

## 3.4 Attorney Representation

### A. Attorney for Respondent

Representation of respondents in substance abuse proceedings is generally provided under G.S. 122C-270, under Chapter 122C, Article 5, Part 7 of the North Carolina General Statutes concerning mentally ill individuals, although there are some specific provisions in Chapter 122C, Article 5, Part 8 applicable only to substance abuse commitments. There is statutory provision for representation of all respondents throughout the substance abuse commitment process regardless of whether they are currently being treated in a 24-hour facility because they *may* be treated on an inpatient basis at any time during the commitment.

Special Counsel represents all indigent respondents at a state facility. *See generally* 122C-270(a). Although this section addresses representation of the mentally ill, it presumably applies to representation of substance abusers admitted to these state facilities.

Appointment of counsel for indigent respondents must be made in accordance with rules adopted by the Office of Indigent Defense Services. G.S. 122C-286(d). No specific rules have been adopted by IDS as of this writing, and attorney appointments are made pursuant to local rules or practice. The clerk of court generally assigns counsel for respondents not represented by Special Counsel. The clerk of court, on direction of a district court judge, must assign counsel on receipt of a recommendation for substance abuse commitment from a physician or eligible psychologist. G.S. 122C-284(a). If the respondent is held pending hearing in a 24-hour facility that is not a state facility, counsel is assigned by the clerk of the county where the facility is located. If the respondent was released pending hearing, counsel is assigned by the clerk of the county in which the petition originated. *Id.*

Respondents who are not indigent are entitled to be represented by privately-retained counsel of choice. G.S. 122C-286(d). Presumably a non-indigent respondent who refuses to hire counsel will be appointed counsel pursuant to the statute in Article 5, Part 7 of Chapter 122C. *See* G.S. 122C-268(d). An indigent respondent may also arrange for private representation.

For more on the role and responsibilities of counsel, see *infra* Appendix C, “Working with Clients.”

### B. Attorney for Petitioner

The attorney from the Attorney General’s staff assigned to a state facility or to the psychiatric service of the University of North Carolina Hospitals at Chapel Hill is specifically designated to represent the state’s interest at all commitment hearings held at the facility. G.S. 122C-270(f). Although it appears that the Attorney General’s office *may* represent the state’s interest in substance abuse proceedings held outside the state

facilities (*see* G.S. 122C-268(b)), the office does not have sufficient staff to represent the state's interest, if any, at hearings outside the state facilities. Because a county agency may be the substance abuse treatment provider, an attorney from the District Attorney's office or the County Attorney's office may choose to represent the petitioner's interest.

Private substance abuse treatment facilities generally retain an attorney to provide representation in support of commitment.

There are no other statutory provisions for representation of either the state or the petitioner in Article 5, Part 8 of Chapter 122C concerning substance abuse proceedings. For a further discussion of the question of representation of the petitioner's interest, see *supra* § 2.5B.