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Guardianship Training for Clerks: **Jurisdiction and Venue**

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Definitions

- Jurisdiction:

- Subject Matter Jurisdiction:

- A court's authority to hear and adjudicate a particular type of case (a particular *subject matter*). Without this authority, a court is powerless to proceed with respect to that type of dispute.
 - Parties cannot confer subject matter jurisdiction on a court by consenting to it or waiving their challenges/defenses.

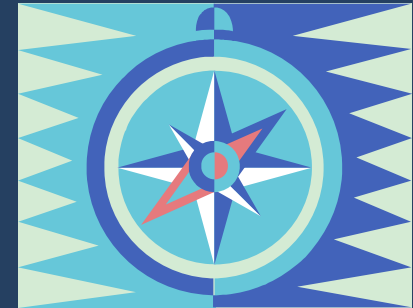
Definitions

- Jurisdiction:

- Personal Jurisdiction:

- A court's authority to exercise jurisdiction over a particular person.
 - Personal jurisdiction is an issue of due process of law for the individual.
 - Where a court does not already have personal jurisdiction over a person, that person can confer it on the court by consent or by failing to raise it as a defense. (It is a "waivable" defense.)

Definitions



- Venue:
 - The proper location (county) within the State in which a particular case should be heard.
 - A case can still be heard in a county of improper venue if the parties fail to raise improper venue as a defense or fail to move for transfer of venue. (Improper venue is a “waivable” defense.)



Subject Matter Jurisdiction

Who has subject matter jurisdiction?

- Clerk or assistant clerk has original jurisdiction over guardianship proceedings, including:
 - Determining incapacity and restoring capacity
 - Appointing guardians, removing guardians
 - Adjusting guardian's bond
 - Hearing disputes among guardians
 - Ensuring compliance with orders and requirements

N.C. Gen. Stat. § 35A-1103(a); 1203(a)

Subject Matter Jurisdiction


Who else may exercise this jurisdiction?

- District Court judges in Family Court programs
 - Few programs have exercised this jurisdiction to date
 - Superior Court judges residing or presiding in the district, but *only* when clerk has an “interest, direct or indirect” in the proceeding.
 - Clerk must recuse herself in this situation.
- § 35A-1103(d)

Quick Quiz 1

- Petition for guardianship of respondent's estate is filed by daughter of respondent.
- Clerk and parties discover that clerk is one of beneficiaries of respondent's will.
- Value of clerk's potential inheritance is approximately \$5,000.00.

What should the clerk do?

1. Recuse himself
 because of “interest”
in proceedings
2. Don’t recuse himself
– no “interest” in
proceedings
3. Recuse himself only if
party makes motion

Quick Quiz 2

- Petitioner files petition for general guardianship of elderly man (Respondent).
- Respondent's counsel requests clerk transfer case to superior court judge due to "complexity of the facts" and "potential equitable issues".
- Petitioner's counsel does not object to this request.

How should the clerk proceed?

1. Grant motion
(transfer case)
- ✓ 2. Deny motion (hear
case)
3. Transfer to superior
court judge for
resolution only of
equitable issues

Subject Matter Jurisdiction

“Proceedings for adjudication of incompetency or restoration of competency under Chapter 35A of the General Statutes...shall not be transferred [to Superior Court] even if an issue of fact, an equitable defense, or a request for equitable relief is raised.”

N.C. Gen. Stat. § 1-301.2(g)

Personal Jurisdiction

Over whom can the clerk exercise jurisdiction?

- A person who:
 - Has been properly served the petition pursuant to Rule 4 and who, at the time of service, was
 - Present in the state *or*
 - Domiciled in the state.

N.C. Gen. Stat. § 1-75.4(1)



Personal Jurisdiction

What does “domiciled” in N.C. mean?

- Resides in N.C. and has the present intention of continuing to reside in N.C. permanently or indefinitely; or
- Is absent from N.C. but has not established new domicile elsewhere.
 - Incapacitated persons probably remain domiciled where they were before becoming incapacitated.

Personal Jurisdiction

Personal Jurisdiction and Service are Intertwined.

- To assess whether the court has personal jurisdiction over respondent, clerk must first determine that respondent has been properly served with notice pursuant to § 35A-1109.

Venue

In what county must an incompetency determination be heard?

- The county in which the respondent:
 - Resides
 - Is domiciled; or
 - Is an inpatient in a treatment facility; or
 - If these issues cannot be determined, in the county where the respondent is present.

§§ 35A-1103(b); 1204(a).

Venue

- Motions by a party for change of venue:
 - Motions for change of venue are made pursuant to N.C. R. Civ. P. 12(b)(3).
 - If the motion is not made in a timely fashion, the venue challenge is waived.
 - When does the motion need to be made to be timely?
 - Probably any time before hearing.

Venue

- Change of venue without motion by party:
 - If clerk determines that venue is not proper, clerk can order change of venue on her own motion.
 - Clerk must first find that the change of venue would not result in any hardship or prejudice to the respondent.



Venue

What if a guardianship petition is filed for same respondent in two or more counties?

- County where the petition was first filed is the county of proper venue (if venue is proper there).

§ 35A-1204(c).

Venue

In what county must a guardianship appointment be heard?

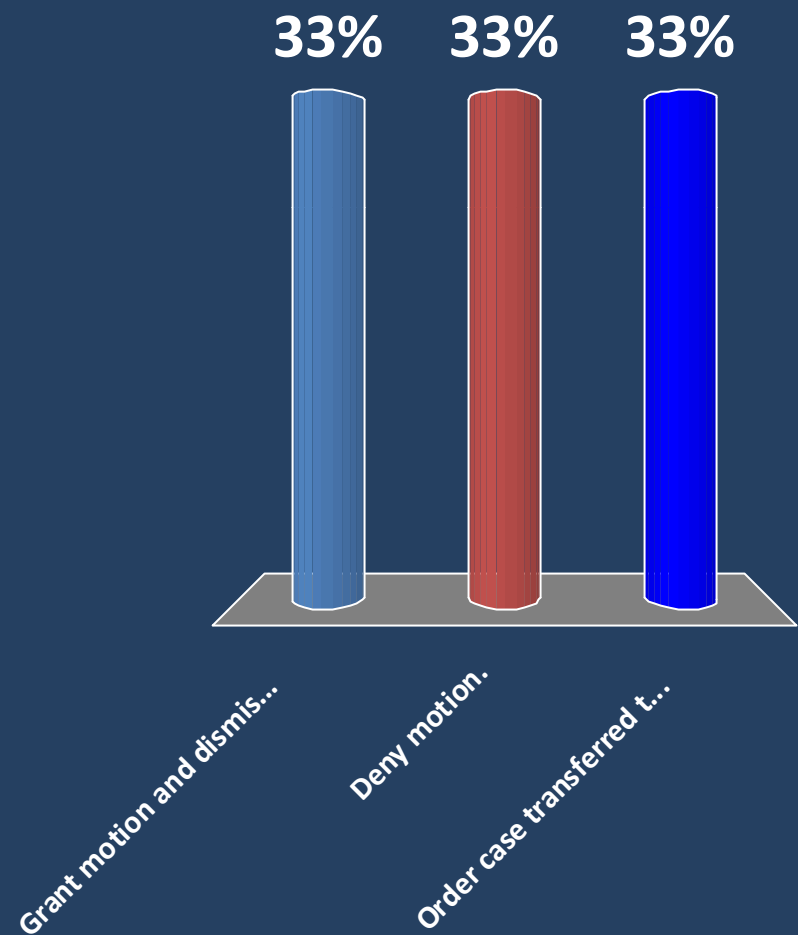
- At any time after a clerk declares the respondent incompetent, venue may be transferred to a different county.
 - Either on party's motion or clerk's own motion.
- Thus, venue for a guardian appointment can take place in a county other than the county in which incompetency was determined.

Quick Quiz 3

- Guardianship petition filed in your county, County A. Respondent lives at home, not in a facility.
- Attorney for Respondent moves to dismiss petition for lack of subject matter jurisdiction, arguing that Respondent resides and is domiciled in County B, not County A.
- Based on facts, you determine Respondent resides and is domiciled in County B.

How do you rule on the motion to dismiss ?

1. Grant motion and dismiss petition.
- ✓ 2. Deny motion.
3. Order case transferred to County B.



Quick Quiz 3 (con'd)

- You determine that venue is improper.
- Counsel for parties do not want to transfer venue to County B.
- Parties therefore waive any motion to transfer venue.

May you still transfer venue to County B?

1. Yes, upon your own motion if no prejudice to Respondent.
2. Yes, upon your own motion if no prejudice to Petitioner.
3. No, parties have waived the motion.

