

March 19, 2009

**H 704. GUARDIANSHIP/COURT-APPOINTED COUNSEL.** Filed 3/19/09. *TO REDEFINE THE ROLE OF COURT-APPOINTED ATTORNEYS IN INCOMPETENCE AND GUARDIANSHIP PROCEEDINGS UNDER THE LAWS PERTAINING TO GUARDIANSHIP.*

Enacts new GS 35A-1107.1 providing a right to counsel for respondents in guardianship and incompetence proceedings. Provides that an attorney may be appointed under rules adopted by the Office of Indigent Defense Services (IDS) or retained by the respondent. Specifies duties and responsibilities of an appointed or retained attorney to the respondent. Repeals GS 35A-1107, which allowed for respondent to be represented by counsel or a guardian ad litem (GAL). Amends GS 35A-1101(4) and 35A-1202(3) to (1) include serving as a GAL among the functions of a designated agency that the clerk may order and (2) specify that an agency may not serve as a designated agency in a proceeding if it or one of its employees is a party or is a general guardian or guardian of the person in the proceeding. Amends GS 35A-1109 to remove requirement for service of notice and petition on respondent's counsel or GAL. Amends GS 35A-1113 regarding circumstances under which the clerk may adjudicate incompetence on the basis of a prior adjudication in another state to require that the respondent was represented by an attorney in the prior adjudication (was, represented by attorney or GAL). Amends GS 35A-1116 specifying fees and costs allowed and the conditions determining the responsibility of parties for fees and costs. Places responsibility for paying fees in certain circumstances with the Office of Indigent Defense Services (was, Administrative Office of the Courts). Makes technical and conforming changes. Requires IDS to implement rules governing the appointment, discharge and compensation of attorneys appointed to represent respondents in accordance with GS 35A-1107.1 by October 1, 2010. Appropriates \$30,000 for 2009-10 from the General Fund to the Judicial Department, IDS, to develop educational and training resources for attorneys who represent respondents in incompetence and guardianship proceedings. Appropriates \$30,000 for 2009-10 and \$30,000 for 2010-11 from the General Fund to the Judicial Department, Office of Indigent Defense Services, to offset personal costs. Appropriations sections are effective July 1, 2009. The remainder of the act is effective October 1, 2010, for proceedings, motions, orders, or applications filed on or after that date.

**Intro. by Goodwin, Farmer-Butterfield,  
Bordsen.**

GS 35A, APPROP