

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

S

2

SENATE BILL 308
Judiciary Committee Substitute Adopted 4/4/23

Short Title: Guardianship Rights.

(Public)

Sponsors:

Referred to:

March 15, 2023

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE GUARDIANSHIP ACCOUNTING STATUTE TO ALLOW FOR CERTAIN TIMING ELECTIONS AND EXTENSIONS, TO AMEND THE GENERAL STATUTES TO PREVENT THE ABUSE OR MISUSE OF AUTHORITY GRANTED TO AN AGENT IN A POWER OF ATTORNEY, AND TO PROMOTE THE RIGHTS AND INDEPENDENCE OF PERSONS SUBJECT TO THE GUARDIANSHIP PROCESS AND TO IMPROVE JUDICIAL OVERSIGHT AND ACCOUNTABILITY FOR GUARDIANS OF THE PERSON, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

PART I. GUARDIANSHIP ANNUAL ACCOUNTING CHANGES

SECTION 1.1. G.S. 35A-1264 reads as rewritten:

"§ 35A-1264. Annual accounts.

~~Every~~ Unless the time for filing the annual account has been extended by the clerk, every guardian shall, within 30 days after the expiration of one year from the date of his qualification or appointment, and annually, for so long as any of the estate remains in his the guardian's control, file annually in the office of the clerk an inventory and account, under oath, of the amount of property the guardian received by him, or invested by him, and invested, including the manner and nature of such investment, and his all receipts and disbursements for the past year in the form of debit and credit. All accounts shall be due within 30 days after the close of the fiscal year selected by the guardian, and annually thereafter. The election of a fiscal year shall be made by the guardian upon filing of the first annual account; or, if made in a subsequent year, with the permission of the clerk. In no event may a guardian select a fiscal year-end that is fewer than 11 months nor more than 12 months from the date of the guardian's qualification or appointment. The guardian shall produce vouchers for all payments or verified proof for all payments in lieu of vouchers. The clerk may examine on oath such the accounting party, or any other person, concerning the receipts, disbursements or any other matter relating to the estate; and having estate. The clerk shall carefully revised review and audited such audit the account, and, if he approve the same, he approved, must endorse his the approval thereon, on the account and cause the account to be recorded, which shall be deemed prima facie evidence of correctness."

SECTION 1.2. This Part is effective January 1, 2024, and applies to annual account filings made on or after that date.

PART II. PREVENT ABUSE OF AUTHORITY IN POWERS OF ATTORNEY

SECTION 2.1. G.S. 32C-1-116 reads as rewritten:



* S 3 0 8 - V - 2 *

1 **"§ 32C-1-116. Judicial relief.**

2 (a) The clerks of superior court of this State shall have original jurisdiction of
3 proceedings under this Chapter. Except as provided in subdivision (4) of this subsection, the clerk
4 of superior court's jurisdiction is exclusive. The following proceedings are included:

- 5 (1) To compel an accounting by the agent, including the power to compel the
6 production of evidence substantiating any expenditure made by the agent from
7 the principal's assets.
- 8 (2) To terminate a power of attorney or to suspend or terminate the authority of
9 an agent where a guardian of the estate or a general guardian has been
10 appointed.
- 11 (3) To determine compensation and expenses for an agent under
12 G.S. 32C-1-112(b) and G.S. 32C-1-112(c).
- 13 (4) To determine an agent's authority and powers, to construe the terms of a power
14 of attorney created or governed by this Chapter, and to determine any question
15 arising in the performance by an agent of the agent's powers and authority
16 under a power of attorney governed by this Chapter, including, but not limited
17 to, the following proceedings:
- 18 a. To determine whether and to what extent an agent holds a specific
19 grant of authority under G.S. 32C-2-201.
- 20 b. To approve an agent's ability to make a gift on behalf of the principal
21 where the gift is governed by G.S. 32C-2-217 because the power of
22 attorney grants the agent only general authority with respect to gifts.
- 23 c. To authorize the agent to make a gift of the principal's property under
24 G.S. 32C-2-218.
- 25 d. To authorize the agent to do an act described in G.S. 32C-2-201(a),
26 other than the act to make a gift, under G.S. 32C-2-219.
- 27 e. To determine whether and to what extent acceptance of a power of
28 attorney shall be mandated under G.S. 32C-1-120(f).

29 Any party may file a notice of transfer of a proceeding pursuant to this
30 subdivision to the superior court division of the General Court of Justice as
31 provided in G.S. 28A-2-6(h). In the absence of a removal to superior court,
32 Article 26 of Chapter 1 of the General Statutes shall apply to a proceeding
33 commenced under this Chapter to the extent consistent with this subsection.

34 ...

35 (f) Upon motion by the ~~principal~~, principal individually and not through an agent, the
36 clerk of superior court shall dismiss a petition filed under subsection (a) of this section, unless
37 the clerk of superior court determines the principal is incapacitated within the meaning of
38 G.S. 32C-1-102(6).

39 (g) Any party adversely affected by an order of the clerk of superior court in a proceeding
40 commenced under subsection (a) of this section may appeal the clerk's order as provided in
41 G.S. 1-301.3."

42 **SECTION 2.2.** This Part is effective when it becomes law and applies to proceedings
43 filed on or after that date.

44
45 **PART III. CHANGES TO GUARDIANSHIP STATUTES**

46 **SECTION 3.1.** G.S. 35A-1101 reads as rewritten:

47 **"§ 35A-1101. Definitions.**

48 The following definitions apply in this Subchapter:

49 ...

- 50 (7) **Incompetent adult.** – An adult or emancipated minor who lacks sufficient
51 capacity to manage the adult's own affairs or to make or communicate

1 important decisions concerning the adult's person, family, or property whether
 2 the lack of capacity is due to mental illness, intellectual disability, epilepsy,
 3 cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or
 4 condition. An adult or emancipated minor does not lack capacity if, by means
 5 of a less restrictive alternative, he or she is able to sufficiently (i) manage his
 6 or her affairs and (ii) communicate important decisions concerning his or her
 7 person, family, and property.

8 (8) Incompetent child. – A minor who is at least 17 1/2 years of age and who,
 9 other than by reason of minority, lacks sufficient capacity to make or
 10 communicate important decisions concerning the child's person, family, or
 11 property whether the lack of capacity is due to mental illness, intellectual
 12 disability, epilepsy, cerebral palsy, autism, inebriety, disease, injury, or
 13 similar cause or condition. An incompetent child does not lack capacity if, by
 14 means of a less restrictive alternative, he or she is able to sufficiently (i)
 15 manage his or her affairs and (ii) communicate important decisions
 16 concerning his or her person, family, and property.

17 (9) Indigent. – Unable to pay for legal representation and other necessary
 18 expenses of a proceeding brought under this Subchapter.

19 (10) Inebriety. – The habitual use of alcohol or drugs rendering a person
 20 incompetent to transact ordinary business concerning the person's estate,
 21 dangerous to person or property, cruel and intolerable to family, or unable to
 22 provide for family.

23 (10a) Intellectual disability. – Significantly subaverage general intellectual
 24 functioning existing concurrently with deficits in adaptive behavior and
 25 manifested before age 22.

26 (11) Interim guardian. – A guardian, appointed prior to adjudication of
 27 incompetence and for a temporary period, for a person who requires
 28 immediate intervention to address conditions that constitute imminent or
 29 foreseeable risk of harm to the person's physical well-being or to the person's
 30 estate.

31 (11a) Less restrictive alternative. – An arrangement enabling a respondent to
 32 manage his or her affairs or to make or communicate important decisions
 33 concerning his or her person, property, and family that restricts fewer rights
 34 of the respondent than would the adjudication of incompetency and
 35 appointment of a guardian. The term includes supported decision making,
 36 appropriate and available technological assistance, appointment of a
 37 representative payee, and appointment of an agent by the respondent,
 38 including appointment under a power of attorney for health care or power of
 39 attorney for finances.

40"

41 **SECTION 3.2.** G.S. 35A-1106 reads as rewritten:

42 **"§ 35A-1106. Contents of petition.**

43 The petition shall set forth, to the extent ~~known~~:known, all of the following:

- 44 (1) The name, age, address, and county of residence of the ~~respondent~~:respondent.
 45 (2) The name, address, and county of residence of the petitioner, and ~~his~~-the
 46 petitioner's interest in the ~~proceeding~~:proceeding.
 47 (3) A general statement of the respondent's assets and liabilities with an estimate
 48 of the value of any property, including any compensation, insurance, pension,
 49 or allowance to which ~~he~~-the respondent is ~~entitled~~:entitled.

1 (4) A statement of the facts tending to show that the respondent is incompetent
2 and the reason or reasons why the adjudication of incompetence is
3 ~~sought;~~sought.

4 (4a) A statement identifying what less restrictive alternatives have been considered
5 prior to seeking adjudication and why those less restrictive alternatives are
6 insufficient to meet the needs of the respondent.

7 (5) The name, address, and county of residence of the respondent's next of kin
8 and other persons known to have an interest in the ~~proceeding;~~proceeding.

9 (6) Facts regarding the adjudication of respondent's incompetence by a court of
10 another state, if an adjudication is sought on that basis pursuant to
11 G.S. 35A-1113(1)."

12 **SECTION 3.3.** G.S. 35A-1107 reads as rewritten:

13 **"§ 35A-1107. Right to counsel or guardian ad litem.**

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

20 (b) An attorney appointed as a guardian ad litem under this section shall represent the
21 respondent until any of the following occurs:

22 (1) The petition is dismissed.

23 (2) A guardian is appointed under Subchapter II of this Chapter.

24 (3) Other relief is granted under Article 2 of this Subchapter.

25 (c) After being appointed, the guardian ad litem shall personally visit the respondent as
26 soon as possible and shall make every reasonable effort to determine the respondent's wishes
27 regarding the incompetency proceeding and any proposed guardianship. During the personal
28 visit, and at any time upon request by the respondent, the guardian ad litem shall explain the
29 notice of rights required under G.S. 35A-1117 to the respondent. The guardian ad litem shall
30 present to the clerk the respondent's express wishes at all relevant stages of the proceedings. The
31 guardian ad litem also may make recommendations to the clerk concerning the respondent's best
32 interests if those interests differ from the respondent's express wishes. In appropriate cases, the
33 guardian ad litem shall consider the possibility of a limited guardianship and shall make
34 recommendations to the clerk concerning the rights, powers, and privileges that the respondent
35 should retain under a limited guardianship."

36 **SECTION 3.4.** G.S. 35A-1108 reads as rewritten:

37 **"§ 35A-1108. Issuance of notice.**

38 (a) Within five days after filing of the petition, the clerk shall issue a written notice of the
39 date, time, and place for a hearing on the petition, which shall be held not less than 10 days nor
40 more than 30 days after service of the notice of rights required under G.S. 35A-1117 and the
41 petition and initial notice of hearing on the respondent, unless the clerk extends the time for good
42 cause, for preparation of a multidisciplinary evaluation as provided in G.S. 35A-1111, or for the
43 completion of a mediation.

44 (b) If a multidisciplinary evaluation or mediation is ordered after a notice of hearing has
45 been issued, the clerk may extend the time for hearing and issue a notice to the parties that the
46 hearing has been continued, the reason therefor, and the date, time, and place of the new hearing,
47 which shall not be less than 10 days nor more than 30 days after service of such notice on the
48 respondent.

49 (c) Subsequent notices to the parties shall be served as provided by G.S. 1A-1, Rule 5,
50 Rules of Civil Procedure, unless the clerk orders otherwise."

51 **SECTION 3.5.** G.S. 35A-1109 reads as rewritten:

"§ 35A-1109. Service of notice and petition.

(a) Copies of the notice of rights required under G.S. 35A-1117 and the petition and initial notice of hearing shall be personally served on the respondent. Respondent's counsel or guardian ad litem shall be served pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. A sheriff who serves the notice and petition shall do so without demanding his fees in advance. The petitioner, within five days after filing the petition, shall mail or cause to be mailed, by first-class mail, copies of the notice of rights and the petition and initial notice of hearing to the respondent's next of kin alleged in the petition and any other persons the clerk may designate, unless such person has accepted notice. Proof of such mailing or acceptance shall be by affidavit or certificate of acceptance of notice filed with the clerk. The clerk shall mail, by first-class mail, copies of subsequent notices to the next of kin alleged in the petition and to such other persons as the clerk deems appropriate.

(b) Expired August 1, 2020, pursuant to Session Laws 2020-3, s. 4.11(b)."

SECTION 3.6. G.S. 35A-1116 reads as rewritten:

"§ 35A-1116. Costs and fees.

(a) Costs. – Except as otherwise provided herein, costs shall be assessed as in special proceedings. Costs, including any reasonable fees and expenses of ~~counsel for the petitioner which the clerk, in his discretion, may allow, may be taxed against either party counsel, shall be taxed against any party or apportioned among the parties,~~ in the discretion of the ~~court unless~~ court. In exercising such discretion, the court shall tax costs incurred by any party against the respondent if the court finds that such costs were incurred for the benefit of the respondent, unless doing so would be inequitable. If the clerk finds that the petitioner did not have reasonable grounds to bring the proceeding, costs shall be taxed to the petitioner. In the event that

~~(1) The clerk finds that the petitioner did not have reasonable grounds to bring the proceeding, in which case costs shall be taxed to the petitioner; or~~

~~(2) The respondent is indigent, in which case the costs shall be waived by the clerk if not taxed against the petitioner a party other than the respondent as provided above in this subsection or otherwise paid as provided in subsection (b) or (c) of this section.~~

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

(1) If the respondent is adjudicated incompetent and is not indigent, the cost shall be assessed against the respondent;

(2) If the respondent is adjudicated incompetent and is indigent, the cost shall be borne by the Department of Health and Human Services;

(3) If the respondent is not adjudicated incompetent, the cost may be taxed against either party, apportioned among the parties, or borne by the Department of Health and Human Services, in the discretion of the court.

(c) Witness. – Witness fees shall be paid by:

(1) The respondent, if the respondent is adjudicated incompetent and is not indigent;

(2) The petitioner, if the respondent is not adjudicated incompetent and the clerk finds that there were not reasonable grounds to bring the proceeding;

(2a) The petitioner for any of the petitioner's witnesses, and the respondent for any of the respondent's witnesses, when the clerk finds all of the following:

a. There were reasonable grounds to bring the proceeding.

b. The respondent was not adjudicated incompetent.

c. The respondent is not indigent.

(3) The Administrative Office of the Courts for witness fees for the respondent, if the respondent is indigent.

1 (c1) Mediator. – Mediator fees and other costs associated with mediation shall be assessed
2 in accordance with G.S. 7A-38.3B.

3 (c2) Guardian Ad Litem. – The fees of an appointed guardian ad litem shall be paid by:

4 (1) The respondent, if:

5 a. The respondent is adjudicated incompetent; and

6 b. The respondent is not indigent.

7 (2) The respondent, if:

8 a. The respondent is not adjudicated incompetent;

9 b. The clerk finds that there were reasonable grounds to bring the
10 proceeding; and

11 c. The respondent is not indigent.

12 (3) The petitioner, if:

13 a. The respondent is not adjudicated incompetent; and

14 b. The clerk finds that there were not reasonable grounds to bring the
15 proceedings.

16 (4) The Office of Indigent Defense Services in all other cases.

17 (d) The provisions of this section shall also apply to all parties to any proceedings under
18 this Chapter, including a guardian who has been removed from office and the sureties on the
19 guardian's bond."

20 **SECTION 3.7.** Article 1 of Subchapter 1 of Chapter 35A of the General Statutes is
21 amended by adding a new section to read:

22 **"§ 35A-1117. Notice of rights of respondent.**

23 (a) Notice of Rights. – Every respondent in a proceeding under this Chapter shall be given
24 a notice of his or her rights which shall be set forth in a conspicuous manner and substantially
25 similar to the following language:

26
27 **"THE LAWS GOVERNING INCOMPETENCY AND GUARDIANSHIP ARE**
28 **COMPLEX. THIS IS A SUMMARY OF RIGHTS FOR INFORMATIONAL PURPOSES**
29 **ONLY. IT IS NOT INTENDED TO BE A COMPLETE DISCUSSION OF ALL RIGHTS.**
30 **THE RIGHTS LISTED MAY NOT APPLY IN ALL CASES AND SHOULD NOT BE**
31 **CITED AS LAW IN A COURT PROCEEDING. YOU SHOULD CONSULT WITH AN**
32 **ATTORNEY OF YOUR CHOOSING IF YOU HAVE ANY QUESTIONS ABOUT YOUR**
33 **RIGHTS.**
34

35 a. Rights of Respondents Before Adjudication of Incompetence:

36
37 1. Right to Notice – You have a right to receive a copy of the petition, the initial notice
38 of hearing, and this notice of rights before the hearing. You also have the right at any time to
39 request a copy of this notice of rights from your court-appointed guardian ad litem or the court.

40 2. Right to an Attorney – You have the right to hire an attorney of your choice to
41 represent you in the proceeding. If you do not hire your own attorney, you will be represented by
42 an attorney called a guardian ad litem. If you do hire an attorney, the court may require the
43 guardian ad litem to continue to be involved in your case. The guardian ad litem will present your
44 express wishes to the court and consider the possibility of a limited guardianship, making
45 recommendations to the court regarding the rights that you should keep if the guardianship is
46 limited. The guardian ad litem may also make recommendations to the court that the guardian ad
47 litem feels are in your best interest, even if those recommendations differ from your express
48 wishes.

49 3. Right to Gather Evidence – You have a right to require witnesses to appear and to
50 gather documents concerning your ability to make decisions. You have a right to request an
51 evaluation (called a multidisciplinary evaluation) to assist the court in determining the extent of

1 your ability to make decisions and to assist in making an appropriate guardianship plan. You or
2 your attorney must request a multidisciplinary evaluation in writing no later than 10 days after
3 you are served with the petition.

4 4. **Right to a Hearing** – A hearing must be held before you can be adjudicated to be
5 incompetent. The hearing will be held between 10 and 30 days after you receive a copy of the
6 petition, notice of hearing, and this notice of rights unless the court delays the hearing for a good
7 reason. You have the right to ask the court to change the date of the hearing for a good reason,
8 and the court will decide whether or not to change the hearing date. You have a right to attend
9 the hearing if you choose to do so. You can give up your right to attend the hearing. You have a
10 right to have your express wishes communicated to the court by the court-appointed guardian ad
11 litem at all relevant stages of the proceedings.

12 5. **Right to a Jury** – You have the right to request that a jury hear your case. You lose
13 that right to a jury if you wait too long to ask.

14 6. **Right to a Closed Hearing** – The hearing is open to the public unless you or your
15 attorney ask for it to be private. You or your attorney have the right to ask the court to close the
16 hearing and exclude anyone who is not directly involved or testifying at the hearing.

17 7. **Right to Present Evidence and Testimony** – You have a right to present evidence
18 at the hearing. You have a right to testify at the hearing.

19 8. **Right to Call Witnesses and Right to Question Witnesses** – You have the right to
20 call and question witnesses at the hearing, including family members and medical providers. You
21 have the right to question witnesses anyone else calls at the hearing.

22 9. **Right to Express Wishes Regarding Your Rights** – If you are adjudicated to be
23 incompetent, you will lose the right to direct your healthcare, employment, interpersonal
24 relationships, and religious, social, and community activities unless the court specifically agrees
25 to allow you to keep those rights. You have the right to tell the court what rights you would like
26 to keep. The court will consider your wishes, but the court is not required to follow your wishes.

27 10. **Right to Express Wishes as to Who Serves as Your Guardian** – If the court decides
28 that you need a guardian, you have the right to tell the court who you want to be your guardian.
29 The court will consider your wishes, but the court is not required to follow your wishes.

30 11. **Right to Appeal** – If you have a good reason to believe that your case was wrongly
31 decided, (i) you have the right to appeal the decision adjudicating you to be incompetent by filing
32 a written notice of appeal with the clerk within 10 days of the clerk entering the order and (ii)
33 you have the right to appeal the clerk's decision about who is appointed as your guardian by filing
34 a written notice of appeal with the clerk within 10 days of the order being served on you. You
35 lose your rights to appeal any decision made by the clerk if you do not file a written notice of
36 appeal in time.

37
38 b. **Rights of Wards After Adjudication of Incompetence:**

39
40 1. **Right to a Qualified, Responsible Guardian** – You have the right to a qualified,
41 responsible guardian.

42 2. **Right to Request Transfer to Another County** – If you have a good reason to
43 believe that your guardianship should be administered in a different county, you have the right
44 to request that your guardianship be transferred to another county.

45 3. **Right to Request Restoration of Competency** – If there has been a change in your
46 circumstances and you believe that you can show to the court that you have regained your
47 competency, you have the right to request that the court restore your competency and end your
48 guardianship.

49 4. **Right to Request a Review or Modification of Your Guardianship** – If there has
50 been a change in your circumstances and you believe that your guardianship should be modified

1 or reviewed, you have the right to file a motion to request that the court review or modify your
2 guardianship.

3 5. **Right to Vote** – You have a right to register to vote and vote in elections if you are
4 otherwise qualified.

5 6. **Right to Request a Hearing in a Petition for Procedure to Permit Sterilization** –
6 If your guardian asks the court for an order to sterilize you, you have the right to know about it,
7 to participate in the hearing, to have an attorney at the hearing, and to appeal the court's decision
8 by filing a written notice of appeal with the clerk within 10 days of the clerk entering the order.

9 7. **Ability to Drive** – You may lose your ability to drive a car or other vehicle. The clerk
10 must notify the Department of Motor Vehicles (DMV) that you have been adjudicated
11 incompetent, and the clerk will make a recommendation on whether you should keep your
12 driver's license. The DMV will contact you and you may get a letter from the DMV revoking
13 your license. You have the right to make a written request to the DMV to review a decision to
14 revoke your license.

15 8. **Additional Rights** – *Some rights depend on whether you have the capacity to*
16 *exercise the right. Different rights have different tests for capacity. Examples of rights where*
17 *you need to demonstrate you have the required capacity are the right to marry, make a last will*
18 *and testament, and testify as a witness. You should consult with an attorney of your choosing*
19 *to discuss whether you have the capacity to exercise these rights.*

20
21 (b) The Administrative Office of the Courts shall develop a form notice as set forth in
22 subsection (a) of this section and shall make a Spanish translation of the form available."

23 **SECTION 3.8.** G.S. 35A-1201 reads as rewritten:

24 "**§ 35A-1201. Purpose.**

25 (a) The General Assembly of North Carolina recognizes that:

- 26 (1) Some minors and incompetent persons, regardless of where they are living,
27 require the assistance of a guardian in order to help them exercise their rights,
28 including the management of their property and personal affairs.
- 29 (2) Incompetent persons who are not able to act effectively on their own behalf
30 have a right to a qualified, responsible guardian.
- 31 (3) The essential purpose of guardianship for an incompetent person is to replace
32 the individual's authority to make decisions with the authority of a guardian
33 when the individual does not have adequate capacity to make such decisions.
- 34 (4) Limiting the rights of an incompetent person by appointing a guardian for him
35 should not be undertaken unless it is clear that a guardian will give the
36 individual a fuller capacity for exercising his rights.
- 37 (5) Guardianship should seek to preserve for the incompetent person the
38 opportunity to exercise those rights that are within his comprehension and
39 judgment, allowing for the possibility of error to the same degree as is allowed
40 to persons who are not incompetent. To the maximum extent of his
41 capabilities, an incompetent person should be permitted to participate as fully
42 as possible in all decisions that will affect him.
- 43 (6) Minors, because they are legally incompetent to transact business or give
44 consent for most purposes, need responsible, accountable adults to handle
45 property or benefits to which they are entitled. Parents are the natural
46 guardians of the person of their minor children, but unemancipated minors,
47 when they do not have natural guardians, need some other responsible,
48 accountable adult to be responsible for their personal welfare and for personal
49 decision-making on their behalf.

1 (7) For adults, guardianship should always be a last resort and should only be
2 imposed after less restrictive alternatives have been considered and found to
3 be insufficient to meet the adult's needs.

4 (8) The filing of regular status reports by the guardian of the person or general
5 guardian concerning the conditions and welfare of an incompetent person is
6 encouraged and should be required whenever appropriate.

7 "

8 **SECTION 3.9.** G.S. 35A-1207 reads as rewritten:

9 "**§ 35A-1207. Motions in the cause.**

10 (a) Any interested person or the clerk, on the clerk's own motion, may file a motion in
11 the cause with the clerk in the county where a guardianship is docketed to request modification
12 of the order appointing a guardian or guardians or consideration of any matter pertaining to the
13 guardianship.

14 (b) The clerk shall treat all such requests, however labeled, as motions in the cause.

15 (c) A movant under this section shall obtain from the clerk a time, date, and place for a
16 hearing on the motion, and shall serve the motion and notice of hearing on all other parties and
17 such other persons as the clerk directs as provided by G.S. 1A-1, Rule 5 of the Rules of Civil
18 Procedure, unless the clerk orders otherwise.

19 (d) If the clerk finds reasonable cause to believe that an emergency exists that threatens
20 the physical well-being of the ward or constitutes a risk of substantial injury to the ward's estate,
21 the clerk may enter an appropriate ex parte order to address the emergency pending disposition
22 of the matter at the hearing."

23 **SECTION 3.10.** G.S. 35A-1214 reads as rewritten:

24 "**§ 35A-1214. Priorities for appointment.**

25 The clerk shall consider appointing a guardian according to the following order of priority:
26 (i) an individual or entity nominated under G.S. 32C-1-108(a) or G.S. 32A-22(b), as applicable;
27 (ii) an individual recommended under G.S. 35A-1212.1; (iii) an individual; (iv) a corporation; or
28 (v) a disinterested public agent. No public agent shall be appointed guardian until diligent efforts
29 have been made to find an appropriate individual or corporation to serve as guardian, but in every
30 instance the clerk shall base the appointment of a guardian or guardians on the best interest of
31 the ward."

32 **SECTION 3.11.** G.S. 35A-1217 reads as rewritten:

33 "**§ 35A-1217. Appointment of guardian ad litem for incompetent ward.**

34 The clerk shall appoint a guardian ad litem to represent a ward in a proceeding under this
35 Subchapter if the ward has been adjudicated incompetent under Subchapter I and the clerk
36 determines that the ward's interests are not adequately represented. Appointment and discharge
37 of the guardian ad litem shall be in accordance with rules adopted by the Office of Indigent
38 Defense Services. The guardian ad litem shall explain the notice of rights under G.S. 35A-1117
39 as part of the guardian ad litem's representation of the ward in connection with all proceedings
40 under this Subchapter. Nothing herein shall affect the ward's right to retain counsel of his or her
41 own choice."

42 **SECTION 3.12.** G.S. 35A-1242 reads as rewritten:

43 "**§ 35A-1242. Status reports for incompetent wards.**

44 (a) Any corporation or disinterested public agent that is guardian of the person for an
45 incompetent person, within six months after being appointed, shall file an initial status report
46 with the clerk and submit a copy of the initial status report to the designated agency, if there is
47 one. Such guardian shall file a second status report with the clerk one year after being appointed,
48 and subsequent reports annually thereafter. The clerk may order any other guardian of the person
49 to file status reports. If a guardian required by this section to file a status report is employed by
50 the designated agency, the guardian shall file any required status report with the clerk and submit
51 a copy of the status report to the designated agency.

1 ...
2 (e) Every guardian of the person, upon knowledge of a ward's change of residence, shall
3 file a notice of change of ward's address with the court within 30 days. The notice shall include
4 the ward's previous address, the ward's new address, and the date the ward moved to the new
5 address."

6 **SECTION 3.13.** This Part is effective January 1, 2024, and applies to petitions filed
7 on or after that date.

8
9 **PART IV. EFFECTIVE DATE**

10 **SECTION 4.1.** Except as otherwise provided, this act is effective when it becomes
11 law.