

## 2.9 Right to Appointment of Guardian

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**Generally.** The Juvenile Code provides under Article 20, “Basic Rights,” that a guardian of the person *may* be appointed for the juvenile if no parent, guardian, or custodian appears at a hearing with the juvenile or if the court finds that it would be in the juvenile’s best interest. G.S. 7B-2001 (emphasis added). The guardian is given custody of the juvenile or the discretion to arrange placement, authority to consent to necessary remedial, psychological, medical, or surgical treatment, and authority to represent the juvenile in legal actions before any court. The guardian also may stand *in loco parentis* to consent to marriage, enlistment in the armed forces, and enrollment in school. *Id.*

Although this statute is listed under basic rights of the juvenile and is intended to safeguard the juvenile, it does not specify procedural protections in the appointment of a guardian for either the parent or the juvenile. It does not specifically provide for notice and a hearing regarding the proposed appointment, and it does not specify the standard for a judicial decision other than “best interests of the juvenile” or that the parent is absent from a hearing. G.S. 7B-2001. The juvenile statute may conflict with Chapter 35A, which applies specifically to guardianships and provides greater protections, as well as due process requirements.

**Considerations if parent, guardian, or custodian not present.** The presence of a parent, guardian, or custodian is mandated for any hearing for which the parent, guardian, or custodian receives notice. G.S. 7B-1805. If the parent, guardian, or custodian does not appear at a hearing after proper notice, counsel should consider the juvenile’s circumstances and wishes, as well as possible consequences, in deciding whether to request that the court appoint a guardian or compel the presence of the parent.

A supportive parent can be a positive factor in the outcome of a delinquency case by advocating for the juvenile, providing supervision, participating in treatment, and providing transportation. Conversely, the compelled presence of a parent adverse to the juvenile’s position may have a harmful effect.

An interested and active guardian may fill the role served by a supportive parent. Appointment of a guardian without notice to the parent and juvenile and without a hearing, however, could result in the appointment of an inappropriate guardian or a guardian to whom the juvenile objects, such as a disliked relative or the Department of Social Services.

**Guardian ad litem distinguished.** A guardian ad litem is a person who is appointed in a legal proceeding, often pursuant to Rule 17 of the Rules of Civil Procedure, to represent the interests of a party who is under a legal disability, such as minority or incompetence. *See infra* § 3.5J, Guardian ad Litem. For example, courts are required to appoint guardians ad litem to represent children in cases involving allegations of abuse or neglect.

G.S. 7B-601. The duties of a guardian ad litem appointed under G.S. 7B-601 are primarily to investigate and determine the needs of the child. *Id.* In an incompetency case, a guardian ad litem is appointed to determine the respondent's wishes regarding the proceedings and any proposed guardianship. G.S. 35A-1107(b).