

*Guardianship in*  
*North Carolina*

**Mecklenburg County DSS**

## *Kinds of Guardians*

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- **Person-duties** related to the care, custody and control of the ward
- **Estate-manages** property, estate, and business affairs
- **General-manages** estate and person

## ***Mecklenburg County DSS***

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- DSS is currently the Guardian of Person for 309 incompetent adults
- 289 managed by nine social workers who are Guardian Representatives
- 20 contracted out to private agency (pilot)
- 53% have mental illness, developmental disability or substance abuse as a primary diagnosis

## ***Mecklenburg County DSS***

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- How DSS becomes Guardian:
  - Referral from hospital
  - Adult Protective Services files petition
  - Court appointment

# *What is Guardianship?*

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- Legal Relationship
- Incompetent Adult
- Decision-maker
- Advocate

# *Guardianship is not...*

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- Guardianship should not be used to control an individual's behavior.
- Limiting the rights of an incompetent person by appointing a guardian for him should not be undertaken unless it is clear that a guardian will give the individual a fuller capacity for exercising his rights.

NC Statute 35A-1201(4)

# *Alternatives*

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- Guardianship should only be used as the alternative of last resort:
  - Representative Payee Services
  - Support services
  - Advance Directives
  - Power of Attorney: Durable, Healthcare, Mental Health
  - Special Bank Accounts-Trust account

# *Filing a Petition*

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- Any person can file at the Clerk of Superior Court in the County where the individual resides.
- Mecklenburg County Clerk of Superior Court, Special Proceedings:  
832 East 4<sup>th</sup> Street, Room 3600  
Charlotte, NC 28202  
704-686-0420



# *Before Filing a Petition...*

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- Who has the most information/evidence
- The Respondent has a right to be present at the adjudication hearing
- Respondent has a right to be represented by an attorney. A G.A.L will be appointed by the court
- Petition and Proceedings are public records
- Filing fee assessed by the Clerk
- **What is in the best interest of the adult ?**

# *The Hearing*

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- Two decisions are made at the hearing:
  - 1<sup>st</sup> - To determine competency
  - 2<sup>nd</sup> - To determine the type of guardianship, and the appointment of a guardian(s)
- The standard of proof is by clear, cogent and convincing evidence

# *Types of Guardianship*

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- Interim-time limited
- Limited-Respondent retains specified rights
- Guardianship of Person-personal affairs
- Guardianship of the Estate-business affairs
- General Guardian-handles all affairs

# *Priority for Appointment*

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- An Individual-doesn't have to be family
- A Corporation-entity chartered by the State to serve as Guardian
- Disinterested Public Agent

NC GS 35A- 1214

# *Tasks and Duties*

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- Regular visits
- Least Restrictive Environment
- Ensure Care
- Consent for services
- Ensure Protection
- Advocate
- Understand Needs

# *Financial Obligation*

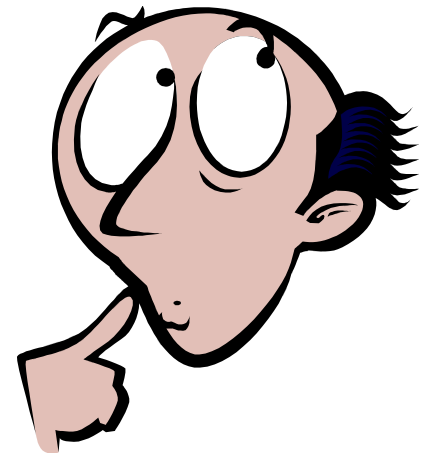
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- The Guardian of the Person is not required to support the ward financially or to contribute his/her own resources to the ward and is not liable for the ward's debts.

# *When Does Guardianship End?*

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- Death
- Clerk removes Guardian
- Guardian Resigns
- Successor Guardian
- Restored to Competency



# *Rights Retained by Wards*

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- Marry
- Vote
- Make a Will
- Divorce



# *Resources*

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- NC General Statute 35 A:  
<http://www.ncga.state.nc.us/gascripts/statutes/Statutes.asp>
- NC Courts:  
<http://www.nccourts.org/Forms/FormSearch.asp>
- NC Guardianship Association:  
[www.nc-guardian.org](http://www.nc-guardian.org)

# *QUESTIONS*

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