

Proposed Part Nine to the Rules of Court for Involuntary Commitment Proceedings

May 2011

Proposed Draft Rules Published for Comment

Set forth below are draft rules proposed by the Mental Health Law Reform Commission's Task Force on Rules of Court for Involuntary Commitment Proceedings. The proposed draft rules, set forth below, have not been approved by the Advisory Committee on Rules of Court, nor have they been submitted to, considered by, or approved by the Judicial Council of Virginia or the Supreme Court of Virginia. The Advisory Committee on Rules of Court seeks comment from the citizens of the Commonwealth on these proposed draft rules.

Background: The proposed rules for proceedings involving involuntary commitment were developed by the Task Force to "Promote uniformity in the application of the laws governing the involuntary civil commitment process in the General District Courts and Circuit Courts of the Commonwealth."

Comments on these proposed draft rules should be sent by August 26, 2011 to:

Advisory Committee on Rules of Court
c/o Steven Dalle Mura
Office of the Executive Secretary
Supreme Court of Virginia
100 North Ninth St.
Richmond, VA 23219

OR via email with the subject line: "comment on proposed Part 9" to:

proposedrules@courts.state.va.us

RULES OF SUPREME COURT OF VIRGINIA
PART NINE
INVOLUNTARY CIVIL COMMITMENT PROCEEDINGS

Rule 9:1. Scope.

Part Nine of the Rules shall apply to all involuntary civil commitment proceedings pursuant to Chapter 8 of Title 37.2 of the Code of Virginia in the general district courts and, to the extent provided in Rule 9:13, to appeals of orders for involuntary admission in the circuit courts.

Rule 9:2. Purpose of these Rules.

The purpose of Part Nine of the Rules shall be to:

(a) Promote uniformity in the application of the laws governing the involuntary civil commitment process in the General District Courts and Circuit Courts of the Commonwealth;

(b) Assure a full and fair adjudication of involuntary civil commitment proceedings, and to enable mental health professionals to carry out their statutory and professional duties to the fullest extent;

(c) Respect the rights, needs and interests of persons subject to these proceedings, and to ensure that the timing, location and conduct of such proceedings are not detrimental to the best interests of the respondent.

Rule 9:3. Rights of the Respondent.

The Respondent's rights include, but are not limited to, the following:

(a) To a hearing no sooner than 12 hours and no later than 48 hours after the execution of the temporary detention order, unless the 48-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, in which case the hearing shall be held by close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed;

(b) To a sufficient period of time before a hearing is held to allow for completion of the preadmission screening and report, the independent examination, and for initiation of mental health treatment, if needed, to stabilize the person's psychiatric condition and avoid involuntary admission where possible;

(c) To retain private counsel or to be represented by a court-appointed attorney;

(d) To apply for voluntary admission as provided in § 37.2-814(B);

(e) To be present at the hearing, to testify and present relevant evidence, including independent evaluation and expert testimony or the testimony of other witnesses;

(f) To appeal any order for involuntary admission or mandatory outpatient treatment to the circuit court;

(g) To have a jury trial on appeal, and

(h) To be informed, before commencement of the hearing, of his loss of the right to purchase, possess or transport a firearm if the respondent is involuntarily admitted, ordered to undergo mandatory outpatient treatment, or agrees to voluntary admission after being the subject of a temporary detention order.

Rule 9:4. Duties of Counsel for the Respondent.

The duties of counsel for the respondent include, but are not limited to, the following:

(a) Counsel shall review the written explanation of rights form with the respondent prior to the hearing.

(b) To the extent possible, prior to, and during the hearing, counsel shall interview the respondent, the petitioner, the independent examiner, the community services board staff, and other material witnesses.

(c) To the extent possible, prior to the hearing, counsel shall review and examine all relevant diagnostic reports and treatment records in possession of the community services board, or any current health care provider.

(d) Counsel shall present evidence and witnesses, if any, on respondent's behalf, and shall otherwise actively represent respondent in the proceedings.

(e) Counsel should endeavor to notify the court prior to the hearing if counsel believes live testimony from the independent examiner will be required, or if counsel has an objection to the independent examiner's written certification.

(f) Counsel should request appointment of an interpreter as authorized in § 37.2-802 if one is needed.

Rule 9:5. Rights of the Petitioner.

The rights of petitioner include, but are not limited to, the following:

- (a) To receive adequate notice of the place, date, and time of the commitment hearing.
- (b) To be present at the hearing, to testify and to present relevant evidence.
- (c) To retain counsel.

Rule 9:6. Release Prior to Hearing.

When the respondent is released prior to the commitment hearing by the director of the facility pursuant to § 37.2-813, and the judge or special justice has received verification either in writing or under oath that the respondent has been released, the judge or special justice shall enter an order of final disposition.

Rule 9:7. Voluntary Admission.

(a) At the commencement of the commitment hearing, the judge or special justice shall inform the respondent of his right to apply for voluntary admission, and shall afford the respondent the opportunity to agree to voluntary admission if, in the opinion of the court, the respondent is capable and willing to consent to voluntary admission in accordance with Code § 37.2-814(B).

(b) If the respondent expresses interest in voluntary admission at any time prior to the court's final decision, and the judge or special justice finds that the respondent is capable and willing to consent to voluntary admission, the court shall afford the respondent an opportunity to agree to voluntary admission in accordance with Code § 37.2-814(B).

(c) When considering whether respondent is capable and willing to consent to voluntary admission, the judge or special justice shall consider any relevant evidence, including but not limited to, respondent's prior compliance or non-compliance with treatment, and testimony from the community services board representative, the independent examiner, the treating physician, and hospital staff.

Rule 9:8. Independent Examination.

(a) The independent examination pursuant to § 37.2-815 shall be conducted in private, in a separate room, outside of the sight or hearing of any person who is not participating in the examination. The judge or special justice shall, at no time, be present for the independent examination.

(b) The following persons may be present for the examination, in addition to the independent examiner, if in the opinion of the examiner such persons are necessary:

(i) medical or hospital personnel for the purpose of ensuring the medical well-being of the person,

(ii) security personnel to ensure the safety of the examiner or person,

(iii) an interpreter.

(c) Family members or similarly interested persons may be present at the examination upon the request or with the concurrence of the respondent, providing the independent examiner determines that the presence of such individuals will not be detrimental to the conduct of the examination.

(d) The independent examiner's report and opinion shall be provided in writing prior to the hearing.

Rule 9:9. Evidence.

The preadmission screening report shall be admitted into evidence. The independent evaluation may be admitted into evidence unless the court sustains objection thereto. The representative of the community services board shall attend the hearing unless physical attendance is not practical in which case the representative of the community services board may appear at the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1. The independent examiner and the treating physician may appear at the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1. Electronic signatures on the preadmission screening report and the independent examiner's report are permitted. The items listed above are not exclusive and not meant to limit the court's authority to consider any relevant evidence and medical records admitted at the hearing or elicited by the court sua sponte.

Rule 9:10. Timing and Location of the Commitment Hearing.

(a) The commitment hearing shall be held no sooner than 12 hours and no later than 48 hours after the execution of the temporary detention order, unless the 48-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, in which case the hearing shall be held by close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

(b) The commitment hearing shall be held after a sufficient period of time has passed to allow:

(i) The community services board to complete the preadmission screening report,

(ii) The independent examiner to complete the examination,

(iii) The facility where the person is detained to initiate mental health treatment to stabilize the person's psychiatric condition, and

(iv) Respondent's attorney to meet with respondent and interview key participants prior to the hearing.

(c) The community services board that prepared the preadmission screening report shall be given notice of the time and location of the hearing at least 12 hours prior to the hearing as provided for in § 37.2-817(B).

(d) The time and location of the hearing shall be selected so as to avoid inconvenience and any unnecessary travel for the respondent. The hearing should be held where the respondent is located in the absence of some compelling justification for holding it elsewhere.

Rule 9:11. Alternative Transportation.

When the respondent has agreed to voluntary admission under § 37.2-814 or when respondent has been ordered to be admitted to a facility, the judge or special justice shall consider whether transportation to the facility should be provided by the sheriff or may be provided by an alternative transportation provider as set forth in § 37.2-829.

Rule 9:12. Appointment and Supervision of Special Justices.

(a) The chief judge of each judicial circuit may appoint one or more special justices to perform the duties required of a judge by Chapter 8 and Chapter 11 of Title 37.2, §§ 19.2-169.6, 19.2-174.1, 19.2-182.9, 53.1-40.1, 53.1-40.2, and 53.1-40.9. Every special justice shall be licensed to practice law in the Commonwealth or a retired or substitute judge in good standing. Every special justice is required to meet the qualifications set forth in, and to comply with the continuing education and other requirements of, the Training Standards and Appointment Guidelines adopted by the Judicial Council of Virginia, effective October 20, 2008. See Appendix A.

(b) Special justices serve under the supervision and at the pleasure of the chief judge of the judicial circuit for a period of up to six years. After appointing a new special justice, the chief judge shall monitor the special justice and periodically obtain information from

parties who regularly appear before the special justice for the purpose of assuring that the special justice is conducting hearings in accordance with the applicable law and these Rules.

(c) Before reappointing a special justice for a new term, the chief judge shall also obtain information from parties who regularly appear before the special justice for the purpose of assuring that the special justice has been conducting hearings in accordance with the applicable law and these Rules.

Rule 9:13. Circuit Court Appeals.

(a) *Who may file an appeal.* Any person who is the subject of an order for involuntary admission or for mandatory outpatient treatment has the right to appeal that order.

(b) *When the appeal must be filed.* The appeal must be filed within 10 days of the issuance of the order for involuntary admission or mandatory outpatient treatment.

(c) *Venue.* The appeal may be filed in the jurisdiction where the person was involuntarily admitted or ordered to mandatory outpatient treatment, or in the jurisdiction where the facility to which he was admitted is located. Choice of venue shall rest with the person, but the court may transfer the case upon a finding that the other forum is more convenient.

(d) *Notice.* The clerk of the general district court from which an appeal is taken shall immediately transmit the record to the clerk of the circuit court. The clerk of the circuit court shall provide written notice of the appeal to the petitioner and the independent examiner and shall also provide the community services board with at least 12 hours of notice prior to the hearing, in accordance with 37.2-817(B).

(e) *Docket.* The appeal shall be given priority over all other pending matters before the circuit court and heard as soon as possible, notwithstanding § 19.2-241 regarding the time within which the court shall set criminal cases for trial.

(f) *Effect of Appeal on Order.* A petition for or the pendency of an appeal shall not suspend any order unless so ordered by a judge or special justice. A person may be released during the pendency of an appeal pursuant to § 37.2-837 or 37.2-838.

(g) *Appeal Heard De Novo.* Any appeal under this Rule shall be heard de novo in accordance with the provisions set forth in these Rules and § 37.2-821, except that the circuit court may rely upon the independent examination report from the district court commitment hearing instead of requiring a new independent examination pursuant to § 37.2-815.

(h) *Jury.* A person appealing an order for involuntary admission or mandatory outpatient treatment is entitled to a jury trial. Seven persons from a panel of 13 shall constitute a jury.

(i) *Counsel.* If the person appealing the order for involuntary admission or mandatory outpatient treatment is not represented by counsel, the judge shall appoint counsel to represent him. The order of the court from which the appeal is taken shall be defended by the attorney for the Commonwealth.

(j) *Independent Examiner.* Whether or not a new independent examination is ordered for the appeal, the independent examiner is still required to be available for the hearing in accordance with Code § 37.2-815 and 817.

(k) *Circuit Court Order.* Any order of the circuit court shall not extend the period of involuntary admission or mandatory outpatient treatment set forth in the appealed order. An order continuing involuntary admission or mandatory outpatient treatment shall only be entered if the applicable criteria in § 37.2-817 are met at the time the appeal is heard.