8-507.1. Competency; transfer to district court.

A. **Purpose; scope.** This rule is intended to provide a timely, efficient, and accurate procedure for resolving whether a defendant is competent to stand trial. Competency to stand trial is distinct from other questions about a defendant's mental health that may be relevant in a criminal proceeding, such as the substantive defenses of not guilty by reason of insanity at the time of commission of an offense and incapacity to form specific intent.

B. **Definitions.** For purposes of this rule, the following definitions shall apply.

(1) ***Competency.*** The terms competency, competence, and competent are used interchangeably throughout this rule and refer to whether the defendant has,

(a) sufficient present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding,

(b) a rational as well as factual understanding of the proceedings against the defendant, and

(c) the capacity to assist in the defendant's own defense and to comprehend the reasons for punishment.

(2) ***Competency evaluation.*** A competency evaluation is an examination of the defendant by a qualified mental health professional, appointed by and acting on behalf of the court, limited to determining whether the defendant is competent to stand trial. Unless otherwise ordered by the court, a competency evaluation shall be limited to a determination of the defendant's competency and shall not state opinions about other matters including the defendant's sanity at the time of the offense or ability to form a specific intent.

C. **Raising a question of competency; who may raise.** A question of the defendant's competency to stand trial shall be raised whenever it appears that the defendant may not be

competent to stand trial. The issue shall be raised by a motion for a competency evaluation and may be raised by a party or upon the court's own motion at any stage of the proceedings.

D. **Motion for competency evaluation.**

(1) ***By motion of a party represented by counsel.*** When a question of competence is raised by a party who is represented by counsel, a motion for a competency evaluation shall be in writing and shall contain the following:

(a) a statement that the motion is based on a good faith belief that the defendant may not be competent to stand trial;

(b) a description of the facts and observations about the defendant that have formed the basis for the motion. If filed by defense counsel, the motion shall contain such information without violating the attorney–client privilege;

(c) a statement that the motion is not filed for purposes of delay;

(d) a statement of whether the motion is opposed as provided in Rule 8-304 NMRA;

(e) a completed defendant information sheet, [~~substantially in the form approved by the Supreme Court~~] Form 9-514A NMRA; [~~and~~]

(f) a statement of whether the defendant is indigent; and

[~~(f)~~](g) a request for a competency evaluation.

(2) ***By motion of a self-represented defendant or upon the court's own motion.*** When a question of competence is raised by a party who is self-represented or upon the municipal court's own motion, the municipal court shall dispose of the motion by filing an order substantially in the form approved by the Supreme Court that addresses the following:

(a) whether the motion is based on a good faith belief that the defendant is not competent to stand trial;

(b) a description of the facts and observations about the defendant that have formed the basis for the motion;

(c) whether the motion is advanced for purposes of delay;

(d) whether the motion is opposed; and

(e) whether a competency evaluation is requested.

E. **Suspension of proceedings.** Upon the filing of a motion for a competency evaluation, further proceedings in the case shall be suspended until the motion is denied or, if the motion is granted, until the case is remanded from the district court. The filing of a motion for a competency evaluation shall not affect a court's authority to set or review conditions of release under Rule 8-401 NMRA.

F. **Resolution of motion; reasonable belief.** In considering a motion for a competency evaluation, the court shall comply with the following procedures.

(1) ***Unopposed.*** Within two (2) days of the filing of a motion that is unopposed under Subparagraph (D)(1)(d) of this rule, the court shall file an order substantially in the form approved by the Supreme Court finding whether the motion is supported by a reasonable belief that the defendant may not be competent to stand trial. The determination shall be based solely upon the allegations in the motion and upon the court's own observations of the defendant.

(2) ***Opposed.*** A response in opposition to a motion for a competency evaluation shall be in writing, shall cite specific facts in opposition to the motion, and shall be filed within five (5) days of the filing of the motion or be deemed waived. Upon the filing of a response in opposition, the court shall do one of the following:

(a) unless the court determines that a hearing on the motion is necessary, file an order substantially in the form approved by the Supreme Court within two (2) days finding whether the motion is supported by a reasonable belief that the defendant may not be competent to stand trial; or

(b) hold a hearing on the motion and file an order substantially in the form approved by the Supreme Court within fifteen (15) days of the filing of the response finding whether the motion is supported by a reasonable belief that the defendant may not be competent to stand trial.

G. **Transfer to district court; effect on municipal court proceedings.** An order finding a reasonable belief that the defendant may not be competent to stand trial under Paragraph E of this rule also shall transfer the case to the district court for further proceedings under Rule 5-602.1 NMRA. The order shall be delivered to the district court within two (2) days of the finding of a reasonable belief. When such an order is filed, jurisdiction over the defendant and any conditions of release shall be transferred to the district court. Any conditions of release and any bond set by the municipal court shall continue in effect unless amended by the district court. The municipal court shall suspend its case pending remand from the district court.

H. **Remand from district court.** Upon remand from the district court after proceedings to determine the defendant's competency, the municipal court shall proceed as follows.

(1) ***Defendant found competent.*** If the defendant has been found competent to stand trial, the municipal court shall resume the proceedings against the defendant as otherwise provided under these rules.

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Committee commentary. — The municipal court shall transfer a case to the district court for a competency determination when the court finds that the motion is supported by a reasonable belief that the defendant may not be competent to stand trial. A reasonable belief may arise from the court's own observations or from the factual allegations in a party's motion. If the municipal court finds a reasonable belief that the defendant may not be competent, the municipal court shall suspend the proceedings and transfer the case to district court for a determination of competency.

The reasonable belief standard requires the court to consider only whether the movant's subjective, good faith belief that the defendant may not be competent to stand trial is objectively reasonable. *Cf. Kestenbaum v. Pennzoil Co*., 1988-NMSC-092, ¶ 27, 108 N.M. 20, 766 P.2d 280 (discussing the difference between a "subjective good faith belief as opposed to an objective standard of reasonable belief"). In making this determination, the court should evaluate whether the motion demonstrates that the movant's good faith belief is supported by specific, articulable facts that would lead a reasonable person to believe that the defendant may not be competent to stand trial. *Cf. State v. Martinez*, 2018-NMSC-007, ¶ 10, 410 P.3d 186 ("An officer obtains reasonable suspicion when the officer becomes aware of specific articulable facts that, judged objectively, would lead a reasonable person to believe criminal activity occurred or was occurring." (internal citation and quotation marks omitted)). This is not a heavy burden, and in most circumstances a motion that meets the requirements of Paragraph D of this rule will satisfy

the reasonable belief standard without the need for an evidentiary hearing. Without such a showing, however, a motion for a competency evaluation—whether opposed or unopposed—should be denied. *Cf. State v. Hovey*, 1969-NMCA-049, ¶ 18, 80 N.M. 373, 456 P.2d 206 ("[T]here must be a showing of reasonable cause for the belief that an accused is not competent to stand trial.").

For further discussion of the procedures set forth in this rule, *see* the committee commentary to Rule 5-602.1 NMRA.

Courtroom closure

Hearings under this rule may be closed only upon motion and order of the court. *See* Rule 8-114(A) NMRA ("All courtroom proceedings shall be open to the public unless the courtroom is closed by an order of the court entered under this rule."); *see also* Rule 8-114 committee commentary ("[I]f a party believes that courtroom closure is warranted for any reason, including the protection of confidential information, such party may file a motion for courtroom closure under Subparagraph (B)(2) of this rule.").

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