

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 945*

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

Sponsors: Senators Malone; Bingham, Dannelly, and Purcell.

Referred to: Judiciary I.

March 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE STATE'S GUARDIANSHIP STATUTES WITH RESPECT TO
3 JURISDICTION, VENUE, PROCEDURE, APPEALS, AND PORTABILITY.

4 The General Assembly of North Carolina enacts:

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

8 **SECTION 2.** G.S. 35A-1101(3) and (4), (6), (14), and (17) are repealed.

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11 repealed.

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

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

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

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

19 ...
20 (10a) 'Home state' means the state in which a respondent resided or in which a
21 respondent was a patient or resident of an adult care home, nursing home,
22 group home, or similar institution or facility for a period of at least six
23 consecutive months immediately before the commencement of a special
24 proceeding to appoint a guardian for the respondent. A period of temporary
25 absence is part of the period.

26"

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

29 **§ 35A-1203.1. Jurisdiction over proceedings to appoint guardians for incompetent**
30 **persons.**

31 (a) The clerk of superior court has exclusive, original jurisdiction over proceedings to
32 appoint a guardian for a minor or incompetent person, unless the clerk in the county in which a
33 proceeding to appoint a guardian for an incompetent person is brought has an interest, direct or
34 indirect, in the proceeding. Jurisdiction with respect to the proceeding shall be vested in any
35 superior court judge residing or presiding in the district, and the jurisdiction of the superior
36 court judge shall extend to all things which the clerk might have done.



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

3 (1) This State is the home state of the respondent on the date of the
4 commencement of the proceeding or was the home state of the respondent
5 within six months before the commencement of the proceeding; or

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

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

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

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

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

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

28 "**§ 35A-1204. Venue.**

29 (a) Venue for the appointment of a guardian for an incompetent person is in the county
30 in which the person was adjudicated to be incompetent unless the clerk in that county has
31 transferred the matter to a different county, in which case venue is in the county to which the
32 matter has been transferred. respondent resides on the date the proceeding is commenced or in
33 any county in which the respondent resided within six months before the date the proceeding is
34 commenced. If the respondent's residence cannot be determined or the respondent does not
35 reside in this State and has not resided in this State within six months before the date the
36 proceeding is commenced, venue shall be in the county where the respondent is present on the
37 date the proceeding is commenced. If proceedings involving the same respondent are brought
38 in more than one county in which venue is proper, venue shall be in the county in which
39 proceedings were commenced first.

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

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

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

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

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

7 "**§ 35A-1205. Transfer to different county.**

8 At any time ~~before or~~ after appointing a guardian for a minor or incompetent person the
9 clerk may, on a motion filed in the cause or on the court's own motion, for good cause order
10 that the matter be transferred to a different county. The transferring clerk shall enter a written
11 order directing the transfer under such conditions as the clerk specifies. The clerk in the
12 transferring county shall inform the clerk of the transferee county that the proceeding is being
13 transferred and transfer all original papers, documents, and orders from the guardianship and
14 the incompetency proceeding, if any, proceeding to the clerk of the transferee county, along
15 with the order directing the transfer. The clerk in the transferee county shall docket and file the
16 papers in the estates division as a basis for jurisdiction in all subsequent proceedings. The clerk
17 in the transferring county shall close his the file with a copy of the transfer order and any order
18 adjudicating incompetence or appointing a guardian."

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

20 "**§ 35A-1210. Application-Petition before clerk.**

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

- 29 (1) The name, age, address, and county of residence of the ~~ward or~~ respondent;
- 30 (2) The name, address, and county of residence of the ~~applicant, his~~petitioner,
31 the petitioner's relationship if any to the respondent or ward, and
32 his~~respondent,~~ and the petitioner's interest in the proceeding;
- 33 (3) The name, address, and county of residence of the respondent's next of kin
34 and other persons known to have an interest in the proceeding;
- 35 (3a) Facts regarding the appointment of a guardian or conservator for the
36 respondent or the respondent's estate in another state and the commencement
37 of proceedings to appoint a guardian or conservator for the respondent or the
38 respondent's estate in this State or in another state;
- 39 (3b) A statement of the facts tending to show that the respondent is incompetent
40 and the reason why appointment of a guardian is sought;
- 41 (4) A general statement of the ~~ward's or~~ respondent's assets and liabilities with
42 an estimate of the value of any property, including any income and
43 receivables to which ~~he the~~ respondent is entitled; and
- 44 (5) Whether the ~~applicant-petitioner~~ petitioner seeks the appointment of a guardian of the
45 person, a guardian of the estate, or a general guardian, and whom the
46 ~~applicant-petitioner~~ petitioner recommends or seeks to have appointed as ~~such the~~
47 guardian or guardians."

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

50 "**§ 35A-1210.1. Application before clerk.**

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

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

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

24 **"§ 35A-1211. Service of petition, application, motions, and notices.**

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

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

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

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

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

51 **"§ 35A-1211.1. Rules of procedure and evidence.**

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

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

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

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

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

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

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

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

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

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

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

34 "**§ 35A-1211.5. Right to jury.**

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

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

43 "**§ 35A-1212. Hearing before clerk on appointment of guardian.**

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

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

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

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

50 ~~If the clerk determines that the nature and extent of the ward's capacity justifies ordering a~~
51 ~~limited guardianship, the clerk may do so.~~ Except as otherwise provided, the hearing on the

1 petition shall be at the date, time, and place set forth in the final notice of hearing. If a
2 multidisciplinary evaluation or mediation is ordered after a notice of hearing has been issued,
3 the clerk may extend the time for hearing and issue a notice to the parties that the hearing has
4 been continued. The notice shall state the reason the hearing has been continued and the date,
5 time, and place of the new hearing. The new hearing shall not be less than 10 days or more than
6 30 days after the respondent has been served with notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 44 (1) If the respondent is adjudicated incompetent and is not indigent, the cost
45 shall be assessed against the respondent;
- 46 (2) If the respondent is adjudicated incompetent and is indigent, the cost shall be
47 borne by the Department of Health and Human Services;
- 48 (3) If the respondent is not adjudicated incompetent, the cost may be taxed
49 against either party, apportioned among the parties, or borne by the
50 Department of Health and Human Services, in the discretion of the court."

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

3 **"§ 35A-1282. Payment of debt and delivery of property to foreign guardian or**
4 **conservator without local proceeding.**

5 A person who is indebted to or has the possession of tangible or intangible property of an
6 incompetent person or minor for whom a general guardian, guardian of the person, guardian of
7 the estate, or similar court-appointed fiduciary has been appointed under the law of another
8 state may pay the debt or deliver the property to the foreign guardian upon presentation of the
9 letters or order of appointment and an affidavit made by or on behalf of the foreign guardian,
10 conservator, or fiduciary stating that a guardianship proceeding is not pending in this State and
11 that the foreign guardian, conservator, or fiduciary is entitled to payment or to receive delivery.
12 Payment or delivery in accordance with this section discharges the debtor or possessor, absent
13 bad faith, knowledge of a guardianship proceeding pending in this State, or any other reason
14 the transfer is unlawful or improper."

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

17 "Article 12A.

18 "Guardianship Portability.

19 **"§ 35A-1289.1. Authority of foreign guardians.**

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

24 **"§ 35A-1289.2. Issuance of guardianship letters to foreign guardians.**

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

- 27 (1) That person has been appointed and is serving as the ward's general guardian
28 or guardian of the person under the laws of another state;
29 (2) The foreign guardian applies for letters of appointment;
30 (3) The foreign guardian files with the clerk an authenticated copy of the letters
31 of appointment or order under which the guardian is authorized to act under
32 the laws of the other state; and
33 (4) The ward resides in this State.

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

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

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

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

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

51 **"§ 35A-1289.3. Transfer of guardianship to another state.**

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

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

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

10 ...

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

13"

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

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

16 "**§ 35A-1296. Proceedings before clerk.**~~Restoration to competency.~~

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

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

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

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

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

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

49 **SECTION 30.** This act becomes effective October 1, 2010, and applies to
50 proceedings or motions filed or pending on or after that date.