

5.5 Attorney Representation

A. Appointment of Counsel

The statute requiring judicial review of a voluntary admission of an incompetent adult provides that, “[u]nless otherwise provided in this Part, the hearing . . ., including the provisions for representation of indigent incompetent adults,” and all related proceedings are governed by the procedures for involuntary commitment. G.S. 122C-232(c); *see supra* § 2.5A.

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

B. Ethical Considerations

There are challenges in representing a person who has already been adjudicated incompetent. The statutory section on admissions states that the legally responsible person shall act for the person admitted, including “giving or receiving any legal notice.” G.S. 122C-231. The hearing procedures, however, are designed to protect the due process rights of the *respondent*. Counsel is ethically required to explain the hearing procedures and dispositional alternatives to the respondent. Although the incompetent respondent does not have the legal capacity to sign in to the facility voluntarily, the respondent may contest the admission at the district court hearing or may decide not to contest. The attorney should determine how the respondent wishes to proceed. If the respondent is contesting, counsel must prepare the case as any other, reviewing records, talking with witnesses, and issuing subpoenas as appropriate.

Effective communication, given the disability of the client, is a concern. A prior review of records, as well as talking with the treatment team after obtaining any required consent by opposing counsel, may offer guidance on how best to approach the client interview.

See infra Appendix C, “Working with Clients.”