



Clerks of Superior Court and Guardianships



Office of the Clerk of Superior Court

- The Clerk of Superior Court is elected for four years and must be a resident of the county he or she is elected.
- State Constitutional Officer
- Unlike clerks in other states, the Clerk of Superior Court in North Carolina has numerous judicial functions.



History of the Clerk of Superior Court

In 1806 the legislature provided there should be a Superior Court in each county, sitting twice annually at the county seat.

- There were only six circuits with a judge for each.
- Each judge was to ride the various circuits in rotation.



History of the Clerk of Superior Court

From *The Historical Records of North Carolina, Volume I*

The Clerk of Superior Court holds one of the most important offices in North Carolina local government. He not only acts as clerk and chief resident officer of the Superior Court in each county, but exercises important functions independent of the court of which he is an officer. In its present form, the Office of Clerk of Superior Court is a creation of the Constitution of 1868 and the Code of Civil Procedure and certain supplementary legislation of the same year. The present office; however, is the heir of both the functions and the archives of the various earlier court clerk's offices, which go back almost to the beginning of settlement in North Carolina.



Courts in North Carolina

- North Carolina has a unified court system
 - General Court of Justice
 - Trial Courts
 - Appellate Courts
 - NC Administrative Office of the Courts
 - Handles more than 3 million cases per year
 - Operates on a budget smaller than the Wake County School system's budget



Record Keeper

- Files, processes and maintains every document either in paper form or electronically filed in the North Carolina General Court of Justice
- Backs up paper files in digital format
- Certify documents on record
- Transmits historical records to State Archives



Comptroller

- Receives, distributes and invest funds collected from court related activity.
 - Over \$4.5 million in invested funds in Iredell County
 - Over \$3.2 million property bonds held for safekeeping
 - Returns over \$2.5 million to Iredell County in fees, fines and forfeitures annually.



Court Administrator

- Issues Summons
- Establishes court dockets and indexes case files
- Manages jury summons and the master jury list



Judge of Probate

- Holds exclusive and original jurisdiction over matters relating to the probate of wills and the administration of estates.
- Presides over Competency Determinations, Guardianship Proceedings and Adoptions.
- Presides over many civil hearings including: Foreclosures, Claim and Delivery hearings, Partitions of Land and other matters.



Incompetency Proceedings

- The Clerk of Superior Court has original jurisdiction over incompetency proceedings. *NCGS 35A-1103(a)*
- An incompetency proceeding can not be transferred to superior court even if an issue of fact, an equitable defense or request for equitable relief is raised. *NCGS 1-301.2(g)*
- The respondent in an incompetency proceeding is entitled to a jury trial. *NCGS 35A-1110*



Guardianship

- The purpose of guardianship for an incompetent person is to transfer to a guardian the individual's authority to make decisions when the individual does not have adequate capacity to make such decisions.
NCGS 35A-1201(a)(3)
- Guardianship is the legal empowerment of one person (the guardian) to act on behalf of and make decisions for a minor or an incompetent person (the ward).



Types of Guardianships

- Guardian of the Person
- Guardian of the Estate
- General Guardian
- Limited Guardian
- Single Transaction Fiduciary and Protective Arrangements
 - ❖ *New – NCGS 35A-1121 effective October 1, 2021*



Limited Guardianships

- In a limited guardianship, an adult ward retains some rights that would otherwise be lost in guardianship.
- North Carolina law encourages CSC to consider limited guardianships tailored to the needs of the incompetent person.
- CSC must make specific findings of fact.
- Can have Limited Guardian of the Person, Limited Guardian of the Estate or Limited General Guardian.



Recent Changes

- Single Transaction Fiduciary and Protection Arrangements (*effective October 1, 2021*)
- Notice of Rights (*effective January 1, 2024*)
- Consideration of Less Restrictive Alternatives (*effective January 1, 2024*)



Single Transaction Protective Arrangement

**What is a single protective arrangement
or transaction?**

A single protective arrangement or single transaction is a process by which a court authorizes, directs, or ratifies:



Single Transaction Protective Arrangement

- any transaction necessary or desirable to achieve any service, care, or safety arrangement meeting the foreseeable needs of the minor or incompetent person and authorize a special fiduciary to execute any such transaction on behalf of the incompetent person.



Single Transaction Protective Arrangement

- any contract, trust, or other transaction relating to the minor or incompetent person's property and business affairs and authorize a special fiduciary to execute any such contract, trust, or other transaction on behalf of the minor or incompetent person, if the Clerk of Superior Court determines that the transaction is in the best interest of incompetent person.



Notice of Rights

“Notice of Rights of Respondents and Wards” (AOC-SP-197)

- Must be served on the respondent when Petition for Adjudication of Incompetence and Notice of Hearing are served.
- Guardian Ad-Litem must review with the respondent.



Less Restrictive Alternatives

Recent changes to North Carolina's guardianship laws make clear that an adult or emancipated minor does not lack capacity (and is therefore not incompetent) if a less restrictive alternative to guardianship enables them to manage their affairs and make and communicate important decisions about themselves and their property.



Less Restrictive Alternatives

Changes to Petition for Adjudication of Incompetence (Form - AOC-SP-200)

- #6 I considered the following less restrictive alternatives prior to seeking an adjudication of incompetence:
- #7 The less restrictive alternatives listed above are insufficient to meet the needs of the respondent because:



Questions?



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