

CHAPTER 7:

Appointment of Guardians

- 7.1 **Scope of this Chapter** 128
 - 7.2 **Types of Guardians That May Be Appointed** 128
 - 7.3 **Legal Standards for Appointment of a Guardian** 130
 - A. Incapacity
 - B. Best Interest of the Ward
 - C. Other Statutory Considerations and Requirements
 - 7.4 **Procedure for Appointing a Guardian** 130
 - A. Nature of Proceeding
 - B. Authority of the Clerk, Jury, and Judge to Appoint Guardians
 - C. Role of the Respondent's Attorney or *Guardian ad Litem*
 - D. Hearing
 - E. Evidence, Evaluations, and Reports
 - 7.5 **Qualifications and Disqualifications for Appointment of Guardians** 134
 - A. Qualifications of Guardians
 - B. Recommendation of Potential Guardians
 - C. Limitations and Disqualifications
 - 7.6 **Statutory Priorities and Preferences Governing Appointment of Guardians** 135
 - 7.7 **Appointment of Disinterested Public Agent Guardians** 136
 - A. Definition of Disinterested Public Agent
 - B. Appointment of Disinterested Public Agent as Guardian
 - C. Conflicts of Interest
 - D. DHHS Requirements Regarding Public Guardianship
 - E. Payment for Public Guardianship Services
 - 7.8 **Appointment of Public Guardians** 137
 - 7.9 **Order and Letters of Appointment** 138
 - A. Order Appointing a Guardian
 - B. Creation of Guardianship
 - C. Appointment of Guardians
 - D. Appointment of Co-Guardians
 - E. Letters of Appointment
-

7.1

Scope of this Chapter

This chapter summarizes the substantive law governing the appointment of an individual, corporation, agency, or official as the general guardian, guardian of the person, or guardian of the estate of an incapacitated respondent who is being represented by an attorney who has been appointed as the respondent's *guardian ad litem* pursuant to G.S. 35A-1107.

The powers and duties of general guardians, guardians of the person, and guardians of the estate are briefly summarized in Chapter 1.

The procedural law governing hearings to appoint a guardian for an incapacitated respondent is discussed in Chapters 3 through 5. Chapter 5 also discusses the appointment of interim guardians for allegedly incapacitated respondents in adult guardianship proceedings.

Procedures governing the removal of a guardian, the appointment of successor guardians, and the modification or termination of guardianship orders are discussed in Chapter 10.

This manual does not discuss the appointment of ancillary guardians pursuant to G.S. 35A-1280.

7.2

Types of Guardians That May Be Appointed

Article 5 of G.S. Chapter 35A authorizes the Clerk of Superior Court to appoint

- a general guardian of an incapacitated adult,
- a guardian of the person of an incapacitated adult,
- a guardian of the estate of an incapacitated adult.

Depending on the nature and extent of a respondent's incapacity, needs, assets, income, and liabilities, the Clerk may determine that it is appropriate to appoint a general guardian for the respondent; to appoint separate persons or entities as the guardian of the ward's person and guardian of the ward's estate; to appoint only a guardian of the person for the respondent; to appoint only a guardian of the estate for the respondent; or to create a limited guardianship that allows the respondent to retain certain legal rights and limits the guardian's statutory powers.

General guardian. A general guardian is a guardian who has the authority of a guardian of the person and a guardian of the estate of an incapacitated ward. G.S. 35A-1202(7).

Practice Note: The Clerk should not appoint a general guardian for a ward unless the ward has or will have an estate that should be managed by a guardian, the ward needs a guardian of his or her person, and the Clerk determines that the same person or persons should exercise authority as guardian of the ward's person and estate.

Guardian of the person. A guardian of the person is a guardian who is appointed solely for the purpose of performing duties relating to the care, custody, and control of an incapacitated ward. G.S. 35A-1202(10).

Practice Note: Appointment of a guardian of the ward's person rather than appointment of a general guardian or without appointment of a guardian of the ward's estate is appropriate if the ward does not have an estate that needs to be managed by a guardian but needs a guardian to make decisions regarding his or her care.

Guardian of the estate. A guardian of the estate is a guardian who is appointed solely for the purpose of managing the property, estate, and business affairs of an incapacitated ward. G.S. 35A-1202(9).

Practice Note: The Clerk should not appoint a general guardian or guardian of the estate for a ward unless the ward has or will have an estate that should be managed by a guardian. If the only income and assets of a ward consist of Social Security or SSI benefits or other public assistance payments, management of the ward's income and assets through a representative payee generally is more appropriate than appointment of a guardian of the ward's estate under G.S. Chapter 35A.

Ancillary guardian. An ancillary guardian is a guardian of the estate who is appointed pursuant to Article 12 of G.S. Chapter 35A on behalf of a nonresident ward when a general guardian, guardian of the estate, or similar fiduciary has been appointed for the ward under the laws of another state and the ward has an ownership or other interest in real or personal property in North Carolina. This manual does not discuss the appointment of ancillary guardians under G.S. 35A-1280 because the respondent in a proceeding to appoint an ancillary guardian is not represented by an attorney who is appointed as a *guardian ad litem* under G.S. 35A-1107.

Interim guardian. An interim guardian is a temporary guardian who is appointed pursuant to Article 1 of G.S. Chapter 35A to protect an allegedly incapacitated respondent's well-being or estate from imminent harm. G.S. 35A-1114. The appointment of interim guardians is discussed in Chapter 5.

Practice Note: G.S. 35A-1114 does not authorize the appointment of an "interim" or "emergency" guardian after the Clerk has determined that a respondent is incapacitated and has appointed a guardian for the respondent—even in cases in which there is an emergency due to the guardian's death, resignation, removal, or failure or refusal to protect the ward. The Clerk, however, may enter an emergency order under G.S. 35A-1291 to protect the ward or the ward's property in these situations.

7.3

Legal Standards for Appointment of a Guardian

A. Incapacity

The Clerk may not appoint a guardian for a respondent in an adult guardianship proceeding unless the respondent has been adjudicated incapacitated. *In re Efrid*, 114 N.C. App. 638 (1994).

B. Best Interest of the Ward

The Clerk's decisions regarding the appointment of a guardian for an incapacitated respondent should be based on the respondent's "best interests" as determined by the Clerk. *See* G.S. 35A-1212(a)(3); G.S. 35A-1212.1.

When appointing a guardian for an incapacitated respondent, the Clerk should appoint the person, corporation, agency, or official who will be the most suitable, qualified, and responsible guardian for the respondent. *See* G.S. 35A-1212(a)(3); G.S. 35A-1212.1.

C. Other Statutory Considerations and Requirements

The Clerk should not appoint a guardian for an incapacitated respondent unless it is clear that doing so will give the respondent a fuller capacity for exercising his or her rights. G.S. 35A-1201(a)(4).

In appointing a guardian for an incapacitated respondent, the Clerk should create a "limited guardianship" whenever the nature and extent of the respondent's incapacity makes creation of a limited guardianship appropriate. *See* G.S. 35A-1212(a).

The Clerk may not appoint a person, corporation, agency, or official as the guardian for an incapacitated respondent unless the prospective guardian is legally qualified to serve as the respondent's guardian and meets all of the applicable requirements set forth in G.S. Chapter 35A.

7.4

Procedure for Appointing a Guardian

A. Nature of Proceeding

The aspect of a guardianship proceeding involving the appointment of a guardian for an incapacitated respondent generally is treated as an "estate" matter, rather than a special proceeding. *See In re Simmons*, 266 N.C. 702 (1966); *In re Bidstrup*, 55 N.C. App. 394 (1982).

Practice Note: Because the appointment of a guardian is treated as an "estate" matter, the appeal of an order appointing a guardian for an incapacitated adult is governed by G.S. 1-301.3 except with respect to appeals involving the issue of the respondent's incapacity. Appeals in adult guardianship proceedings are discussed in Chapter 9 of this manual.

B. Authority of the Clerk, Jury, and Judge to Appoint Guardians

The Clerk of Superior Court has exclusive jurisdiction with respect to the appointment of guardians for incapacitated adults.

Issues regarding who should be appointed as the guardian of an incapacitated adult may not be determined by a jury in an adult guardianship proceeding.

If the Clerk's order appointing a guardian is appealed to the Superior Court, the Superior Court Judge may reverse the Clerk's order appointing a guardian in cases involving legal error or abuse of judicial discretion and remand the case to the Clerk for further proceedings, but may not appoint a person, corporation, disinterested public agent, or public guardian as the respondent's guardian. See *In re Simmons*, 266 N.C. 702 (1966).

C. Role of the Respondent's Attorney or *Guardian ad Litem*

If an attorney has been appointed as a respondent's *guardian ad litem* pursuant to G.S. 35A-1107, the attorney has not been discharged, and the respondent is adjudicated incapacitated, the attorney continues to represent the incapacitated respondent until a guardian is appointed for the respondent. G.S. 35A-1107(b).

The respondent's attorney or *guardian ad litem* may recommend, on behalf of the respondent, that a particular person be appointed or not be appointed as the respondent's guardian, may present evidence, on behalf of the respondent, to the Clerk regarding the appointment of a guardian for the respondent, and may examine and cross-examine witnesses who testify with respect to the appointment of a guardian for the respondent.

The respondent's *guardian ad litem* must make the respondent's express wishes with respect to appointment of a guardian known to the Clerk and *may* make recommendations to the Clerk regarding the appointment of a guardian for the respondent if the attorney determines that those recommendations are in the respondent's best interest and are consistent with the attorney's statutory and professional obligations. See G.S. 35A-1107(b).

If the respondent's attorney or *guardian ad litem* determines that creation of a limited guardianship is in the respondent's best interest, he or she may make recommendations to the Clerk regarding the rights, powers, and privileges that should be retained by the respondent and the extent to which the guardian's statutory powers should be limited if the attorney determines that those recommendations are in the respondent's best interest and are consistent with the attorney's statutory and professional obligations. See G.S. 35A-1107(b).

The role and responsibilities of the respondent's attorney or *guardian ad litem* are discussed in more detail in Chapter 2.

D. Hearing

Before appointing a guardian for an incapacitated adult, the Clerk must hold a hearing to determine

- the respondent's assets, liabilities, and needs;
- the nature and extent of the needed guardianship;

- whether a “limited guardianship” is appropriate and feasible; and
- who, in the Clerk’s discretion, can most suitably serve as the respondent’s guardian.
G.S. 35A-1212(a).

The hearing regarding the appointment of a guardian for an incapacitated respondent may be combined with the hearing regarding the respondent’s incapacity or may be held following the adjudication of the respondent’s incapacity.

Unless a guardianship proceeding has been transferred to another county pursuant to G.S. 35A-1205 following the adjudication of a respondent’s incapacity, a hearing to appoint a guardian for an incapacitated respondent is held in the same county in which the order adjudicating the respondent’s incapacity was entered.

Practice Note: The transfer of an adult guardianship proceeding to another county under G.S. 35A-1205 is discussed in Chapter 3 of this manual.

E. Evidence, Evaluations, and Reports

Scope of hearing. The Clerk must “make such inquiry and receive such evidence as the Clerk deems necessary to determine . . . the nature and extent of the needed guardianship . . . and who, in the Clerk’s discretion, can most suitably serve as the [respondent’s] guardian. . . .”
G.S. 35A-1212.

Rules of evidence. Although hearings regarding the appointment of a guardian for an incapacitated respondent often are uncontested or informal, the North Carolina Rules of Evidence are applicable.

Recording the hearing. Because an appeal from a Clerk’s order appointing a guardian for an incapacitated adult is reviewed by the Superior Court “on the record,” the Clerk is required, upon request of a party, to make an electronic recording of the portion of a guardianship proceeding involving the appointment of a guardian for an incapacitated adult. *See* G.S. 1-301.3(f).

Practice Note: The attorney who has been appointed as the respondent’s *guardian ad litem* should request the Clerk to record the entire hearing in an adult guardianship proceeding.

Multidisciplinary evaluation. If a current multidisciplinary evaluation (MDE) is not available, the Clerk may, on the Clerk’s own motion or on the request of any party, order that an MDE be performed to assist the Clerk in determining the nature and extent of the respondent’s incapacity, the nature and extent of the needed guardianship, whether a “limited guardianship” is appropriate and feasible, and the guardianship program or plan that should be implemented for the respondent. G.S. 35A-1212(b); G.S. 35A-1111(a).

Practice Note: The procedure for requesting a multidisciplinary evaluation is discussed in Chapter 5 of this manual. The requirements for preparing a multidisciplinary evaluation are discussed in Chapter 6 of this manual.

Reports and recommendations by designated human services agencies. The Clerk may order a designated state or local human services agency to prepare a report evaluating the suitability of a prospective guardian and recommending the most suitable and appropriate party or person to serve as an incapacitated adult's guardian. G.S. 35A-1212(c).

Practice Note: G.S. Chapter 35A does not expressly authorize the Clerk to order a person who has applied to be appointed or has been nominated as the guardian of a ward to produce his or her own financial or medical records or to submit to or cooperate with an assessment or evaluation regarding his or her suitability for appointment as the ward's guardian. However, if a prospective guardian fails to submit such evidence as the Clerk deems necessary to determine whether the prospective guardian should be appointed as the ward's guardian, the Clerk, in the sound exercise of the Clerk's discretion, may refuse to appoint the prospective guardian as the ward's guardian.

Factors that should be considered in appointing a guardian. In determining whether a particular person, corporation, agency, or official should be appointed as the guardian of an incapacitated adult, the Clerk should consider whether the prospective guardian

- is qualified to serve as the adult's guardian (*see* § 7.5 of this chapter);
- is willing to serve as the adult's guardian;
- is able to serve as the adult's guardian;
- understands the legal powers, duties, and responsibilities of a guardian;
- will act in the ward's best interest;
- will act in a fiduciary manner with respect to the ward and the ward's property;
- has a personal, private, or official interest that conflicts or may conflict with the ward's interests or that may hinder or be adverse to the discharge of the guardian's responsibilities;
- has been convicted of a felony;
- has wasted or mismanaged the property of the ward or others;
- has served in a fiduciary capacity with respect to the ward or others;
- has violated his or her fiduciary obligations to the ward or others;
- has been adjudicated incompetent;
- has engaged in any activity that would raise doubts regarding his or her honesty or integrity.

7.5

Qualifications and Disqualifications for Appointment of Guardians

A. Qualifications of Guardians

The Clerk may appoint an adult individual, a corporation, a disinterested public agent, or a public guardian as the general guardian, guardian of the person, or guardian of the estate of an incapacitated adult unless the individual, corporation, disinterested public agent, or public guardian is not legally qualified to serve as the respondent's guardian under G.S. Ch. 35A. G.S. 35A-1213(a).

B. Recommendation of Potential Guardians

The petitioner or applicant in an adult guardianship proceeding may submit for the Clerk's consideration the name or names of individuals, corporations, agencies, or officials as potential guardians for an incapacitated adult. G.S. 35A-1213(a). The Clerk also may consider guardianship recommendations made by the respondent's next of kin, the respondent, the respondent's attorney or *guardian ad litem*, or other persons. G.S. 35A-1213(a).

C. Limitations and Disqualifications

The Clerk may not appoint an adult individual or corporation as the guardian of an incapacitated adult unless the individual or corporation is willing to serve as the adult's guardian.

The Clerk may not appoint a corporation as the general guardian, guardian of the person, or guardian of the estate of an incapacitated adult unless the corporation's charter authorizes it to serve as a guardian or in a similar fiduciary capacity. G.S. 35A-1213(c).

An adult who is not a resident of North Carolina may be appointed as the general guardian, guardian of the person, or guardian of the estate of an incapacitated adult. A guardian who is not a resident of North Carolina, however, must indicate in writing his or her willingness to submit to the jurisdiction of North Carolina's courts in matters relating to his or her service as a guardian and must appoint a resident agent to accept service of process for the guardian in all actions or proceedings with respect to the guardianship. G.S. 35A-1213(b).

An employee of a mental health treatment facility (as defined in G.S. 122C-3(14)) may not be appointed as the guardian of an incapacitated adult who is an inpatient in or resident of the facility in which the employee works. G.S. 35A-1213(e).

Practice note: This provision applies only to persons who are employed by mental health treatment facilities. It does not apply to persons who are employed by nursing homes, adult care homes, or other treatment facilities that are not mental health facilities.

A person may not be appointed as the guardian of an incapacitated adult if the person has been adjudicated incompetent and his or her competency has not been restored. *See* G.S. 35A-1290(c)(1).

7.6

Statutory Priorities and Preferences Governing Appointment of Guardians

The Clerk generally must appoint a guardian for an incapacitated adult according to the following order of priority:

1. a qualified, willing, able, and suitable individual or corporation who has been nominated as general guardian, guardian of the person, or guardian of the estate by a valid, unrevoked durable power of attorney executed by an adult who has subsequently become incapacitated (G.S. 32A-10(b));
2. a qualified, willing, able, and suitable individual who has been nominated as guardian of the person by a valid, unrevoked health care power of attorney executed by an adult who has subsequently become incapacitated (G.S. 32A-22(b));
3. a qualified, willing, able, and suitable individual recommended as guardian pursuant to G.S. 35A-1212.1 by the last will and testament of the parent of an unmarried adult child;
4. any other qualified, willing, able, and suitable adult (G.S. 35A-1214);
5. a qualified, willing, able, and suitable corporation (including for-profit corporations, corporate financial institutions, and non-profit corporations) (G.S. 35A-1214);
6. a disinterested public agent (G.S. 35A-1214, discussed in § 7.7 of this chapter) or the public guardian (G.S. 35A-1270, discussed in § 7.8 of this chapter).

Nomination of guardian under the ward's power of attorney. The nomination of a guardian pursuant to G.S. 32A-10(b) or G.S. 32A-22(b) is not binding on the Clerk if the Clerk determines that there is good cause to appoint a different guardian.

Nomination of guardian under the last will and testament of the ward's parent. The recommendation of a guardian pursuant to G.S. 35A-1212.1 is not binding on the Clerk if the Clerk determines that appointing a different guardian is in the ward's best interest. G.S. 35A-1212.1.

No statutory priority for spouse or next of kin. Unlike the Uniform Guardianship and Protective Proceedings Act and North Carolina's law governing the administration of decedents' estates (G.S. 28A-4-1), G.S. Ch. 35A does not establish an order governing the preference or priority of an incapacitated adult's spouse, child, parent, sibling, or other relative to serve as the adult's guardian. Thus, the spouse, child, or parent of an incapacitated adult is not *per se* entitled to preference or priority as the adult's guardian *vis a vis* a qualified, willing, able, and suitable adult who is not related to the adult.

Limitations on appointment of disinterested public agent as guardian. A disinterested public agent may not be appointed as the guardian of an incapacitated adult unless there has been a diligent effort to find a qualified, willing, able, suitable, and appropriate individual or corporation to serve as the ward's guardian and the Clerk determines that appointing a disinterested public agent, rather than an individual or corporation, as guardian is in the ward's best interest. G.S. 35A-1214.

The appointment of a disinterested public agent as guardian is discussed in more detail in the following section of this chapter.

7.7

Appointment of Disinterested Public Agent Guardians

A. Definition of Disinterested Public Agent

A “disinterested public agent” is

- the director or assistant director of a local human services (social services, public health, mental health, aging, etc.) agency; *or*
- an officer, agent, or employee of a state human services agency. G.S. 35A-1202(4).

B. Appointment of Disinterested Public Agent as Guardian

Unless disqualified under G.S. 35A-1213(e) (*see* § 7.5C of this chapter), a disinterested public agent may be appointed by the Clerk as the general guardian, guardian of the person, or guardian of the estate of an incapacitated adult, and must serve as the adult’s guardian if the Clerk orders him or her to do so. *See* G.S. 35A-1213(d).

Practice Note: Some state and local human services agencies have developed memoranda of understanding among themselves and the Clerk regarding the criteria and procedures for appointing disinterested public agents as guardians for incapacitated adults.

A disinterested public agent, however, may not be appointed as the guardian of an incapacitated adult unless there has been a diligent effort to find a qualified, willing, able, suitable, and appropriate individual or corporation to serve as the ward’s guardian and the Clerk determines that appointing a disinterested public agent, rather than an individual or corporation, as guardian is in the ward’s best interest. G.S. 35A-1214.

A disinterested public agent who is appointed as the guardian of an incapacitated adult serves in that capacity by virtue of his or her office or employment, which must be identified in the Clerk’s order and in the letters of appointment issued by the Clerk. *See* G.S. 35A-1213(d). When a disinterested public agent’s office or employment terminates, his or her successor in office or employment (or his or her immediate supervisor if there is no successor) succeeds him or her as guardian without further proceedings or appointment unless the Clerk orders otherwise. *See* G.S. 35A-1213(d).

C. Conflicts of Interest

Except as provided in G.S. 35A-1213(e) (*see* § 7.5C of this chapter), the fact that a disinterested public agent is employed by a state or local human services agency that provides financial assistance, services, or treatment to an incapacitated adult does not disqualify the disinterested public agent from being appointed or serving as the adult’s guardian. *See* G.S. 35A-1202(4).

A disinterested public agent, however, may, at the time of his or her proposed appointment as guardian or at any time subsequent to his or her appointment as guardian, request the Clerk to appoint a different guardian if he or she believes that his or her role or the role of his or her agency in relation to the ward is such that his or her appointment or service as guardian would constitute a conflict of interest or believes there is any other reason that his or her appointment or service as guardian would not be in the ward's best interest. *See* G.S. 35A-1213(d).

D. DHHS Requirements Regarding Public Guardianship

Disinterested public agents who are appointed as guardians must meet guardianship training requirements established by the state Department of Health and Human Services (DHHS) and comply with DHHS rules governing the guardianship responsibilities of disinterested public agents. *See* G.S. 35A-1216.

E. Payment for Public Guardianship Services

A disinterested public agent who serves as the guardian of the estate of an incapacitated adult may be paid a commission from the adult's estate pursuant to G.S. 35A-1269. A disinterested public agent who serves as the guardian of the person of an incapacitated adult may be reimbursed from the ward's estate for reasonable and proper expenditures incurred in the performance of his or her duties as guardian. *See* G.S. 35A-1241(b).

Although guardianship services provided by a disinterested public agent may be paid from any public funding that is available to the state or local human services agency for guardianship services, little or no federal or state human services funding is expressly designated for guardianship services.

7.8 Appointment of Public Guardians

G.S. 35A-1270 authorizes, but does not require, the Clerk of Superior Court to appoint for a term of eight years a person as the public guardian for the county.

Bond. The public guardian must post a bond in accordance with G.S. 35A-1271.

Powers and duties. A public guardian who is appointed as the general guardian, guardian of the person, or guardian of the estate of an incapacitated adult has the same statutory powers and duties as other guardians of incapacitated adults. G.S. 35A-1272.

Compensation. A public guardian who is appointed as the general guardian, guardian of the person, or guardian of the estate of an incapacitated adult is entitled to the same compensation as other guardians of incapacitated adults. G.S. 35A-1272.

Letters of appointment. The public guardian appointed pursuant to G.S. 35A-1270 may be appointed by the Clerk as the general guardian or guardian of the estate of an incapacitated adult if the incapacitated adult does not have a general guardian or guardian of the estate

and a period of six months has elapsed from the discovery of any property belonging to the incapacitated adult. G.S. 35A-1273(1).

The public guardian appointed pursuant to G.S. 35A-1270 also may be appointed by the Clerk as the general guardian or guardian of the estate or as the guardian of the person of an incapacitated adult if any person who is entitled to letters of guardianship files a written request that the Clerk issue letters of appointment to the public guardian. G.S. 35A-1273(2). If letters of appointment are issued to the public guardian under G.S. 35A-1273(2), the Clerk may, for sufficient cause, revoke the letters in response to the written application of any person who is entitled to qualify as the adult's guardian.

7.9 Order and Letters of Appointment

A. Order Appointing a Guardian

When appointing a guardian, the Clerk must enter an order setting forth:

- the nature of the guardianship or guardianships to be created;
- the name of the person or entity appointed as guardian with respect to each guardianship created; and
- the powers and duties of the guardian or guardians which, unless otherwise ordered by the Clerk, shall include the applicable statutory powers and duties set forth in Articles 8 and 9 of G.S. Chapter 35A. G.S. 35A-1215(a).

If the Clerk designates a human services agency to receive guardianship status reports pursuant to G.S. 35A-1242 and G.S. 35A-1243, the Clerk's guardianship order must identify the designated agency. G.S. 35A-1215(a)(3).

If the Clerk enters a "limited guardianship" order pursuant to G.S. 35A-1212(a), the Clerk's order should include provisions specifying the legal rights and privileges that are retained by the ward as well as any necessary and appropriate limitations with respect to the guardian's powers. G.S. 35A-1215(b).

If a guardian is required to post a bond, the Clerk's order also may include provisions with respect to the amount, terms, and conditions of the guardian's bond.

B. Creation of Guardianship

The Clerk's guardianship order may create a guardianship of an incapacitated adult's person, a guardianship of an incapacitated adult's estate, or a general guardianship of the incapacitated adult's person and estate.

The Clerk should not create a general guardianship unless the Clerk determines that the adult needs a guardian who can serve as the guardian of the adult's person and estate. If an incapacitated adult does not have an estate but needs a guardian of his or her person, the Clerk generally should create only a guardianship of the incapacitated adult's person. If an

incapacitated adult needs a guardian of his or her estate but does not need a guardian of his or her person, the Clerk should create only a guardianship of the incapacitated adult's estate and should not create a general guardianship or a guardianship of the adult's person.

C. Appointment of Guardians

If the Clerk determines that creation of a general guardianship is appropriate, the Clerk may appoint one person or entity as the adult's general guardian or may appoint one person or entity as the guardian of the adult's person and another person or entity as the guardian of the adult's estate.

D. Appointment of Co-Guardians

G.S. Chapter 35A neither expressly authorizes nor prohibits the Clerk from appointing two or more persons or entities to serve as co-guardians of an incapacitated adult, as co-guardians of an incapacitated adult's person, or as co-guardians of an incapacitated adult's estate. In practice, however, Clerks sometimes appoint two or more persons or entities to serve jointly as the co-guardians of an incapacitated adult. *See Parker v. Barefoot*, 61 N.C. App. 232 (1983) (adult son and daughter of an incapacitated adult were appointed as her co-guardians).

Practice Note: If the Clerk appoints two or more persons or entities as the co-guardians of an incapacitated adult, the Clerk's order should specify the manner in which the co-guardians will exercise their shared powers and duties. *See* G.S. 28A-13-6 (governing the exercise of powers by co-administrators or co-executors).

E. Letters of Appointment

Bond requirements. Before issuing letters of appointment to a general guardian or guardian of the estate of an incapacitated adult (other than a guardian appointed pursuant to a recommendation under G.S. 35A-1212.1 that includes a provision specifically directing that no bond be required), the Clerk must require the guardian to post a bond in accordance with Article 7 of G.S. Ch. 35A or other applicable law. G.S. 35A-1231(a). The Clerk may require a nonresident guardian of the person of an incapacitated adult to post a bond. G.S. 35A-1213(b).

Issuance of letters of appointment. After the Clerk has entered an order appointing a person or entity as the guardian of an incapacitated adult and the guardian has accepted appointment (unless the guardian is a disinterested public agent or the public guardian), posted a bond (if a bond is required), and taken an oath to faithfully and honestly discharge the guardian's duties according to law, the Clerk must issue letters of appointment to the guardian, under the Clerk's signature and official seal, evidencing the guardian's authority to act as the incapacitated adult's general guardian, guardian of the person, or guardian of the estate. G.S. 35A-1206.

Contents of letters of appointment. The letters of appointment issued to the guardian of an incapacitated adult should state the name of the incapacitated adult, the name of the

incapacitated adult's guardian, the date the guardian qualified for issuance of the letters of appointment, and the date the letters of appointment were issued.

If the Clerk enters a limited guardianship order, the letters of appointment issued to the guardian should specify the legal rights that are retained by the incapacitated adult and the manner and extent to which the guardian's powers are limited.