

## 3.5 Hearings

### A. Time Limit for Hearing

A hearing must be held in district court within ten days of the respondent being taken into custody if substance abuse commitment is recommended. G.S. 122C-286(a). The hearing must occur regardless of whether the respondent is in a 24-hour facility or released pending hearing. The time limitation for the district court hearing is the same as that for involuntary mental health commitment.

For a further discussion of issues pertaining to hearings, see *infra* Appendix C, “Working with Clients.”

### B. Venue and Transfer of Venue

***Respondent held pending hearing.*** When the respondent is held pending hearing, the hearing is held in the county where the 24-hour facility is located. On the respondent’s objection, the hearing must be held in the county where the petition originated. G.S. 122C-286.1(a).

***Respondent released pending hearing.*** When the respondent is released pending hearing, the hearing is held in the county where the petition originated. G.S. 122C-284(a).

### C. Continuance

A continuance of up to five days may be granted on motion of the court, the respondent, or the State. In addition, the “responsible professional” may also move for a continuance. G.S. 122C-286(a). Because many district courts hold commitment hearings only once a week or on two consecutive days, a five-day continuance is unworkable. It is common practice for the court to allow a seven-day continuance on consent of the parties. For a discussion of potential benefits of continuing the case, see *supra* § 2.6E.

### D. No Waiver of Respondent’s Appearance

The respondent’s appearance at the hearing may *not* be waived. G.S. 122C-286(b). The statute provides that a subpoena may be issued to compel the respondent’s appearance, but it does not specify who is responsible for obtaining the issuance of the subpoena. *Id.*

This mandatory appearance potentially creates a problem for a respondent when the treating physician recommending substance abuse commitment arranges a discharge before the respondent’s court date. The respondent may obtain release before the court date because bed space is available at a rehabilitation facility or because the respondent’s condition has stabilized. Often, a respondent who has been released from involuntary inpatient care will either refuse or be unable to attend a future court hearing in spite of the mandatory appearance requirement.

In these circumstances, counsel for respondents have sometimes agreed to a waiver of the respondent's appearance in negotiating the respondent's release before the commitment hearing, and courts have allowed the waiver and entered a substance abuse commitment when later sought by the physician. No appellate decisions have yet addressed this practice. Before considering such a waiver, counsel should advise the respondent of the statutory appearance requirement, the collateral consequences of a substance abuse commitment, and the respondent's obligations if served with a subpoena for a future court date. Counsel should document these efforts in the office case file for future reference.

#### **E. Not Contesting/Not Resisting Commitment**

**Not contesting.** There are no statutory provisions for respondents to accept the recommendation of substance abuse commitment or to "not contest." In practice, however, many respondents are in agreement with their attending physicians on the need for substance abuse treatment and do not contest the allegations in the petition. Counsel may, after advising the client of the possible consequences of substance abuse commitment, inform the client of the option to "not contest." *See infra* § 3.6C (discussing potential license consequences) and Chapter 12 (discussing various collateral consequences of commitment). An alternative possibility with a cooperative respondent, if the attending physician agrees, is not contesting an involuntary mental health commitment. This would allow a period of inpatient treatment without incurring the possible consequences of a substance abuse commitment.

By not contesting, the respondent can avoid an adversarial hearing. Although the respondent's appearance cannot be waived in a substance abuse commitment proceeding, the hearing could proceed by abbreviated testimony or by stipulation of the respondent's counsel. Counsel may stipulate to the facts alleged in the petition and in the Qualified Physician's Examination report (for a definition of this report, see *supra* § 2.2), or stipulate that the information in those documents would be the testimony of the authors.

**Not resisting.** In substance abuse cases, a period of detoxification may be necessary before the respondent is able to understand the issues involved in a substance abuse commitment. A short-term continuance could address this problem.

The respondent may, however, exhibit serious symptoms resulting from long-term substance abuse or of a concurrently existing mental illness that interfere with the ability to express a decision whether to contest the commitment. There are no statutory provisions to guide counsel when the client is unable to express a decision on whether to contest. In these cases, counsel should review the respondent's medical and psychiatric records and consult with the attending physician to better understand the respondent's prognosis.

In the cases where the client has not expressed a desire to contest and there is little or no chance for improvement or of the respondent prevailing at the commitment hearing, counsel may report to the court that the respondent is "not resisting." This means that the

respondent is unable to understand and discuss the issues enough to contest the commitment, but is equally unable to decide not to contest. As with an uncontested case, the hearing may then proceed with abbreviated testimony from the petitioner's witnesses or by stipulation of the respondent's counsel. Counsel may stipulate to the facts alleged in the petition and in the Qualified Physician's Examination report (for a definition of this report, see *supra* § 2.2), or stipulate that the information in those documents would be the testimony of the authors.

#### **F. Criteria for Commitment**

To order commitment, the court must find "by clear, cogent, and convincing evidence that the respondent is a substance abuser and is dangerous to himself or others." G.S. 122C-287(1).

There are no North Carolina appellate opinions addressing the evidence necessary to support a finding that the respondent is a substance abuser.

For a discussion of cases addressing the courts' interpretation of the standard of danger to self or others, see *supra* § 2.6H.

#### **G. Evidence**

**Admissible certified copies.** "Certified copies of reports and findings of physicians and psychologists and medical records of previous and current treatment are admissible in evidence . . ." G.S. 122C-286(c). As with mental health commitments, the respondent retains the right to confront and cross-examine witnesses. *Id.* For a discussion of the issues involved in this provision, see *supra* § 2.6J.

**Burden of proof.** The court must find that the respondent is a substance abuser and is dangerous to self or others by clear, cogent, and convincing evidence. G.S. 122C-287(1).

There are no North Carolina appellate cases addressing the evidence necessary to support a finding that a respondent is a substance abuser. Depending on the evidence presented, counsel may be able to make an argument that even if there is evidence of substance use, it does not support a finding that the respondent suffers from "an impairment in personal, social, or occupational functioning," as required by the statutory definition. *See* G.S. 122C-3(36).

As with some mental health commitments, the petitioner may not be present or may be unrepresented at the hearing. For a discussion of the challenges in handling such hearings, see *supra* § 2.5B.

**Witnesses and hearsay.** *See supra* § 2.6J.