

## COMPETENCY HEARING

### I. WHAT'S GOING ON WITH DEFENDANT?

Defendant is charged with a crime and exhibiting characteristics that may indicate he/she is not competent to stand trial.

Defendant is in trial and behaving in a bizarre fashion that may indicate he/she is not competent to stand trial.

### II. QUESTION PRESENTED:

Is defendant competent to stand trial?

### III. RELEVANT STATUTES:

**O.R.C. 2945.37:** The issue of defendant's competence to stand trial may be raised by:

1. the prosecution
2. the defense
3. the court

- A. If raised before the trial has begun, the court *shall* hold a hearing on the issue. The hearing shall be held within 30 days unless an evaluation is requested in which case the hearing will be held within 10 days after the evaluation is filed with the court.
- B. If raised after the trial has begun, the court shall hold a hearing on the issue *only* for good cause shown or upon the court's own motion. A party raising the issue of competence after the trial has begun has the burden of proving "good cause" at the hearing to determine whether the issue of competency is proper at that time. "Good cause" is within the court's sound discretion to determine. Factors the court should consider in making a good cause determination are:
  1. evidence of irrational behavior;
  2. counsel's expressed doubts about the defendant's competency
  3. prior medical evaluations relating to competency.
- C. The hearing shall be within 30 days after the issue of competency is raised with the court but may be continued for good cause.
- D. In a competency hearing both prosecution and defense may submit evidence pertaining to defendant's competence to stand trial.
- E. **BURDEN OF PROOF: PREPONDERANCE OF THE EVIDENCE.** If the court finds the defendant incompetent to stand trial by a preponderance of the evidence presented, the court will enter an order pursuant to **O.R.C. 2945.38**. The defendant is incompetent to stand trial if the judge finds by a preponderance of the evidence that the defendant:
  1. is unable to understand the nature and objective of the proceeding against him/her OR
  2. is unable to assist in his/her own defense.

These are the findings that the court would make.

- F. Since you are not a doctor, you will need to order that defendant undergo an evaluation to determine if he/she is competent at this time. You cannot by law order the evaluation be done by the state mental hospital (which, for Cuyahoga County is Northcoast Behavioral Healthcare.) It may be helpful to access the Alcohol, Drug Addiction & Mental Health Services Board of Cuyahoga County website at [www.adamhsc.org](http://www.adamhsc.org) for locations.

All evaluation costs must be paid by your legislative authority and then taxed as costs in this case. O.R.C. 2945.37(H).

- G. The defendant is incompetent to stand trial if the judge finds by a preponderance of the evidence that the defendant:
1. is unable to understand the nature and objective of the proceeding against him/her OR
  2. is unable to assist in his/her own defense.

Speedy trial period is tolled from the date a motion challenging competency is raised/filed until a court determines whether the defendant is competent. State v. Palmer (1998), 84 Ohio St. 3d 103, 702 N.E. 2d 72, 1998-Ohio-507.

If defendant is found competent, trial proceeds as in the ordinary course.

The test for competency is whether:

- (1) the defendant has sufficient present ability to consult with his/her lawyer with a reasonable degree of rational understand, and
- (2) whether he/she has a rational as well as factual understanding of the proceedings against him/her.

State v. Berry (1995), 72 Ohio St. 3d 354, 359, quoting Dusky v. United States (1960), 362 U.S. 402.

A defendant's failure to make "meaningful responses" to questions posed by the court may be an indicator of incompetence. The court may also ask the defendant's attorney whether or not the defendant seems to understand the proceedings, taking into account the amount of time the defendant and attorney have worked together. State v. Thomas (2002), 97 Ohio St. 3d 309, 316.

Remember that incompetency must not be equated with mental/emotional instability, or even with outright insanity. A defendant may be emotionally disturbed or psychotic and still be competent to stand trial. State v. Bock (1968), 28 Ohio St. 3d 108, 110.

#### **IV. EVIDENCE NEEDED TO PROVE THE DEFENDANT IS INCOMPETENT TO STAND TRIAL:**

The court need find only one of the two bases set forth below (find "A" or "B"):

**A. Defendant is unable to understand the nature and objective of the proceeding.**

1. Does the defendant know why he/she is in custody?
  - a) Does defendant know that he/she has done something that is against the law or is being accused of breaking the law?
2. Does the defendant understand the charges brought against him/her?
  - a) Does the defendant understand what he/she is being accused of doing is illegal?
3. Does defendant understand the possible punishments that might be imposed?
  - a) Does defendant know what the punishment is?  
Example: If the punishment is imprisonment, defendant must understand that imprisonment means going to jail and being confined under supervision until the term of the sentence has been served.
  - b) Does defendant understand the nature of the punishment?  
Example: If defendant understands what imprisonment is, but thinks that he/she will be rescued by a genie once inside the jail, he/she does not understand the nature of the punishment.

**B. Defendant is unable to assist in his/her own defense.**

1. Does the defendant know the roles of the lawyers (both the prosecution and the defense) and the judge?
  - a) Even if defendant does not initially know what the roles are, can defendant understand it to the extent an average person would after some explanation?  
Example: If defendant understands that the defense attorney is there to help defendant (or “get me off”), the prosecuting attorney is there to prove he/she committed a crime (“put me in jail”), and the judge will determine punishment.
  - b) Does the defendant understand that the prosecutor and defense lawyers are opponents and that the judge is neutral?
  - c) Does defendant think the system is out to get him/her for unreasonable reasons (not counting racially motivated distrust of the police or other, more routine types of distrust for the law)?  
Example: If the defendant thinks the system is unfair based upon recognized patterns of discrimination, the defendant may be able to assist in his/her defense. But, if the defendant thinks the lawyers and the judge can read his/her thoughts and are there to put defendant in prison so he/she cannot carry out the mission of saving the world from the Martians, this defendant may not be able to assist in his/her defense.
2. Does the defendant trust his/her lawyer with information?
  - a) Will the defendant be forthcoming in giving his/her attorney information necessary to prepare the case for trial?
3. Does the defendant trust that the defense attorney is acting in his/her best interest? Example: If the defendant is skeptical about trusting the

defense lawyer, this does not rise to the level of not being able to assist. But if the defendant thinks the defense attorney is out to get him and is acting in a secret conspiracy with the prosecutor to steal his/her stamp collection, this defendant may not be able to assist in his/her defense.

4. Can the defendant control himself/herself in the courtroom and follow procedural rules?
  - a) Will the defendant be able to sit quietly or quietly address the defense attorney if defendant believes a witness is lying? If the defendant says he/she cannot control himself/herself, this defendant may not be able to assist in his/her defense.
5. Is the defendant able to realistically gauge his/her chances of success and is the defendant able to make decisions that are in his/her best interest and in line with his/her goals?
  - a) Will the defendant consider plea bargains, especially if the weight of the evidence makes it very unlikely that the defense will prevail at trial and the defense attorney alerts the defendant to this fact?
  - b) Will the defendant consider pleading guilty if it is in his/her best interest?
  - c) Is the defendant able to recognize when there is a likely chance of failure in the courtroom?
  - d) Does the defendant insist upon going to trial and refuse to consider other alternatives for outlandish or irrational reasons?

## **V. EVIDENCE WHICH MAY BE PRESENTED TO THE COURT:**

- A. “Examiner’s” Reports/Opinions (The defendant’s “examiner” means a psychiatrist or licensed clinical psychologist but see O.R.C. 2945.37(A)(2) for more detail.):  
Can the “examiner” say to a reasonable degree of medical (psychiatric) certainty, that the defendant is/is not competent to stand trial or assist in his/her defense?

This expert will need to testify in court unless the prosecution and defense agree to stipulate to the examiner’s report. During the examiner’s testimony, the report will be submitted into evidence and may be relied upon by the court. If stipulated to, it may be considered an exhibit.

In order to obtain the report of an expert, the judge may need to order an evaluation to determine whether defendant is competent.

See **20 DAY EVALUATION SECTION**, *infra*

See **COMMON EVIDENTIARY ISSUES**, *supra*.

- B. Defendant’s Refusal/Inability to Assist:

The court may inquire about the defendant’s ability to assist his/her attorney, courtroom personnel, probation officer, bond commissioners, etc.

1. POTENTIAL PROBLEMS:

- a) Hearsay. See **COMMON EVIDENTIARY ISSUES**, *supra*.
- b) Attorney-client Privilege. If the defendant is uncooperative, the defense attorney may provide only generalized statements that the defendant is unable/unwilling to provide needed information in order for preparation of a proper defense. See **COMMON EVIDENTIARY ISSUES**, *supra*.

**VI. WHO WILL BE AT THE HEARING?:**

The defendant has the right to attend a hearing on competency.

Unless the expert's report is stipulated to by prosecution and defense, the "examiner" will need to be present to testify.

**IN THE \_\_\_\_\_ MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO**

STATE/MUNICIPALITY	)	CASE NO. _____
vs.	)	JUDGE _____
DEFENDANT	)	JOURNAL ENTRY
	)	Order for Evaluation
	)	
	)	
	)	

It has come to this court's attention that the defendant may not be competent to stand trial.

Defendant hereby ordered to have psychiatric evaluation with Dr. \_\_\_\_\_  
on \_\_\_\_\_ at \_\_\_\_\_ as follows (check one):  
(Date) (Time)

Defendant is in custody. Evaluation to occur at \_\_\_\_\_  
(Jail location)

Defendant is in custody. \_\_\_\_\_  
(Custodial Law Enforcement Agency)  
is hereby ordered to transport defendant to \_\_\_\_\_  
(Doctor's office/facility address)  
for said appointment and return defendant to jail hereafter.

Defendant is not in custody. Defendant ordered to attend evaluation at:  
\_\_\_\_\_  
(Doctor's office/facility address)

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**JUDGE**