

BEFORE THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

COMMENTS OF THE SECTION ON COURTS,
LAWYERS, AND THE ADMINISTRATION OF JUSTICE
OF THE DISTRICT OF COLUMBIA BAR
REGARDING PROPOSED
SUPERIOR COURT MENTAL HEALTH RULE 16

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"The views expressed herein represent only those of the
Section on Courts, Lawyers and the Administration of Justice of
the District of Columbia Bar and not those of the District of
Columbia Bar or of its Board of Governors."

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SUMMARY

The Superior Court Rules Committee has recently recommended the adoption of Superior Court Mental Health Rule 16. The proposed rule sets forth the procedures to be followed in returning an individual to the hospital after commitment for outpatient mental health treatment, and for permanent revocation of outpatient commitment (in favor of inpatient treatment). The proposed rule is intended to follow the guidelines established by the Court of Appeals in In re Richardson, 481 A.2d 473 (D.C. 1984).

The Section on Courts, Lawyers, and the Administration of Justice offers two amendments to the proposed rule: First, that SCR-Mental Health 16(b)(3) (appointment of and notice to counsel) be amended to make clear that counsel must be appointed to represent the patient and be given notice of the grounds for re-hospitalization within 24 hours; and that any extension of the 24-hour period be consistent with the Ervin Act, D.C. Code § 21-526. Second, that SCR-Mental Health 16(c)(1) (involuntary hospitalization) be amended to make it clear that the hospital must release the patient or move for a hearing on continued hospitalization within five days, consistent with Richardson.

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The Section on Courts, Lawyers, and the Administration of Justice of the District of Columbia Bar acknowledges that the proposed rule generally follows closely the Richardson guidelines. There is some concern, however, that Mental Health Rule 16(b)(3) and 16(c)(1) are in some respects ambiguous and not entirely consistent with other District of Columbia law. Since individual liberty is at issue, the Section recommends clarifying amendments to two parts of the proposed rule.

Mental Health Rule 16(b)(3) governs appointment of counsel for rehospitalized patients and notice to counsel of the grounds for rehospitalization. The Section recommends the following amendments to the rule:

(b) RETURN PROCEDURES.

* * *

(3) APPOINTMENT OF AND NOTICE TO COUNSEL.

Within 24 hours of its receipt of the notice of rehospitalization referred to in paragraph (b)(1), the Court shall appoint or reappoint an attorney to represent the respondent for the duration of the rehospitalization and shall ~~forthwith~~ provide counsel with a copy of the notice of rehospitalization and accompanying affidavit. If the 24 hour period expires on a Saturday, Sunday, or legal holiday, the period shall be extended until ~~the end~~ 12:00 noon of the next day which is not a Saturday, Sunday, or legal holiday.

The Court of Appeals held that "the patient's counsel must . . . be provided with a copy of the affidavit within twenty-four hours of the patient's return [to inpatient treatment]." Richardson, 481 A.2d at 481. This proposed amendment is designed to make that clear. In addition, the time in which to act is extended until noon of the first business day following rehospitalization, rather than "the end" of the next business day. "The end" of the day might mean anything from close of business (e.g., 5:00 PM) to midnight; further, an extension until noon is consistent with the related provisions of the D.C. Code:

If the maximum period of time prescribed by section 21-512, 21-523, 21-524, or 21-525, during which an action or determination may or shall be taken, expires on a Saturday, Sunday, or legal holiday, the period may be extended to not later than noon of the next succeeding day which is not a Saturday, Sunday, or legal holiday.

D.C. Code § 21-526 (emphasis added). The referenced statutes set

time limits on various stages in the proceedings concerning persons hospitalized for mental health treatment.

The Section also recommends the following amendment to the proposed rule:

(c) CONTINUED HOSPITALIZATION.

(1) INVOLUNTARY HOSPITALIZATION. If the affidavit indicates that respondent was involuntarily rehospitalized, then within five (5) days the hospital must either: ~~(1) release the respondent after the-fifth-day-of-inpatient-care-and-observation,~~ or ~~thereafter-promptly~~ (2) move for a judicial hearing seeking permanent revocation of the respondent's outpatient commitment.

The original text of the proposed rule borrowed language from Richardson providing that, upon rehospitalization, "both the patient and his counsel shall be informed in writing that the Hospital must either release him after the fifth day of institutional care and observation, or thereafter move for a prompt adversary judicial hearing seeking the permanent revocation of his outpatient status." Richardson, 481 A.2d at 481. But this language is ambiguous: at the expiration of the initial five-day observation period, the court would be unable to determine whether the patient was entitled to be released immediately, or detained while the hospital "thereafter" prepared a petition for a hearing.

Fortunately, Richardson is more explicit in a later passage: "The Hospital may detain the patient without a full judicial hearing for a maximum of five days. . . . However, if the Hospital determines that further institutionalization is required, it must move for the hearing no later than the fifth day of examination and observation." Richardson, 481 A.2d at 482-83 (emphasis added). In addition, the Ervin Act reflects a preference for definite time limitations, especially when individual liberty is at stake. See, e.g., D.C. Code §§ 21-512, 21-524, 21-525. The recommended amendment would make it clear that the motion for a revocation hearing must be filed within the five-day period.