

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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HOUSE DRH50205-LUz-35 (02/12)

Short Title: Guardianship/Jurisdiction and Portability. (Public)

Sponsors: Representative Goodwin.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REVISE THE STATE'S GUARDIANSHIP STATUTES WITH RESPECT TO JURISDICTION, VENUE, PROCEDURE, APPEALS, AND PORTABILITY AS RECOMMENDED BY THE HOUSE STUDY COMMITTEE ON STATE GUARDIANSHIP LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 35A-1101(1) and (2), (5), (7) through (13), and (15) through (16), respectively, are recodified as G.S. 35A-1202(1a) and (1b), (4a), (10a) and (10b), (11a) through (11e), (13a), and (14a), respectively.

SECTION 2. G.S. 35A-1101(3) and (4), (6), (14), and (17) are repealed.

SECTION 3. G.S. 35A-1102 through 35A-1106, G.S. 35A-1108 and 35A-1109, G.S. 35A-1112 and 35A-1113, G.S. 35A-1115, and G.S. 35A-1120 are repealed.

SECTION 4. G.S. 35A-1201 is amended by adding a new subsection to read:

"(c) Nothing in this Chapter shall interfere with the authority of a judge to appoint a guardian ad litem under Rule 17(b) of the North Carolina Rules of Civil Procedure in a civil action or proceeding that does not arise under this Chapter."

SECTION 5. G.S. 35A-1202 is amended by adding a new subdivision to read:

"When used in this Subchapter, unless a contrary intent is indicated or the context requires otherwise:

...

(10a) 'Home state' means the state in which a respondent resided or in which a respondent was a patient or resident of an adult care home, nursing home, group home, or similar institution or facility for a period of at least six consecutive months immediately before the commencement

1 of a special proceeding to appoint a guardian for the respondent. A
2 period of temporary absence is part of the period.

3"

4 **SECTION 6.** Article 4 of Chapter 35A of the General Statutes is amended
5 by adding a new section to read:

6 "**§ 35A-1203.1. Jurisdiction over proceedings to appoint guardians for**
7 **incompetent persons.**

8 (a) The clerk of superior court has exclusive, original jurisdiction over
9 proceedings to appoint a guardian for a minor or incompetent person, unless the clerk in
10 the county in which a proceeding to appoint a guardian for an incompetent person is
11 brought has an interest, direct or indirect, in the proceeding, jurisdiction with respect
12 thereto shall be vested in any superior court judge residing or presiding in the district,
13 and the jurisdiction of the superior court judge shall extend to all things which the clerk
14 might have done.

15 (b) Except as otherwise provided in Article 12 or Article 12A of this Chapter, the
16 clerk has jurisdiction to appoint a guardian for an incompetent person only if:

17 (1) This State is the home state of the respondent on the date of the
18 commencement of the proceeding or was the home state of the
19 respondent within six months before the commencement of the
20 proceeding; or

21 (2) The respondent is physically present in this State, the respondent has
22 significant contacts with this State, and there is significant evidence in
23 this State regarding the respondent's condition, capacity, care, and
24 needs.

25 (c) Except as otherwise provided in Article 12 or Article 12A of this Chapter, the
26 physical presence of the respondent or the respondent's property in this State is not a
27 sufficient basis in itself to establish jurisdiction to appoint a guardian for the respondent
28 or the respondent's estate.

29 (d) The clerk may, on the clerk's own motion or upon motion of a party, decline
30 to exercise jurisdiction in a proceeding to appoint a guardian for an incompetent person
31 if the clerk determines that this State is an inconvenient or inappropriate forum or that
32 the clerk's exercise of jurisdiction is not in the best interest of the respondent.

33 (e) If a guardianship proceeding is pending in another state and a proceeding to
34 appoint a guardian for an incompetent person is commenced pursuant to this
35 Subchapter, the clerk shall notify the court in which the other proceeding is pending
36 and, after consultation with the court in which the other proceeding is pending, assume
37 or decline jurisdiction, whichever is in the best interest of the respondent.

38 (f) If a general guardian, a guardian of the person, a guardian of the estate, or
39 similar fiduciary has been appointed for the respondent or the respondent's estate by a
40 court of another state and that guardianship has not terminated, the clerk may appoint a
41 guardian for the respondent or the respondent's estate, as the case may be, only as
42 provided by Article 12 or Article 12A of this Chapter."

43 **SECTION 7.** G.S. 35A-1204 reads as rewritten:

44 "**§ 35A-1204. Venue.**

1 (a) Venue for the appointment of a guardian for an incompetent person is in the
2 county in which the ~~person was adjudicated to be incompetent unless the clerk in that~~
3 ~~county has transferred the matter to a different county, in which case venue is in the~~
4 ~~county to which the matter has been transferred.~~ respondent resides on the date the
5 proceeding is commenced or in any county in which the respondent resided within six
6 months before the date the proceeding is commenced. If the respondent's residence
7 cannot be determined or the respondent does not reside in this State and has not resided
8 in this State within six months before the date the proceeding is commenced, venue
9 shall be in the county where the respondent is present on the date the proceeding is
10 commenced. If proceedings involving the same respondent are brought in more than one
11 county in which venue is proper, venue shall be in the county in which proceedings
12 were commenced first.

13 (b) Venue for the appointment of a guardian for a minor is in the county in which
14 the minor resides or is domiciled.

15 (c) Venue for the appointment of an ancillary guardian for a nonresident of the
16 State of North Carolina who is a minor or who has been adjudicated incompetent in
17 another state, and who has a guardian of the estate or general guardian in the state of his
18 residence, is in any county in which is located real estate in which the nonresident ward
19 has an ownership or other interest, or if the nonresident ward has no such interest in real
20 estate, any county in which the nonresident owns or has an interest in personal property.

21 (d) Upon motion of a party, the clerk in the county in which a proceeding to
22 appoint a guardian for an incompetent person was commenced shall transfer the
23 proceeding to a county in which venue is proper if the county in which the proceeding
24 was commenced is not a proper venue for the proceeding.

25 (e) The clerk may, on the clerk's own motion or upon motion of a party, transfer
26 venue of a proceeding to appoint a guardian for an incompetent person to another
27 county if the convenience of the parties or witnesses and the ends of justice are
28 promoted by the transfer and the clerk determines that no hardship or prejudice to the
29 respondent will result from the change of venue."

30 **SECTION 8.** G.S. 35A-1205 reads as rewritten:

31 "**§ 35A-1205. Transfer to different county.**

32 At any time ~~before or~~ after appointing a guardian for a minor or incompetent person
33 the clerk may, on a motion filed in the cause or on the court's own motion, for good
34 cause order that the matter be transferred to a different county. The transferring clerk
35 shall enter a written order directing the transfer under such conditions as the clerk
36 specifies. The clerk in the transferring county shall inform the clerk of the transferee
37 county that the proceeding is being transferred and transfer all original papers,
38 documents, and orders from the guardianship and the incompetency proceeding, if
39 any proceeding to the clerk of the transferee county, along with the order directing the
40 transfer. The clerk in the transferee county shall docket and file the papers in the estates
41 division as a basis for jurisdiction in all subsequent proceedings. The clerk in the
42 transferring county shall close his the file with a copy of the transfer order and any order
43 adjudicating incompetence or appointing a guardian."

44 **SECTION 9.** G.S. 35A-1210 reads as rewritten:

1 **"§ 35A-1210. Application-Petition before clerk.**

2 Any individual, corporation, or disinterested public agent may file an application for
3 the appointment of a guardian for an incompetent person by filing the same person,
4 including any State or local human services agency through its authorized
5 representative, may commence a special proceeding seeking the appointment of a
6 guardian for an incompetent person by filing a petition with the clerk. The application
7 may be joined with or filed subsequent to a petition for the adjudication of
8 incompetence under Subchapter I of this Chapter. The application-petition shall be
9 verified and set forth, to the extent known and to the extent such information is not
10 already a matter of record in the case: known, the following:

- 11 (1) The name, age, address, and county of residence of the ward or
12 respondent;
- 13 (2) The name, address, and county of residence of the applicant,
14 his petitioner, the petitioner's relationship if any to the respondent or
15 ward, and his respondent, and the petitioner's interest in the proceeding;
- 16 (3) The name, address, and county of residence of the respondent's next of
17 kin and other persons known to have an interest in the proceeding;
- 18 (3a) Facts regarding the appointment of a guardian or conservator for the
19 respondent or the respondent's estate in another state and the
20 commencement of proceedings to appoint a guardian or conservator
21 for the respondent or the respondent's estate in this State or in another
22 state;
- 23 (3b) A statement of the facts tending to show that the respondent is
24 incompetent and the reason why appointment of a guardian is sought;
- 25 (4) A general statement of the ward's or respondent's assets and liabilities
26 with an estimate of the value of any property, including any income
27 and receivables to which he the respondent is entitled; and
- 28 (5) Whether the applicant-petitioner seeks the appointment of a guardian
29 of the person, a guardian of the estate, or a general guardian, and
30 whom the applicant-petitioner recommends or seeks to have appointed
31 as such the guardian or guardians."

32 **SECTION 10.** Article 5 of Chapter 35A of the General Statutes is amended
33 by adding a new section to read:

34 **"§ 35A-1210.1. Application before clerk.**

35 If a petition under G.S. 35A-1210 has been filed and the proceeding has not been
36 dismissed or an order appointing a guardian has not been entered, any person, including
37 any State or local human services agency through its authorized representative, other
38 than the petitioner who is interested in the respondent's welfare may file an application
39 seeking appointment as the respondent's guardian by filing an application with the clerk.
40 The application shall be verified and set forth, to the extent known and to the extent the
41 information is not already a matter of record in the case, the following:

- 42 (1) The name, address, and county of residence of the applicant, the
43 applicant's relationship if any to the respondent, and the applicant's
44 interest in the proceeding;

- 1 (2) The name, address, and county of residence of the respondent's next of
2 kin and other persons known to have an interest in the proceeding;
3 (3) Facts regarding the appointment of a guardian or conservator for the
4 respondent or the respondent's estate in another state and the
5 commencement of proceedings to appoint a guardian or conservator
6 for the respondent or the respondent's estate in this State or in another
7 state;
8 (4) A general statement of the ward's or respondent's assets and liabilities
9 with an estimate of the value of any property, including any income
10 and receivables to which the respondent is entitled; and
11 (5) Whether the applicant seeks the appointment of a guardian of the
12 person, a guardian of the estate, or a general guardian, and whom the
13 applicant recommends or seeks to have appointed as the guardian or
14 guardians."

15 **SECTION 11.** G.S. 35A-1211 reads as rewritten:

16 **"§ 35A-1211. Service of petition, application, motions, and notices.**

17 (a) Application—Within five days after filing the petition, the clerk shall issue a
18 written notice of the date, time, and place for a hearing on the petition. The hearing shall
19 be held not less than 10 days or more than 30 days after the respondent has been served
20 with notice and the petition unless the clerk extends the time for good cause, for
21 preparation of a multidisciplinary evaluation, or for the completion of a mediation.
22 Copies of the petition for appointment of a guardian and ~~related motions and~~
23 ~~notices~~initial notice of hearing shall be personally served on the respondent,
24 respondent's counsel or guardian ad litem, other parties of record, and such other
25 persons as the clerk shall direct. respondent. A sheriff who serves the notice and petition
26 shall serve the notice and petition without demanding any fees in advance.

27 (b) When the application for appointment of a guardian is joined with a petition
28 for adjudication of incompetence, the application shall be served with and in the same
29 manner as the petition for adjudication of incompetence. When the application is filed
30 subsequent to the petition for adjudication of incompetence, the applicant shall serve the
31 application as provided by G.S. 1A-1, Rule 5, Rules of Civil Procedure, unless the clerk
32 directs otherwise. Within five days after filing the petition, the petitioner shall mail or
33 cause to be mailed, by first-class mail, copies of the notice and petition to the
34 respondent's next of kin alleged in the petition and any other persons the clerk may
35 designate, unless the person has accepted notice. Proof of the mailing or acceptance
36 shall be by affidavit or certificate of acceptance of notice filed with the clerk.

37 (c) The clerk shall mail, by first-class mail, copies of subsequent notices to the
38 next of kin alleged in the petition and to other persons the clerk deems appropriate.

39 (d) Applications for appointment of a guardian and other motions and notices
40 shall be served on the respondent's counsel, the respondent's guardian ad litem, other
41 parties of record, and other persons as directed by the clerk."

42 **SECTION 12.** Article 5 of Chapter 35A of the General Statutes is amended
43 by adding a new section to read:

44 **"§ 35A-1211.1. Rules of procedure and evidence.**

1 Except as otherwise provided by this Article, the Rules of Civil Procedure under
2 Chapter 1A of the General Statutes and the Rules of Evidence under Chapter 8C of the
3 General Statutes shall apply in proceedings to appoint a guardian for an incompetent
4 person."

5 **SECTION 13.** G.S. 35A-1107 is recodified as G.S. 35A-1211.2.

6 **SECTION 14.** G.S. 35A-1211.2(b) reads as rewritten:

7 "(b) An attorney appointed as a guardian ad litem under this section shall
8 represent the respondent until the petition is dismissed or until a guardian is ~~appointed~~
9 ~~under Subchapter II of this Chapter.~~ appointed. After being appointed, the guardian ad
10 litem shall personally visit the respondent as soon as possible and shall make every
11 reasonable effort to determine the respondent's wishes regarding the incompetency
12 proceeding and any proposed guardianship. The guardian ad litem shall present to the
13 clerk the respondent's express wishes at all relevant stages of the proceedings. The
14 guardian ad litem also may make recommendations to the clerk concerning the
15 respondent's best interests if those interests differ from the respondent's express wishes.
16 In appropriate cases, the guardian ad litem shall consider the possibility of a limited
17 guardianship and shall make recommendations to the clerk concerning the rights,
18 powers, and privileges that the respondent should retain under a limited guardianship."

19 **SECTION 15.** G.S. 35A-1114 is recodified as G.S. 35A-1211.3.

20 **SECTION 16.** G.S. 35A-1111 is recodified as G.S. 35A-1211.4.

21 **SECTION 17.** G.S. 35A-1211.4(b) reads as rewritten:

22 "(b) If a multidisciplinary evaluation is ordered, the clerk shall name a designated
23 agency and order it to prepare, cause to be prepared, or assemble a current
24 multidisciplinary evaluation of the respondent. The agency shall file the evaluation with
25 the clerk not later than 30 days after the agency receives the clerk's order. ~~The~~
26 ~~multidisciplinary evaluation shall be filed in the proceeding for adjudication of~~
27 ~~incompetence, in the proceeding for appointment of a guardian under Subchapter II of~~
28 ~~this Chapter, or both.~~ Unless otherwise ordered by the clerk, the agency shall send
29 copies of the evaluation to the petitioner and the respondent's counsel ~~or~~ and guardian
30 ad litem ~~for the respondent~~ not later than 30 days after the agency receives the clerk's
31 order. The evaluation shall be kept under such conditions as directed by the clerk and its
32 contents revealed only as directed by the clerk. The evaluation shall not be a public
33 record and shall not be released except by order of the clerk."

34 **SECTION 18.** G.S. 35A-1211.4(e) is repealed.

35 **SECTION 19.** G.S. 35A-1110 is recodified as G.S. 35A-1211.5.

36 **SECTION 20.** G.S. 35A-1211.5 reads as rewritten:

37 "**§ 35A-1211.5. Right to jury.**

38 The respondent has a right, upon request by ~~him, his counsel, or his~~ the respondent,
39 the respondent's counsel, or the respondent's guardian ad litem, to trial by jury-jury on
40 the issue of incompetency. Failure to request a trial by jury shall constitute a waiver of
41 the right. The clerk may nevertheless require trial by jury in accordance with G.S. 1A-1,
42 Rule 39(b), Rules of Civil Procedure, by entering an order for trial by jury on ~~his~~ the
43 clerk's own motion. The jury shall be composed of 12 persons chosen from the county's
44 jury list in accordance with the provisions of Chapter 9 of the General Statutes."

1 **SECTION 21.** G.S. 35A-1212 reads as rewritten:

2 "**§ 35A-1212. Hearing before clerk on appointment of guardian.**

3 (a) ~~The clerk shall make such inquiry and receive such evidence as the clerk~~
4 ~~deems necessary to determine:~~

5 (1) ~~The nature and extent of the needed guardianship;~~

6 (2) ~~The assets, liabilities, and needs of the ward; and~~

7 (3) ~~Who, in the clerk's discretion, can most suitably serve as the guardian~~
8 ~~or guardians.~~

9 ~~If the clerk determines that the nature and extent of the ward's capacity justifies~~
10 ~~ordering a limited guardianship, the clerk may do so.~~Except as otherwise provided, the
11 hearing on the petition shall be at the date, time, and place set forth in the final notice of
12 hearing. If a multidisciplinary evaluation or mediation is ordered after a notice of
13 hearing has been issued, the clerk may extend the time for hearing and issue a notice to
14 the parties that the hearing has been continued. The notice shall state the reason the
15 hearing has been continued and the date, time, and place of the new hearing. The new
16 hearing shall not be less than 10 days or more than 30 days after the respondent has
17 been served with notice.

18 (a1) The hearing shall be open to the public unless the respondent or the
19 respondent's counsel or guardian ad litem requests otherwise, in which event the clerk
20 shall exclude all persons other than those directly involved in or testifying at the
21 hearing.

22 (a2) The petitioner and the respondent are entitled to present testimony and
23 documentary evidence, subpoena witnesses and the production of documents, and
24 examine and cross-examine witnesses.

25 (a3) The clerk may not enter an order appointing a guardian for an incompetent
26 person unless the clerk or jury finds, by clear, cogent, and convincing evidence, that the
27 respondent is incompetent.

28 (b) ~~If a current multidisciplinary evaluation is not available and the clerk~~
29 ~~determines that one is necessary, the clerk, on his-the clerk's own motion or the motion~~
30 ~~of any party, may order that such an a multidisciplinary evaluation be performed~~
31 ~~pursuant to G.S. 35A-1111. The provisions of that section shall apply to such an order~~
32 ~~for a multidisciplinary evaluation following an adjudication of incompetence performed.~~

33 (c) The clerk may require a report prepared by a designated agency to evaluate
34 the suitability of a prospective guardian, to include a recommendation as to an
35 appropriate party or parties to serve as guardian, or both, based on the nature and extent
36 of the needed guardianship and the ward's assets, liabilities, and needs.

37 (d) If a designated agency has not been named—pursuant—to
38 ~~G.S. 35A-1111,~~named, the clerk may, at any time ~~he-the clerk~~ finds that the best interest
39 of the ward would be served thereby, name a designated agency.

40 (e) If the respondent is adjudicated incompetent and the clerk determines that a
41 guardian should be appointed, the clerk shall enter an order appointing a guardian or
42 guardians pursuant to the provisions of this Article. If the clerk determines that the
43 nature and extent of the ward's capacity justifies ordering a limited guardianship, the
44 clerk shall order a limited guardianship."

1 **SECTION 22.** Article 5 of Chapter 35A of the General Statutes is amended
2 by adding a new section to read:

3 **"§ 35A-1215.1. Appeal from clerk's order.**

4 (a) Appeal from the clerk's order shall be to the superior court pursuant to
5 G.S. 1-301.1(c) through (e).

6 (b) An appeal shall not stay the appointment of a guardian unless the stay is
7 ordered by the superior court or the Court of Appeals."

8 **SECTION 23.** G.S. 35A-1116 is recodified as G.S. 35A-1215.2.

9 **SECTION 24.** G.S. 35A-1215.2(b) reads as rewritten:

10 (b) The cost of a multidisciplinary evaluation order ~~pursuant to G.S. 35A-1111~~
11 shall be assessed as follows:

- 12 (1) If the respondent is adjudicated incompetent and is not indigent, the
13 cost shall be assessed against the respondent;
- 14 (2) If the respondent is adjudicated incompetent and is indigent, the cost
15 shall be borne by the Department of Health and Human Services;
- 16 (3) If the respondent is not adjudicated incompetent, the cost may be taxed
17 against either party, apportioned among the parties, or borne by the
18 Department of Health and Human Services, in the discretion of the
19 court."

20 **SECTION 25.** Article 12 of Chapter 35A of the General Statutes is amended
21 by adding a new section to read:

22 **"§ 35A-1282. Payment of debt and delivery of property to foreign guardian or**
23 **conservator without local proceeding.**

24 A person who is indebted to or has the possession of tangible or intangible property
25 of an incompetent person or minor for whom a general guardian, guardian of the person,
26 guardian of the estate, or similar court-appointed fiduciary has been appointed under the
27 law of another state may pay the debt or deliver the property to the foreign guardian
28 upon presentation of the letters or order of appointment and an affidavit made by or on
29 behalf of the foreign guardian, conservator, or fiduciary stating that a guardianship
30 proceeding is not pending in this State and that the foreign guardian, conservator, or
31 fiduciary is entitled to payment or to receive delivery. Payment or delivery in
32 accordance with this section discharges the debtor or possessor, absent bad faith,
33 knowledge of a guardianship proceeding pending in this State, or any other reason the
34 transfer is unlawful or improper."

35 **SECTION 26.** Chapter 35A of the General Statutes is amended by adding a
36 new Article to read:

37 "Article 12A.

38 "Guardianship Portability.

39 **"§ 35A-1289.1. Authority of foreign guardians.**

40 A general guardian, guardian of the person, guardian of the estate, or similar
41 court-appointed fiduciary appointed in another state may take any action or exercise any
42 power within this State if the guardian's action is valid under the law of the state in
43 which the guardian was appointed and the ward is not a resident of this State.

44 **"§ 35A-1289.2. Issuance of guardianship letters to foreign guardians.**

1 (a) The clerk in the county in which a ward resides may appoint a person as the
2 guardian of the person of a ward if:

3 (1) That person has been appointed and is serving as the ward's general
4 guardian or guardian of the person under the laws of another state;

5 (2) The foreign guardian applies for letters of appointment;

6 (3) The foreign guardian files with the clerk an authenticated copy of the
7 letters of appointment or order under which the guardian is authorized
8 to act under the laws of the other state; and

9 (4) The ward resides in this State.

10 (b) Upon filing an application for letters of appointment under this section, the
11 foreign guardian shall serve notice of the application on the ward and on any other
12 persons the clerk designates.

13 (c) The clerk shall grant the application and issue letters of appointment pursuant
14 to G.S. 35A-1206 without a hearing unless the ward or an interested person files an
15 objection with the clerk within 14 days after service of notice of the application or the
16 clerk determines that issuing letters of appointment to the foreign guardian without a
17 hearing is not in the ward's best interest.

18 (d) If the ward or an interested person files a timely objection or the clerk
19 determines that issuing letters of appointment to the foreign guardian is not in the ward's
20 best interest, the clerk shall deny the application and the foreign guardian or any
21 interested person may file a petition seeking appointment of a guardian pursuant to
22 Subchapter II of this Chapter.

23 (e) The duties, powers, rights, liabilities, and responsibilities of a guardian
24 appointed pursuant to this section shall be the same as those of a guardian appointed
25 pursuant to Subchapter II of this Chapter.

26 (f) If the clerk appoints a guardian pursuant to this section, the clerk shall
27 provide notice of appointment to the court that appointed the foreign guardian.

28 **"§ 35A-1289.3. Transfer of guardianship to another state.**

29 Upon application by a guardian or an interested person, the clerk shall terminate a
30 guardianship pursuant to G.S. 35A-1295 and discharge the guardian pursuant to
31 G.S. 35A-1266 if the clerk determines that: (i) the ward no longer resides in this State;
32 (ii) a court of another state has entered an order appointing a guardian or conservator for
33 the ward or the ward's property; (iii) the interests of the ward are adequately protected;
34 and (iv) there is no longer a need for continued guardianship in this State."

35 **SECTION 27.** G.S. 35A-1295(a)(2) reads as rewritten:

36 "(a) Every guardianship shall be terminated and all powers and duties of the
37 guardian provided in Article 9 of this Chapter shall cease when the ward:

38 ...

39 (2) ~~Is adjudicated to be restored to competency pursuant to the provisions~~
40 ~~of G.S. 35A-1130, competency, or~~

41 "

42 **SECTION 28.** G.S. 35A-1130 is recodified as G.S. 35A-1296.

43 **SECTION 29.** G.S. 35A-1296 reads as rewritten:

44 **"§ 35A-1296. Proceedings before clerk. Restoration to competency.**

1 (a) The guardian, ward, or any other interested person may petition for
2 restoration of the ward to competency by filing a motion in the ~~cause of the~~
3 ~~incompetency proceeding with the clerk who is exercising jurisdiction therein.~~cause.
4 The motion shall be verified and shall set forth facts tending to show that the ward is
5 competent.

6 (b) Upon receipt of the motion, the clerk shall set a date, time, and place for a
7 hearing, which shall be not less than 10 days or more than 30 days from service of the
8 motion and notice of hearing on the ward and the guardian, or on the one of them who is
9 not the petitioner, unless the clerk for good cause directs otherwise. The petitioner shall
10 cause notice and a copy of the motion to be served on the guardian and ward (but not on
11 one who is the petitioner) and any other parties to the ~~incompetency~~ proceeding. Service
12 shall be in accordance with provisions of G.S. 1A-1, Rule 4, Rules of Civil Procedure.

13 (c) At the hearing on the motion, the ward shall be entitled to be represented by
14 counsel or guardian ad litem, and a guardian ad litem shall be appointed in accordance
15 with rules adopted by the Office of Indigent Defense Services if the ward is indigent
16 and not represented by counsel. Upon motion of any party or the clerk's own motion, the
17 clerk may order a multidisciplinary ~~evaluation~~evaluation as defined in
18 G.S. 35A-1202(13). The ward has a right, upon request by ~~him, his counsel, or his~~the
19 ward or the ward's counsel or guardian ad litem to trial by jury. Failure to request a trial
20 by jury shall constitute a waiver of the right. The clerk may nevertheless require trial by
21 jury in accordance with G.S. 1A-1, Rule 39(b), Rules of Civil Procedure, by entering an
22 order for trial by jury on ~~his~~the clerk's own motion. ~~Provided, if~~if there is a jury in a
23 proceeding for restoration to competency, it shall be a jury of six persons selected in
24 accordance with the provisions of Chapter 9 of the General Statutes.

25 (d) If the clerk or jury finds by a preponderance of the evidence that the ward is
26 competent, the clerk shall enter an order adjudicating that the ward is restored to
27 competency. Upon ~~such~~the adjudication, the ward is authorized to manage ~~his~~the
28 ward's affairs, make contracts, control and sell ~~his~~the ward's property, both real and
29 personal, and exercise all rights as if ~~he~~the ward had never been adjudicated
30 incompetent.

31 (e) The filing and approval of final accounts from the guardian and the discharge
32 of the guardian shall be as provided in Subchapter II of this Chapter.

33 (f) If the clerk or jury fails to find that the ward should be restored to
34 competency, the clerk shall enter an order denying the petition. The ward may appeal
35 from the clerk's order to the superior court ~~for trial de novo~~pursuant to G.S. 1-301.3(c)
36 through (e)."

37 **SECTION 30.** This act becomes effective October 1, 2008 and applies to
38 proceedings or motions filed or pending on or after that date.