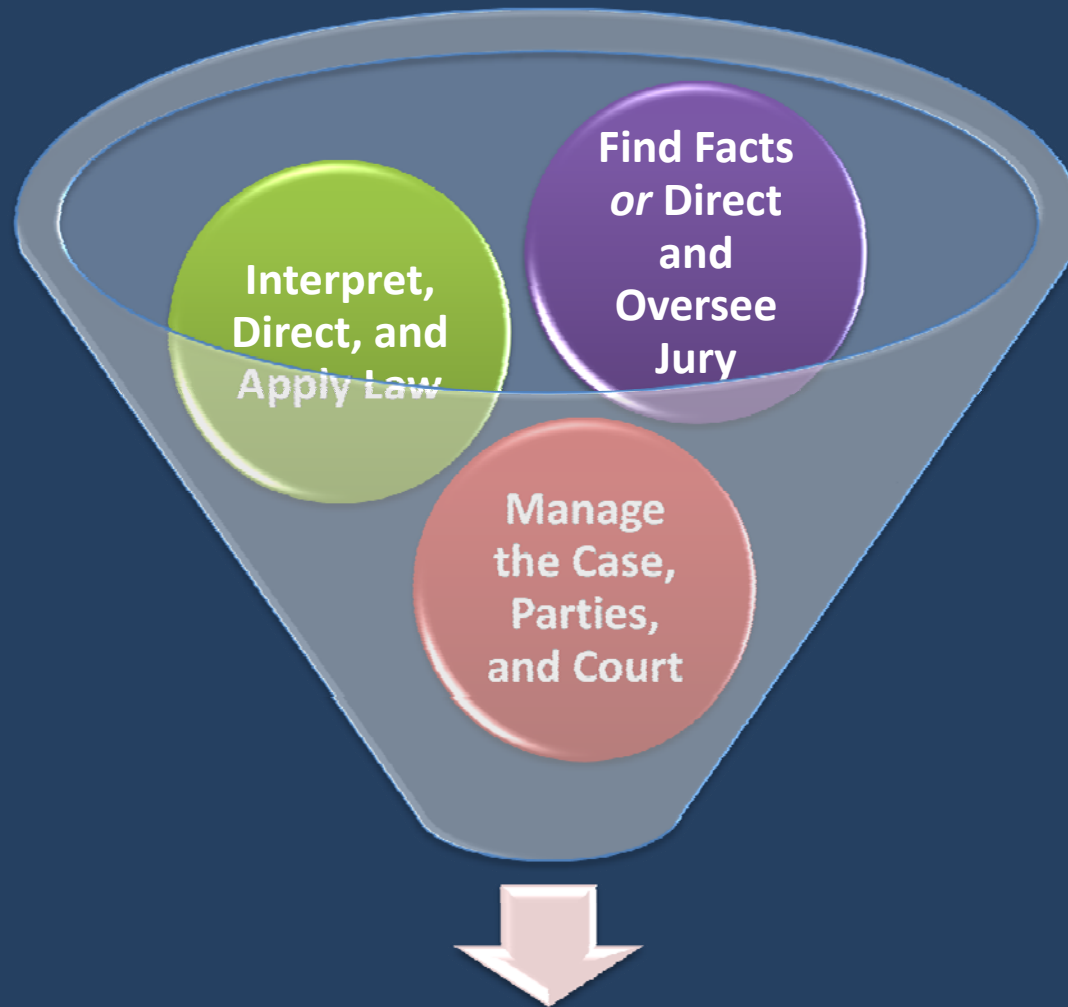


# Guardianship Training for Clerks: Role of Clerk in North Carolina

Judicial College  
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Clerk's Role as Judicial  
Officer in Guardianship  
Proceedings

# Clerk's Authority

- Clerk has original, exclusive jurisdiction over proceedings to adjudicate incompetency and to handle guardianship appointments.
- Clerk is the presiding judicial officer – **the judge** – in incompetency and guardianship proceedings.
- Clerk exercises all the powers and duties conferred upon clerks hearing original matters. See 7A-103.

# Principles Applicable to Clerk's Role as Presiding Judge

- Faithfulness to the law
- Maintaining professionalism and competence
- Remaining motivated by law and facts rather than partisan interest or public criticism
- Conducting court with dignity and propriety, order and decorum
- Remaining patient, dignified and courteous toward parties, witnesses, jurors, and lawyers, and demanding the same of them.

## Principles Applicable to Clerk's Role as Presiding Judge

- Hearing the proceeding fairly, without bias, and with patience and deliberation.
- Handling matters efficiently but not arbitrarily.
- According legally interested persons their right to be heard.
- Avoiding *ex parte* communications; and
- Disqualifying herself or himself in conflict situations.

See Clerk's Manual, Code of Ethics.

# The Clerk's Many Responsibilities in Guardianship Cases

- Review and assess pleadings, notice, and service
- Oversee rights of Respondent to guardian ad litem or other representation
- Manage and decide pre-trial matters:
  - Discovery scheduling and pretrial conferences
  - Motions, hearings, and orders for interim guardianship

# The Clerk's Many Responsibilities in Guardianship Cases

- Continuances
- Orders for Multidisciplinary Evaluation (MDEs)
- Order for mediation

# The Clerk's Many Responsibilities in Guardianship Cases

- Preside Over Hearing
  - Determine whether to divide (bifurcate) incapacity and guardianship phases of hearing
  - Oversee recording of proceedings
  - Determine order of witnesses
  - Swear, instruct, and control witnesses
  - Evaluate admissibility of evidence and handle objections
  - Determine qualification of expert witnesses



# The Clerk's Many Responsibilities in Guardianship Cases

....and meanwhile protect the Respondent from harm  
from the sensitive nature of the proceedings.



# The Clerk's Many Responsibilities in Guardianship Cases

- Then, in non-jury trials,
  - Take on the role of finder of fact.
  - Evaluate the competent evidence fairly to determine capacity based on the “clear, cogent, and convincing evidence” standard.
- Or, in jury trials,
  - Impanel jury as finder of fact
  - Instruct and oversee jury's fact-finding role
  - Receive jury's verdict and dismiss jury.

# The Clerk's Many Responsibilities in Guardianship Hearings

- Finally, in all trials,
  - Make Order based on findings of fact – either adjudicating the Respondent incompetent or dismissing case.
  - Where Order adjudicates the Respondent incompetent, make determinations as to type of guardianship, extent of guardianship, and person(s) appointed guardian.
  - Assess costs and fees according to the law.

N.C. Gen. Stat. § 35A