

2.12 Appeal

A. Appeal to North Carolina Court of Appeals

The district court has exclusive original jurisdiction over civil commitments and admissions requiring judicial review. Appeal from a district court order is directly to the North Carolina Court of Appeals. An appeal does not stay the order of the district court, which retains jurisdiction to hear all reviews, rehearings, or supplemental hearings allowed or required by statute. G.S. 122C-272.

It is important for counsel to stress to the respondent that appealing does not result in immediate release from the hospital. In most cases, the respondent will be either discharged or recommitted prior to issuance of an opinion from the court of appeals. Although discharge of the client does not render the appeal moot (*see infra* § 2.12E), if the client is recommitted pending resolution of the appeal, winning the appeal does not result in discharge from the current commitment.

B. Who May Appeal

The statute allows the state or “any party on the record as in civil cases” to appeal. G.S. 122C-272. It is not specified who, other than the respondent, would be a party of record. There is no case law on this point.

C. Representation of Respondent

Chapter 122C provides for attorney representation of a respondent through any appellate proceedings. G.S. 122C-270. Appeal by the respondent’s counsel is at the direction of the respondent. Pursuant to G.S. 122C-270(a) and (e), assigned counsel represents respondents through all proceedings in the district court. Presumably, this covers notice of appeal, which is required to be given at the district court level. Counsel appointed by the Office of the Appellate Defender represent respondents through the conclusion of any appeal. G.S. 122C-270(e).

D. Confidentiality on Appeal

There is no provision in the North Carolina Rules of Appellate Procedure for using the initials of a respondent in appellate documents to preserve patient confidentiality. Recent amendments to the Rules, however, mandate the use of initials for most records in juvenile proceedings, which also are confidential proceedings. Counsel should consider filing a motion with the court requesting to be allowed to use initials, citing the rule for juvenile cases as analogous. If the motion is granted, the respondent’s name would be redacted from *all* records designated by the court, including the transcript and all exhibits.

Counsel should advise a client who is considering an appeal that confidentiality of the proceeding may be sacrificed as a consequence of appealing. This might be an important

factor to some clients.

E. Appeal Not Moot

An appeal is not rendered moot by the discharge of the respondent pending the resolution of the appeal.

Case law: An appeal is not moot if the respondent is discharged or the term of commitment has expired.

In re Hatley, 291 N.C. 693 (1977). An appeal is not rendered moot because the term of commitment ordered by the lower court has expired. In *Hatley*, the North Carolina Supreme Court considered the possible consequences of being adjudged mentally ill, such as the finding or order being used adversely against the respondent in future civil or criminal proceedings. The court also noted that in the instant case, the lower court based its order in part on the respondent's record of prior commitments. Because there were possible collateral legal consequences, the court held that the respondent's appeal was not moot. *Id.* at 694–95.

In re Hogan, 32 N.C. App. 429 (1977). In *Hogan*, the North Carolina Court of Appeals stated that even though the record contained a certificate indicating that the respondent had been unconditionally discharged from the order of commitment, the appeal was not moot, citing *In re Hatley*, discussed above, and other cases. The court of appeals did not discuss the facts of the case or possible collateral legal consequences. *Id.* at 432.

In re Benton, 26 N.C. App. 294 (1975). The North Carolina Court of Appeals held in *Benton* that the respondent's appeal was not moot even though the commitment period of sixty days had expired. The court did not discuss the facts of the case or possible collateral legal consequences in reaching its holding. *Id.* at 295.