

Restoration to Competency

G.S. 35A-1130

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www.sog.unc.edu

Two Step Process

Step #1:
Incompetency
1100s

- Special Proceeding
- Clear, Cogent and Convincing

Step #2:
Guardianship
1200s

- Estate Proceeding
- Best Interests of the Ward



Incompetent Adult

G.S. 35A-1101(7)

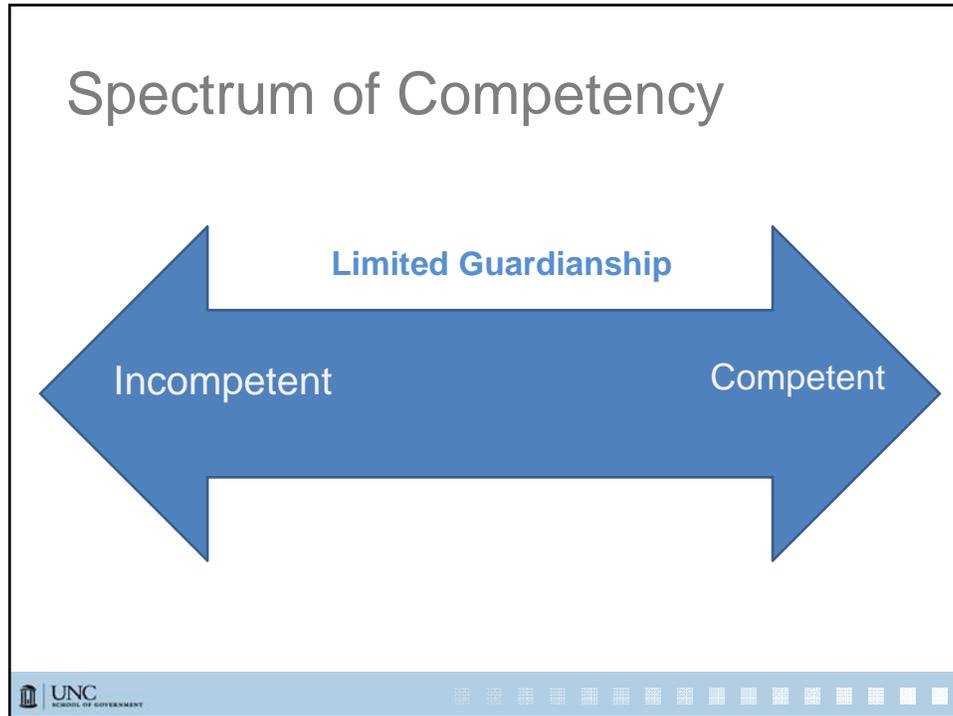
Lack sufficient capacity to:

- **Functional:** Manage own affairs, *or*
- **Cognitive:** Make or communicate important decisions concerning the adult's person, family, or property.

Competent Adult

Sufficient capacity to:

- **Functional:** Manage own affairs, *AND*
- **Cognitive:** Make or communicate important decisions concerning the adult's person, family, or property.



Status Reports

G.S. 35A-1242(a1)

Two Things

1. DSS must file them when appointed as guardian of the person or general guardian – 6 months then annually
2. Each status report shall include all of the following:
 - Report on efforts to restore competency
 - Recommendations for limited guardianship

UNC
SCHOOL OF GOVERNMENT

Who Can Petition for Restoration?



1. Ward
2. Guardian
3. Any Other Interested Person

G.S. 35A-1130(a)

What Does The Petitioner File?

- “Party **Petitions** for Restoration
By Filing a **Motion in the Cause**”



Take a step back....



Document must have:

1. Statement indicating filing party seeking restoration for an identifiable ward
2. Facts tending to show the ward is competent
3. A verification
 - Signed by the petitioner
 - Under Oath
 - Before a notary public or other authorized officer
 - Under a declaration of penalty of perjury
 - That the information is true and correct

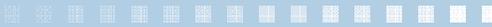
GS 35A-1130(a)

Motion in the Cause Form AOC-E-415 – Page 1

IN THE MATTER OF:		MOTION IN THE CAUSE TO MODIFY GUARDIANSHIP	
Name And Current Address Of Ward			
County Of Residence Of Ward	Date Of Birth	G.S. 35A-1201, -1207, -1212	
Name, Street Address, PO Box, City, State And Zip Code Of Moving Party		Name, Street Address, PO Box, City, State And Zip Code Of Moving Party's Attorney	
County Of Residence Of Moving Party	Telephone No. Of Moving Party	Telephone No. Of Moving Party's Attorney	State Bar No.
Moving Party's Relationship To Ward Or Interest In Proceeding		Nature Of Impairment	
The undersigned requests that the Court, after notice and hearing:			
<input type="checkbox"/> modify general guardianship to guardian of the person. <input type="checkbox"/> modify general guardianship to guardian of the estate. <input type="checkbox"/> modify guardian of the person to general guardianship. <input type="checkbox"/> modify guardianship of the estate to general guardianship.		<input type="checkbox"/> add to the rights and privileges of the ward. <input type="checkbox"/> limit the rights and privileges of the ward. <input type="checkbox"/> Other/Comment: _____ _____	

Motion in the Cause Form AOC-E-415 – Page 3

IN THE MATTER OF	File No.
Name Of Ward	
<p>5. The movant requests that the current guardianship be modified as follows: <i>(Describe how you want the guardianship to be changed. Be specific.)</i></p>	

Motion in the Cause Form AOC E-415

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		Date
Date	Signature Of Person Authorized To Administer Oaths	Name Of Moving Party (Type Or Print)
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court		Signature Of Moving Party
<input type="checkbox"/> Notary	Date Commission Expires	
SEAL	County Where Notarized	

Requirements for a valid verification

1. Signed by the petitioner or the petitioner’s attorney
2. Under oath
3. Before a notary public or other authorized officer
4. Under a declaration of penalty of perjury that the information contained in the petition is true and correct

Verification

- Form AOC-SP-200 – Petition for Adjudication and Appointment of Guardian

VERIFICATION		
I, the undersigned petitioner, have read this Petition and state that its contents are true to my own knowledge except those matters stated on information and belief, which I believe are true.		
SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		Date
Date	Signature Of Person Authorized To Administer Oaths	Signature Of Petitioner
<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court
<input type="checkbox"/> Notary	Date Commission Expires	
SEAL	County Where Notarized	

What is NOT Required to File?

1. Doctor's letter or other medical professional's statement of competency or recommendation for restoration
2. Attorney*



Obtaining Medical Evidence

1. GOP or general guardian obtains directly
2. Court order
3. MDE
 - Motion of clerk or any party (Form 901M)
 - Clerk's order includes payment of costs

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1. Doctor's letter or other medical professional's statement of competency or recommendation for restoration
2. Attorney*



Attorney Exceptions

G.S. 84-5; Lexis-Nexis v. Travishan Corp., 155 NC App 205 (2002)

1. Prepare certain legal documents
2. Appear to avoid default
3. Small Claims before Magistrate only
 - Filling in a form
 - Quick, inexpensive procedure

7B-401.1 – A/N/D – Director authorized to file

Where to file the Petition?

The Clerk of Superior Court is the presiding judge.

- Original + exclusive jurisdiction
- Transfer only in limited circumstances (direct or indirect interest of the clerk)
- The matter may not be transferred if equitable issues arise.

Where to file the Petition?

- The petition is filed in the original special proceeding.
- The petition is file in the county where the incompetency file is currently located, even if the county is not the county where the ward was originally adjudicated incompetent.

Petition is filed, now what?

Clerk schedules the matter for hearing

- Hearing must be between 10-30 days from date service on the ward, the guardian and the petitioner
- Unless clerk for good cause orders otherwise (MDE)

Petition is filed, now what?

Notice of petition and hearing

- Notice must be served via Rule 4 on:
 - Ward
 - Guardian
 - Any other party to the original incompetency proceeding*

*DSS may receive notice of petitions in this capacity where petitioner in original incompetency but someone else appointed guardian

What type of service?

Petitioner required to serve via Rule 4

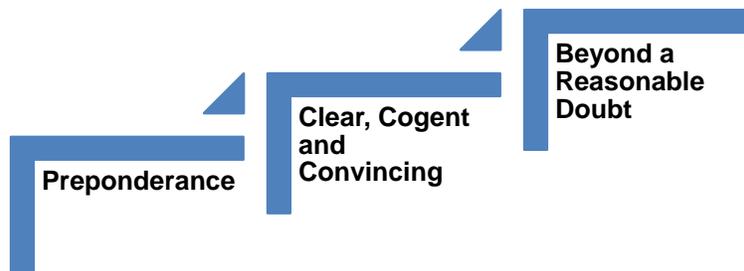
- Personal delivery
- Leaving copies at home with suitable person
- Delivering to authorized agent
- Mailing via CMRRR or FedEx sign confirmation

Guardian Ad Litem

- Ward is entitled to be represented by counsel or a guardian ad litem
- GAL should meet personally with the ward; at least interview guardian, family, and other interested persons

Burden of Proof

- Burden on the petitioner
- Preponderance of the evidence



Trial by Jury

- Request or waive
 - Ward
 - Ward's attorney
 - GAL
- Request anytime
 - Clerk
- Jury of 6 ppl



Effect of Restoration

- Effective immediately upon entry of clerk's order restoring ward's capacity
- Ward can exercise all rights as if never adjudicated incompetent
 - Exception for firearms, NICS designation removed only by district court judge

Appeal

- Clerk denies restoration
- Ward or ward's attorney may appeal in writing for trial *de novo*
- 10 days from entry of clerk's order to appeal
- Guardianship remains in place pending appeal

Case Problem