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General Information about the Civil Commitment Process
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I'm writing this for my client and family members, whether you work well together or not. Since all clients have family and other people involved in their lives, I thought I'd provide this overview for general information only. While each person and case is unique, I hope this letter can give a better description of the choices and circumstances of the civil commitment process and provide help with avoiding other problems later on.

My job is to help my client determine how to approach and work through the hearing process. We can't go back and undo the Magistrate's Hold Order for Commitment but we might be able to prevent another, more consequential Court Order – the actual Civil Commitment Order by a District Court Judge. At the same time, I hope to empower my client and his or her support system (family or others) to avoid getting into further legal problems.

If my client wants a hearing, that's fine, if not, that's fine too. It all depends on what is most important to the client and what can be done to make that goal. The basic options are: to be discharged prior to hearing, to sign a voluntary treatment agreement, to consent to the current recommendation from the doctor, to contest (have a hearing) the commitment and recommendation, or to continue the case for any of the above or other reasons.

The Civil Commitment Hearing Process:

When a commitment process has begun it means that someone's self-directed behavioral health care is believed by someone to be at a crisis stage (like a heart attack that requires immediate medical attention). The legal process in North Carolina requires a Court's permission for the hospital to care for someone in crisis. This permission, through an Order, authorizes them to lock their doors and, if necessary, compel the patient to take medication – even by force.

There may be a dispute about the need for such treatment and court order, but that's the reason there's a hearing – to allow a judge to decide when those involved can't, or won't, resolve it. At this hearing the Judge will receive formal information (evidence) from a doctor, others and my client about whether my client has a mental illness and is a danger to him or herself or others *AT THE TIME OF THE HEARING* and is in need of inpatient or outpatient psychiatric treatment.

The legal process does not make it easy for my client to have their own independent expert and evaluation. This help isn't directly denied, but the time and nature of the legal process makes it difficult to happen. So at the hearing the judge will make a decision based my client's personal opinion versus the doctor's medical opinion. Many clients believe that if they tell the judge that they are ready to go home that the judge will allow that to happen. Sometimes family members believe that if they tell the judge that their loved one needs more time in the hospital that the judge will allow it.

Neither is true. If there is clear, cogent and convincing evidence presented by a doctor or others that a client has a mental illness and, as a result of that illness may hurt themselves or others, or risks a decline in health to the point of self-harm, then the judge will follow the doctor's recommendation for commitment for treatment. The authorized commitment will usually be up to, but not exceeding, the maximum time recommended by the doctor. The actual time of commitment served may be less than requested by the doctor and ordered by the judge.

The information and paperwork that is provided leading up to the hearing is important, and must follow certain rules. The hearing usually is about the hospital, through the doctor, asking the court for further permission to treat my client for inpatient or outpatient treatment for a specific period of time. The total time of commitment cannot exceed 90 days, which may be a combination of the inpatient (up to 30 days) and outpatient time (up to 90 days). Later, additional hearings for continuing outpatient commitment orders following the 90-day period allow for up to 180 days for the outpatient commitment if it appears to professionals the client needs additional court ordered treatment.

Even if there is a successful challenge at the hearing resulting in a dismissal of the case, the hospital can initiate new proceedings based on new evidence if the medical staff has a good faith belief that the client needs to be involuntarily committed. The reason for the dismissal may be the result of inadequate paperwork, or the doctor not providing the evidence in the right way. So a dismissal does not necessarily mean there will be an immediate discharge.

Some Strategies:

Given this reality, *sometimes a simple "legal win" is to get the commitment dismissed before the hearing even if that means staying at the hospital a little longer to work out the right treatment approach.* This can be done through complying with treatment and getting an *early discharge*. Another option is to sign an agreement with the hospital for *voluntary treatment* (subject to a 72 hour hold and possible re-commitment), or agreeing to *continue the case* one or more times to allow for voluntary treatment or discharge from the hospital prior to a hearing. If a hearing is postponed, it will still be an available option if needed at the next court date.

Continuing the court case does not prevent a client from being released prior to the next date. *Once the hospital discharges the client, the court process ends automatically unless there is a need for an outpatient order*. If that happens, the client can come back for the hearing at the hospital after being discharged to the community. The client can also *waive their appearance* and allow the lawyer to appear for them and *consent to the recommendation*.

Sometimes clients are upset about the quality of care they receive from the doctor or hospital. The commitment hearing is not the appropriate place for resolving complaints about treatment. *Resolving such conflict prior to hearing by medical staff and the client can result in a client agreeing to voluntary treatment, cooperating with the medial staff or even consenting to a commitment order*. If there are concerns about the quality of treatment, the hospital should to provide reasonable access to a *second opinion* or even a mental health care *Consumer Advocate*.

In the end the best way to *avoid a Civil Commitment* is to have a good, recovery-based, health care plan, particularly for mental health and wellness, and to follow it. Writing and developing a *Psychiatric Advance Directive and Psychiatric Health Care Power of Attorney* is one way that can empower a client and family to avoid Commitment or Guardianship. Preparing a *W.R.A.P. (Wellness Recovery Action Plan)* is also a good option for self-directed care. Look to *N.A.M.I. (National Alliance on Mental Illness) and Cardinal Innovations* for resources, such as the *Family to Family and Peer to Peer Programs,* which can be very helpful with finding other people and additional help for a better life.