6.6 Hearings

A. Venue

The statute provides for the hearing for judicial review of the minor's admission to be held at the 24-hour facility if located within the judge's district. G.S. 122C-224.3(a). The hearing may be held elsewhere, however, if the judge determines that holding the hearing at the facility would be disruptive to the court calendar. *Id.* In that case, the hearing may be held in another location, including the judge's chambers. The hearing may not be held in a regular courtroom over the minor's objection if a more suitable place is available. *Id.*

There is no statutory provision for change of venue.

B. Preparation

Counsel should review the medical and psychiatric records from this and any prior psychiatric admissions. Additionally, any available school records and psychological reports or testing should be reviewed. The treatment team should be consulted, after obtaining any necessary consent, to learn the recommended length of stay and to explore the possibility of an agreement between the client and the treatment team on the length of the admission.

As with any other client, the minor's attorney should obtain the consent of the minor to contact witnesses outside the facility, including the legally responsible person. Counsel should interview possible witnesses and issue subpoenas for documents and witnesses as necessary. Admission papers and court documents should be examined to determine if they comply with statutory and due process requirements. For example, the admission application should be checked to see if it was properly signed by the legally responsible person. If there are irregularities, counsel may consider whether a motion to dismiss is possible and discuss the possible outcomes with the client.

C. Continuance

The hearing is to be held within fifteen days of admission, with statutory provision for one continuance of not more than five days. G.S. 122C-224(a). The statute neither specifies nor limits who may move for the continuance.

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.

D. Not Contesting/Not Resisting Commitment

Not contesting. There are no statutory provisions for minors to accept the recommendation for continued inpatient treatment or to "not contest." In practice, however, many minors are in agreement with their attending physicians on the need for

inpatient treatment and do not want to contest the admission. Counsel may inform the client of the option to "not contest" the voluntary admission.

By not contesting, the minor can avoid a hearing with possibly upsetting testimony from family, friends, and the treatment team. An uncontested hearing on admission could proceed with testimony from witnesses supporting the admission or by stipulation of the respondent's counsel. Counsel may stipulate to the facts alleged in the Qualified Physician's Examination report (for a definition of this report, see *supra* § 6.2) or stipulate that the information in that document would be the testimony of the author.

A minor who is not contesting may wish to attend the hearing and has the right to do so. Counsel should explain the abbreviated nature of the proceedings so that the minor will know what to expect. Minors who are not contesting often prefer not to attend the hearing. A motion for waiver of appearance should be filed so that the minor is not compelled to attend. *See infra* § 6.6E.

Not resisting. The minor's lack of maturity, as well as the acute symptoms of mental illness, may prevent the minor from understanding the nature or import of the proceeding. The minor may be unable to discuss the issues or respond to counsel's questions, even at an elementary level. There are no statutory provisions to guide counsel when the client is unable to express a decision on whether to contest the commitment. For a discussion of these issues in cases involving adults, see *supra* § 2.6F.

If a review of the psychiatric and educational records support counsel's observations of the minor's level of understanding and there is no prospect of the minor being released by the court, counsel may report to the court that the respondent is "not resisting." This means that the minor is unable to understand and discuss the issues enough to contest the admission, but is equally unable to decide not to contest. As with an uncontested case, the hearing may then proceed with testimony from witnesses supporting the admission or by stipulation of the minor's counsel. Counsel may stipulate to the facts alleged in the Qualified Physician's Examination report (for a definition of this report, see *supra* § 6.2) or stipulate that the information in that document would be the testimony of the author.

A motion for waiver of appearance is filed in virtually every voluntary admission case in which the minor is not resisting. The minor is often also unable to make a decision regarding an appearance and is unable to understand or to benefit from attending court proceedings.

E. Waiver of Right to Appear and Waiver of Right to Testify

If the minor client does not want to be present at the hearing, counsel must file a written motion to waive the right to appear. G.S. 122C-224.2(b), 122C-224.3(b). The minor retains the right to testify even if the right to appear is waived. *Id.* If the minor client does not want to testify, counsel must file a *separate* written motion waiving the right to testify. *Id.*

An interesting section of the statute on the minor's testimony provides that the minor may appear "to respond to the judge's questions." G.S. 122C-224.3(b). Although one could infer that this means that only the judge may question the minor, this would appear to be a violation of the minor's due process right to representation by an attorney and the right of the petitioner to cross-examination.

F. Attorney Representation of Legally Responsible Person

There is no provision for representation of the legally responsible person, the person who signed the application for admission of the minor to the 24-hour facility. There is no provision for notice of judicial proceedings to an attorney representing the interests of the legally responsible person or the facility, although the legally responsible person and the responsible professional are among those who must receive notice. G.S. 122C-224.1(b). At state facilities, the attorney from the Attorney General's office may represent the interest of the state in the admission. Private facilities may employ private counsel to represent the interest of the facility in the admission. The legally responsible person could presumably hire an attorney to present evidence supporting the admission, although this is not provided by statute.

G. Hearing Closed to Public

Unless the attorney moves for the hearing to be open, it is closed to the public. G.S. 122C-224.3(d). The attorney is presumably the attorney for the minor, as no other attorney is mentioned in the section on voluntary admissions of minors. It also appears that if the minor's attorney requests that the hearing be open, the judge must grant the request.

H. Evidence

It may be unclear who will present evidence at the hearing to support admission. Counsel for the minor may find that the court is taking judicial notice of documents in the court file. The statute provides that "[c]ertified copies of reports and findings of physicians, psychologists and other responsible professionals as well as previous and current medical records are admissible in evidence." G.S. 122C-224.3(c). Copies of all documents admitted into evidence as well as a transcript of the hearing must be provided by the clerk at the request of the minor's attorney. G.S. 122C-224.3(e).

The minor, through counsel, has the statutory right to confront and cross-examine witnesses. G.S. 122C-224.3(c). If the legally responsible person is not represented at the hearing, who arranges for the appearance of the authors of the documents? The attorney for the minor should not be required to subpoena witnesses adverse to the client. Does the court issue a subpoena, and does this occur after objection to admitting the documentary evidence at hearing? If so, asserting the right to cross-examination will necessarily result in a delay of the hearing.

This may produce the uncomfortable situation of defending against the "empty chair." The court in effect produces or reviews the evidence, creating the appearance that the court is adverse to the minor client.

Counsel for the minor must determine, along with the client, whether to have the minor testify. It is also counsel's responsibility to subpoena any other favorable witnesses or documents.

I. Criteria for Admission

The criteria for the court to concur in the voluntary admission of a minor are less stringent than for an involuntary commitment as there is no need for a finding of danger to self or others. The court must first find that the minor is either mentally ill or a substance abuser. Additionally, the minor must be in need of further treatment at the 24-hour facility. Finally, there must be no less restrictive mode of treatment available. G.S. 122C-224.3(f).

J. Dispositional Order

There are three possible choices for the dispositional order. If the court finds by clear, cogent, and convincing evidence that the criteria for voluntary admission have been met, it must concur in the admission. The court must set the maximum length of stay, up to ninety days. G.S. 122C-224.3(g)(1).

The court may find that there are "reasonable grounds to believe" that the admission criteria exist, but additional evaluation and diagnosis are needed. In that case, it may order a one-time authorization of a stay of up to fifteen more days for such evaluation and diagnosis. G.S. 122C-224.3(g)(2).

Finally, if the court finds that the criteria for admission or additional evaluation have not been met, it must order that the minor be released. G.S. 122C-224.3(g)(3).

See infra Appendix A, Form AOC-SP-913M.