6.5 Duties of Attorney for Minor

A. Meet with Client

By statute, the attorney must meet with the minor within ten days of appointment and not later than forty-eight hours before the hearing. G.S. 122C-224.2(a); *see infra* Appendix C, "Working with Clients."

B. Deliver Notice of Hearing

The attorney must deliver a copy of the notice of the time and place of hearing to the minor no later than forty-eight hours before the hearing. G.S. 122C-224.2(a). As the attorney must be served with the notice no later than seventy-two hours before the hearing, it is possible that the attorney will have only twenty-four hours in which to deliver the notice.

C. Advise Minor on Hearing Procedure

It is the duty of the attorney to explain the hearing procedures to the minor. The attorney may want to review the records and talk with the treatment team to learn about the minor's level of understanding. Especially with very young children, the attorney may need to use non-legal terms to help the minor better understand the proceeding.

If the minor is contesting the admission, the attorney should explain about evidence and testimony and explore potential witnesses for the petitioner and for the minor. Evidence supporting admission should be discussed, along with the judicial standard of review. The minor should be advised that counsel might need to contact other people in preparation for the hearing. If the minor objects to communication, for example with parents, counsel should explain the reasons contact might benefit the case and explore the basis for the objection. If the minor continues to object, it is better practice to follow the minor's wishes. Counsel should make a note in the office case file of the advice given and the minor's position.

Minors may equate "contesting" with "going home." The attorney should explain that the judge makes the decision after hearing all the evidence and that contesting does not necessarily mean that the minor will be released. A realistic assessment of the merits of the case may help the minor make a good decision regarding whether to contest.

The statute provides that minors have the right to be present at the hearing, as well as the separate right to testify even if otherwise not in attendance at the hearing. G.S. 122C-224.3(b); *see infra* § 6.6E. The attorney should explain that the minor may appear at the hearing whether or not the admission is contested. If the minor is not contesting, an appearance will have no effect on the outcome on the case. The minor still may be interested in being present at the proceeding. Some minors may look at the hearing as a chance for an outing. Counsel might gently discourage this but ultimately must leave the decision to the client.

Even if the minor does not wish to appear at the hearing, the minor still has the right to testify. G.S. 122C-224.3(b). For example, the minor might not want to be present in the hearing room to hear the testimony of the petitioner's witnesses, yet might want to testify. If the minor is contesting, counsel should explore the possible testimony of the minor. Counsel must assess whether the minor's testimony will aid or hinder the minor's position.

Note that the motions for waiver of appearance and the waiver of right to testify must be filed separately and in writing. G.S. 122C-224.2(b). This is presumably to ensure that the minor has the opportunity to testify, if desired, without having to sit through the entire hearing, which may be daunting to a minor.

D. Advise Minor on Potential Effects of Admission

Generally. The attorney should explain that the minor may be kept as a patient in the facility as long as the court concurs in the admission and the facility determines that the minor continues to be in need of treatment that could not be received in a less restrictive manner. Other matters that arise only after reaching the age of majority are more difficult to explain meaningfully. For example, in applying for college or employment, if asked whether the client has ever been committed, must the client answer in the affirmative? There is a good argument that a voluntary admission is not a commitment and does not have to be disclosed. It is also a confidential proceeding and is not a public record. *See infra* Chapter 12.

Federal gun laws. Federal gun laws prohibit ownership or possession of a gun by someone who has been committed to a psychiatric institution. Again, there is an argument that these laws do not apply to a voluntary admission. It is difficult to explain these legal concepts to a young person, especially when they might not become a real concern for years. *See infra* § 12.3.

Expunction of records. There is a statutory procedure for expunction of a minor's records of admission or commitment to a 24-hour facility. G.S. 122C-54(e). Either the legally responsible person or the former patient may request that the records be expunged after the minor reaches adulthood and has been released from the facility. *Id.* The statute provides that the court is to inform the legally responsible person and the minor in writing of the right to expunge records. This notice is to be given at the time the application for admission is filed. *Id.* It is unclear how the court would provide this information. It appears that only the facility staff would be in a position to provide this information at the time of admission. *See infra* § 12.6.

E. Represent Minor Until Relieved by Court

The statute provides that counsel for the minor shall continue the representation until relieved by the court. G.S. 122C-224.2(c). Presumably, representation also ends when the minor is unconditionally discharged or when the minor reaches the age of majority.