

## 3.7 Supplemental Hearings

### A. Requests for Supplemental Hearings

***Supplemental hearing distinguished from rehearing.*** A supplemental hearing is held during the term of a substance abuse commitment if the respondent has moved to another county, out of state, or to an unknown location or the respondent is in need of treatment exceeding forty-five consecutive days at a 24-hour facility. These are matters concerning the terms of the existing commitment.

A rehearing is held on a request to *extend* the current substance abuse commitment. For example, a rehearing may be held on request of the attending physician for an additional forty-five days of substance abuse commitment following a 180-day commitment.

A respondent may seek discharge from a substance abuse commitment by filing a written application for a supplemental hearing with the clerk of court. G.S. 122C-291(d). There is no AOC form for the respondent's use.

There is no statutory definition of either "supplemental hearing" or "rehearing."

***Mandatory requests.*** The area authority or physician *must* request a supplemental hearing if the respondent intends to move or has moved to another county within the state. G.S. 122C-290(c).

Additionally, the area authority or physician *must* request a supplemental hearing if inpatient treatment in a 24-hour facility will exceed forty-five consecutive days. The clerk must be notified by the thirtieth day of the inpatient treatment of the need for the supplemental hearing. G.S. 122C-290(b).

### B. Scheduling of Supplemental Hearing and Notice

On receipt of a request for a supplemental hearing, the clerk must calendar a hearing to be held within fourteen days. The clerk must also give notice at least seventy-two hours before the hearing to the petitioner, the respondent, the respondent's attorney, if any, and the area authority or physician. G.S. 122C-291(a).

The statute requires that the respondent be served with notice as provided in Rule 4(j) of the North Carolina Rules of Civil Procedure (principally, by personal delivery or leaving at the respondent's "usual place of abode with some person of suitable age and discretion then residing therein," by delivery to an authorized agent, or by mailing a copy by registered or certified mail, return receipt requested). All others are to receive notice by first-class mail, postage prepaid. G.S. 122C-291(a), 122C-284(b).

### C. Supplemental Hearing Procedures

The supplemental hearing is held in district court pursuant to the procedures for the initial

substance abuse commitment hearing. G.S. 122C-291(a); *see also* G.S. 122C-286. As with the initial hearing, the respondent's appearance may not be waived.

#### **D. Disposition**

***Respondent's request for discharge.*** The statute provides that the court is to determine whether the respondent continues to meet the criteria for commitment. G.S. 122C-291(d). The statute does not state whether the burden of proof is on the moving respondent. It presumably would be up to the respondent to prove that the criteria for substance abuse commitment are no longer present because the supplemental hearing is held during the term of the existing commitment.

***Respondent has moved or intends to move to another county within the state.*** The court must determine first whether the respondent continues to meet the criteria for commitment. If not, the respondent must be discharged and the case dismissed. If the respondent continues to meet the commitment criteria, the court must continue the commitment but designate an area authority or physician within the respondent's new county of residence to provide treatment. Venue for further court proceedings is changed to the new county providing supervision of treatment. The clerk of court in the original county must transfer the records to the clerk of the county to which venue has been transferred. G.S. 122C-291(b).

***Inpatient treatment to exceed forty-five consecutive days.*** The court must first determine whether the respondent continues to meet the criteria for substance abuse commitment. If not, the respondent must be released and the case dismissed. G.S. 122C-291(c). If the respondent continues to meet the commitment criteria, the court must determine whether further treatment in the 24-hour facility is necessary. If so, the court may order continued inpatient treatment for up to ninety days. If the court finds that the respondent continues to meet the commitment criteria, but is not in need of continued inpatient treatment, it may continue the commitment but order the release of the respondent from the 24-hour facility. G.S. 122C-291(c).

***Order.*** *See infra* Appendix A, Form AOC-SP-206.