

3.11 Appeal

A. Statutory Provision

The section on appeal in substance abuse proceedings tracks nearly verbatim the provisions for appeal in mental health proceedings. G.S. 122C-288; *see also supra* § 2.12. Appeal is to the North Carolina Court of Appeals.

B. Representation of Respondent

Any party on the record may appeal as in civil cases. Appeal by the respondent's counsel is at the direction of the respondent. Pursuant to G.S. 122C-289, 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-289.

C. 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 are also confidential proceedings. *See* N.C. R. APP. P. 3.1(b). 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 must 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.

D. Rehearing or Discharge

Although an appeal is not rendered moot by the respondent's subsequent discharge, counsel should advise the client of the time generally required to receive an opinion from the North Carolina Court of Appeals. The client should be informed of the likelihood of discharge from the substance abuse commitment before an appellate decision is handed down.

A rehearing must be held before the end of substance abuse commitment being appealed if the respondent has not been discharged. This would usually occur before the appeal is decided. If recommitted, the respondent would not be released except by the attending physician or the district court judge even if victorious on appeal.

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

See supra § 2.12E.