

5.7 Appeal

Appeal is directly to the North Carolina Court of Appeals. G.S. 122C-272. The statute provides that any party on the record may appeal as in civil cases. *Id.* It is unclear how this would apply to the voluntary admission of an incompetent person.

It seems clear that the incompetent adult could appeal as the person whose rights are protected by the judicial review of the admission. It is less clear whether the legally responsible person can appeal as the person acting on behalf of the incompetent adult. There is no case law on this point, but it could be argued that the legally responsible person is a party.

Chapter 122C provides for attorney representation of an incompetent person through any appellate proceedings. G.S. 122C-232(c), 122C-270. Appeal by the respondent's counsel is therefore at the direction of the respondent. In determining who is responsible for providing notice of appeal, the only guidance from 122C-232 (c) is that "all subsequent proceedings, . . . are governed by the involuntary commitment procedures of Part 7 of this Article [Article 5 of Chapter 122C]." Part 7 regulates involuntary commitment of the mentally ill. Appeals under Part 7 are taken by respondents. Pursuant to 122C-270, assigned counsel represents respondents through all proceedings in the district court. Presumably, this covers notice of appeal, which is required to be given at the district court level. These specific statutory provisions take precedence over the North Carolina Rules of Civil Procedure, which provide that an incompetent person can appear or appeal in civil cases only through a guardian ad litem or general guardian. N.C. R. Civ. P. 17.

Attorneys assigned by the North Carolina Office of the Appellate Defender are responsible for representing the respondent following the filing of appeal. G.S. 122C-232(c), 122C-270(a), (e).