2.3 Involuntary Commitment: Prehearing Procedures

It is important for counsel to be familiar with the statutory requirements of the first and second evaluation and other prehearing procedures, even if counsel did not represent the respondent at that time, in order to identify defects in legal process that might be raised in a later motion to dismiss.

A. Affidavit and Petition Before Clerk or Magistrate

Affidavit and petition. Involuntary commitment begins with an individual appearing before either the clerk of superior court or a magistrate to file a petition seeking to have another person taken into custody for an examination to see if that person should be involuntarily committed. The petition is filed in the county in which the respondent either resides or is present. The petitioner must have knowledge that the person "is mentally ill and either (i) dangerous to self . . . or dangerous to others . . . or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness." G.S. 122C-261(a). An affidavit containing the underlying facts supporting the request for commitment is executed by the petitioner. *See infra* Appendix A, Form AOC-SP-300.

The statute also requires the affiant to state if there is reason to believe the respondent is also mentally retarded. G.S. 122C-261(a). This is necessary because state policy is to treat people who are mentally retarded in facilities separate from those dedicated to treating people with mental illness alone. The clerk or magistrate must therefore contact the area authority prior to issuing a custody order for a person alleged to be mentally retarded, and the area authority must designate the facility to which the person will be taken for examination. G.S. 122C-261(b).

Case law: An unsworn petition and a petition without facts supporting conclusory statements are grounds for dismissal.

In re Ingram, 74 N.C. App. 579 (1985). The North Carolina Court of Appeals held that the failure of a petition to be signed by oath or affirmation before a duly authorized certifying officer when required by statute is a jurisdictional defect and is grounds for dismissal of the petition. The statutory requirements for the signing of the petition under oath must be "followed diligently," and involuntarily committing a respondent without the required oath deprives the respondent of "liberty without legal process."

Although a motion to dismiss based on an unsworn petition should be granted, counsel should advise the respondent of the possible consequences. Because an order of dismissal on this basis is not res judicata, the original petitioner or a current treatment provider may file a sworn petition that could initiate a new involuntary commitment proceeding. Prevailing on the motion to dismiss could serve in effect as an unwanted continuance because the new petition could be filed before the respondent is released from custody and the new ten-day period for a hearing would start from the date the new petition was

filed, thus extending the time the respondent would be in custody prior to a hearing on the merits.

No facts supporting conclusory statements. The petition must contain facts supporting the allegations that the respondent is mentally ill and dangerous to self or others. In *Ingram,* the petition stated:

> "Respondent has strange behavior and irrational in her thinking. Leaves home and no one knows of her whereabouts, and at times spends night away from home. Accuses husband of improprieties."

74 N.C. App. at 579.

The court held that the paragraph quoted above contained conclusory statements and statements that did not provide facts illustrating mental illness and danger to self or others. These statements did not form a sufficient basis for a determination of reasonable grounds for issuance of a commitment order. *Id.* at 581.

Filing a motion to dismiss based on the insufficiency of the allegations in the petition may be a better strategy than moving to dismiss because of an unsworn petition, as it is based more on the substance of the case. The petitioner would not be allowed to refile a petition with the same allegations, and the original petitioner might not have observed the more recent actions of the respondent. On the other hand, the attending physician at the facility might have sufficient information on which to file a new petition. This might lead to a delay in the hearing, just as with a dismissal based on the technical insufficiency of the petition. Counsel should advise the client of the possibility of the petition being refiled and discuss the pros and cons of filing a motion to dismiss with the client to enable the client to make an informed decision on how to proceed.

Case law: A petition may be based on hearsay.

In re Zollicoffer, 165 N.C. App. 462 (2004). The North Carolina Court of Appeals affirmed that it is permissible for a petition for involuntary commitment to be based on hearsay information. In *Zollicoffer,* the respondent appealed the failure of the lower court to grant his motion to dismiss the petition based on the hearsay contained therein. The court held that there was no requirement that the petition be based on first-hand knowledge and that the petition before the magistrate [or clerk of superior court], which the court characterized as a hearing, was not subject to the rules of evidence.

B. Custody Order for Examination

The clerk or magistrate must first review the petition to determine if there are "reasonable grounds to believe that the facts alleged in the affidavit are true." G.S. 122C-261(b). There must be a determination of whether the respondent is "probably mentally ill and either (i) dangerous to self . . . or dangerous to others . . . or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in

dangerousness." *Id.* If these conditions are met, the clerk or magistrate must issue an order to a law enforcement officer, or other authorized person, to take the respondent into custody for examination by a physician or eligible psychologist. *Id.*; *see infra* Appendix A, Form AOC-SP-302.

Where reasonable grounds are not found, the respondent is free from the threat of detention for involuntary commitment based on the petitioner's current allegations. This is the first of four opportunities prior to the district court hearing for the commitment process to end and for the respondent to be released from further involuntary detention. The respondent also may be released by the examining practitioner at either the first or second examinations or by the treating physician prior to the district court hearing.

On issuance of a custody order, the clerk or magistrate must provide the petitioner and respondent, if present, with specific information regarding the next steps that will occur. G.S. 122C-261(b).

Practice note: If the petitioner reports not knowing that he or she was requesting an involuntary commitment from the clerk or magistrate, counsel should inquire as to what information about the proceedings was provided to the petitioner by the clerk or magistrate when that official took the petitioner's affidavit. In a contested case, if it appears that no official notified the petitioner that he or she was requesting involuntary commitment, this violation of the requirements of G.S. 122C-261(b) should be brought to the attention of the court in support of the respondent's request for discharge.

G.S. 122C-261(b) presumes that the magistrate will issue the custody order within a reasonable time after presentation of the affidavit and petition. However, a significant delay in issuance of the custody order may subject the entire process to dismissal at the district court hearing, particularly when the length of delay indicates that the magistrate is accommodating non-statutory interests. *See infra* Appendix 2-2, Memorandum to Magistrates from Mark Botts (Nov. 15, 2009).

C. Transportation Procedures

Although the respondent's attorney is not involved in transportation arrangements for the client, counsel may be asked to answer questions concerning transportation to the hospital, between hospitals, to court, and home after discharge. Transportation considerations also may affect commitments. For example, an involuntary commitment petition might be filed by a law enforcement officer primarily to secure transportation for a cooperative person from a mental health center to a hospital. Additionally, counsel may need to address systemic problems with transportation, such as the repeated failure to provide an escort of the same sex as the respondent being taken into custody.

Within a county. Transportation of a respondent for involuntary commitment proceedings within a county is generally provided by either the city or the county. The city must transport a city resident as well as any person taken into custody within the city.

The county transports non-city residents and those taken into custody outside city limits. G.S. 122C-251(a).

Between counties. Transportation of a respondent between counties for admission to a facility is generally provided by the county where the respondent was taken into custody. The sheriff is allowed to cross county lines for the purpose of assuming custody pursuant to a petition and for the purpose of transporting a patient to a facility. *See* G.S. 122C-261(e). The county where the petition was initiated must transport a respondent who requests a change of venue back to the initiating county for the district court hearing. G.S. 122C-251(b). The county of the respondent's residence must provide transportation between counties upon the respondent's discharge from the facility, although the respondent may arrange for private transportation and assume any expense thereof. *Id.*

Other provisions. Counties and cities may use their own vehicles or may contract to use private vehicles. Law enforcement officers are to wear plain clothes and drive unmarked vehicles "[t]o the extent feasible." G.S. 122C-251(c). They also must advise respondents being taken into custody, "to the extent possible," that they are being taken for treatment for the safety of themselves and others and are not being arrested and have not committed a crime. *Id.* The city or county must provide either a driver or attendant of the same sex as the respondent, unless a family member is allowed to accompany the respondent. G.S. 122C-251(d).

In addition to using law enforcement personnel, cities and counties may use trained volunteers and personnel from public and private agencies, including private hospital staff, to provide all or part of the transportation required. The training must ensure the safety and protection of both the public and the respondent. G.S. 122C-251(g).

Costs. The county of the respondent's residence is generally responsible for the costs of transportation and must reimburse the state, another county, or a city that has transported the respondent pursuant to the commitment statutes. The county of residence, after giving proper notice and opportunity to object, may seek reimbursement from: 1) a non-indigent respondent; 2) a person or entity with sufficient assets who is legally liable for the respondent's support; 3) a person or entity that is contractually responsible for the cost; or 4) any person or entity otherwise liable for the cost under federal, state, or local law. G.S. 122C-251(h).

Qualified immunity for law enforcement officers. Law enforcement officers providing transportation are allowed to use "reasonable force to restrain the respondent" for the safety of the respondent and others. G.S. 122C-251(e). If "reasonable measures" are employed, the law enforcement officer cannot be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes in carrying out statutory duties. *Id.*

D. Custody and Transport to First Examination

The law enforcement officer or other authorized person is to take the respondent into custody within twenty-four hours after the order is issued. G.S. 122C-261(e). A new

custody order must be obtained if the time expires without custody being assumed. The law enforcement officer has no authority to assume custody after the order expires, and a respondent taken into custody without a valid order would have grounds to move to dismiss the petition.

After being taken into custody, the respondent must be transported to an area facility for a first examination by a physician or eligible psychologist. G.S. 122C-263(a). After the magistrate's review of the affidavit, the first examination is the next opportunity available for the respondent to be released from involuntary detention during the commitment process. If there is no physician or eligible psychologist at the area facility available to perform the examination, the respondent may be taken to any physician or eligible psychologist in the local area. Occasionally, neither a physician nor an eligible psychologist is immediately available, in which case the respondent may be temporarily detained pending examination. Temporary detention is allowed in an area facility if available, in the respondent's home under appropriate supervision, in a private hospital or clinic, in a general hospital, or in a state facility for the mentally ill. The statute specifically provides that the temporary detention may not be in a jail or other penal facility. *Id.*

E. First Examination Requirements

Factors to be evaluated. The physician or eligible psychologist must perform the examination as soon as possible and no later than twenty-four hours after the respondent's arrival. G.S. 122C-263(c).

The examiner must evaluate four factors:

> "(1) Current and previous mental illness and mental retardation including, if available, previous treatment history;
> (2) Dangerousness to self . . . or others . . . ;
> (3) Ability to survive safely without inpatient commitment, including the availability of supervision from family, friends or others; and
> (4) Capacity to make an informed decision concerning treatment."

Id.; *see infra* Appendix A, Form DMH 5-72-01.

Criteria for inpatient commitment. The examiner must find that the respondent is mentally ill and dangerous to self or others in order to recommend inpatient commitment. G.S. 122C-263(d)(2).

Criteria for outpatient commitment. The examiner must make the following determinations for recommendation of outpatient commitment:

> "a. The respondent is mentally ill;
> b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others;

c. Based on the respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11); and
d. The respondent's current mental status or the nature of respondent's illness limits or negates the respondent's ability to make an informed decision to seek voluntarily or comply with recommended treatment."

G.S. 122C-263(d)(1).

Temporary waiver of requirement for physician or eligible psychologist to perform first examination. A bill effective July 1, 2003, S.L. 2003-178, and extended periodically allows the Secretary of Health and Human Services, on the request of a local management entity (LME), to waive temporarily the statutory requirement that either a physician or eligible psychologist perform the initial examination. Session Law 2010-119 continues this program until October 1, 2012. The waiver applies only on a "pilot-program basis" upon request and if certain criteria are met. A maximum number of twenty programs may receive a waiver, which would allow the first examination to be performed by a licensed clinical social worker, a masters level psychiatric nurse, or a masters level certified clinical addictions specialist.

F. First Examination via Telemedicine

G.S. 122C-263(c) provides that when the first examination is performed by a physician or eligible psychologist, the respondent either may be in the physical presence of the physician or eligible psychologist or may be examined using telemedicine equipment and procedures. For the purpose of this part of the statute, "telemedicine" is "two-way real-time interactive audio and video between places of lesser and greater medical capability or expertise . . . when distance separates participants who are in different geographical locations." G.S. 122C-263(c). The examiner "must be satisfied to a reasonable medical certainty that the determinations made . . . would not be different" if done face to face. *Id.* If not so satisfied, the examiner must indicate that in writing on the first examination report. The respondent then must be transported for a face-to-face examination. The statute does not expand the twenty-four hour limitation provided for the first examination to occur.

If these conditions are met, G.S. 122C-263(c) supersedes *McLean v. Sale,* 54 N.C. App. 538 (1981), in which the North Carolina Court of Appeals held that the examiner has an affirmative duty to personally examine the respondent prior to forming and putting in writing a recommendation.

If the respondent reports that the professional who signed the examination report did not perform an examination—whether face-to-face or via telemedicine—counsel should discuss the pros and cons of moving to dismiss, discussed *supra* under the case law portion of § 2.3A. Counsel should also advise the respondent of the need to seek private counsel if the respondent plans to bring a cause of action for breach of the examiner's affirmative duty.

G. Determination by Physician or Eligible Psychologist

At the conclusion of the first examination, the physician or eligible psychologist must determine whether the respondent meets the criteria for inpatient commitment, outpatient commitment, or neither, in which case the respondent must be released. G.S. 122C-263(d).

Inpatient. If the examiner determines that the respondent is mentally ill and dangerous to self or others and cannot be treated on an outpatient basis, inpatient commitment must be recommended and noted on the examination report. If inpatient commitment is recommended, the law enforcement officer or other designated person must transport the respondent to a 24-hour facility for the custody and treatment of involuntary clients pending a district court hearing or, if there is no such 24-hour facility and if the respondent is unable to pay for care at a private 24-hour facility, to a state facility for the mentally ill for "custody, observation, and treatment and immediately notify the clerk of superior court of this action." G.S. 122C-263(d)(2).

Outpatient. If the examiner finds that the respondent can be treated on an outpatient basis, this must be recorded and recommended on the examination report. The examiner must show on the report the name, address, and telephone number of the proposed outpatient physician or treatment center. The law enforcement officer or other designated person must take the respondent home, or with the consent of all, to the residence of an individual located in the county where the petition was filed. G.S. 122C-263(d)(1).

If the examiner is not the proposed outpatient provider, the respondent must be given in writing the name, address, and telephone number of the proposed outpatient treatment physician or center. The respondent also must receive a written notice listing the date and time to appear for an appointment with the proposed treatment provider. The examiner is required to telephone the proposed treatment provider prior to the appointment date, as well as send a copy of the notice and examination report. G.S. 122C-263(f).

H. Alternative Procedure to Petition Before Clerk or Magistrate: Affidavit by Physician or Eligible Psychologist

Rather than going before a clerk or magistrate to file a petition, a physician or eligible psychologist may perform an examination of the respondent in compliance with the criteria discussed *supra* in § 2.3E, and then appear before "any official authorized to administer oaths," including a notary public, to execute an affidavit. G.S. 122C-261(d); *see infra* Appendix A, Forms DMH 5-72-01-A and DMH 5-72-01-B.

The affidavit may be transmitted via fax to the clerk or magistrate as long as the original is mailed to that official within five days. The clerk or magistrate reviews the affidavit and, if the commitment criteria are met, issues a custody order for the respondent to be transported to a 24-hour facility. The examination and affidavit of the physician or eligible psychologist substitute for both the petition before a clerk or magistrate and the statutorily-mandated first examination after a petition is filed.

I. Transport to 24-Hour Facility for Inpatient Treatment

If the physician or eligible psychologist who performed the first examination determines that the individual meets the criteria for inpatient commitment, the law enforcement officer or other designated person must then transport the respondent to a 24-hour facility pending the hearing to review the commitment. An area 24-hour facility is the preferred placement, with a private hospital being the next choice if the respondent is able to pay. If there is no area facility and the respondent is indigent, the respondent is taken to a state facility for the mentally ill. The clerk of superior court is to be notified immediately by the law enforcement officer or other designated person of the admission to a state facility. G.S. 122C-263(d)(2).

J. First Examination Detention Limited to Seven Days

According to G.S. 122C-263(d)(2), the respondent may be "temporarily detained" at the place of the first examination while waiting for transport to the 24-hour facility. Until the revision of G.S. 122C-263(d)(2) in 2009, temporary detention had not been defined, nor had there been a statutory remedy when the detention appeared excessive. According to the new version of G.S. 122C-263(d)(2), if the respondent is temporarily detained and a 24-hour facility is not available or medically appropriate seven days after issuance of the custody order, a physician or eligible psychologist must report this to the clerk and the proceedings must be terminated.

Termination of the proceedings does not necessarily preclude initiation of new involuntary commitment proceedings. However, re-petitioning for commitment is only allowed on certain conditions that preserve a modicum of rights for the respondent. A new petition is allowed only if subsequent supporting affidavits are based on a new examination of the respondent and do not contain any of the information relied on in the previous filing. Bear in mind that 122C-270(a) provides counsel only for initial hearings, rehearings, and supplemental hearings. Generally, counsel is appointed after the respondent's admission to the 24-hour facility. *See supra* § 2.1 (right to counsel). Therefore, the respondent may not have benefit of counsel during this potentially lengthy prehearing detention. Procedural relief for respondents at this juncture would require extraordinary measures, e.g., a writ of habeas corpus.

Practice note: A new filing could potentially result in an additional seven-day waiting period for bed space at a 24-hour facility. Once appointed, respondents' counsel should ask clients about the length of time they were held in the hospital waiting for a bed at the 24-hour facility. Violations of the statute warrant dismissal. In addition, attorneys who regularly represent respondents in commitment proceedings should ask commitment clerks to notify them when a first examiner terminates a commitment and then re-files new commitment papers based on the seven-day rule. If so notified by the clerk's office, respondents' counsel should bring any violation of a respondent's due process rights to the attention of the commitment court through appropriate motion. In addition, a respondent's attorney should address any chronic systemic problems with successive seven-day holds with their supervisor or with the chief district court judge.

K. Second Examination by Physician

A physician must perform a second examination within twenty-four hours of the respondent's arrival at a 24-hour facility. The examiner cannot be the physician who performed the first examination or an eligible psychologist. The second examination provides another opportunity prior to the ten-day hearing at which the respondent may be released from involuntary detention. As with the initial examination, the respondent must be assessed to determine if the criteria for inpatient or outpatient commitment are present. Again, if the criteria for neither are present, the respondent must be released. G.S. 122C-266(a); *see infra* Appendix A, Form DMH 5-72-01.

Inpatient. If the criteria for inpatient commitment are met, the respondent is held at the 24-hour facility pending the district court hearing. G.S. 122C-266(a)(1). The treating physician may release the respondent at any time during the process if the respondent no longer meets the criteria for commitment, except for certain cases referred through the criminal justice system. G.S. 122C-266(a)(3); *see also infra* Chapters 7, 8, and 9.

Outpatient. If the criteria for outpatient commitment are met, the respondent must be released pending the district court hearing. The examiner must provide the respondent, and show on the written examination report, the name, address and telephone number of the proposed outpatient treatment physician or center. In addition, the respondent must be given the date and time for the first outpatient appointment. It is the examiner's responsibility to send a copy of the examination report to the proposed outpatient treatment physician or center, as well as to notify the physician or center by telephone. G.S. 122C-266(a)(2).

Case law: The failure to obtain a second physician examination requires that the commitment order be vacated.

In re Barnhill, 72 N.C. App. 530 (1985). Failure to obtain a second examination by a physician is a fatal procedural error requiring that the commitment order be vacated. In *Barnhill,* a physician petitioned for the issuance of a custody order under former statute G.S. 122-58.3. The North Carolina Court of Appeals noted that the record contained no evidence that a second examination was performed as required under the former statute, a requirement now codified in G.S. 122C-261(d) and 122C-266. The court held that the statutory requirements must be followed diligently and vacated the order of commitment for failure to comply. 72 N.C. App. at 532.

L. Outpatient Commitment: Examination and Treatment Pending Hearing

Prehearing examination. When outpatient commitment is recommended by an examiner and the respondent is released pending the district court hearing, the respondent is required to attend an appointment with the proposed outpatient treatment provider. If the respondent does not appear as scheduled, the proposed treatment provider must notify the clerk of superior court. The clerk is required to issue an order for a law enforcement officer or other designated person to take the respondent into custody and transport the

respondent for an evaluation. G.S. 122C-265(a); *see infra* Appendix A, Form AOC-SP-224.

Treatment. The proposed outpatient treatment provider may prescribe appropriate medications but may not physically force the respondent to take the medications. Other appropriate treatment may also be prescribed, but the respondent may not be forcibly detained for purpose of treatment. G.S. 122C-265(b), (c).

Change of recommendation. If the outpatient physician or center determines before the district court hearing that the respondent no longer meets the criteria for outpatient commitment, the respondent must be released and the clerk of court notified of the action. The outpatient proceedings are then terminated. G.S. 122C-265(d).

If the outpatient physician or center determines that the respondent now meets the criteria for inpatient commitment, new proceedings must be initiated by petition or by affidavit of physician or eligible psychologist. G.S. 122C-265(e). Upon initiation of proceedings for inpatient commitment, the clerk in the county where the respondent is being held must send notice to the clerk in the county where the outpatient commitment was initiated, if the counties are different. The outpatient commitment proceeding is then terminated. G.S. 122C-265(f).

M. Duties of Clerk of Superior Court

Inpatient commitment. The clerk of court in the county where the 24-hour facility is located must calendar the district court hearing on receipt of a recommendation from a physician or eligible psychologist for inpatient commitment. G.S. 122C-264(b). The hearing must be held within ten days of the date the respondent was taken into the custody of law enforcement. G.S. 122C-268(a). If the clerk or magistrate determined at the time the custody order was issued that a respondent at a non-state facility is indigent, counsel must be appointed. *See* G.S. 122C-268(d). For respondents at the state psychiatric hospitals, indigency is determined by Special Counsel in accordance with G.S. 7A-450(a), although it is subject to redetermination by the court. G.S. 122C-270(a).

Notice of the hearing is to be provided by the clerk to the respondent, the respondent's counsel, and the petitioner. The petitioner may waive notice by filing a written waiver with the clerk. G.S. 122C-264(b).

Outpatient commitment. The clerk in the county where the petition is initiated must calendar the district court hearing on receipt of a recommendation by a physician or eligible psychologist for outpatient commitment. The clerk is to provide notice of the time and place of the hearing to the respondent, the proposed outpatient treatment physician or center, and the petitioner. The petitioner is allowed to waive notice by filing a written waiver with the clerk of court. G.S. 122C-264(a).

There is no statutory provision for notice to counsel for the petitioner, as there is no requirement that the petitioner be represented.

List of outpatient commitments. The clerk in the county where the outpatient commitment is supervised is required to keep a list of outpatient commitments. The statute also requires the clerk to make a quarterly report listing all active cases, the "assigned supervisor" (which is not defined), and the disposition of all hearings, supplemental hearings, and rehearings. G.S. 122C-264(e). There is no direction as to who is to receive this report. Confidentiality requirements would mandate that this not be a public document.

N. Special Provisions for Mentally Retarded Individuals

It is state public policy that individuals with mental retardation not be treated in state facilities for the mentally ill, if possible. *See* G.S. 122C-263(d)(2) (second paragraph).

"Mental retardation" is defined in 122C-3(22) as significant "subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22." "Significantly subaverage general intellectual functioning" is generally identified as an intelligence quotient of less than seventy according to *In re LaRue,* 113 N.C. App. 807 (1994).

Throughout the statutes, there are provisions for the petitioner, clerk, magistrate, and examiners to note if a respondent is known or suspected to be mentally retarded. Those individuals are to be diverted to facilities designed for the treatment of people with mental retardation. *See* G.S. 122C-241.

Chapter 122C specifies exceptions that may be made to this policy:

- Any person charged with a violent crime and found incapable of proceeding must be taken to a state facility. G.S. 122C-263(d)(2)a., 122C-266(b).
- Any person who is committed as a result of being found not guilty by reason of insanity must be taken to a state facility. G.S. 122C-263(d)(2)b., 15A-1321.
- A person for whom a waiver is granted by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his or her designee, because the individual is "extremely dangerous" so as to be a threat both to the community and to other patients in a non-state facility setting, may be admitted to a state facility. G.S. 122C-263(d)(2)c.
- A person for whom a waiver is granted by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his or her designee because the individual is "so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate" may be admitted to a state facility. G.S. 122C-263(d)(2)d.