

2.8 Outpatient Commitment Supplemental Hearings

A. Request for Supplemental Hearing

Supplemental hearing distinguished from rehearing. A supplemental hearing is held during the term of an outpatient commitment if the respondent fails to comply or clearly refuses to comply with treatment, or if the respondent moves or intends to move to another county within the state. These are matters concerning the terms of the existing commitment.

A rehearing is held on a request to *extend* the current outpatient commitment. For example, a rehearing may be held on request of the attending physician for an additional ninety days of outpatient commitment following a ninety-day commitment.

There is no statutory definition for either “supplemental hearing” or “rehearing.”

Mandatory requests. A supplemental hearing must be requested by the treatment provider in the following instances:

- when the respondent “fails to comply or clearly refuses to comply” with recommended treatment (G.S. 122C-273(a)(1); *see infra* Appendix A, Form AOC-SP-221); or
- when the respondent moves or intends to move to another county within the state. G.S. 122C-273(b).

Discretionary requests. A supplemental hearing may be requested:

- by the treatment provider if the respondent “fails to comply, but does not clearly refuse to comply” with recommended treatment (G.S. 122C-273(a)(2), 122C-274; *see infra* Appendix A, Form AOC-SP-220); or
- by the respondent at any time in writing seeking discharge from outpatient commitment. G.S. 122C-274(e).

An attending physician for an inpatient respondent may request a supplemental hearing for the purpose of transferring the respondent to an outpatient commitment. G.S. 122C-277(a). There are no separate statutory provisions for a supplemental hearing for inpatient commitment.

B. Calendaring of Supplemental Hearing and Notice

The clerk of superior court of the county supervising the outpatient commitment must calendar a supplemental hearing within fourteen days of receipt of a request. Notice to the petitioner, the respondent’s attorney, if any, and the designated outpatient treatment provider must be given by the clerk by first-class mail, postage prepaid, at least seventy-two hours prior to the hearing. The respondent must be personally served with an order to appear at least seventy-two hours before the hearing. G.S. 122C-274(a).

C. Supplemental Hearing Procedures

The supplemental hearing is held in district court pursuant to the procedures provided for the initial outpatient commitment hearing. G.S. 122C-274(b); *see also* G.S. 122C-267. As with the initial hearing, the appearance of the respondent may not be waived, and the court may consider certified medical documents that would otherwise be considered hearsay evidence.

D. Disposition

Alleged failure to comply. The court must first determine whether the respondent has failed to comply with outpatient treatment. If the respondent is in compliance, presumably the proceeding is terminated and the original outpatient commitment continues, although this is not stated in the statute. *See* G.S. 122C-274(c).

If the respondent is found not to be in compliance, the court may order one of three alternatives:

- if the court finds “probable cause to believe that the respondent is mentally ill and dangerous to himself . . . or others . . . ,” it may order an examination by the outpatient or other physician or an eligible psychologist to determine the need for continued outpatient commitment or for inpatient commitment;
- it may reissue or change the outpatient commitment order in accordance with the initial dispositional criteria and order outpatient commitment of up to ninety days; or
- it may discharge the respondent from outpatient commitment and dismiss the case.

G.S. 122C-274(c)(1)–(3); *see infra* Appendix A, Form AOC-SP-206.

Respondent has moved or intends to move. The court is required to determine first whether the respondent continues to meet the criteria for outpatient commitment, even though the supplemental hearing has been requested pursuant to a move or planned move. If the respondent continues to meet the criteria, the court must continue in effect the outpatient commitment and designate a treatment provider in the new county of residence to supervise the outpatient treatment. The court must order that the respondent appear at the address provided for the new treatment provider for continued outpatient treatment. In addition, the court is required to transfer venue of the case to the county of the provider supervising the outpatient treatment. G.S. 122C-274(d); *see infra* Appendix A, Form AOC-SP-206.

Respondent’s request for discharge. On the respondent’s request for a supplemental hearing, the court must “determine whether the respondent continues to meet the criteria specified in G.S. 122C-263(d)(1) [outpatient commitment]. The court may either reissue or change the commitment order or discharge the respondent and dismiss the case.” G.S. 122C-274(e); *see infra* Appendix A, Form AOC-SP-206.

Attending physician's request to transfer respondent from inpatient to outpatient commitment. The court is first required to determine whether the respondent continues to meet the criteria for inpatient commitment. If so, it must order that the original inpatient commitment be continued. If the court finds that the respondent meets the criteria for outpatient commitment, it must order outpatient commitment of up to ninety days. The respondent must be discharged and the case dismissed if the respondent does not meet the criteria for either type of commitment. G.S. 122C-274(f).