

STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice
Superior Court Division
Before The Clerk

_____ County

IN THE MATTER OF

Name And Address Of Respondent

ORDER ON PETITION FOR ADJUDICATION OF INCOMPETENCE

Date Of Birth

Drivers License No. Of Respondent

State

G.S. 35A-1112, -1116, -1120, -1205; 35B-17

This matter is before the Court on a petition for an adjudication of incompetence of the respondent.

This court has jurisdiction of the subject matter of this proceeding in that: *(select only one box, 1. or 2. or 3.)*

1. Home State *(select only box a. or b. immediately below)*

North Carolina is the respondent's home state because the respondent was physically present in North Carolina, including any period of temporary absence:

- a. for at least six (6) consecutive months **immediately preceding** the filing of the petition.
- b. for at least six (6) consecutive months **ending within** the six (6) months prior to the filing of the petition.

OR

2. Significant-Connection State *(select only box a. or b. or c. immediately below)*

North Carolina is a significant-connection state because the respondent has a significant connection to North Carolina other than mere physical presence and substantial evidence concerning the respondent is available in North Carolina, and the respondent:

- a. **does not have a home state** because the respondent was not physically present in any state for at least six (6) consecutive months over the course of the past twelve (12) months.
- b. **has a home state that is not North Carolina** and that state declined to exercise jurisdiction because North Carolina is a more appropriate forum.
- c. **has a home state that is not North Carolina** and (1) no other petition for adjudication of incompetence and appointment of a guardian was pending in any other state at the time the underlying petition in this case was filed, (2) no other petition was filed in the respondent's home state after the initiation of this proceeding, (3) no person entitled to notice raised an objection to North Carolina's jurisdiction, and (4) this Court concludes that North Carolina is an appropriate forum.

OR

3. "Other" State

North Carolina is not a home state or a significant-connection state but the respondent's home state and all significant-connection states have declined to exercise jurisdiction because North Carolina is a more appropriate forum, and jurisdiction in North Carolina is consistent with the constitutions of North Carolina and the United States.

A copy of the petition, a notice of this hearing, and, for petitions filed on or after January 1, 2024, the notice of rights in a form substantially similar to G.S. 35A-1117, were properly served on all persons entitled thereto, this Court has jurisdiction of the person of the respondent, and this county is a proper venue.

- A hearing was held before the Court and a jury. After hearing the evidence and the instructions of the Court, and upon deliberation, the jury did did not find by clear, cogent, and convincing evidence that the respondent is incompetent.
- A hearing was held before the Court and, after hearing the evidence, the Court does does not find by clear, cogent, and convincing evidence that the respondent is incompetent.
- No hearing was held due to the death of the respondent.

The Court finds that the petitioner did did not have reasonable grounds to bring the petition.

The Court finds that the respondent is is not indigent.

(Over)

ORDER

NOTES TO CLERK: *An adult, emancipated minor, or incompetent child does not lack capacity if, by means of a less restrictive alternative, he or she is able to sufficiently (i) manage his or her affairs and (ii) communicate important decisions concerning his or her person, family, and property. G.S. 35A-1101(7) and (8).*

A less restrictive alternative is defined as an arrangement enabling a respondent to manage his or her affairs or to make or communicate important decisions concerning his or her person, property, and family that restricts fewer rights of the respondent than would the adjudication of incompetency and appointment of a guardian. The term includes supported decision making, appropriate and available technological assistance, appointment of a representative payee, and appointment of an agent by the respondent, including appointment under a power of attorney for health care or power of attorney for finances. G.S. 35A-1101(11a).

Guardianship should always be a last resort and should only be imposed after less restrictive alternatives have been considered and found to be insufficient to meet the adult's needs. G.S. 35A-1201(7).

- The clerk/the jury did not find the respondent to be incompetent by clear, cogent, and convincing evidence and it is ORDERED that the proceeding is dismissed.
- No hearing was held due to the death of the respondent and it is ORDERED that the proceeding is dismissed.
- It is adjudged that the respondent is incompetent.
 - It is ORDERED that a guardian be appointed by this court.
 - For good cause shown, it is ORDERED that the proceeding for the appointment and qualification of a guardian is transferred to _____ County.
(NOTE TO CLERK: All original documents from the incompetency file in this matter are to be sent to the county where this case is transferred.)
 - The Court recommends that the respondent be allowed to retain his or her driving privileges.
 - Pursuant to G.S. 35A-1112(d), the Court makes the following findings regarding the nature and extent of the ward's incompetence:
(NOTE TO CLERK: If ordering a limited guardianship, separate findings should be recorded on form AOC-E-406 pursuant to G.S. 35A-1212, -1215.)

Further, it is ORDERED that pursuant to G.S. 35A-1116: *(select if applicable)*

- There were reasonable grounds to bring the proceeding and due to respondent's indigency, costs are taxed:
 - IDS (GAL fees, if any), NCAOC (witness fees, if any),
 - NC DHHS (MDE costs, if any), and all other costs are waived.

NOTE: *A separate motion for costs and fees must be filed for the court to consider taxing costs and fees, including attorneys' fees, against any party or apportioned among the parties pursuant to G.S. 35A-1116(a).*

Date	Name Of Presiding Clerk (type or print)	Signature	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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NOTE TO CLERK:

If the respondent is adjudicated incompetent:

- *Send a certified copy of this Order to the Division of Motor Vehicles, 3112 Mail Service Center, Raleigh, NC 27699-3112. G.S. 20-17.1(b).*
- *If the respondent resides in another county, also send a certified copy of this Order to the Clerk of the county of the respondent's legal residence to be filed and indexed as a special proceeding in that county. G.S. 35A-1112(f). In order to facilitate this filing and indexing in the county of the respondent's legal residence, a copy of the petition for adjudication of incompetence may be sent with the certified copy of this Order.*
- *If a guardian is appointed, a new estate should be opened and copies of the original petition and of this Order should be placed in the separate "E" file for the new estate.*
- *See the Rules of Recordkeeping for NICS reporting requirements.*

CERTIFICATION

I certify that this Order On Petition For Adjudication Of Incompetence is a true and complete copy of the original on file in this case.

Date	Name Of Clerk (type or print)	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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