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# Table of Contents

**Preface** ix

**Chapter 1: Overview of Adult Guardianship** 1

1.1 Scope of this Manual  
1.2 Scope of this Chapter  
1.3 Adult Guardianship Terminology  
1.4 Nature and Purpose of Adult Guardianship  
1.5 Guardianship Law in North Carolina  
1.6 Overview of Adult Guardianship Proceedings  
1.7 Legal Consequences of Guardianship  
1.8 Relationship of G.S. Ch. 35A to Other Laws  

**Appendix 1-1 Additional Resources**

**Chapter 2: Appointment of Attorney as *Guardian ad Litem*** 19

2.1 Right to Counsel  
2.2 Appointment and Discharge of Attorney as *Guardian ad Litem*  
2.3 Statutory Powers and Duties of Appointed Attorney  
2.4 Role of Appointed Attorney or *Guardian ad Litem*  
2.5 Professional and Ethical Responsibilities of Appointed Attorney  
2.6 Representing Persons with Diminished Capacity  
2.7 Compensation of Appointed and Retained Attorneys for Respondents  
2.8 Civil Liability of Appointed Attorneys  

**Appendix 2-1 Additional Resources**

**Chapter 3: Jurisdiction and Venue** 39

3.1 Subject Matter Jurisdiction  
3.2 Personal Jurisdiction  
3.3 Interstate Jurisdictional Issues  
3.4 Venue  
3.5 Change of Venue  
3.6 Abatement  

**Appendix 3-1 Additional Resources**

**Chapter 4: Parties, Pleadings, and Notice** 45

4.1 Parties  
4.2 Pleadings and Motions
4.3 Summons Not Required
4.4 Notice of Hearing
4.5 Service of Petition and Notice of Hearing
4.6 Service of Other Pleadings and Motions

Appendix 4-1 Additional Resources

Chapter 5: Hearings, Practice, and Procedure 53

5.1 Scope of this Chapter
5.2 Nature of Adult Guardianship Proceedings
5.3 Rules of Procedure
5.4 Right to Jury Trial
5.5 Voluntary Dismissal, Default Judgment, and Summary Judgment
5.6 Discovery
5.7 Pre-Trial Conference
5.8 Appointment of Interim Guardian
5.9 Order for Multidisciplinary Evaluation
5.10 Calendaring and Continuance of Hearings
5.11 Hearing Procedure
5.12 Evidentiary Issues and Burden of Proof
5.13 Findings and Order
5.14 Costs and Fees

Appendix 5-1 Additional Resources

Chapter 6: Incapacity 73

6.1 Incapacity and Adult Guardianship
6.2 Defining Incapacity
6.3 Statutory Definition of Incapacity
6.4 Analyzing and Interpreting the Statutory Definition of Incapacity
6.5 The Medical Component of Incapacity
6.6 The Functional and Cognitive Elements of Incapacity
6.7 Clinical Assessment of Cognitive and Functional Incapacity
6.8 Multidisciplinary Evaluations of Incapacity
6.9 Judicial Determination of Incapacity

Appendix 6-1 Clinical Professionals
Appendix 6-2 Medical Conditions Affecting Capacity
Appendix 6-3 Dementia Overview
Appendix 6-4 Temporary and Reversible Causes of Confusion
Appendix 6-5 Medications That May Commonly Cause Confusion
Appendix 6-6 Distinguishing Delirium from Dementia
Appendix 6-7 Cognition and Cognitive Testing
Appendix 6-8 Neuropsychological Assessment and Testing
Appendix 6-9 Brief Guide to Psychological and Neuropsychological Instruments
Appendix 6-10 Everyday Functioning and Functional Assessment
Appendix 6-11 Means to Enhance Capacity
Appendix 6-12 Additional Resources
Chapter 7: Appointment of Guardians  127
7.1 Scope of this Chapter
7.2 Types of Guardians That May Be Appointed
7.3 Legal Standards for Appointment of a Guardian
7.4 Procedure for Appointing a Guardian
7.5 Qualifications and Disqualifications for Appointment of Guardians
7.6 Statutory Priorities and Preferences Governing Appointment of Guardians
7.7 Appointment of Disinterested Public Agent Guardians
7.8 Appointment of Public Guardians
7.9 Order and Letters of Appointment

Chapter 8: Mediation of Adult Guardianship Cases  141
8.1 Statutory Authority and Rules
8.2 Ordering Mediation in Adult Guardianship Cases
8.3 Selecting the Mediator
8.4 Responsibilities of Respondent’s Counsel or Guardian ad Litem
8.5 The Mediation Process
8.6 Consideration of Mediated Agreements by the Clerk
8.7 Cost of Mediation

Chapter 9: Appeal of Guardianship Orders  149
9.1 Appeal of Final and Interlocutory Orders
9.2 Standing to Appeal
9.3 Notice of Appeal
9.4 Stay Pending Appeal
9.5 Appellate Jurisdiction of the Superior Court
9.6 Appellate Procedure in Superior Court
9.7 Appellate Review by the Court of Appeals and Supreme Court
9.8 Abatement of Appeal

Chapter 10: Modification and Termination of Guardianship Orders  155
10.1 Termination of Guardianship
10.2 Restoration of Competency
10.3 Modification of Guardianship Orders
10.4 Removal of Guardian
10.5 Resignation of Guardian
10.6 Appointment of Successor Guardian
10.7 Other Guardianship Proceedings
Preface

In 2007, the N.C. Office of Indigent Defense Services asked the UNC-Chapel Hill School of Government to develop a training program for attorneys who are appointed pursuant to G.S. 35A-1107 to represent allegedly incapacitated adults in guardianship proceedings.

Recognizing that there was no comprehensive treatise or practice manual on the subject of North Carolina guardianship law, I offered to write a *North Carolina Guardianship Manual* that would serve as a training and reference resource for attorneys who are appointed to represent incapacitated adults in guardianship proceedings. As such, it is part of a series of manuals produced by the School of Government on indigent defense practice areas, including the *North Carolina Defender Manual* and the *North Carolina Civil Commitment Manual* (2006).

It is important to note that this manual does not address all aspects of North Carolina’s guardianship law. It does not, for example, address most of the issues that arise in an adult guardianship proceeding following the appointment of a guardian for an incapacitated adult. Nor does it address in detail the powers and duties of guardians or the appointment of guardians for minors. Instead, it focuses almost exclusively on those aspects of adult guardianship matters in which attorneys who are appointed under G.S. 35A-1107 are involved—especially proceedings to determine whether an adult is incapacitated, proceedings to appoint a guardian for an incapacitated adult, and proceedings seeking the restoration of a ward’s incapacity.

Despite this, however, I hope that this manual will be of value to others who are involved in adult guardianship proceedings, including Clerks of Superior Court, superior court judges, lawyers who are retained to represent petitioners or respondents in adult guardianship proceedings, and public agencies (such as county social services departments) that may be involved in adult guardianship proceedings.

In writing this manual, I have made the conscious decision to use the terms “capacity,” “incapacity,” and “incapacitated,” rather than “competency,” “incompetency,” and “incompetent,” whenever possible and appropriate. It is true that North Carolina’s guardianship statute (Chapter 35A of the General Statutes) still uses “incompetent” and similar terms. I feel, however, that those terms are antiquated, pejorative, and inaccurate, and that the term “incapacitated” is preferable. It is important to note, though, that the use of “incapacitated” in this manual relates only to questions of capacity in connection with adult guardianship proceedings under G.S. Chapter 35A and does not apply to other legal proceedings, such as criminal proceedings or involuntary commitment proceedings, in which the issue of capacity may arise.

No book is ever solely the product of its author, and this manual is no exception. In writing this manual, I received much assistance and support from many people. My
colleagues on the faculty at the School of Government, John Rubin, Janet Mason, Joan Brannon, and Ann Anderson, reviewed the entire manuscript and offered many valuable suggestions and corrections, as did several other reviewers, including Dolly Whiteside (Special Counsel Supervising Attorney, N.C. Office of Indigent Defense Services), Pamela Weaver Best (Deputy Legal Counsel, N.C. Administrative Office of the Courts), Ben N. Turnage (Special Counsel, N.C. Office of Indigent Defense Services), and Patricia Kay Gibbons, Esq. (Raleigh, NC). I would also like to note my special appreciation to the American Psychological Association and the American Bar Association’s Commission on Law and Aging for their permission to include the copyrighted materials that appear in the appendices to Chapter 6. I also want to thank Robby Poore, Kevin Justice, Sarah McConnaghy, Katrina Hunt, Chris Toenes, and Angela Williams of the Publications Division of the School of Government for their assistance in producing this manual.

Although I hope that the information included in this manual is entirely accurate, I realize that it may include some mistakes or errors (as well as perspectives and legal opinions with which some may disagree) and invite readers to contact me (saxon@sog.unc.edu or 919-966-4289) if they feel there is anything in the manual that is not correct or needs to be changed, added, or deleted in the next edition of this manual.

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