June, 2017.

ORIGINAL SIGNED ON JUNE 20, 2017  
BY ANTHONY RONDOLINO, CHIEF JUDGE

Attachments:

- (A) Order Directing Examination For Competence to Proceed
- (B) Order Directing Examination of Defendant's Mental Condition on Motion of Defendant
- (C) Order Directing Examination of Defendant's Mental Condition on Motion of the State

cc: All Judges  
The Honorable Bernie McCabe, State Attorney  
The Honorable Bob Dillinger, Public Defender  
The Honorable Paula S. O'Neil, Clerk of the Circuit Court, Pasco County  
The Honorable Ken Burke, Clerk of the Circuit Court, Pinellas County  
Gay Inskeep, Trial Courts Administrator  
Ita M. Neymotin, Regional Counsel, Second District  
Ngozi Acholonu, Assistant Regional Counsel  
Lillian Simon, Director of Administrative Services, Pasco County  
Kimberly Thompson, Director of Criminal Courts, Pasco County Clerk's Office  
Nichole Alvarez-Sowles, Chief Operations Officer, Pasco County Clerk's Office  
Maryellen McDonald, Director of Legal Services, Agency for Persons with Disabilities  
Gerald Siebens, Legal Dep't, Agency for Persons with Disabilities, Suncoast Region  
Bar Associations, Pasco and Pinellas  
Law Libraries, Pasco and Pinellas

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PASCO/PINELLAS COUNTY, FLORIDA**

STATE OF FLORIDA

REF NO: \_\_\_\_\_

UCN: \_\_\_\_\_

vs.

\_\_\_\_\_  
SPN:

**ORDER DIRECTING EXAMINATION FOR COMPETENCE TO PROCEED**

THIS CAUSE COMING on to be heard in the above-styled case upon the:

- Court's own motion
- Motion of the Attorney for the Defendant
- Motion of the Pro Se Defendant
- Motion of the State

to determine the mental condition of the Defendant regarding competence to proceed. The Court being fully advised, it is hereby

**ORDERED:**

1. That said motion is granted.

**PART I. APPOINTMENT OF EXPERT FOR EXAMINATION OF DEFENDANT; SCHEDULING**

2.  The Court appoints Dr. \_\_\_\_\_, an expert under contract with the Court, to examine the Defendant for purposes of competence to proceed.

Dr. \_\_\_\_\_, a psychologist selected by the Agency for Persons with Disabilities, is appointed to examine the Defendant for purposes of competence to proceed, and \_\_\_\_\_, a social service professional under contract with the Court, is appointed to provide a social and developmental history of the Defendant because the Defendant's suspected mental condition is intellectual disability or autism.

As of this date, the Defendant is:

\_\_\_\_\_Not in Custody. The expert must contact defense counsel for scheduling and must provide defense counsel and the State Attorney advance notice of any scheduled examination of the Defendant.

\_\_\_\_\_In the [Pasco][Pinellas] County Jail. The expert must notify defense counsel when he or she is available to coordinate examination of the Defendant and must provide defense counsel and the State Attorney advance notice of any scheduled examination of the Defendant.

3. That the Sheriff of [Pasco][Pinellas] County shall permit the above-named expert to enter the [Pasco][Pinellas] County Jail as necessary to conduct the foregoing evaluation of the Defendant upon presentment of this Order.

4. Attorneys for the State and Defendant may be present for the expert's examination.

5. That a copy of the Order serves as authorization for the expert to inspect and copy any discoverable information relating to the Defendant maintained by the Clerk of the Circuit Court, State Attorney's Office, any hospital, doctor, or any health care provider, therapist, psychiatrist, psychologist, counselor, or any mental health provider, or other social or human services agency without the necessity of written consent by Defendant.

6. This cause is scheduled for a hearing on the issue of the Defendant's competence to proceed at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

## **PART II. EXPERT'S WRITTEN REPORT**

### **ALL REPORTS**

7. That the expert must submit to this Court a written report on the Defendant's mental condition or, in the case of a social service professional, social and developmental history, and provide copies to defense counsel and the State Attorney, on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

All information contained in the motion to determine competence of the Defendant or in any report submitted under this order that relates solely to the issues of competence to proceed, treatment, or commitment of the Defendant, shall be used only in determining the mental competence to proceed, treatment, or commitment of the Defendant. (Fla. R. Crim. P. 3.211(d)).

8. That **all** written reports submitted by an expert must:

- (a) identify the specific matters referred for evaluation;
- (b) describe the evaluative procedures, techniques, and tests used in the examination and purpose or purposes for each;
- (c) state the expert's clinical observations, findings, and opinions on each issue referred for evaluation by the Court; and indicate specifically those issues, if any, on which the expert could not give an opinion; and
- (d) identify the sources of information used by the expert and a presentation of the factual basis for the expert's clinical findings and opinions. (Fla. R. Crim. P. 3.211(c)).

### **REPORTS ON COMPETENCE TO PROCEED: MENTAL ILLNESS**

The expert must first determine whether the Defendant has a mental illness. (§ 916.12(2), Fla. Stat). If the expert determines that the Defendant has a mental illness, the expert must then report on the Defendant's competence to proceed. (§ 916.12, Fla. Stat.; Fla. R. Crim. P. 3.211(a)). A defendant is incompetent to proceed if the Defendant does not have sufficient present ability to consult with counsel with a reasonable degree of rational understanding, or if the Defendant has no rational, as well as factual, understanding of proceedings against him or her. (§ 916.12(1), Fla. Stat.).

In considering the issue of competence to proceed, the examining expert must consider and include in his or her report the Defendant's capacity to:

- (a) Appreciate the charges or allegations against the Defendant;
- (b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the Defendant;
- (c) Understand the adversary nature of the legal process;
- (d) Disclose to counsel facts pertinent to the proceedings at issue;
- (e) Manifest appropriate courtroom behavior; and
- (f) Testify relevantly. (§ 916.12(3), Fla. Stat.).

The expert must also consider and include in his or her report any other factor deemed relevant by the expert. (§ 916.12(3), Fla. Stat.)

Ø **Should the expert determine that the Defendant is incompetent to proceed, the expert must also:**

**1. Report on any recommended treatment for the Defendant to attain competence to proceed.** (§ 916.12(4) Fla. Stat.; Fla. R. Crim. P. 3.211(b)).

In considering the issues relating to treatment, the expert must specifically report on:

- (a) The mental illness causing the incompetence;
- (b) The treatment or treatments appropriate for the mental illness of the Defendant and an explanation of each of the possible treatment alternatives in order of choices;
- (c) The availability of acceptable treatment and, if treatment is available in the community, the expert must so state in the report; and
- (d) The likelihood of the Defendant attaining competence under the recommended treatment, an assessment of the probable duration of the treatment required to restore competence, and the probability that the Defendant will attain competence to proceed in the foreseeable future. (§ 916.12(4)), Fla. Stat.)

**2. Determine whether the Defendant meets the criteria for involuntary commitment.** (§ 916.13, Fla. Stat.; Fla. R. Crim. P. 3.212(c)).

In evaluating the Defendant to determine whether the Defendant may be involuntarily committed, the appointed expert must determine and report on whether:

- (a) The Defendant has a mental illness and because of the mental illness:
  - i. The Defendant is manifestly incapable of surviving alone or with the help or willing and responsible family or friends, including available alternative services, and without treatment, the Defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the Defendant's well-being; or
  - ii. There is a substantial likelihood that in the near future the Defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm;
- (b) All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of the Defendant's condition have been judged to be inappropriate; and
- (c) There is a substantial probability that the mental illness causing the Defendant's incompetence will respond to treatment and the Defendant will regain competency to proceed in the reasonably foreseeable future. (§ 916.13(1)(a)-(c), Fla. Stat.).

## **REPORTS ON COMPETENCE TO PROCEED: INTELLECTUAL DISABILITY OR AUTISM**

The expert must first consider whether the Defendant meets the definition of intellectual disability or autism (§ 916.3012(2), Fla. Stat.). If the expert determines that the Defendant has intellectual disability or autism, the expert must then report on the Defendant's competence to proceed. (916.3012, Fla. Stat.) A defendant whose suspected mental condition is intellectual disability or autism is incompetent to proceed if the defendant does not have sufficient present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against him or her. (§ 916.3012(1), Fla. Stat.)

In considering the issue of competence to proceed, the examining expert must consider and include in his or her report the Defendant's capacity to:

- (a) Appreciate the charges or allegations against the Defendant;
- (b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the Defendant;
- (c) Understand the adversarial nature of the legal process;
- (d) Disclose to counsel facts pertinent to the proceedings at issue;
- (e) Manifest appropriate courtroom behavior; and
- (f) Testify relevantly. (§ 916.3012(3)(a)-(f), Fla. Stat.).

The expert must also consider in his or her report any other factor deemed relevant by the expert. (§ 916.3012(3), Fla. Stat.)

Ø **Should the expert determine that the Defendant is incompetent to proceed, the expert must also:**

**1. Report on any recommended training for the Defendant to attain competence to proceed.**

In considering the issues relating to training, the examining expert must specifically report on the following. (§ 916.3012(4), Fla. Stat.).

- (a) The intellectual disability or autism causing the incompetence;
- (b) The training appropriate for the intellectual disability or autism of the Defendant and an explanation of each of the possible training alternatives in order of choices;
- (c) The availability of acceptable training and, if training available in the community, the expert must so state in the report; and
- (d) The likelihood of the Defendant's attaining competence under the training recommended, an assessment of the probable duration of the training required to restore competence, and the probability that the defendant will attain competence to proceed in the foreseeable future. (§ 916.3012(4)(a)-(d), Fla. Stat.)

**2. Determine whether the Defendant meets the criteria for involuntary commitment.** (§ 916.302, Fla. Stat.)

In evaluating the Defendant to determine whether the Defendant may be involuntarily committed, the appointed expert must determine whether:

- (a) The defendant has intellectual disability or autism;

- (b) There is a substantial likelihood that in the near future the Defendant will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm;
- (c) All available, less restrictive alternatives, including services provided in community residential facilities or other community settings, which would offer an opportunity for improvement of the condition have been judged to be inappropriate; and
- (d) There is a substantial probability that the intellectual disability or autism causing the Defendant's incompetence will respond to training and the Defendant will regain competence to proceed in the reasonably foreseeable future. (§ 916.302(1)(a)-(d), Fla. Stat.)

**PART III. PAYMENT OF EXPERT**

The expert will be paid in accordance with the current Administrative Order regarding payment of appointed experts and the terms of his or her contract with the Sixth Judicial Circuit.

The expert must submit his or her appropriate invoice with an attached copy of this Order Directing Examination for Competence to Proceed to:

Court Administration  
 Administrative Office of the Courts, Fiscal Office  
 7530 Little Road  
 New Port Richey, FL 34654

If the expert also examined the Defendant for sanity, then the expert must submit the portion of his or her bill concerning sanity to defense counsel.

**DONE AND ORDERED** in chambers at \_\_\_\_\_, [Pasco][Pinellas] County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
 CIRCUIT JUDGE

cc:  
 State Attorney  
 [Pasco][Pinellas] County Sheriff  
 \_\_\_\_\_, Expert  
 \_\_\_\_\_, Counsel for the Defendant

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PASCO/PINELLAS COUNTY, FLORIDA**

**STATE OF FLORIDA**

**REF NO:** \_\_\_\_\_  
**UCN:** \_\_\_\_\_

vs.

\_\_\_\_\_  
**SPN:**

**ORDER DIRECTING EXAMINATION OF DEFENDANT'S  
MENTAL CONDITION ON MOTION OF DEFENDANT**

THIS CAUSE is before the Court upon the:

- Motion of the Attorney for the Defendant
- Motion of the Pro Se Defendant

to determine the mental condition of the Defendant. The Court being fully advised, it is hereby

**ORDERED:**

1. That said motion is hereby granted.

**PART I. APPOINTMENT OF EXPERT FOR EXAMINATION OF DEFENDANT; SCHEDULING**

2. The Court appoints Dr. \_\_\_\_\_ to examine the Defendant for purposes of:

- Confidential Defense Examination to Determine Competence to Proceed
- Insanity
- Other Mental Health Defenses
- Aid for Sentencing
- Aid for Sentencing – Capital Case
- Intellectual Disability as a Bar to Execution

As of this date, the Defendant is:

\_\_\_\_\_ Not in Custody. The expert should contact defense counsel for scheduling and must provide defense counsel and the State Attorney advance notice of any scheduled examination of the Defendant.

\_\_\_\_\_ In the [Pasco][Pinellas] County Jail. The expert must notify defense counsel when he or she is available to coordinate examination of the Defendant and must provide defense counsel and the State Attorney advance notice of any scheduled examination of the Defendant.

3. The Sheriff of [Pasco][Pinellas] County must permit the above-named expert to enter the [Pasco][Pinellas] County Jail as necessary to conduct the foregoing evaluation of the Defendant upon presentment of this Order.

4. A copy of this Order serves as authorization for the expert to inspect and copy any discoverable information relating to the Defendant maintained by the Clerk of the Court, State Attorney's Office, any hospital, doctor, or any health care provider, therapist, psychiatrist, psychologist, counselor, or any mental health provider, or other social or human services agency without the necessity of written consent by Defendant.

5. This cause is scheduled for a hearing on the issue of \_\_\_\_\_ at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The expert must submit his or her report to \_\_\_\_\_ by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

## **PART II. EXPERT'S EXAMINATION AND REPORT**

### **CONFIDENTIAL DEFENSE EXAMINATION TO DETERMINE COMPETENCE TO PROCEED**

**If the expert is appointed to examine the Defendant for a confidential examination to determine competence to proceed, the expert shall prepare a report in accordance with instructions from defense counsel.**

### **SANITY**

**If the expert is appointed to examine the Defendant concerning the Defendant's sanity at the time of the alleged offense (M'Naghten Rule) (§ 775.027, Fla. Stat.; Fla. R. Crim. P. 3.216.):**

The expert must examine the Defendant to determine whether, at the time of the commission of the acts constituting the alleged offense(s), the Defendant was insane. Insanity is established when:

- (a) The Defendant had a mental infirmity, disease, or defect; and
- (b) Because of this condition,
  - 1. The Defendant did not know what he or she was doing or its consequences, or
  - 2. Although the Defendant knew what he or she was doing and its consequences, the defendant did not know that what he or she was doing was wrong. (§ 775.027, Fla. Stat.)

The expert is to report only to defense counsel or the pro se Defendant. (Fla. R. Crim. P. 3.216(a)).

### **OTHER MENTAL HEALTH DEFENSES OR AID FOR SENTENCING**

**If the expert is appointed to examine the Defendant for mental health defenses or as an aid for sentencing (§ 921.0026, Fla. Stat.; Fla. R. Crim. P. 3.216(f)):**

The expert is to examine the Defendant and report to defense counsel or the pro se Defendant on whether the Defendant's mental condition presents any factors that may aid in defense of the Defendant or in sentencing the Defendant. Mitigating circumstances the expert must consider include, but are not limited to, whether:

- 1. The capacity of the Defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of the law was substantially impaired.
- 2. The Defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the Defendant is amenable to treatment.
- 3. The Defendant acted under extreme duress or under the domination of another person. (§ 921.0026, Fla. Stat. and 921.0026(2)(j)(k)).

## **SENTENCING IN A CAPITAL CASE**

### **If the expert is appointed to examine the Defendant (§ § 921.141(6) and 921.142(7), Fla. Stat.; Fla. R. Crim. P. 3.202(b)):**

The expert is to examine the Defendant and report to defense counsel or the pro se Defendant regarding statutory or non-statutory mitigating circumstances. Mitigating factors the expert must consider include, but are not limited to, whether:

1. The capital felony was committed while the Defendant was under the influence of extreme mental or emotional disturbance.
2. The Defendant acted under extreme duress or under the substantial domination of another person.
3. The capacity of the Defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of the law was substantially impaired.
4. There is the existence of any other factors in the Defendant's background that would mitigate against imposition of the death penalty. (§§921.141(6) and 921.142(7), Fla. Stat.)

## **INTELLECTUAL DISABILITY AS A BAR TO EXECUTION**

### **If the expert is appointed to examine the Defendant concerning intellectual disability as a bar to execution (§ 921.137, Fla. Stat.; Fla. R. Crim. P. 3.203):**

The expert must promptly test, evaluate, or examine the Defendant and must submit a written report of any findings to the parties and the Court. Fla. R. Crim. P. 3.203(c)(3). The expert's report must include any findings as to whether the Defendant is intellectually disabled. The term "intellectual disability" or "intellectually disabled" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning" means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Agency for Persons with Disabilities. The term "adaptive behavior" means the effectiveness of degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. § 921.137(1), Fla. Stat.

The expert is to report only to defense counsel or the pro se Defendant.

## **PART III. PAYMENT OF EXPERT**

When defense counsel or the Defendant requests an evaluation of the Defendant to determine the Defendant's sanity, other mental health defenses, or as an aid for sentencing, the requesting party must pay. The expert must submit his or her appropriate invoice and a copy of this Order Directing Examination of Defendant's Mental Condition to:

- When requested by the Public Defender:  
Public Defender  
14250 49<sup>th</sup> St. North  
Clearwater, FL 33762
- When requested by Court appointed counsel, counsel for a Defendant determined indigent for costs, or a pro se Defendant who is indigent for cost:  
Justice Administrative Commission  
PO BOX 1654  
Tallahassee, FL 32302

Payment for evaluations to determine intellectual disability as a bar to execution will be made by the Court. The expert must submit his or her appropriate invoice with an attached copy of this Order Directing Examination of Defendant's Mental Condition to the entity indicated below which is hereby ordered the pay the expert:

Court Administration  
Administrative Office of the Courts, Fiscal Office  
7530 Little Road  
New Port Richey, FL 34654

**DONE AND ORDERED** in chambers at \_\_\_\_\_, [Pasco][Pinellas] County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CIRCUIT JUDGE

cc:

State Attorney

[Pasco][Pinellas] County Sheriff

\_\_\_\_\_, Expert

\_\_\_\_\_, Counsel for the Defendant

\_\_\_\_\_, Entity Ordered to Pay

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PASCO/PINELLAS COUNTY, FLORIDA**

**STATE OF FLORIDA**

**REF NO:** \_\_\_\_\_  
**UCN:** \_\_\_\_\_

vs.

\_\_\_\_\_  
**SPN:**

**ORDER DIRECTING EXAMINATION OF DEFENDANT'S  
MENTAL CONDITION ON MOTION OF THE STATE**

THIS CAUSE is before the Court upon the Motion of the State to determine the mental condition of the Defendant. The Court being fully advised, it is hereby

**ORDERED:**

1. That said motion is hereby granted.

**PART I. APPOINTMENT OF EXPERT FOR EXAMINATION OF DEFENDANT; SCHEDULING**

2. The Court appoints Dr. \_\_\_\_\_ to examine the Defendant for purposes of:

- Insanity
- Other Mental Health Defenses
- Aid for Sentencing
- Aid for Sentencing – Capital Case
- Intellectual Disability as a Bar to Execution

As of this date, the Defendant is:

\_\_\_\_\_ Not in Custody. The expert should contact defense counsel for scheduling and must provide defense counsel and the State Attorney advance notice of any scheduled examination of the Defendant.

\_\_\_\_\_ In the [Pasco][Pinellas] County Jail. The expert must notify defense counsel when he or she is available to coordinate examination of the Defendant and must provide defense counsel and the State Attorney advance notice of any scheduled examination of the Defendant.

3. The Sheriff of [Pasco][Pinellas] County must permit the above-named expert to enter the [Pasco][Pinellas] County Jail as necessary to conduct the foregoing evaluation of the Defendant upon presentment of this Order.

4. A copy of this Order serves as authorization for the expert to inspect and copy any discoverable information relating to the Defendant maintained by the Clerk of this Court, State Attorney's Office, any hospital, doctor, or any health care provider, therapist, psychiatrist, psychologist, counselor, or any mental health provider, or other social or human services agency without the necessity of written consent by Defendant.

5. This cause is scheduled for a hearing on the issue of \_\_\_\_\_ at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The expert must submit his or her report to \_\_\_\_\_ by the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

## **PART II. EXPERT'S EXAMINATION AND REPORT**

### **SANITY**

**If the expert is appointed to examine the Defendant concerning the Defendant's sanity at the time of the alleged offense (M'Naghten Rule) (§ 775.027, Fla. Stat.; Fla. R. Crim. P. 3.216.):**

The expert must examine the Defendant to determine whether, at the time of the commission of the acts constituting the alleged offense(s), the Defendant was insane. Insanity is established when:

- (a) The Defendant had a mental infirmity, disease, or defect; and
- (b) Because of this condition,
  1. The Defendant did not know what he or she was doing or its consequences, or
  2. Although the Defendant knew what he or she was doing and its consequences, the defendant did not know that what he or she was doing was wrong. (§ 775.027, Fla. Stat.)

When the expert is appointed by the Court on request of the State, attorneys for the State and Defendant may be present at the examination. Fla. R. Crim. P. 3.216(d)).

### **OTHER MENTAL HEALTH DEFENSES**

**If the expert is appointed to examine the Defendant on motion of the State (Fla. R. Crim. P. 3.216(f)):**

The expert is to examine the Defendant as to the mental health defense raised by the Defendant. Attorneys for the State and Defendant may be present at the examination.

### **SENTENCING IN A CAPITAL CASE – State request**

**If the expert is appointed to examine the Defendant on motion of the State (Fla. R. Crim. P. 3.202(d)):**

The expert is to examine the Defendant but the examination is to be limited to those mitigating circumstances the Defendant expects to establish through expert testimony. Attorneys for the State and Defendant may be present at the examination.

### **INTELLECTUAL DISABILITY AS A BAR TO EXECUTION**

**If the expert is appointed to examine the Defendant concerning intellectual disability as a bar to execution (§ 921.137, Fla. Stat.; Fla. R. Crim. P. 3.203):**

The expert must promptly test, evaluate, or examine the Defendant and must submit a written report of any findings to the parties and the court. Fla. R. Crim. P. 3.203(c)(3). The expert's report must include any findings as to whether the Defendant is intellectually disabled. The term "intellectual disability" or "intellectually disabled" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning" means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Agency for Persons with Disabilities. The term "adaptive behavior" means the effectiveness of degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. § 921.137(1), Fla. Stat.

When the expert is appointed by the Court on request of the State, attorneys for the State and Defendant may be present at the examination and the report is to be submitted to the parties and the Court. Fla. R. Crim. P. 3.203(c).

**PART III. PAYMENT OF EXPERT**

When a request is made for an evaluation of the Defendant to determine the Defendant’s sanity or other mental health defenses or when the State Attorney selects the expert under Fla. R. Crim. P. 3.203(c)(2) to determine the State Attorney or the requesting party must pay. The expert must submit his or her appropriate invoice and a copy of this Order Directing Examination of Defendant’s Mental Condition to the State Attorney at:

State Attorney  
PO BOX 5028  
Clearwater, FL 33758-5028

**DONE AND ORDERED** in chambers at \_\_\_\_\_, [Pasco][Pinellas] County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
CIRCUIT JUDGE

cc:

State Attorney

[Pasco][Pinellas] County Sheriff

\_\_\_\_\_, Expert

\_\_\_\_\_, Counsel for the Defendant

\_\_\_\_\_, Entity Ordered to Pay