

6.4 Duties of Clerk of Superior Court

A. Schedule Hearing

The clerk must schedule a hearing for judicial review upon receipt of notice of the minor's admission. G.S. 122C-224.1(b). The hearing must be held within fifteen days of date of admission. *Id.* This is in contrast to the requirement of a hearing within *ten* days of the date a respondent is taken into custody for an involuntary commitment.

B. Appoint Attorney

Within forty-eight hours of receipt of notice of the admission, an attorney shall be appointed in accord with the rules of the Office of Indigent Defense Services. G.S. 122C-224.1(a). Typically, the clerk has made the appointments. If the minor is in a state facility, Special Counsel serves as the minor's attorney. All minors are presumed to be indigent. *Id.*; *see infra* Appendix A, Form AOC-SP-912M.

The Attorney General issued an opinion that only the legally responsible person can choose or engage an attorney for a minor. *See* Opinion of Attorney General to C. Robin Britt, Sr., Secretary, Department of Human Resources, Attorney Access to Minors in State Hospitals and Attorney General Opinion (December 20, 1995), *available at* www.ncdoj.com/About-DOJ/Legal-Services/Legal-Opinions/Opinions/Attorney-Access-to-Minors-in-State-Hospitals-and-A.aspx. The opinion also states that the minor's rights are protected during commitment proceedings by G.S. 122C-224.1 and 122C-270, which provide for representation of the minor by Special Counsel or appointed counsel. Presumably, this is acknowledgement that an attorney selected by the legally responsible person, who signed the application for the voluntary admission of the minor before the court, would have an inherent conflict of interest in representing the minor in the judicial proceeding. Appointed counsel's responsibilities for a minor continue until counsel is discharged by the court. G.S. 122C-224.2(c); *see also infra* § 6.5E.

C. Give Notice

Upon calendaring of the hearing, the clerk must give notice of the time and place of the hearing to the minor's attorney on behalf of the minor. G.S. 122C-224.1(b). The notice must be given as soon as possible but not later than seventy-two hours before the hearing, pursuant to Rule 4(j) of the North Carolina Rules of Civil Procedure. *Id.* Rule 4(j) requires personal service, service by certified mail, or other designated methods of service.

The clerk also must send notice as soon as possible but not later than seventy-two hours before the hearing, by first-class mail, postage prepaid, to the legally responsible person and to the responsible professional. G.S. 122C-224.1(b).