Appendix C
Working with Clients

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WORKING WITH CLIENTS
INVOLUNTARY COMMITMENT CLE
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INTRODUCTION

The 3 most important things I have to share:

1) The main difference between our clients and the rest of us is that we know their diagnoses.

2) You do not have to listen to everything a bi-polar client in a manic phase has to say.

3) We work for the client.

In our society, there is an almost inherent paternalistic, human quality of wanting to take care of/protect those whom we perceive to be disadvantaged and a tendency to believe that we know better than they do what is best for them. Even though we are trained to zealously advocate for our clients, we are only human and can fall prey to this tendency. If a person is perceived to be mentally ill or a substance abuser, this human quality and tendency encourages many lay people--including attorneys, and judges--to want to do what is in the best interest of mental patients--often deferring completely to the doctor's recommendations or giving the doctor's opinion undue weight.

If we want to represent respondents in involuntary commitment hearings, then we have to disabuse ourselves of this notion and the related tendency. We must remember that we work for our clients and let them determine their own position. This is true even if the client has been declared incompetent. The incompetent client already has a guardian to act in his best interest, and our job is to protect the client's rights. If the client is unable to determine his/her own position, we cannot assume that the client consents to commitment or that this inability to do so invites or requires us to substitute our judgment of what is best for our client. The involuntary commitment procedure, like other legal procedures, is designed to require that the prosecuting attorney must make the case for commitment and the court must make the ultimate decision. If we substitute our judgment for our client's, we thwart the process and the system, as well as violate our client's right to a zealous advocate.

I. HOW WE DO OUR JOB MAY DETERMINE IF WE MAKE THINGS BETTER OR WORSE FOR OUR CLIENTS

A. There is an underlying conflict between legal rights and right to treatment

1. Medical point of view

Treatment staff may focus on the patient's medical need for treatment as being paramount to other legal rights. They may see legal process as intruding on their

work and client's treatment rights and interfering with treatment. Specifically, they may express:

(a) Concerns that patient access to medical evidence may prematurely reveal information that the patient is not ready to know.

(b) Concerns that legal process undermines the patient/therapist relationship.

(c) Concerns that the patient treatment time, energy, and focus is diverted to fighting commitment rather than participating in and benefiting from treatment.

(d) Concerns that their finite treatment resources are being depleted by court related demands.

(e) Concerns that may become pressure on the patient's attorney to do or refrain from doing certain things for treatment purposes (e.g., not reveal certain information to the client, not engage with family members because they fear this may undermine other treatment goals, etc.)

And may be is a legitimate basis for all of these concerns.

2. Legal point of view

The constitutional rights to liberty, freedom of speech, and freedom of association demand that due process requirements be strictly followed in order to force psychiatric hospitalization and treatment on anyone involuntarily.

B. How we approach client may influence/direct their position regarding IVC

1. It is our job to be sure that our clients understand:

a. Their legal rights regarding involuntary commitment

b. The legal process

c. Their options

2. Not our job to:

a. Direct/influence the client's decision regarding whether or not to contest IVC

b. Direct the client's decision regarding treatment or to interfere in treatment

C. How we approach client may influence their treatment

1. We may upset the client-

IVC clients may already feel criminalized due to their treatment by law enforcement and outpatient experience prior to admission and may fear imprisonment.

The client may have directly or tangentially related criminal charges, domestic violence protective orders, or DSS child protection proceedings and the client may have concerns that IVC will adversely affect these matters or their ability to participate in them due to their confinement.

The client may have irrational fears or response to having an attorney.

The client may learn from the attorney for the first time that he or she is hospitalized on involunary commitment status or what that status means. The client may have sought treatment and believe that he or she is a voluntary patient; have been coerced into IVC; been told that the hospitalization would only be for 3 days; or given other erroneous information.

If the client becomes preoccupied with the court hearing, s/he may disengage from treatment or behave in ways that may be used to provide more evidence for IVC or may act out in ways that lead to more intrusive treatment.

2. We may calm or relieve the client-

The client may believe for the first time since hospitalization that someone is really supporting him or her, is willing to consider his or her point of view, or that s/he has a voice in the decision making regarding treatment and hospitalization. The client may find it easier to make treatment decisions knowing that s/he has a legal advocate.

If the client's rights were violated in the process or if s/he feels treated badly, the client may appreciate an advocate who recognizes and validates that.

II. GENERAL CONSIDERATIONS IN DECIDING HOW TO APPROACH A CLIENT

A. WHEN TO SEE THE CLIENT

It is important to see the client as soon as possible. The timing of the first contact may be determined by a number of factors, including how far in advance of the hearing the attorney is appointed/notified of the appointment; when the attorney is notified of the doctor's recommendations regarding commitment (it may be difficult to interview the client without knowing what the doctor is recommending because the client usually wants to know the recommendation and the uncertainty of not knowing can cause additional problems for the client); and whether the attorney will have more than one opportunity to meet with the client prior to the hearing.

N.C.G.S. 122C-224.2 requires that the attorney for a minor must meet with the minor client within 10 days of appointment but not later than 48 hours before the hearing.

B. WHETHER OR NOT TO REVIEW THE RECORD IN ADVANCE (OR DISCUSS CLIENT WITH HOSPITAL STAFF)

There are differing points of view about how much information the attorney should obtain prior to initially interviewing the client. Those who advise against reviewing records prior to the initial client contact base their objection on the possibility that the attorney will be influenced to believe the validity of allegations and medical evidence and conclusions regarding mental illness and danger, thereby undermining their objectivity. It is obviously necessary for the attorney not to have preconceived notions regarding the client's mental illness, substance abuse, or dangerousness.

As with other types of representation, many find it ill advised not to obtain information in advance of the initial client interview for a number of reasons, including assessing personal safety; and to identify issues and matters necessary to discuss with the client.

It is appropriate for the attorney to carefully review the allegations of petitioner and referral sources upon which petition is based and medical conclusions may be based.

In addition to a thorough review of the legal documents attendant to the IVC proceeding, it is helpful to review the following information which is found in the client's hospital chart:

Referral information
Triage information
Admission summary
Admission physical exam
Toxicology screens
2nd QPE
Medications (checking for compliance/noncompliance, effects, side effects)
Restraints/take downs
Progress reports

Recorded observations of treatment team members of client behavior in the hospital may or may not tend to support the factual allegations and medical conclusions and recommendations.

It may also be helpful to ask staff about medical/medication issues you don't understand, safety concerns, and details or the basis of chart notes.

C. SAFETY CONSIDERATIONS-The attorney should have healthy concern for his or her own physical safety from dangerous or unpredictable clients and should take care to try to avoid placing clients in situations in which they may threaten, harm or attempt to harm the attorney or behave in a manner that provides additional evidence of commitability. Note allegations of dangerousness in the petition and the 1st and 2nd QPEs and follow up in the chart or with hospital staff to determine if evidence of danger to others, or threats of danger, have occurred or continued during hospitalization. Sometimes behavior or threats of danger to others occurs during hospitalization even if it is not alleged in the petition or required exams.

D. INTERVIEW SPACE-The hospital is required to provide space for the attorney/client interview. Be sure that the space is suitable for the needs of the particular client and interview, and request an alternative space if it is not suitable; or suggest how the space might be modified to be suitable. Sometimes simply arranging the furniture so that the attorney will sit near the door and the client will sit across a desk or table from the attorney and providing for a hospital staff member to escort the client into and out of the room provides sufficient protection.

E. CONFIDENTIALITY-The client has the right to confidential communication with his/her attorney. If the client understands that s/he is entitled to a confidential interview but wants to have someone else present during the interview anyway, those wishes should be accommodated, if possible. Otherwise, unless safety concerns require the presence of a third person, the interview space should allow for a confidential exchange. There are a number of ways that might provide enough safety without actually having another person present, such as interviewing in an observation room without the sound system on or leaving the room door open with a third party outside able to see in, but not within hearing distance.

F. DISCLOSURE OF ALLEGATIONS AND EVIDENCE TO THE CLIENT- A client is entitled to know the allegations and evidence against him or her. G.S. 122C-53 governs disclosure of confidential mental health records to patients, allowing the attending physician (or in the absence of an attending physician, the facility director of his designee) to determine if the information "would be injurious to a client's physical or mental well being" and if so, to refuse patient requests to see the information. There is no case law construing this provision, and good legal reasoning can determine that all QPEs, medical records upon which they are based, and any other relevant evidentiary information contained in the medical record is evidence against the client and he or she is entitled to be informed of the contents of those records or to see them. It is difficult, if not impossible, to adequately represent a client without candid discussion of the evidence supporting the petition and the doctor's recommendations.

It is important to be mindful that these records may contain information unknown to or withheld from the client and from sources who wish not to be identified. The information may be sensitive and could cause additional problems for the client. Utmost care should be exercised in discussing information contained in the medical record with the client. Also bear in mind any safety considerations that may apply.

III. CLIENT SPECIFIC CONSIDERATIONS IN INTERVIEWS

A. PHYSICAL CONSIDERATIONS-Usually the client's significant physical conditions are identified by medical history, during intake, or during the course of hospitalization, and this information is available to counsel. However, sometimes a client may have an unidentified physical or medical problem that impacts communication, participation in treatment, cooperation with counsel, or participation in the client's defense. Be alert to your own observations of the client and follow up on indications of an unidentified problem. Also be sure to ask the client if they can hear and understand you, see you, etc. If you are unsure if they understand or of the reliability of their response, try a common sense check of your own.

1. MOBILITY-Does the client have the physical ability to get comfortably to,

from, in, and out of the interview space? If the client is bedridden, try to arrange the interview when the client's roommate is out of the room. If the client is in a wheelchair or has difficulty ambulating, is the interview space conveniently located? Is it appropriate for the attorney to wheel a patient to and from the interview? Is the attorney comfortable doing so, or is there hospital policy concerning non employees doing this? Is there someone available who can push the wheelchair? Is there some other seating arrangement that meets the physical needs of the client?

2. HEARING IMPAIRMENT-Determine in advance if the client has an identified hearing impairment, what accommodations are needed to communicate with the client, and if they are available. Do not assume the client can hear and understand you. Ask or otherwise determine to your own satisfaction if the client is able to hear and understand you.

Does the client have a hearing aid and, if so, is it at the hospital? Involuntary clients do not usually get to pack their things before being transported and often do not have eye glasses, false teeth, hearing aids, prosthetic limbs, and other necessary appliances. If the client's hearing aid is not at the hospital, can anything be done to get it for him or her?

Is it necessary to speak very loudly? If so, does the interview space provided allow the attorney and client to talk loud enough without being overheard by others?

Will writing or typing assist the client in communicating and understanding and, if so, are writing implements or a keyboard available?

Does the client read lips? If so, take care to be sure that the space (and the court room) is set up so that the attorney and client can be positioned appropriately and with enough light for the client to lip read. Also be sure that during the hearing, everyone in the process is positioned and speaks so that the client can see/hear what is being said. This may require reminders from counsel during the course of the hearing.

Is an interpreter needed and, if so, is one available? Is there a qualified court interpreter available? If the client has a hearing impairment, an important consideration will be whether the hospital is able to provide appropriate treatment to the patient. Milieu therapy consisting of watching videos and group sessions may not be of service at all to some hearing impaired clients.

3. VISUAL IMPAIRMENT-Does the client have a visual impairment that affects his/her ability to participate in the interview/treatment? If so, what is needed to accommodate this disability? Does this impact on treatment?

4. OTHER COMMUNICATION PROBLEMS-Does the client have problems with receptive or expressive language? With uncommunicative clients, try different techniques to get them to respond to you: write them a note; ask them to nod or blink their eyes; see if they can use a keyboard. Sometimes clients' physical/medical impairments might be missed and their nonresponsiveness is otherwise mistaken for a symptom of mental illness. Do not assume that a client

described as nonresponsive cannot hear or understand you. Try different methods.

5. OVERMEDICATION-Clients may be given large doses of antipsychotic drugs upon admission or if deemed necessary during treatment, with the side effect of making them groggy, unable to completely wake up, slurring their speech, or otherwise making communication with them difficult or impossible. Sometimes combinations of medications clients are prescribed for other medical conditions make them appear to exhibit symptoms of mental illness. When clients have difficulty waking up during regular work hours to participate in an interview, or if it is difficult to communicate with them, check to see if medication may be causing or contributing to the problem. If so, reschedule the interview as often as necessary until the client can participate, continuing the case if necessary. Try coming at different times of day or night.

B. MENTAL/EMOTIONAL CONSIDERATIONS

1. RESTRAINTS, SECLUSION, AND CLIENTS TOO SICK TO INTERVIEW-Upon admission or at other times during hospitalization, clients may be too sick or psychotic to participate in an attorney/client interview. Clients may be in seclusion or restraints because of their perceived dangerous behavior. Interviews with clients in these situations need to be postponed with frequent personal checks to see when they are able to participate.

2. MENTAL RETARDATION-Mentally retarded clients may be likely to try to please the attorney by giving the answers they believe the interviewer wants to hear. Be sure to discuss the commitment procedures and the legal process carefully and have the client restate his or her understanding of it to be sure that the client actually understands. In determining the client's wishes regarding venue, contesting, etc., take each issue separately.

3. ALZHEIMERS/ORGANIC BRAIN SYNDROME-If you have reason to question whether a client may be demented, be sure to ascertain whether the client is fully oriented. It is not unusual to have a lengthy interview with an Alzheimer's client with a preliminary conclusion that there is not dementia only to find out at the end of the encounter that the client believes that this is 1932.

IV. SOME INTERVIEWING TECHNIQUES

A. DETERMINE IF CLIENT IS GENERALLY ORIENTED-Early in the interview process, make sure your client knows who they are, where they are, and the current time frame (date, time, year).

B. OPEN ENDED QUESTIONS WHEN POSSIBLE-It is important to question in a manner that yields the client's wishes and direction and not to influence the answer. Do not go into the interview with assumptions as to what the client wants. Try to conduct the interview with open ended questions. If the client is unable to answer open ended questions, then gradually make the questions more specific. Remember that some clients, such as mentally retarded patients and some children are more likely to give the answer they think the interviewer wants to hear. Some clients, like adolescents and

paranoid clients, may be more likely to give a negative answer to any question.

C. DEALING WITH DELUSIONS/HALLUCINATIONS-Many clients will have ideas and opinions that are a product of psychosis. There are cases in which a client is believed to be psychotic but the facts are being manipulated by the petitioner so that it appears that way or the facts are otherwise misunderstood. Some psychotic clients may be attuned to the fact that others believe they are sick and that their beliefs are delusions. These clients may ask their attorney to validate their delusions or hallucinations. Paranoid clients may want their legal advocate to agree with their delusions. This can be an issue in forming a client/attorney relationship.

Attorneys are not treatment personnel. Confronting delusions and hallucinations can be dangerous and harmful to both the patient and the attorney. On the other hand, reinforcing delusions can be unhelpful to the client. It is important not to get into a confrontation with clients regarding their delusions or symptoms of psychosis. There are many ways to handle this situation, but personal safety should always be an important consideration for the attorney.

It can be a challenge for the attorney to fulfill the ethical obligation of RPC 1.14 to "as far as reasonably possible, maintain a normal client-lawyer relationship with the [psychotic or otherwise mentally impaired] client." This is particularly true if the client wants to contest the hearing and wants the attorney to put forth a defense that is based on delusional beliefs that, in the attorney's opinion, will result in a court order of involuntary commitment. There is no single answer to how an attorney should deal with a client's delusions; the answer depends on the totality of the circumstances. However, insofar as possible, it is a good idea to walk the thin line between not confronting delusions and not reinforcing them.

Keeping in mind that it is not prudent to talk to the client about the client's delusions in any way that is likely to cause aggression by the client, it may be possible to give the client sound legal advice that his or her preferred defense is likely to fail. For instance, a client may be able to comprehend and accept a response such as "While respecting your belief that God has told you to convert people on the corner of Church and Main streets, this is so far from the experience of most people that in my opinion the court is likely to agree with your doctor that this belief is a symptom of mental illness and poses a danger to other people. That would probably lead to your commitment."

D. DEALING WITH DENIAL-It is not unusual for clients to deny mental illness, substance abuse, or evidence of danger. They may be right. Or this could be a symptom of the mental illness or substance abuse. To the extent possible, it is important for the attorney to deal candidly with the client and not to reinforce denial. For example, a client who says she does not abuse drugs, but who had a toxicology test clearly showing significant drug or alcohol use, should be told that information and informed of the evidentiary consequences of such evidence.

E. REFRAIN FROM GIVING PERSONAL OPINIONS-

1. Opinion about what the client should do-Clients who are hospitalized on involuntary commitment are in the hospital because several people--the petitioner, magistrate, outpatient examiner, and inpatient examiner--have already substituted their judgment regarding the respondent's need for treatment

for the client's own judgment. It is extremely important that the attorney maintain the role of advocate and not try to influence the patient to make a particular decision regarding whether or not to contest the commitment. Some clients genuinely look to us for advice about whether or not they should contest. If after careful interviewing a client cannot make a decision, it may be appropriate to advise a client to inform the court that they do not know what they want to do and allow the court to decide. Another course of action could be to take the position of not consenting and make the hospital prove the case.

2. Opinion about mental illness, etc.-It is advisable to avoid answering the client's questions by giving our opinions about whether or not they are mentally ill, dangerous, need treatment, or if we believe a particular delusion. There will be many times when the attorney may believe that the client is mentally ill or a substance abuser; however, that belief does not interfere with the attorney's duty and ability to zealously represent the client and advocate for the client's wishes. Often clients will accept answers such as, "I understand that you believe you are married to Elvis Presley, and that is all that is important"; or "I work for you. That means that the only thing that matters to me is what you believe and what you want. I will advocate for what you want, regardless of whatever I think"; or "I do not know if you are mentally ill or not. My job is to try to accomplish what you want irrespective of that."

V. CONTENTS OF INTERVIEW

A. BE SURE CLIENT UNDERSTANDS WHO YOU ARE AND YOUR ROLE-The client needs to know from the beginning that the attorney is appointed by the court because he or she is hospitalized under involuntary commitment.

1. NOT EMPLOYEE/AGENT OF HOSPITAL-Clients are likely to assume that anyone they see in the hospital is employed by the hospital. Affirmatively state that you do not work for the hospital.

2. RESPONSIBILITIES OF ROLE-Define your job to the client. Do not assume the client knows what your role with him or her is.

3. LIMITATIONS OF ROLE-The court appointed attorney is authorized to perform only within the limits of the appointment, that is, to represent the client in the involuntary commitment process. Many of the clients will have numerous legal issues in addition to the IVC. It is important to define the role within the scope of the appointment. That does not mean that the client cannot be referred to other appropriate resources for assistance with other legal matters. It is not the responsibility of court appointed counsel to advise regarding criminal, disability, domestic, or other legal matters.

4. PAYMENT-The client needs to know that the court will award your fee and they are not responsible for paying it.

5. HAVE THE CLIENT RESTATE ISSUES TO YOU-One of the best ways to be sure the client understands the involuntary commitment process, his or her rights in the process, etc., is to have them restate their understanding to you and

then to deal with any areas of misunderstanding.

B. EXPLAIN INVOLUNTARY COMMITMENT PROCESS & ALTERNATIVES TO IVC-Be sure to explain the involuntary commitment court process to the client and the client's rights in the process. If the client has been through the involuntary commitment process before, do not assume he or she understands it. Determine if they are fully informed and re-explain it if necessary.

C. DETERMINE IF THE CLIENT IS INDIGENT-Indigent respondents are entitled to court appointed counsel. There is no provision in the statutes for a civil judgment against an indigent or nonindigent respondent who is represented by appointed counsel.

D. DETERMINE IF THE CLIENT HAS PRIVATE COUNSEL-Some respondents hire their own attorneys. Some respondents assume that their private or court appointed criminal attorneys will represent them in involuntary commitment proceedings, but as a practical matter, most private attorneys will not represent respondents (even their own clients) in civil commitment. The best practice, if appointed to represent a respondent who states that they have private counsel, is to inform the client that counsel will prepare for court and gladly stand aside if private counsel appears. If the respondent signs a release authorizing appointed counsel to contact the private attorney, it may be possible to ascertain if private counsel is actually retained. In the event that the private attorney informs appointed counsel that he or she declines or refuses to represent the respondent, it is preferable if the private attorney will communicate this decision directly to the respondent. Never assume that a client who says he or she has private counsel actually does.

E. DETERMINE WHAT CLIENT WANTS (THEY HAVE A CHOICE)-The client may or may not understand that he or she does not have to agree with treatment recommendations. It is helpful to inform the client that he or she can agree or disagree with the doctor's recommendations concerning commitment and the court will decide what will happen. There are several things the attorney needs to find out:

1. Client's wishes concerning venue-If the involuntary commitment petition did not originate in the county where the 24-hour facility is located, the client has a choice of having the hearing held in the county where the facility is or in the originating county. It is necessary to determine the client's wishes regarding venue as early as possible in order to arrange for a change in venue and have the hearing scheduled in a timely manner. Different counties handle this in different ways, so an objection to venue could mean that the hearing would be held in more than 10 days from the time the respondent was taken into custody. This could influence the client's decision and could result in a continuance.

2. Client's wishes about inpatient treatment/outpatient treatment/medication and the basis of the client's position-In addition to determining whether or not the client agrees or disagrees with the doctor's recommendations, it is important to know why the client feels that way. Sometimes disagreement is based on issues such as taking medication. If the disagreement is over whether or not medication is necessary at all, there is not likely to be a way to negotiate; but if the client's objections are based on a particular side effect, such as weight gain or impotence, it may be possible to negotiate a change in medication that would be acceptable to the client.

Sometimes clients may take a position on commitment based on issues such as placement or transportation. If a client knows he or she cannot return to their former residence and no new placement has been found, they may agree to commitment even though they object, simply because they have no where to go. This may be a situation in which the client would gladly sign a voluntary admission if permitted to do so. The court may need to be informed of the reason the client chooses not to contest.

Another reason clients may agree to commitment when they actually object is that they do not have transportation home. The involuntary commitment statutes require that involuntarily committed clients are to be transported by law enforcement upon discharge if they do not have alternative transportation. The costs of transportation can be recovered from non indigent respondents. (G.S. 122C-251).

3. If the client has an alternative position-The client may propose an alternative to the treatment recommendations, such as voluntary hospitalization at another facility, intensive outpatient commitment, or voluntary commitment. It is important to find out if there is an acceptable alternative and to see if some compromise can be negotiated. If the client admits any of the substantive allegations, it is important to establish what would be different at the time of the hearing than at the time of the petition if the court were to make an order different than the doctor's recommendations.

4. Client's wishes concerning appearing in court-In an involuntary commitment hearing based on mental illness, the client has a choice of whether or not to appear. It is important to determine if the client wants to be present or not in order to prepare the client, to arrange the appearance, or to prepare a written waiver for the judge to sign. If the respondent does not wish to appear, it is important to find out why since this decision may be based on misinformation or misapprehensions regarding the nature and possible consequences of the hearing and these issues might be alleviated by accurate information. It is also important that the client knows what impact his or her appearance or non appearance could have on obtaining the desired results. Waiver of appearance is not provided in involuntary commitment proceedings based on substance abuse.

5. The client's wishes regarding the presentation of the case-While the client generally determines the objectives of representation and the attorney determines the methods, the client may have strong wishes concerning presentation of the case. It is important to know what the client wants and any preferences he or she has about how to accomplish the intended end.

6. Witnesses-Ask the client if there any witnesses to support his or her version of the facts and/or proposed alternative to the doctor's recommendations. Be sure to get releases from the client to contact any proposed witnesses. It is not unusual for clients to believe that friends or family members will support their release when, in fact, those proposed witnesses support commitment.

F. INFORM CLIENT OF PROCEDURAL DEFECTS IN PROCEDURE & REASSESS WHAT CLIENT WANTS-If the client's constitutional or statutory due process rights have been violated by procedural deficiencies in the procedures, the client

has a right to know that. There are many ways to handle this circumstance; however, determining the client's agreement or disagreement with the doctor's recommendations prior to informing the client of possible procedural defects prevents coloring the client's decision in advance.

G. DISCUSS STRATEGY

H. BE SURE CLIENT KNOWS WHAT THE HEARING WILL BE LIKE-As with any type of court proceeding, clients may be apprehensive about going to court. It is very important to give clients as much information as possible about how the hearing will be conducted. Be sure the client knows:

1. Date, time, and place of hearing.

2. How they will get there and back.

3. Who can be present-The client needs to know that the petitioner can be present, and witnesses may be in the courtroom only to testify, but the client can object to the presence of nonparties and nonwitnesses and can limit the presence of nonparty witnesses to their testimony only.

4. If allowed by the court, introduce client to court officials at hearing.

5. Appearance of the hearing room.

6. Involuntary commitments are closed hearings.

7. How judges in this district conduct court.

8. Courtroom etiquette-Particularly be sure the respondent knows when his or her case will be presented, when he or she will be able to talk, not talking at other times, not to make gestures, and what to do if the judge asks questions.

9. Medical testimony-Be sure the client knows that the doctor or other treatment personnel may testify about medical evidence and opinions.

10. Possible outcomes-Be sure the client knows what the possible outcomes are, and particularly that this is not a criminal proceeding and the court cannot order them to jail as a consequence of the involuntary commitment.

11. When they will know the outcome-Inform the client about how and when decisions are usually rendered in your district. If the client is not appearing, let him or her know when to expect you to come to see the client to report and explain the outcome of the hearing.

I. OBTAIN ANY NEEDED CONSENTS TO REVIEW RECORDS/TALK TO WITNESSES

J. PREPARE CLIENT FOR HEARING AT THIS POINT OR AFTER FURTHER INVESTIGATION AND PREPARATION-As with any case, prepare the client to

undergo examination, cross examination, what to do if there are objections, etc. Review and practice again immediately before the hearing if possible. It may be a good idea to begin examination by asking a few basic orientation questions to show the court the client's state of mind. Explain to the client why these questions are important. The client should be prepared to address the allegations in the petition, doctor's observations, his or her understanding of the diagnosis and need for medication as well as compliance with medication, and any physical conditions the client has.

K. FOLLOW UP INTERVIEW(S) WHEN NEEDED

VI. DIFFICULT SITUATIONS IN WORKING WITH CLIENTS

A. HARD QUESTIONS CLIENTS ASK

1. Client says he or she already has an attorney-See paragraph V. D., above.

2. Client "fires" appointed counsel or wants a different court appointed attorney-As in all instances of court appointed counsel, the respondent does not get to choose appointed counsel. The court should be informed if the client objects to the attorney appointed. If the client wants to represent himself or herself, the court is likely to require appointed counsel to remain to advise the client during the hearing.

2. What do you think I should do? See paragraph IV. E., above.

3. What will happen? As in all cases, it is impossible to predict the outcome of the case. However, counsel can share with the client his or her experience of the difficulty or likelihood of prevailing under the circumstances of the specific case.

4. Do you think I am crazy/an addict/dangerous/need treatment? See paragraph IV. E., above

B. WHAT IF THE CLIENT WANTS TO SAY OR HAVE THE ATTORNEY TELL THE COURT THINGS THAT THE CLIENT BELIEVES ARE TRUE, BUT THE ATTORNEY BELIEVES ARE NOT FACTUAL, BUT ARE THE PRODUCT OF THE CLIENT'S MENTAL ILLNESS?

There are times when mentally ill clients who contest commitment do not take their attorney's advice and insist on representation that is likely to provide the evidence necessary to commit them. In these cases, the attorney must provide zealous advocacy that is reasonable under the circumstances. Obviously counsel cannot knowingly perpetrate fraud, suborn perjury, or knowingly make false statements to the court. This can pose a challenge for attorneys representing clients who have belief systems that are different from most of society, even if those belief systems are the product of mental illness. If it is determined that the client is going to testify, or if the client is called by the prosecution, it is possible to ask client questions artfully to allow the client to present his or her case without violating rules of ethics or evidence. For instance, the attorney might phrase questions like:

Q: Ms. Benswanger, what was your experience of the encounter you had with the petitioner on the day of your admission?

Q: Mr. Sutter, what is your memory of the ...

Similarly, the attorney can state or argue the client's case using careful language, such as "My client wants the court to know that...," or "The respondent believes that...." In this difficult situation, such statements provide the client with an appropriate voice in court and allow their participation in the judicial proceedings that determine their commitment. Many clients who contest commitment and lose are satisfied if they feel that they have actually been heard and considered in court.

C. THREATS AGAINST ATTORNEY, STAFF, PETITIONER, COURT, OTHERS-If a client tells or suggests to counsel that he or she will or may become violent during a hearing or if the court makes a decision contrary to the client's wishes, the attorney should take action to prevent such threats from being carried out and should advise the client that he or she is doing so. Depending upon the threat, the attorney may request security or request arrangements for the hearing to be held in a space that provides additional safeguards.

VII. RESPONSIBILITIES TO CLIENT AFTER THE HEARING

A. BE SURE CLIENT UNDERSTANDS COURT RULING, HIS OR HER RESPONSIBILITIES UNDER THE ORDER, AND THE CONSEQUENCES OF NONCOMPLIANCE-Clients do not always hear or understand the court's ruling. If at all possible, ask the judge to allow you a minute outside the courtroom with each client immediately after the hearing. In the alternative, go to see the client after court or call the client if they are discharged and have left the facility. Always restate what the judge has ruled and ascertain whether or not the client understands the ruling. Be particularly sure that the client understands what he or she is supposed to do for any outpatient commitment or outpatient portion of a substance abuse commitment and what the consequences of noncompliance could be.

B. ANSWER CLIENT QUESTIONS ABOUT WHAT HAPPENED

C. DETERMINE IF CLIENT NEEDS DOCUMENTATION FOR OTHER PURPOSES-A client may need a statement from the clerk of court that his or her presence was required in court for school, work, or other purposes. The client may need a copy of the court order for personal or other legal reasons. The client should always be given a certified true copy of the order as soon as possible.

D. APPEALS-A client who loses a case should be informed of the right to appeal, the attorney's opinion of any grounds for appeal, and be informed of how long an appeal is likely to take, that appeals do not stay the order (the client is likely to be out of the hospital long before an appeal is decided), and any potential financial consequences of filing or losing an appeal.