IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR

LEE COUNTY, FLORIDA

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| STATE OF FLORIDA  vs.  <DEFENDANT> | CASE NO. |
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**ORDER APPOINTING EXPERTS TO EVALUATE DEFENDANT TO DETERMINE IF DEFENDANT IS INTELLECTUALLY DISABLED OR AUTISTIC AND, IF SO, WHETHER DEFENDANT IS COMPETENT TO PROCEED**

THIS MATTER comes before the Court on the <Defendant’s/State’s> counsel’s motion, pursuant to Rule 3.210(b), Florida Rules of Criminal Procedure, to determine the Defendant’s competence to proceed. It is alleged that the Defendant may have an intellectual disability or autism as defined in sections 393.063 and 916.106, Florida Statutes. Accordingly, it is

ORDERED AND ADJUDGED as follows:

1. Pursuant to sections 916.301(1) and (2), Florida Statutes, the Court hereby appoints qualified experts who have expertise in evaluating persons who have an intellectual disability or autism.
2. Pursuant to section 916.301(2)(a), Florida Statutes, the Court appoints the following expert(s) to evaluate whether the Defendant meets the definition of intellectual disability or autism and, if so, whether the Defendant is competent to proceed:
3. Pursuant to section 916.301(2)(b), Florida Statutes, the Court directs the Agency for Persons with Disabilities (APD) to select:
   1. A psychologist 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
   2. A social service professional, as defined in section 916.106(17), Florida Statutes, with experience in working with persons who have an intellectual disability or autism.
4. The Court appoints the psychologist and social service professional selected by the APD. The APD-selected psychologist shall evaluate whether the Defendant meets the definition of intellectual disability or autism and, if so, whether the Defendant is incompetent to proceed due to intellectual disability or autism. The APD-selected social service professional shall provide a social and developmental history of the Defendant pursuant to section 916.301(2) (b) 2, Florida Statutes. The history shall be provided to the Court-selected expert and APD-selected psychologist before their written evaluations.
5. The experts appointed pursuant to paragraphs 2 and 3 above shall examine the Defendant in accordance with the provisions of Rule 3.211, Florida Rules of Criminal Procedure, and section 916.3012, Florida Statutes.
6. The expert shall first consider whether the Defendant meets the definition of intellectual disability or autism as defined in section 393.063, Florida Statutes.
   1. If the Defendant does not meet the definition of intellectual disability or autism, the expert shall so report, stating the reasons.
   2. If the expert finds that the Defendant meets the definition of intellectual disability or autism, the expert will then determine whether the Defendant is competent to proceed pursuant to the criteria set forth in section 916.3012, Florida Statutes, and Rule 3.211(a), Florida Rules of Criminal Procedure, that is, whether the Defendant has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and whether the Defendant has a rational, as well as factual, understanding of the pending proceedings. In making this determination the expert must consider and specifically include in his or her report the Defendant’s capacity to:
      1. Appreciate the charges or allegations against the Defendant;
      2. Appreciate the range and nature of possible penalties, if applicable, which may be imposed in the proceedings against the Defendant;
      3. Understand the adversarial nature of the legal process;
      4. Disclose to counsel facts pertinent to the proceedings at issue;
      5. Manifest appropriate courtroom behavior; and
      6. Testify relevantly.
   3. In addition, the expert shall consider and include in his or her report any other factor deemed relevant by the expert.
7. If the expert should find that the Defendant is incompetent to proceed, the expert shall report on any recommended training for the Defendant to attain competence to proceed. In considering the issues relating to training, the examining expert shall specifically report on:
   1. The intellectual disability or autism causing the incompetence;
   2. 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;
   3. The availability of acceptable training and, if training is available in the community, the expert shall so state in the report; and
   4. 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.
8. If the expert should find that the Defendant is incompetent to proceed due to intellectual disability or autism, the expert shall report on whether the Defendant meets the criteria for involuntary commitment for training pursuant to section 916.302, Florida Statutes. In considering the issues relating to involuntary commitment, the examining expert shall specifically report on whether:
   1. 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;
   2. Any available, less restrictive alternatives, including services provided in community residential facilities or other community settings, would offer an opportunity for improvement of the condition and whether such alternatives are appropriate; and
   3. 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 competency to proceed in the reasonably foreseeable future.
9. If the expert should find that the Defendant is incompetent to proceed due to intellectual disability or autism, the expert shall consider and include in his or her report an analysis of whether the Defendant lacks sufficient capacity to give express and informed consent, as defined in section 916.106(8), Florida Statutes, to a voluntary application for services and lacks the basic survival and self-care skills to provide for his or her well-being or is likely to physically injure himself or herself or others if allowed to remain at liberty. The Court notes that if charges are dismissed pursuant to section 916.303, Florida Statutes, the APD, the state attorney, or the Defendant’s attorney may be obligated to apply for involuntary admission of the Defendant to residential services pursuant to section 393.11, Florida Statutes.
10. The written report submitted by the expert must also:
    1. Identify the specific matters referred for evaluation;
    2. Describe the evaluative procedures, techniques, and tests used in the examination and the purpose or purposes for each;
    3. 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
    4. Identify the sources of information used by the expert and present the factual basis for the expert’s clinical findings and opinions.
11. Pursuant to section 916.301(4), Florida Statutes, reasonable fees for services rendered by the experts appointed herein, including those selected by the APD who are not State employees, shall be paid by the Court. The expert must submit his or her invoice for payment to the Court no later than 10th of the month following the month that services are rendered pursuant to this Order. Payment shall be in accordance with the rates approved by the Justice Administrative Commission and Court Administration/Administrative Order. Invoices should be submitted for payment to: <Name, Address>.
12. Pursuant to section 916.301(4), Florida Statutes, state employees appointed as experts herein are only entitled to reimbursement of travel expenses in accordance to section 112.061, Florida Statutes.
13. The Court-selected expert, APD-selected psychologist, and the APD-selected social service professional, appointed above, shall submit their written reports directly to the Court with copies to the Attorney for the State and the Attorney for the Defendant, at the addresses set forth in the Certificate of Service below. The written reports must be submitted within 15 days from the date of this Order.
14. If the Defendant is in custody, the Sheriff of \_\_\_\_\_\_\_\_ County, or one of his or her duly appointed deputies, shall transport the Defendant to the above-referenced examinations, or, alternatively, make the Defendant available to the examining expert in a facility conducive to perform the evaluation. If the Defendant is not in custody, the Defendant shall appear at a reasonable place and time, as scheduled, for an evaluation pursuant to this Order.

This matter is set for hearing to determine the Defendant’s mental competence to proceed on       2019 at      , at the following location:     . The experts are instructed not to attend the hearing unless specifically instructed to appear by the lawyers or the Court.

For experts appointed by the court for the determination of competency, the court is responsible for payment. Prior to issuing a subpoena for the court-appointed expert to testify, counsel shall confer with opposing counsel to confirm that: (1) counsel have received the expert’s written report and there is no stipulation or agreement for the Court to make a determination of competency in reliance on the expert’s written report without testimony; (2) sufficient hearing time has been scheduled for the expert testimony – both direct and anticipated cross-examination; and (3) the hearing is noticed and scheduled with the court’s judicial assistant as an evidentiary hearing.

DONE AND ORDERED at , Florida, this \_\_\_ day of\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2019.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CIRCUIT JUDGE

# **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished to the Office of the State Attorney, <ADDRESS>; Office of the Public Defender, <ADDRESS>, to the Sheriff of <COUNTY>, <ADDRESS>; Agency for Persons with Disabilities, <ADDRESS>, and <COURT APPOINTED EXPERT>, <ADDRESS>this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2019.

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