

QUESTIONS AND ANSWERS ABOUT YOUR APPEAL AND YOUR LAWYER

A Guide Prepared by the Office of the Appellate Defender

1. What is An Appeal?

Your appeal is about whether the judge at your commitment hearing made mistakes and about whether the mistakes probably helped the other side win. Your lawyer is looking for ways to persuade a higher court that the judge made such serious mistakes that you did not get a fair hearing and that the commitment order should be reversed.

An appeal does not involve a new commitment hearing. In an appeal, you do not have a chance to show a new judge different evidence or even the same evidence. In fact, most appeals are decided by judges of a higher court after they have read the written arguments the lawyers send them, but without hearing from the lawyers in person.

It may help you understand appeals to think of a trial like a football game. The judge is like a referee. An appeal is like playing a video of the game and looking for places where a referee made bad calls. The bad calls sometimes don't really make a difference about who won. Sometimes, however, the referees' bad calls might decide the game.

Of course, your appeal is not as simple as looking at a video, and it is certainly not part of a game. It is probably the most important thing in the world to you. However, thinking of the judge like a referee and an appeal like looking for the referee's mistakes may help you better understand what is happening in your appeal.

2. Who Is My Lawyer?

Your lawyer's name is on the notice that came with this guide. The Office of the Appellate Defender assigned this lawyer to your case. The Office of the Appellate Defender provides lawyers for people in North Carolina who can't afford to hire a lawyer for their appeals. Your lawyer may work for the Office of Appellate Defender, or may have a private practice. The Appellate Defender only allows qualified lawyers to handle appeals.

3. How Can I Contact My Lawyer?

Your lawyer's mailing address, telephone number, and email address are on the notice that came with this guide. The best way to contact your lawyer is by mail. You should write to your lawyer if you have questions about your case. You should also write to your lawyer about anything that you think went wrong or was unfair about your case. **You should also make sure that your lawyer always has your**

current address so he or she can contact you to ask you questions or send you documents. THIS IS VERY, VERY IMPORTANT. If you are not in custody and you move, or if you are in custody and are released, you must immediately contact your lawyer to let him or her know how to contact you at your new address. Your lawyer may need to get your permission to appeal to a higher court if your first appeal doesn't win. If your lawyer needs your permission to appeal to a higher court but can't contact you, he or she can't help you any more.

4. When Will My Lawyer Contact Me?

The steps in your appeal are explained in detail under Question 5 ("What Will My Lawyer Do For Me?"). Your lawyer will write to you when:

1. He or she receives the transcript of the commitment hearing.
2. The record on appeal is filed.
3. Your brief is filed.
4. The other side's brief is filed.
5. A reply brief is filed, if your lawyer decides to file a reply brief.
6. An oral argument date is set, if the court has an oral argument.
7. The court decides your case.
8. You write with questions or concerns.

Your lawyer probably does not live and work close to you. It is very difficult for your lawyer to visit you in person. Your lawyer will visit you if he or she needs additional information from you. This does not happen often.

5. What Will My Lawyer Do For Me?

Your lawyer has one job in your case – to represent you on your appeal in the North Carolina courts. There are two courts in North Carolina that decide appeals. The first is the Court of Appeals of North Carolina. The second is the Supreme Court of North Carolina. The Supreme Court is above the Court of Appeals and can change decisions made by the Court of Appeals. All cases other than capital appeals start in the Court of Appeals. After the Court of Appeals decides a case, the Supreme Court may decide to review it.

In order to understand the steps in an appeal, it is useful to know some of the terms that courts and lawyers use in appeals. The following definitions may be helpful.

Definitions

"Appellant" / "Appellee" – The appellant is the person who appeals because he or she wants to change what happened in the trial court. The appellee argues against what the appellant wants. The appellant and appellee are called the "parties" in the

appeal. When a respondent appeals a commitment order, the respondent becomes the appellant and the State and the facility becomes the appellees.

"Brief" – The written arguments in an appeal. Each party submits a brief on appeal. The appellant may also file a short "reply brief" to answer the appellee's arguments.

"Calendar Notice" – The paper that the Court of Appeals sends to the parties to let them know if there will be oral argument, or if the court will decide the case based on the briefs.

"Error" – A mistake made by the trial court.

"Opinion" – When the Court of Appeals decides a case, it writes down the reasons for its decision. The document the court writes when it decides a case is called an "opinion," although it is the court's final ruling.

"Oral Argument" – A one hour hearing in which the lawyers for both parties appear in court and argue the case to a "panel" of judges. Most cases in the Court of Appeals are decided without oral argument. The court's decision is usually based on the briefs submitted by each party.

"Panel" – A set of judges who decide a case. The Court of Appeals has fifteen judges, but every case in the Court of Appeals is assigned to a panel of three judges. Every case in the Supreme Court of North Carolina is decided by all seven of the judges (call "justices") of that court.

"Record on Appeal" – A booklet that contains the documents from the court file that the Court of Appeals will need to see to decide a case. The Record also contains a list of proposed legal issues in the appeal.

"Relief" – Relief is what you are asking the Court of Appeals to do to fix the trial court's errors. Every commitment appeal asks for some relief, often reversal of the commitment order.

"Transcript" – A typed version of the things said in court during the commitment hearing. Although a court reporter may have been typing notes during your commitment hearing, the court reporter must turn those notes into a full transcript for your attorney. That process sometimes takes several months.

STEPS IN AN APPEAL

Every appeal has four main stages. In each stage, there may be several steps that your lawyer needs to take. Your lawyer, or the lawyer on the other side, may ask the court to give him more time to complete some of these steps. For example, if a court reporter cannot finish the transcript by the deadline, your lawyer will ask

the court for extra time. Your lawyer or the lawyer for the other side may ask for more time to write a brief. This happens often. Your lawyer should keep you informed about the status of your case, and you should feel free to write your lawyer with questions.

A. Record Review and Preparation. Your lawyer will get the transcript of your commitment hearing and copies of all papers filed in District Court. Your lawyer will then review these documents, advise you on the case, and prepare your record on appeal. It may take several months to get the transcript, and your lawyer can't advise you about your appeal until he or she has read the transcript. When your lawyer prepares your record on appeal, he or she will make a list of possible legal errors the trial court made. This list is called the "proposed issues on appeal" and it will be a part of your record on appeal. An example of a proposed issue might look like this:

II. The trial court committed prejudicial error by overruling the defendant's objection to the testimony of Jane Jones concerning what Sally Smith told her about firearms in the house, because this testimony was inadmissible hearsay and violated Evidence Rule 802.

Your lawyer will send you a copy of the list of proposed issues when the record is prepared.

After your lawyer has completed the record, he or she must send it to the lawyer for the other side. The lawyer for the other side has a chance to look at the record and ask for changes. Usually, both sides agree on what should be in the record. If both sides can't agree, the trial judge decides what papers are included or taken out. This process is called "settling the record."

B. Briefing. After the record is settled, it is filed in the appeals court. Next, your lawyer writes your brief and files it with the same court. The brief will argue your case and will ask the appeals court for some form of "relief" for you. Depending on the kind of mistake in your case, the "relief" might be a reversal of the commitment order or a new commitment hearing. In a few cases, your lawyer will ask the appeals court to completely throw out the commitment order. All of this depends on the specific facts of your particular case.

The arguments in your brief will discuss proposed issues listed in the record. Don't be surprised if many of the proposed issues from the record are not argued in the brief. Your lawyer will choose only the issues that give you the best chance for a good result in your appeal.

After your lawyer files your brief, the other side has a chance to file a brief. The other side usually argues that no mistakes were made or that any mistakes

were "harmless" (not bad enough to require any relief). After the other side files its brief, your attorney will have an opportunity to write a short reply brief. The reply brief allows your attorney a chance to address the points made in the other side's brief.

C. Calendar Notice and Oral Argument. After both sides file briefs, the Court of Appeals will place your case on its calendar and issue a calendar notice. The notice will tell you whether the Court has asked for an oral argument, or if it will decide the case based on the written briefs.

If the Court asks for oral argument, your lawyer will go to court and argue the case on your behalf. The Court of Appeals is in Raleigh, and most arguments are held in Raleigh. Most cases in the Court of Appeals are decided without oral argument. Respondents win sometimes when there is no oral argument, and lose sometimes when there is oral argument. So having or not having oral argument does not mean you are going to win or to lose. The Court of Appeals orders oral argument when it thinks oral argument will help it decide the case.

D. Decision. After oral argument, or after the Court of Appeals decides that there will be no oral argument, the court will issue its opinion in your case. It usually takes several months after the oral argument or the reply brief for the court to issue its opinion.

6. Will I Be Released if I Decide to Appeal?

Most likely not. There is no requirement that a court stay or otherwise delay enforcement of a commitment order when a respondent gives notice of appeal. Although the Court of Appeals has discretion to grant a stay, it is unlikely to do so in most commitment appeals. Therefore, most respondents remain in custody under commitment orders after giving notice of appeal.

7. Will the Court Decide My Appeal Before My Commitment Has Ended?

No. The longest period of an initial involuntary commitment allowed under North Carolina law is ninety days. The appeals process takes much longer than ninety days even if it moves as quickly as possible. The Court will not reach a decision in the case before the end of your initial commitment.

It sometimes happens that one commitment order is followed by another, so that a respondent may remain continuously committed longer than ninety days. However, each commitment order is a separate "judgment" that must be separately appealed. In any given appeal, the Court of Appeals will only decide legal issues about the specific order that the respondent appealed. In addition, a re-commitment orders can be as long as a year. Unfortunately, appeals can take a year or even longer to complete, so it is possible that the Court will not reach a decision even in a case involving a re-commitment order.

8. If My Commitment is Over, Can I Still Proceed With the Appeal?

Yes. An involuntary commitment order has “collateral consequences,” meaning that the order can affect your rights in future proceedings even after the period outlined in the order is over. For example, a commitment order can be used as evidence against you in a future commitment hearing. Because a commitment order has collateral consequences, the Court of Appeals will still review the order even though the period of commitment has ended.

Some clients do not believe it is worthwhile to appeal a commitment order because the order will be over long before the Court of Appeals decides the appeal. This is a valid concern. However, there is still some value in appealing a commitment order. If the Court of Appeals vacates a commitment order, the order cannot be used against you at a later time. Thus, there is still a reason to appeal the commitment order even if it expires before the appeal is over. Ultimately, it is your choice whether to continue with the appeal, and you should discuss any concerns about appealing with your attorney.

9. What Issues Will Be Decided in My Appeal?

Your appointed attorney will develop the specific issues in your case based on the transcript of your commitment hearing. In most commitment appeals, the attorney challenges technical defects in the commitment order. Your attorney will send you a list of the issues in your case before filing the brief, and you should feel free to ask your attorney any questions you have about the proposed issues.

10. Will My Name Appear on the Appeal?

There is currently no rule that prohibits the Court of Appeals from releasing filings in commitment appeals to the public and identifying the name of the respondent in opinions issued for commitment appeals. However, in recent years, the Court of Appeals has kept filings in several commitment appeals private and used initials to identify respondents in many of its opinions for commitment appeals. Although there is no guarantee, it is possible that your identity and history will remain confidential during the appeal.

11. Will I Be Billed for the Time My Lawyer Spends on the Appeal?

No. Although some statutes allow the State to charge appellants for the time that attorneys spend on appeals, those statutes do not apply to involuntary commitment appeals.

12. What Happens if I Win? Can I Be Committed Again?

In most cases, a win for the respondent (you) means that the Court of Appeals will send the case back to the trial court for further proceedings. The trial court can then attempt to fix whatever was wrong with the order, or it may find that commitment was not appropriate and dismiss the case. It is also possible,

although less common, that the Court of Appeals could order the trial court to dismiss the case entirely. In any event, the trial court will **not** be able to hold a new hearing and try to commit you again simply because you won the appeal.

13. Who is on the Other Side of the Case?

The Attorney General's Office will argue the other side of the case on behalf of the State of North Carolina. In some cases, an attorney for the hospital or treatment facility may also file a brief.