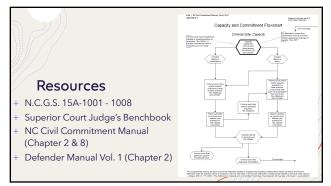


Case Example One Background + Male client + Misuse of 911 System (class 1 misdemeanor) + 52 calls made to 911 throughout a one day period + Rambling/not making sense on calls + Won't answer judge's questions during first appearance Case Example One + Scattered thoughts + No eye contact + Poor hygiene + A/V hallucinations + Schizophrenia diagnosis



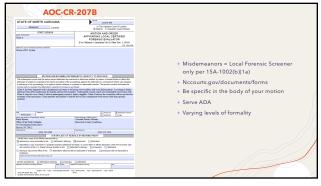
Capacity to Proceed N.C.G.S. § 15A-1001 et seq. Drope v. Missouri, 420 U.S. 162 (1975)

 No person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.

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Try to talk to client first, but...

- + Attorney may not allow client to proceed if believes client is incapable of doing so
- + Duty to raise capacity to proceed if good faith doubt
- + May be raised over client objection



AOC-C	R-207B	
	IN EUT D	
ORDER ADDOMENG LOC	AL CERTIFIED FORENSIC EVALUATOR	
A notice questioning the defendant's requestly to proceed having learn made and considered, the Court finish that the defendant's requestly to proceed is included. The finish that the defendant's requestly to proceed is		
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		-
AGC-07-3078, Gete Two, Flex 109		

N.C.G.S. 15A-1002(b1): May stipulate that defendant is capable to proceed. Prohibited from stipulating to incapacity.

Case Example Two Background + Male client + Robbery with a Dangerous Weapon + Was told by God to take property - Paranoid - Schizoaffective, bipolar type - Refuses to discuss potential defensesadamant that did what he was told to do



The ability to cooperate with counsel to the end that any available defense may be interposed

State v. Jackson, 302 N.C. 101 (1981)

State v. O'Neal, 116 N.C. App. 390 (1994)

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Central Regional Hospital vs Retained Defense Expert

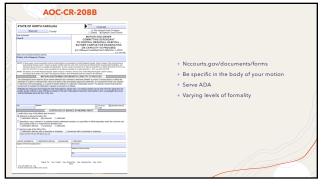
Central Regional Hospital

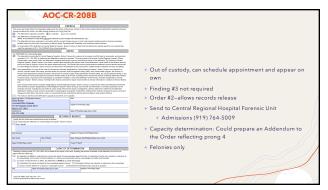
- + Current 2-4 month waiting period for an
- + Generally a one day evaluation
- + CRH easily gets records using the Order + State often accepts CRH assessment

Retained Defense Counsel

- + Potential for expedited evaluation
- + If want expert to review records, counsel needs to obtain and provide
- + Consider type of case
- + Head start on MSO evaluation
- + Forensicresources.org
- + Talk to Sarah Olson
- + Use form AOC-G-309

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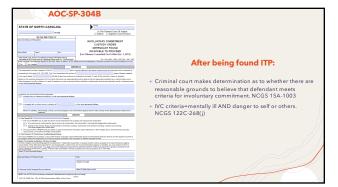


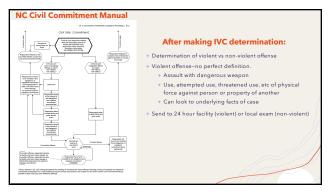


Capacity Hearing

- + May be uncontested
- + Timing of hearing request
- + Level of formality varies
- + Expert report admissible; expert may testify; lay witnesses
- + Attorney observations
- + D has burden of persuasion-preponderance of the evidence

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Inpatient Commitment

- + Cherry, Broughton, Central Regional Hospital
- + Team including psychiatrist, psychologist, social worker, SLP
- + IVC hearings in facility county; D represented by other counsel
- + Capacity Restoration Program
 - +Helping patients achieve three prongs of CTP
 - + "Opinions vary on the nature and value of these efforts."
 - ---NC Superior Court Judges' Benchbook

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ITP from Mental Defect vs. Illness

- + e.g. Intellectual Disability, Dementia, Alzheimer's, Traumatic Brain Injury causing Major Neurocognitive Disorder
- + Set up client for success the best you can

Court **SHALL** Dismiss When: N.C.G.S. 15A-1008

- + Appears to satisfaction of the court defendant will not gain capacity; or
- + In custody >/= Level 6 (felonies) or Level 3 (misdemeanors; or
- + Five years from incapacity determination for misdemeanors; Ten years for felonies
- + Without prejudice to refile

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Practice Tips

- + Familiarize with John Rubin's manuals and articles
- + Consider limiting orders
- + Contested capacity to proceed hearing \rightarrow use your own expert
 - +Additional discovery requests
 - +Prior hearing transcripts
 - +Constitutionalize your motion
 - +Object to court's finding capacity

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