

FREQUENTLY ASKED QUESTIONS

Firearm Permits (Purchase and Concealed) and Clerks' Disclosure of Involuntary Commitments

Note: All of the answers to the following frequently asked questions (FAQ) reflect the interpretation of the relevant statutes and rules of recordkeeping by the Administrative Office of the Courts (NCAOC). Individual orders of the court may direct otherwise and should be followed notwithstanding any advice below.

Fees

- 1. What fees does the clerk charge for searching the SPC files and providing the sheriff with copies of court orders (for pistol purchase permits) or mental health records (for concealed handgun permits)?**

The clerk must not charge fees for either.

For pistol purchase permits, G.S. 14-404(e) provides that, other than the \$5.00 application fee paid to a sheriff, "no other costs or fees other than provided in this subsection shall be charged for the permit, including, but not limited to, any costs for investigation, processing, or medical background checks by the sheriff or others providing records to the sheriff" (emphasis added).

For concealed handgun permits, G.S. 14-415.15(a) as amended effective October 1, 2015, provides that for a sheriff's evaluation of an applicant's mental health, "No person, company, mental health provider, or governmental entity may charge additional fees to the applicant for background checks conducted under this subsection" (emphasis added).

Therefore the clerk should not assess any costs or fees of any kind when responding to requests on the AOC-SP-914 or AOC-SP-917. This means no filing fees, no motion fee (even though the release is a "motion in the cause"), and no copy fees.

What Records to Search and Disclose

- 2. What records must the clerk search in response to the AOC-SP-914 or AOC-SP-917?**

The clerk only needs to search the records of involuntary commitments (IVC) in the confidential SPC files in response to an applicant's release form, because those are the records to which a sheriff has no direct access.

Other records relevant to the evaluation of an applicant generally will be publicly-accessible, so a sheriff's personnel can perform those checks on their own. This includes incompetency records (in SP files indexed in VCAP), criminal records, civil cases with relevant information (like domestic violence protective orders), etc.

Of course, sheriffs' personnel might need a bit of initial help from the clerks' staff, if they are unfamiliar with functions like statewide searches in VCAP or reading our issue codes.

- 3. What records must the clerk provide when the clerk receives a signed AOC-SP-914 or AOC-SP-917?**

It depends on the type of permit for which the applicant is applying.

AOC-SP-914 - Concealed Handgun Permits

If the court orders the disclosure of records in response to an AOC-SP-914 for a concealed handgun permit applicant (either via a standing, administrative order or by an order specific to the applicant), then G.S. 14-

415.13(a)(5) authorizes the disclosure of “any records concerning the mental health or capacity of the applicant” (emphasis added).

Further, the AOC-SP-914 contains the applicant’s authorization for the clerk to reveal from an involuntary commitment (IVC) file “any confidential information in the court files or records of each such proceeding that the sheriff may reasonably require in order to determine whether or not to issue a concealed handgun permit to me.” Therefore if a district court judge has ordered disclosure pursuant to the AOC-SP-914, and unless the court’s order limits the information that may be disclosed, the clerk can provide to the sheriff any content of the applicant’s IVC file that the sheriff requests.

AOC-SP-917 - Pistol Purchase Permits

If the court orders the disclosure of records in response to an AOC-SP-917 for a pistol purchase permit applicant (either via a standing, administrative order or by an order specific to the applicant), then G.S. 14-404(e1) (5) authorizes the disclosure of only “court orders concerning the mental health or capacity of the applicant” (emphasis added).

Therefore if a district court judge has ordered disclosure pursuant to the AOC-SP-917, and unless the court’s order limits the information that may be disclosed, the clerk can provide to the sheriff only court orders from the applicant’s IVC file that the sheriff requests. This includes orders entered by a judge as well as custody orders and commitment orders entered by magistrates and clerks.

4. How does the clerk record what the clerk did in response to the release?

If the chief district court judge (CDCJ) entered the proposed Administrative Order distributed on November 30, 2015, then this is answered by Paragraph 16: when any information from an SPC file is disclosed in response to the AOC-SP-914 or AOC-SP-917, the clerk should place in the SPC file a copy of the release and a copy of the administrative order, and note in the file the date of the disclosure and to whom it was made.

If the CDCJ has not entered the Administrative Order (or one providing substantially similar instructions to the clerk), then the clerk should disclose nothing from an SPC file until an order specific to that applicant is entered by a district court judge. Upon receipt of such an order, the clerk should place in the file the release form and the order, and make the same notations mentioned above in the file: the date of any disclosure made pursuant to that order and to whom it was made.

5. The sheriff is asking why the AOC-SP-914 and AOC-SP-917 can’t be filed electronically, like the remainder of the permit applications. Why does it need to be a notarized hard copy?

The sheriff may be referring to G.S. 14-404(e1) and G.S. 14-415.13(a), both of which require that sheriffs provide applications for both types of permits “electronically.”

G.S. 14-404(e1)(5) and G.S. 14-415.13(a)(5) separately require that the NCAOC develop the release forms for disclosure of court orders or records concerning the applicant’s mental health. The requirement that applications be provided “electronically” refers to the application form, not the NCAOC’s release form. Further, because the release form must be able to serve as a “motion in the cause” under G.S. 122C-54(d) (for disclosure of records from an involuntary commitment proceeding), it must be in a format that can be filed with the clerk, which requires a paper form. Finally, because the applicant generally will not appear before the clerk or the court as part of the sheriff’s request for release of mental health records, notarization is the only method by which the clerk and court can confirm that the applicant personally executed the release.