

SELF REPRESENTATION IN MENTAL HEALTH HEARINGS

GETTING THROUGH ON YOUR OWN

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WAIVING COUNSEL . . .

You have the right to be represented by counsel at your mental health hearing. You may, however, ask the court to allow you to waive your right to counsel and represent yourself. **This is not recommended.** If you decide to represent yourself, you will be facing a skilled lawyer on the other side, and you, **too**, will be expected to know and follow the rules of procedural and substantive law. You probably will not be given any leniency from the judge or opposing counsel.

This brochure will acquaint you with the phases of a trial, in general. However, it is not intended to tell you everything you need to know about your hearing, and courtroom procedures may vary depending on the judge presiding over your trial.

OPENING STATEMENTS . . .

give each side the opportunity to state its theory of the case and to state the facts it hopes to bring out when evidence is presented. An opening statement must not be argumentative.

WITNESSES . . .

provide testimony in an attempt to prove the facts for one side or the other. The burden is always on the State to prove that you meet the statutory criteria for involuntary admission or treatment, and the State must prove its case by clear and convincing evidence. Because the burden is on the State, you are not required to present any witnesses. You may, however, present witnesses if you want to, including yourself.

Generally, witnesses testify only about events they saw and may offer opinions only about those things that lay persons might commonly know, such as whether a car was speeding or whether a person seemed intoxicated.

Expert witnesses, on the other hand, may offer their opinions about your need for involuntary treatment. The expert must give a basis for each opinion. The State will undoubtedly have an expert witness who testifies that you need treatment. You may ask the court to appoint another, independent expert. The independent expert would talk with you and, based on his or her findings, might testify that you do not need treatment.

During direct examination, the State elicits testimony from its witness. Afterwards, you may cross examine. In cross examination, you may ask the witness questions that suggest the answer, such as, "Isn't it true you tried to get me to sign the consent?" or "You didn't actually see me talk to the nurse, did you?" But you should limit your questions to issues that were discussed during the State's direct examination.

Avoid the temptation to bring out very minor inconsistencies in your examination of the State's witness. If it does not really affect the case, let it be.

OBJECTIONS . . .

should be used with caution. Repeated objections, valid or not, may annoy the judge or jury. Some questions and answers, however, may be improper and should be objected to. For example, a question that requires a non-expert witness to report that she heard something from someone else is improper "hearsay" evidence. If the witness testifies that she was worried about you and, when asked why, states, "My neighbor told me [you] weren't eating," that would be hearsay, and you should object. You should also object to repetitive questions that call for the same answer or questions that are phrased in a way that suggest the answer during direct examination.

Additionally, before a witness can describe an event that has happened, the witness must establish where and when the event occurred and how he or she knows about it. If the witness does not do so, you may object for "lack of foundation."

If opposing counsel objects to one of your questions, wait for the judge to rule on the objection before going ahead.

CLOSING ARGUMENTS . . .

provide each side with the opportunity to summarize the evidence and, as the name suggests, argue to the judge or jury why it should prevail. If you have asked for a jury trial, you should thank the jury for its time and attention. Your closing argument is your chance to bring the judge or jury to your view of the case. Whether you argue that the evidence was insufficient or that it is your freedom that is at stake, you should speak clearly and forcefully, and maintain eye contact with the judge or jurors.

TRIAL BY JURY . . .

If you have chosen to have your case tried by a jury, you should be given the opportunity to participate in the instruction conference. At that conference, the judge determines which instructions will be given to the jury. The instructions tell the jury what the law is that it must follow.

You will also be able to participate in selecting the persons who will serve on the jury. The judge will ask the prospective jurors questions about their ability to decide the case fairly. You,

too, may be allowed to ask questions of your own. You can dismiss five prospective jurors for any reason and seek dismissal of an unlimited number of jurors if they cannot be impartial.

COURTROOM DEMEANOR . . .

affects how the judge or jury perceives you. Whenever the judge or jury enters the courtroom, you should stand. You should call the judge "Your honor" or "Judge" and should direct your arguments to him or her, not to opposing counsel. When cross examining the State's witness, you should stand about eight feet in front of the witness. When asking questions of your own witness, you should be farther from the witness so that the jurors focus on the witness, not on you.

APPEAL . . .

If the judge orders you to be admitted or to receive involuntary treatment, the judge should advise you of your right to appeal the decision. You must request an appeal, and a copy of the record and the transcript of the trial, in writing. Representing yourself on appeal is even more difficult than representing yourself at trial, and it often takes many months for a reviewing court to hand down its decision.

FINALLY . . .

Please remember that this brochure cannot teach you to represent yourself effectively, and that **representing yourself is not recommended**. More information can be found in the Mental Health and Developmental Disabilities Code, 405 ILCS 5, and on the Commission's web site.