



F32 Improving Forensic Competency Evaluations Through Better Participation by Defense Counsel

Paul R. Spyhalski, JD*, 211 2nd Street, NW, Austin, MN 55912

After attending this presentation, attendees will better understand what information should be provided to forensic competency examiners.

This presentation will impact the forensic science community by encouraging all parties to criminal proceedings, but particularly criminal defense counsel, to follow through with a decision to seek an evaluation of the client to properly inform the examiner of the issues resulting in the referral. This presentation will urge criminal defense counsel to provide referring information, as well as other third-party information, to the examiner to assist in the determination of whether the client may constitutionally be tried in criminal court.

“It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to trial.”¹ The United States Supreme Court has “repeatedly and consistently recognized” that “the criminal trial of an incompetent defendant violates *due process*.”²

This presentation explores the critical connection between the fields of psychology and the law in determining who may be constitutionally subjected to the criminal processes of the state. Given this link between psychology and the law, forensic examiners expect information from the referring source, and defense attorneys in particular, concerning the nature, extent, and quality of the attorney-client interactions in helping the examiner determine the contours of the evaluation.

Indications from officials at the Minnesota State Operated System (MNSOS) indicate that defense counsel failed to meet the expectations of the examiner in this regard. In particular, defense counsel failed to respond to even the most basic inquiry from MNSOS asking why the client was being referred for examination in roughly 75% of the cases referred to MNSOS for examination.

This failure to provide even the most basic referring information, let alone the failure to provide other additional important collateral information, such as prior treatment records and/or evaluations, contributes to the potential failure of the evaluator to address the issue that resulted in the referral in the first instance. This failure by defense counsel to respond potentially impacts the due process rights of clients to not be tried for a criminal charge if unable to competently make the following decisions required of a defendant during the course of trial: (1) whether to waive the right to remain silent and testify; (2) whether to waive a jury trial; (3) whether to waive confrontation or cross-examination of witnesses; (4) whether and how to put in a defense; and, (5) whether to raise an affirmative defense.

Defense counsel, in expressing a concern about his or her client’s competency to stand trial by seeking a referral for examination, should be prepared, at a minimum, to provide information about the quality of the attorney-client relationship in order for the examiner to frame the issues for their own evaluation, report, and eventual testimony, if necessary. Competent defense counsel should also be prepared to assist in gathering records of prior treatment and evaluations to better inform the examiner for this evaluation of the client.

Reference(s):

1. *Drope v. Missouri*. 420 U.S. 162, 171 (1974).
2. *Cooper v. Arizona*. 517 U.S. 348, 354 (1996).

Competency, Capacity, Psychology