One Minute Brief

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
DISTRICT ATTORNEY NATHAN J. HOCHMAN

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NUMBER: 2026-01 DATE: January 15, 2026
BY: Matthew Brown TOPIC: Faretta

ISSUE: When may a court deny self-representation for mental incompetence?

A defendant has a federal constitutional right to the assistance of counsel, or to waive that right and represent himself or herself. (*Faretta v. California* (1975) 422 U.S. 806, 836 [95 S.Ct. 2525, 45 L.Ed.2d 562].) Indeed, upon a timely and unequivocal assertion of the right to self-representation, and after proper advisements and waivers, the court *must* grant the request, even if the defendant's lack of training and experience make it a horrible idea. (See *People v. Windham* (1977) 19 Cal.3d 121, 127–128.)

Nevertheless, in *Indiana v. Edwards* (2008) 554 U.S. 164 [128 S.Ct. 2379, 171 L.Ed.2d 345], the United States Supreme Court allowed states to deny self-representation to defendants who are competent to stand trial but who "suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." The California Supreme Court took up this invitation in *People v. Johnson* (2012) 53 Cal.4th 519, allowing California courts to deny self-representation when allowed under *Edwards*.

Still, courts should be cautious before denying self-representation under *Edwards*. The court does not have carte blanche to force an attorney on a defendant just because it would be easier. There are some things to keep in mind:

First, *Edwards* is a narrow exception to *Faretta*, not a new standard. "Self-representation by defendants who wish it and validly waive counsel remains the norm and may not be denied lightly." (*People v. Johnson*, *supra*, 53 Cal.4th at p. 531.)

Second, the defendant's incompetence must be due to a "severe mental illness," not just a lack of skill or education. (*People v. Orosco* (2022) 82 Cal.App.5th 348, 360.) To that end, the California Supreme Court basically required courts to get expert evaluations before finding that a defendant is not competent for self-representation, strongly discouraging such a finding based on conduct alone. (*People v. Johnson*, *supra*, 53 Cal.4th at pp. 530–531.)

Third, there is no need for an *Edwards* analysis in every case where a defendant seeks self-representation, even if there is some evidence of mental illness. "[A] trial court is not required to 'routinely inquire' into a defendant's mental competence when evaluating a *Faretta* motion. [Citation.] Indeed, a trial court need only do so where it has doubts about the defendant's competence." (*People v. Mickel* (2016) 2 Cal.5th 181, 208.)

Fourth, the *Edwards* standard is high: The defendant's severe mental illness must render him or her "*unable to perform the basic tasks necessary to present a defense*." (*People v. Mickel*, *supra*, 2 Cal.5th at p. 208, italics added.) Examples of the "basic tasks necessary to present a defense" are "organization of defense, making motions, arguing points of law, participating in *voir dire*, questioning witnesses, and addressing the court and jury." (*Indiana v. Edwards*, *supra*, 554 U.S. at p. 176, citing *McKaskle v. Wiggins* (1984) 465 U.S. 168, 174 [104 S.Ct. 944, 79 L.Ed.2d 122].) In contrast, the court may not deny self-representation just because the defendant will do a bad job. "The 'likelihood or actuality of a poor performance by a defendant acting in propria persona' does not defeat the right of self-representation." (*People v. Daniels* (2017) 3 Cal.5th 961, 985.) Further, the failure to contest a case or a *refusal* (rather than *inability*) to participate in the trial are historically not reasons to deny self-representation (at least in non-capital cases). (See *People v. Parento* (1991) 235 Cal.App.3d 1378, 1381.) There is no reason to believe this is different under *Edwards*.

What about defendants who assert nonsensical, delusional, or legally frivolous defenses? It depends. For example, in *People v. Mickel* (2016) 2 Cal.5th 181, the self-represented defendant asserted a "defense of liberty" for ambushing a police officer. The Court found that holding "fringe political beliefs" did not make him incompetent to represent himself, especially given his otherwise competent conduct of the trial. On the other hand, in *Edwards* as well as *Johnson* the defendants filed nonsensical motions, which the reviewing courts used as evidence of incompetence, though importantly both also had expert evaluations opining that the defendants were not competent. (*Indiana v. Edwards*, *supra*, 554 U.S. at p. 176; *People v. Johnson*, *supra*, 53 Cal.4th at p. 533.) The court should therefore carefully consider whether the defendant is asserting a frivolous defense, which is his prerogative, or is instead unable to perform a basic task.

Ultimately, the *Edwards* exception seems to be permissive, not mandatory. Even where a court *may* deny self-representation, it does not err by still allowing self-representation, so long as the waiver of counsel is knowing and intelligent. (See *People v. Taylor* (2009) 47 Cal.4th 850, 878 ["*Edwards* thus does not support a claim of federal constitutional error in a case like the present one, in which defendant's request to represent himself was granted."]; *People v. Miranda* (2015) 236 Cal.App.4th 978, 988 ["[N]o constitutional error occurs when a mentally ill defendant's request to represent himself is granted."].) Still, the court may err by failing to understand its discretion when expressly presented with an *Edwards* issue. (See *People v. Shiga* (2016) 6 Cal.App.5th 22, 41–42.)

On appeal, a decision regarding a defendant's competence to represent himself or herself will be upheld if supported by substantial evidence. (*People v. Johnson*, *supra*, 53 Cal.4th at p. 531.) Thus, if the court uses right standard, a denial of self-representation will probably be upheld.

<u>BOTTOM LINE</u>: Trial courts may find a defendant competent to stand trial but incompetent for self-representation, but only in limited cases. *Faretta* remains the rule.