GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

SESSION LAW 2003-236
HOUSE BILL 1123

AN ACT TO EXPRESSLY PROVIDE FOR LIMITED GUARDIANSHIPS FOR INCOMPETENT PERSONS AND TO CLARIFY THE DUTY OF A GUARDIAN AD LITEM APPOINTED TO REPRESENT A PERSON IN AN INCOMPETENCY ADJUDICATION AND TO CLARIFY THE APPOINTMENT OF GUARDIAN AD LITEMS UNDER RULE 17 OF THE RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 35A-1212(a) reads as rewritten:

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

(1) The nature and extent of the needed guardianship;
(2) The assets, liabilities, and needs of the ward; and
(3) Who, in the clerk's discretion, can most suitably serve as the guardian or guardians.

If the clerk determines that the nature and extent of the ward's capacity justifies ordering a limited guardianship, the clerk may do so."

SECTION 2. G.S. 35A-1215(b) reads as rewritten:

"(b) ~~The~~ If the clerk orders a limited guardianship as authorized by G.S. 35A-1212(a), the clerk may order that the ward retain certain legal rights and privileges to which ~~he~~ the ward was entitled before ~~he~~ the ward was adjudged ~~incompetent; provided, any such~~ incompetent. Any order of limited guardianship shall include findings as to the nature and extent of the ward's incompetence as it relates to the ward's need for a guardian or guardians."

SECTION 3. G.S. 35A-1107 reads as rewritten:

"**§ 35A-1107. Right to counsel or guardian ad litem.**

(a) The respondent is entitled to be represented by counsel of his own choice or by an appointed guardian ad litem. Upon filing of the petition, an attorney shall be appointed as guardian ad litem to represent the respondent unless the respondent retains his own counsel, in which event the guardian ad litem may be discharged. Appointment and discharge of an appointed guardian ad litem shall be in accordance with rules adopted by the Office of Indigent Defense Services.

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

SECTION 4. G.S. 35A-1102 reads as rewritten:

"**§ 35A-1102. Scope of law; exclusive procedure.**

This Article establishes the exclusive procedure for adjudicating a person to be an incompetent adult or an incompetent child. <u>However, nothing in this Article shall interfere with the authority of a judge to appoint a guardian ad litem for a party to litigation under Rule 17(b) of the North Carolina Rules of Civil Procedure.</u>"

SECTION 5. This act becomes effective December 1, 2003.

In the General Assembly read three times and ratified this the 12th day of June, 2003.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:57 p.m. this 19th day of June, 2003