

5.6 Hearings

A. Venue

All hearings are held in the district court in the county in which the 24-hour facility is located. G.S. 122C-232(a).

B. Application of Involuntary Commitment Procedures

Except when otherwise specified in the sections dealing with voluntary admission of incompetent adults, the required initial hearing and any subsequent proceedings are governed by the provisions for involuntary commitments in Article 5, Part 7 of Chapter 122C. G.S. 122C-232(c). These procedures are discussed *supra* in Chapter 2.

C. Duties of Clerk of Superior Court

Calendaring of hearing. The procedures and notice required for involuntary adult commitment proceedings apply to hearings for the voluntary admission of an incompetent person. The process begins with the written application for admission rather than with a petition. G.S. 122C-231. The clerk of superior court in the county where the facility is located must calendar the hearing within 10 days of the admission. G.S. 122C-268(a).

Notice to respondent. Notice is given by the clerk to the respondent according to Rule 4(j) of the North Carolina Rules of Civil Procedure at least seventy-two hours before the hearing. G.S. 122C-264(b), (c). Rule 4(j) requires service on the respondent by, among other methods, personal service or certified mail (with proof of service on the respondent). Rule 4(j)(2)b. provides for separate service on the guardian.

It is doubtful that service on the respondent is actually being done given the time limitations of the hearing and the notice requirements. The respondent's counsel could make a motion to dismiss for lack of service, but rather than being released, the respondent could be readmitted by a new application of the guardian. The ward might remain in the facility while the process begins anew, delaying the time before the respondent is afforded a hearing.

Notice to others. The clerk is also to provide notice to the respondent's counsel and to the legally responsible person, who is the guardian. G.S. 122C-232(d). This notice is to be sent at least seventy-two hours before the hearing by first-class mail, postage prepaid. G.S. 122C-264(c). Although the legally responsible person may file a written waiver with the clerk of the right to receive notice, there is no provision for waiver by the respondent's counsel. G.S. 122C-232(c), (d).

Due to the time constraints and volume of cases, it is unclear whether the notices are given as required by Rule 4(j) and the statutes. Again, the respondent's counsel could make a motion to dismiss for lack of service, but this might result in delay of the hearing

to allow proper service rather than the respondent's release.

D. Continuance

A continuance of the hearing of up to five days may be granted on motion of the court, the respondent's counsel, or the responsible professional, who is the person named by the facility director to oversee the respondent's care. G.S. 122C-232(a), 122C-3(32). As many district courts hold hearings for commitments and admissions only once a week or on two consecutive days, a five-day continuance will not suffice. It is common practice for the court to allow a seven-day continuance upon consent of the parties.

E. Criteria for Judicial Review of Admission

The court must determine whether the respondent "is mentally ill or a substance abuser and is in need of further treatment at the facility." G.S. 122C-232(b). The court must find that these requirements have been met by clear, cogent, and convincing evidence and that treatment cannot be provided in a less restrictive manner. If these requirements are not met, the respondent is to be released. *Id.* An important distinction between these "voluntary" proceedings and involuntary commitment hearings is that there is no requirement of a finding of danger to self or others.

F. Dispositional Alternatives

The dispositional alternatives for the voluntary admission of an incompetent adult are either concurrence with the inpatient admission or discharge. G.S. 122C-232(b). If the treatment provider is recommending outpatient treatment, an involuntary commitment proceeding for outpatient commitment must be initiated.

G. Discharge Pending Hearing

Prior to the initial court hearing, the respondent is to be discharged on request of the legally responsible person, who is the guardian, subject to the right of the facility to hold the respondent for up to seventy-two hours to initiate involuntary commitment proceedings. G.S. 122C-233(a), 122C-211(b).

H. Discharge After Hearing

After the court has concurred in the admission, only the court or the facility may release the respondent. The legally responsible person may apply to the court to review a request for discharge if the facility refuses to release the respondent when the legally responsible person believes release is in the best interest of the respondent. G.S. 122C-233(b). There is no provision for appointed counsel for the legally responsible person. Special Counsel or appointed counsel continues to represent the respondent until unconditional discharge or through proceedings at the trial level. G.S. 122C-270(a), (e).