

2.9 Rehearings for Inpatient Commitment

A. Notice to Clerk by Facility

If the attending physician determines that an additional period of inpatient treatment will be required, notice of the need for a rehearing must be provided to the clerk at least fifteen days before the end of the commitment. This notice is given to the clerk of the county where the facility is located. G.S. 122C-276(a); *see infra* Appendix A, Form DMH 5-76-01.

B. Scheduling of Hearing and Notice

The clerk is to calendar the rehearing at least ten days before the end of the inpatient commitment hearing. Except for respondents committed as a result of being charged with a violent crime, discussed *infra* in § 8.11, notice is to be provided in accord with the requirements for the initial hearing. G.S. 122C-276(d); *see infra* Appendix A, Form AOC-SP-301.

C. Hearing Procedures

Rehearings for inpatient commitment are held in accord with the procedures set forth for the initial hearing. The respondent is afforded the same rights, including the right to appeal. G.S. 122C-276(d), (f); *see supra* § 2.6. The North Carolina Court of Appeals has held that G.S. 122C-276(d) does not require that the respondent be examined by a second physician, as required for the initial commitment proceeding. The examination of the attending physician who requested the rehearing is sufficient to satisfy statutory requirements. *In re Lowery*, 110 N.C. App. 67, 70 (1993).

D. Disposition

At the first rehearing, the court has the same dispositional alternatives as at the initial hearing, except that a second period of inpatient commitment may be for up to 180 days. G.S. 122C-276(e); *see also* G.S. 122C-271(b). Additionally, if the court finds that the criteria for outpatient commitment are met, an outpatient commitment of up to 180 days may be ordered. G.S. 122C-276(g). The court may also commit a respondent for a combination of both inpatient and outpatient days, i.e. a “split commitment.” However, the total number of days committed cannot exceed 180 days.

At second and subsequent rehearings, if the court finds that the criteria are met, it may order inpatient commitment for up to one year. G.S. 122C-276(f). The court may also order outpatient commitment of up to 180 days at any subsequent rehearing. G.S. 122C-276(g). The court also may combine inpatient and outpatient commitment days for a total maximum of 365 days, although this is rarely, if ever, done.

In re Hayes, ___ N.C. App. ___, 681 S.E.2d 395 (2009), is one in a lengthy series of cases regarding the possible discharge of Michael Hayes, a defendant found not guilty by

reason of insanity. *See supra* § 2.6H (discussing the underlying facts of the case). Although the case is specific to G.S. 122C as it relates to individuals who are found not guilty by reason of insanity, the case is also important for its discussion of the court's disposition options at a rehearing. Essentially, the case holds that the trial court on rehearing may order any disposition allowed by Chapter 122C regardless of the specific relief requested by the treating physician. Therefore, commitment counsel would be well advised to be creative in making recommendations that provide the least restriction on the respondent's liberty as long as the recommendations are within the dispositional alternatives allowed by statute. As always, counsel should advise the respondent of the alternatives available and obtain the respondent's consent before offering dispositional alternatives to the court.

E. Respondent's Waiver of Right to Second and Subsequent Rehearings

The attending physician must notify the respondent, the respondent's counsel, and the clerk in the county where the facility is located, if inpatient treatment beyond the second inpatient commitment is recommended. The respondent may file with the clerk, through counsel, a written waiver of the right to a rehearing. G.S. 122C-276(f).