



**IN THE DISTRICT COURT OF COMANCHE COUNTY
STATE OF OKLAHOMA**

STATE OF OKLAHOMA,)
)
 Plaintiff,)
 v.)
)
 RICKY RAY MALONE,)
)
 By _____)
 Defendant. Deputy)

STATE OF OKLAHOMA
 Comanche County
 FILED in the
 Office of the Court Clerk

Case No. CF-2005-147

FEB 13 2025

**ORDER GRANTING THE STATE’S MOTION
 AND
 AUTHORIZING MENTAL HEALTH REEVALUATIONS
 PURSUANT TO 22 O.S. 1005.1**

On February 11, 2025, the State of Oklahoma’s Motion for Court Order Allowing an Expert Retained by the State to Reevaluate Ricky Ray Malone’s Competence to be Executed and the Defendant’s objection thereto came on for hearing. The Court, having reviewed the pleadings, having heard the argument of counsel, and being fully advised in the premises, hereby enters the following findings and conclusions, to wit:

FINDINGS

1. The Defendant’s competence to be executed has not been reevaluated in over six (6) years.
2. Effective November 1, 2022, 22 O.S. 1007-1008 was repealed, and 22 O.S. 1005.1 was adopted as the procedures to follow when there are questions relating to a person’s competency to be executed.
3. The State of Oklahoma maintains that the procedures outlined in 22 O.S. 1005.1 apply to this case; that the District Court of Comanche County has jurisdiction and Comanche County is the proper venue; that the State is entitled to have the Defendant reevaluated; and also requests this Court authorize the State to retain a qualified expert to evaluate the Defendant’s present competency to be executed.
4. The Defendant maintains that the now repealed statutory process set forth in 22 O.S. 1005-1008 still applies to this case; that the District Court of Pittsburg County still retains jurisdiction and Pittsburg County is the proper venue; that the State is not entitled to have the Defendant reevaluated; but if reevaluation is granted, the reevaluation is only authorized to be

conducted by the Oklahoma Department of Mental Health and Substance Abuse Services or its designee.

CONCLUSIONS

1. This Court has jurisdiction and venue now rests in Comanche County pursuant to 22 O.S. 1005.1. This conclusion is supported by the Oklahoma Court of Criminal Appeal's decision in *Lay v. State*, D-2005-1081. This Court is not persuaded the repealed statutory procedures in 22 O.S. 1005-1008 have continued application to this case. This Court must resolve the remaining issues according to the language adopted by the Oklahoma Legislature in 22 O.S. 1005.1 as it is presently codified.

2. The language in paragraph N of 22 O.S. 1005.1 contemplates mental competency reevaluations of persons determined to be incompetent for execution will occur. Although paragraph N does not set forth any requirements as to the frequency of those reevaluations, or whom they are to be performed by with any particularity, the statutory language anticipates they will occur. The only way a person can "regain" competency is if they are found to meet the competency standard set out in paragraph A. That necessarily means reevaluations are anticipated under the statute.

3. Except for paragraph H, which is the stage at which an initial mental competency evaluation occurs, 22 O.S. 1005.1 does not further define or limit the term "qualified forensic examiner or examiners". And nowhere does the statute expressly authorize or prohibit qualified forensic examiners retained by the State or defense for purposes of reevaluations.


IT IS THEREFORE ORDERED that this Court has jurisdiction and venue of this matter pursuant to 22 O.S. 1005.1, and the Oklahoma Court of Criminal Appeals decision in *Lay v. State*, D-2005-1081. Any future competency issues shall be heard by this Court unless otherwise ordered.

IT IS FURTHER ORDERED that the Defendant is ordered to be reevaluated by a qualified forensic examiner with the Oklahoma Department of Mental Health and Substance Abuse Services to determine whether he is presently "mentally incompetent to be executed" as defined in paragraph A of 22 O.S. 1005.1.

IT IS FURTHER ORDERED that the State and Defendant are authorized the option of retaining a qualified forensic examiner, and upon retention, said qualified forensic examiner(s) may undertake a reevaluation of the Defendant to determine whether he is presently "mentally incompetent to be executed" as defined in paragraph A of 22 O.S. 1005.1.

IT IS FURTHER ORDERED that counsel for the parties shall confer and present this Court with an agreed Order for Competency Evaluations detailing the necessary reevaluation requirements provided for herein before **March 5, 2025, at 9:00 o'clock a.m.** or each is ordered to appear on said date and time with a proposed order.

IT IS FURTHER ORDERED that the Court Clerk of Comanche County is hereby directed to send a copy of this order to the District Court of Pittsburg County for filing in case MH-16-11.



JUDGE OF THE DISTRICT COURT

CERTIFICATE OF MAILING


On the 13th day of February, 2025, a true and correct copy of the above and foregoing order was filed of record and mailed to the following:

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CLERK OF THE DISTRICT COURT

