

March 19, 2009

H 705. GUARDIANSHIP/JURISDICTION AND PORTABILITY. Filed 3/19/09. *TO REVISE THE STATE'S GUARDIANSHIP STATUTES WITH RESPECT TO JURISDICTION, VENUE, PROCEDURE, APPEALS, AND PORTABILITY.*

Recodifies GS 35A-1101(1) and (2), (5), (7) through (13), and (15) through (16) as GS 35A-1202(1a) and (1b), (4a), (10a) and (10b), (11a) through (11e), (13a), and (14a). Also recodifies 35A-1107, 35A-1114, 35A-1111, 35A-1110 and 35A-1116. Repeals GS 35A-1101(3) and (4) (defining *clerk* and *designated agency*), (6) (defining *guardian ad litem*), (14) (defining *multidisciplinary evaluation*), and (17) (defining *ward*); GS 35A-1211.4(e); GS 35A-1102 through GS 35A-1106; GS 35A-1108 through GS 35A-1113; GS 35A-1115; and GS 35A-1120. Amends 35A-1201 to add a new subsection (c) containing that portion of repealed GS 35A-1102 that provides that nothing in Chapter 35A shall interfere with the authority of a judge to appoint a guardian ad litem in a civil action or proceeding that does not arise under Chapter 35A. Amends GS 35A-1202 to add a new subdivision (10A) that defines *home state* as the state in which a respondent resided or in which the respondent was a patient or resident of an adult care home, nursing home, group home, or similar facility for at least six consecutive months immediately before the commencement of a proceeding to appoint a guardian for the respondent. Enacts new GS 35A-1203.1, which contains those portions of repealed GS 35A-1102 and repealed GS 35A-1103(a) and (d) that give the clerk of superior court exclusive, original jurisdiction over proceedings to appoint a guardian for a minor or incompetent person unless the clerk has an interest in the proceeding and vests jurisdiction with respect to the appointment proceeding in any superior court judge residing or presiding in the district; and provides the following: (1) except as otherwise provided in Article 12 or 12A of Chapter 35A, grants jurisdiction to the clerk only if (a) NC is the home state of the respondent or (b) the respondent is physically present in NC, has significant contacts with NC, and there is significant evidence in NC regarding the respondent's condition; (2) permits the clerk to decline to exercise jurisdiction if the clerk determines that NC is an inconvenient or inappropriate forum or is not in the respondent's best interest; (3) if a guardianship proceeding is pending in another state, requires the clerk to notify that court and assume or decline jurisdiction over the proceeding after consultation with the court in which the other proceeding is pending; and (4) if a guardian has been appointed by a court of another state, permits the clerk to appoint a guardian only as provided by Article 12 or 12A of Chapter 35A. Amends GS 35A-1204: (1) to include, with slight modifications, that portion of repealed GS 35A-1103(b) and repealed GS 35A-1103(c) that address where venue is proper in an appointment proceeding; (2) to permit transfer of the proceeding to a county in which venue is proper upon motion of a party; and (3) to include that portion of repealed GS 35A-1104 that permits transfer of the proceeding to a more convenient venue on the clerk's own motion or upon motion of a party. Amends GS 35A-1210: (1) to include that portion of repealed GS 35A-1105 that provides that any person, including any State or local human services agency, may commence a proceeding seeking the appointment of a guardian of an incompetent person by filing a verified petition; (2) to require that the petition include facts regarding parallel proceedings in NC or another state; and (3) to include that portion of repealed GS 35A-1106(4) which requires that the petition include a statement of facts tending to show that the respondent is incompetent. Enacts new GS 35A-1210.1: (1) to permit any person who is interested in the respondent's welfare to file an application seeking appointment as the respondent's guardian once a petition has been filed but before the proceeding to appoint a guardian has been dismissed or an order appointing a guardian has been entered and (2) to require that such application be verified and include information specified in the new statute. Amends GS 35A-1211 (1) to include that portion of repealed GS 35A-1108(a) that requires the clerk to issue a written notice for a hearing on the petition and requires the hearing to be held at a time specified in the statute; (2) to include that portion of repealed GS 35A-1109 that requires copies of the petition to be personally served on the respondent; (3) to delete references to the joinder of an application for appointment of a guardian with a petition for adjudication of incompetence; (4) to include that portion of repealed GS 35A-1109 that requires copies of the notice and the petition to be mailed to the respondent's next of kin; and (5) to require that application for appointment of a guardian and other motions and notices shall be served as directed by the clerk. Enacts new GS 35A-1211.1 that provides that the Rules of Civil Procedure and the Rules of Evidence apply in appointment proceedings,

except as otherwise provided in Article 5 of Chapter 35A. Amends GS 35A-1212: (1) to delete the current subsection (a) and replace it with that portion of repealed GS 35A-1112(a) that requires the appointment hearing to be held at the date, time, and place set forth in the final notice and also replace it with that portion of repealed GS 35A-1108(b) that permits the clerk to extend the time for a hearing if a multidisciplinary evaluation or mediation is ordered; (2) to add a new subsection (a1) that includes that portion of repealed GS 35A-1112(a) that requires the hearing to be open to the public unless the respondent or respondent's counsel or guardian requests otherwise; (3) to add new subsection (a2) that includes that portion of repealed GS 35A-1112(b) that permits the petition and respondent to present evidence at the hearing; (4) to add new subsection (a3) that includes and rewords repealed GS 35A-1112(d) to require that the clerk not enter an order appointing a guardian unless the clerk or jury finds that the respondent is incompetent by clear, cogent, and convincing evidence; and (5) to add a new subsection (e) that includes those portions of repealed GS 35A-1112(e) and repealed GS 35A-1120 that require the clerk to enter an order appointing a guardian if the respondent is adjudicated incompetent. Makes conforming and technical changes. Enacts GS 35A-1215.1 to include that portion of repealed GS 35A-1115 that provides for the appeal from a clerk's order to superior court. Recodifies GS 35A-116 as GS 35A-1215.2. Enacts GS 35A-1282 to permit a person who is indebted to or has possession of property of an incompetent person for whom a guardian has been appointed under the law of another state to pay the debt or deliver the property to that guardian upon presentation of evidence of the appointment and an affidavit that a guardianship proceeding is not pending in NC. Enacts Article 12A of Chapter 35A: (1) to provide that a guardian appointed in another state may take action in NC as long as the action is valid under the law of the state in which the guardian was appointed and the ward is not an NC resident; (2) to permit the clerk in the county in which a ward resides to appoint a person as guardian of the ward and to issue letters of appointment without a hearing if that person has been appointed as guardian of the ward in another state; (3) to permit the clerk to terminate guardianship if the ward no longer resides in NC, the court of another state has appointed a guardian, the interests of the ward are adequately protected, and there is no need for continued guardianship in NC. Makes conforming changes.

Effective October 1, 2010, and applies to proceedings or motions filed or pending on or after that date.

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

GS 35A