

## **Jurisdiction in Adult Guardianship Proceedings: An Overview of North Carolina's New Legislation (UAGPJJA)**

<b>Contents</b>	<b>Page</b>
Course Description	1
Agenda	2
Online Resources	2
Presenters	3
Presentation Slides	4
Appendix A: Initial Filing	
Appendix B: Transfer Out of N.C.	
Appendix C: Transfer to N.C. (Rev 12/5/16)	

### **Course Description**

This live webinar will review how the new UAGPPJA (H817) fits together with existing law. At the end of the 2016 legislative session, the General Assembly enacted complex legislation (H 817) that made significant changes to the way the Clerks of Superior Court will determine jurisdiction in adult guardianship proceedings. The new law incorporates the provisions of the *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act*, which is designed to ensure that jurisdiction for these proceedings is located in one and only one state, except when an emergency exists or in situations where the individual owns property in multiple states. The new law also addresses issues such as transfer of cases and out-of-state recognition of guardianship orders. During this webinar (recorded live on 11/28/16), the speakers will review some of the key provisions of the new law with a particular focus on how the new law will be integrated and applied with existing North Carolina law.



## Agenda (1 hour, 15 minutes)

12:00pm	What is the <i>Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act</i> (UAGPPJA)? Application, Terminology, Impact
12:15pm	How the new law will be integrated and applied with existing NC law
12:20pm	Key Provisions of the new law: <b>Initial filings</b> Gatekeeper Waterfall of priority: Home State, Significant Connection State, Other State
12:55pm	<b>Transfers</b>
1:10pm	<b>Registrations</b> , out-of-state recognition of guardianship orders
1:15pm	End

## Online Resources

House Bill 817 (Session Law 2016-72) effective December 1, 2016

[Chapter 35B: Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act \(UAGPPJA\)](#)

[UAGPPJA is Here to Stay](#), blog post, Meredith Stone Smith (10/21/16)

Social Services Law Bulletin -- [New Rules for Adult Guardianship Proceedings: Applying the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act \(G.S. Chapter 35B\) in North Carolina](#), Meredith Stone Smith (11/29/16)

Always check the NCAOC [Forms webpage](#) for the latest versions:

- PETITION FOR ADJUDICATION OF INCOMPETENCE AND APPLICATION FOR APPOINTMENT OF GUARDIAN OR LIMITED GUARDIAN AND INTERIM GUARDIAN (AOC-SP-200, Rev 12/16)
- ORDER ON PETITION FOR ADJUDICATION OF INCOMPETENCE (AOC-SP-202, Rev 12/16)



## Presenters

### **Amy Funderburk**

Assistant Legal Counsel  
NC Administrative Office of the Courts  
919 890-1302  
Amy.L.Funderburk@nccourts.org

Ms. Funderburk advises judicial officials in estates, special proceedings, and civil matters. Prior to joining NCAOC, she represented the Department of Health and Human Services as an Assistant Attorney General.

### **Meredith Smith**

Assistant Professor of Public Law and Government  
UNC School of Government  
919 843-2986  
meredith.smith@sog.unc.edu


Meredith joined the School of Government in 2013. Previously, she was an associate with the law firm of McGuireWoods LLP in Charlotte, where she practiced with the real estate, corporate, and restructuring and insolvency groups on matters related to a wide range of issues including commercial loan modifications, foreclosures, bankruptcy, corporate governance, mergers and acquisitions, commercial leasing, and real estate purchase and sale contracts. Smith earned a BA in political science and Spanish, with distinction, from the University of North Carolina at Chapel Hill and a law degree, cum laude, from Georgetown University School of Law, where she was a member of the *American Criminal Law Review*.

### **Aimee Wall**

Associate Professor  
School of Government  
919 843-4957  
wall@sog.unc.edu

Aimee teaches, conducts research, and advises state and local government officials on social services law. She focuses on adult services, public assistance programs, and the organization and governance of local social services agencies. She also coordinates educational programs for new legislators and serves as a faculty liaison with legislators and other state level policymakers. Prior to joining the School of Government in 2001, she practiced health care law in Washington, DC, and served as a health policy analyst in the Office of the Secretary in the US Department of Health and Human Services. Aimee earned a BA in English from the Ohio State University and a JD/MPH from the University of North Carolina at Chapel Hill.






NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the COURTS*

## UAGPPJA

Uniform Adult Guardianship and Protective Proceedings  
Jurisdiction Act

November 2016  
Prepared by the NCAOC and the UNC School of Government



---

---

---

---

---

---

---

---

### Presenters



**Amy Funderburk**  
Assistant Legal Counsel  
NCAOC



**Meredith Smith**  
Assistant Professor





**Aimee Wall**  
Associate Professor





NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the COURTS*

UAGPPJA | November 2016 2

---

---

---

---

---

---

---


---


### S.L. 2016-72

New G.S. Chapter 35B  
Uniform Adult Guardianship and Protective Proceedings  
Jurisdiction Act (UAGPPJA)

G.S. Chapter 35A

- Incompetency
- Adult Guardianship Proceedings





NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the COURTS*

UAGPPJA | November 2016 3

---

---

---

---

---

---

---

---

## Roadmap

<b>Part One: Overview</b>	<b>Part Two: Details</b>
1. Application	1. Initial Filings
2. Terminology	2. Transfers
3. Impact	3. Registration

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS UAGPJA | November 2016 4

---

---

---

---

---

---

---

---

## Part One: Overview

- APPLICATION** In what types of guardianship proceedings does UAGPPJA apply?
- TERMINOLOGY** What are some potential areas of confusion that could arise from differences in terminology?
- IMPACT** How will UAGPPJA change adult guardianship proceedings?

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS UAGPJA | November 2016 5

---

---

---

---

---

---

---

---

## #1: Application

G.S. 35B-3(1)

Uniform **Adult Guardianship** and **Protective Proceedings** Jurisdiction Act

- "This Chapter does not govern...[g]uardianship and guardianship proceedings pertaining to minors less than 18 years of age."



NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS UAGPJA | November 2016 6

---

---

---

---

---

---

---

---

**#2: Terminology**

G.S. 35B-3(2) and (3)

Uniform **Adult Guardianship** and **Protective Proceedings**  
Jurisdiction Act

■ 35B does not govern

1. 108A protective services proceedings pertaining to disabled and older adults (Adult Protective Services (APS) proceedings).
2. 50B and 50C domestic violence and civil no-contact proceedings.

Chapter 35B	Relation to Terminology in G.S. Chapter 35A
<b>Guardianship Proceeding</b>	Proceeding for guardian of the person or general guardian.
<b>Guardianship Order</b>	Order appointing a guardian of the person or general guardian.
<b>Incapacitated Person</b>	Adult for whom guardian of the person or general guardian has been appointed (the ward).
<b>Protective Proceeding</b>	Proceeding for guardian of the estate or general guardian.
<b>Protective Order</b>	Order appointing a guardian of the estate, general guardian, or other order related to a person's property under G.S. Chapter 35A.
<b>Protected Person</b>	Adult for whom guardian of the estate or general guardian has been appointed (the ward).

**#3 Impact**

G.S. 35B-1(c)

- Does not apply to the substantive law of incompetency and adult guardianship proceedings under G.S. Chapter 35A.
- No change to substantive law.

## The "Jurisdiction" Act

G.S. 35B-1(c)

Jurisdiction is the power of the court to decide a matter in controversy.

*"The purpose of this legislation is to provide clear direction to the courts, attorneys, guardians, and individuals about the proper jurisdiction for guardianship proceedings. This Chapter is limited in scope to jurisdiction."*

---

---

---

---

---

---

---

---

## 35B is the Gatekeeper to 35A




---

---

---

---

---

---

---

---

## STATE to STATE Analysis




---

---

---

---

---

---

---

---

### The Case of Carmen



- Carmen lives in Iowa
- Has 2 children – Eddie and Linda
- Eddie in IA, Linda in NC
- Linda moves Carmen to a nursing home in NC
- Eddie files for guardianship in IA, Linda in NC
- Which court may act?

---

---

---

---

---

---

---

---

### The Case of Frank




---

---

---

---

---

---

---

---

### The Case of Diane




---

---

---

---

---

---

---

---



## Recap

1. **APPLICATION** In what types of guardianship proceedings does UAGPPJA apply?
  - Adult guardianships – not minors
2. **TERMINOLOGY** What are some potential areas of confusion that could arise from differences in terminology?
  - “Protective” proceedings and orders are those involving guardians of the estate and other orders related to a ward’s property– not APS, 50B, or 50C
3. **IMPACT** How will UAGPPJA change adult guardianship proceedings?
  - Changes jurisdictional analysis only. Substantive law of guardianship in 35A is unchanged. New 35B is the gatekeeper to 35A.

---

---

---

---

---

---

---

---

## Part Two: Details

1. Initial Filings
2. Transfer of Existing Cases
3. Registration of Out of State Orders

---

---

---

---

---

---

---

---

## Effective Date: December 1, 2016

Type of case	Effective
Initial Filings	Filed on or after
Transfer	All cases
Registration	All cases

---

---

---

---

---

---

---

---

# INITIAL FILINGS

NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
of the COURTS

UAGPJJA | November 2016 19

---

---

---

---


---

---

---

---

## Initial Filing: Carmen



- Carmen lives in Iowa
- Has 2 children – Eddie and Linda
- Eddie in IA, Linda in NC
- Linda moves Carmen to a nursing home in NC
- Eddie files for guardianship in IA, Linda in NC
- Which court may act?

NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
of the COURTS

UAGPJJA | November 2016 20

---

---

---

---

---

---


---

---

## Initial Filing – Old G.S. 35A

Types of Jurisdiction

1. Subject Matter Jurisdiction – G.S. 35A  
NC: Clerk of Superior Court
2. Personal Jurisdiction – G.S. 1-75.4(1)(a)  
NC: Presence + Service + Minimum Contacts



NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
of the COURTS

UAGPJJA | November 2016 21

---

---

---

---

---

---

---

---

### 35B is the Gatekeeper to 35A



NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
of the COURTS

UAGPJJA | November 2016 22

### Consent Not an Option

- Court must find jurisdiction exists before proceeding with the substantive hearing.
  - Petitioner should present evidence in petition and at commencement of hearing.
- Parties may not consent to or waive jurisdiction if it is otherwise improper.

NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
of the COURTS

UAGPJJA | November 2016 23

### Waterfall of Priority



\*\* Emergency provides jurisdiction for 90 day  
GOP appointment – physical presence

NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
of the COURTS

UAGPJJA | November 2016 24

## Home State – Physical Presence

First question upon ANY new filing on or after December 1<sup>st</sup>:

**Was the respondent  
physically present  
in one state for the  
last six months?**

**\*\*Exclusive of periods of temporary absence, e.g. business trips, vacations, visits to family.**

---

---

---

---

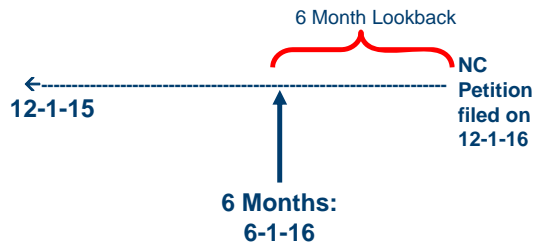
---

---

---

---

## Carmen's Case




---

---

---

---

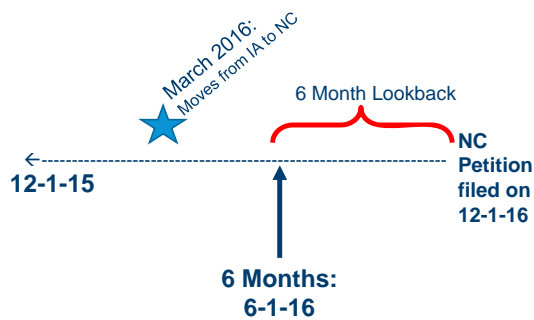
---

---

---

---

## Carmen's Case




---

---

---

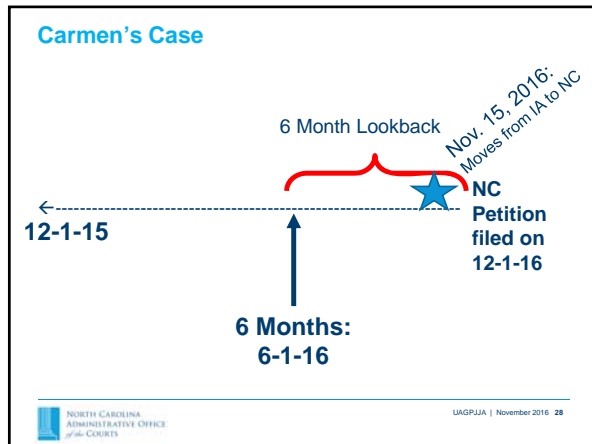
---

---

---

---

---




---

---

---

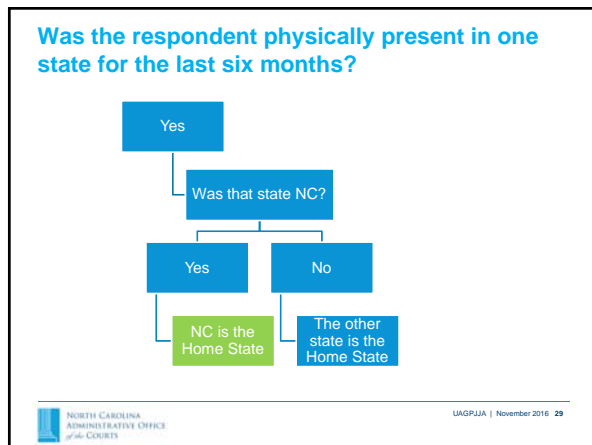
---

---

---

---

---




---

---

---

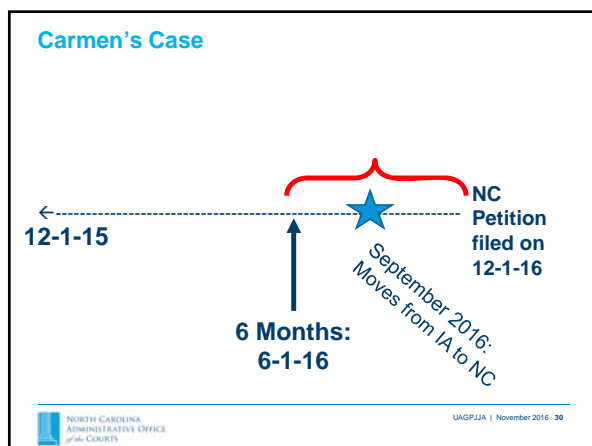
---

---

---

---

---




---

---

---

---

---

---

---

---

**Was the respondent physically present in one state for the last six months?**

**No**

Was the respondent physically present in **any** state for at least six consecutive months ending within six months prior to the filing of the petition?

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS UAGPJJA | November 2016 31

---

---

---

---

---

---

---

---

**Carmen's Case**

12 Month Lookback

← 12-1-15

↑ 6 Months: 6-1-16

Petition filed on 12-1-16

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS UAGPJJA | November 2016 32

---

---

---

---

---

---

---

---

**Carmen's Case**

12 Month Lookback

← 12-1-15

↑ 6 Months: 6-1-16

★ Sept. 2016: Moves from IA to NC

Petition filed on 12-1-16

Last 12 Months  
- 9 in Iowa  
- 3 in NC

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS UAGPJJA | November 2016 33

---

---

---

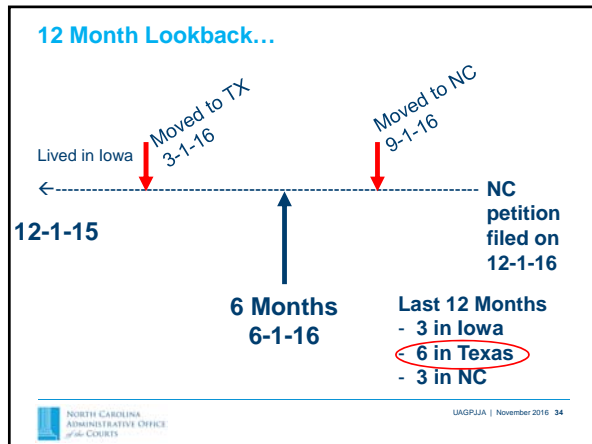
---

---

---

---

---




---

---

---

---

---

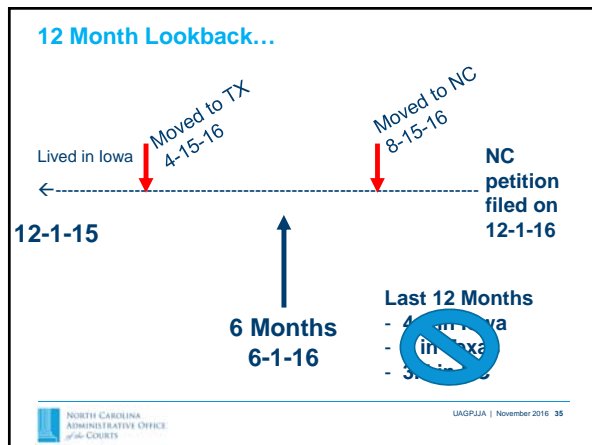
---

---

---

---

---




---

---

---

---

---

---

---

---

---

---

**Revised AOC-SP-200 Form: Petition for Adjudication and Appointment of Guardian**

<b>IN THE MATTER OF:</b>		<b>PETITION FOR ADJUDICATION OF INCOMPETENCE AND APPLICATION FOR APPOINTMENT OF GUARDIAN OR LIMITED GUARDIAN AND INTERIM GUARDIAN</b>	
Full Name of Respondent		G.S. 35A-1105, -1102, -1114, -1210, 35B-17, -18	
Address of Respondent		Name and Address of Attorney for Petitioner	
County of Residence of Respondent	Date of Birth	Telephone No. of Petitioner's Attorney	
<input type="checkbox"/> Respondent Indigent	Respondent's County License No.	State Bar No.	
Name and Address of Petitioner		Name and Address of Treatment Facility if Respondent is Admitted	
County of Residence of Petitioner	Telephone No. of Petitioner		
Petitioner's Relationship to Respondent or Interest in Proceeding			
The undersigned, being duly sworn, requests that the Court, after notice and hearing, adjudicate the respondent above to be incompetent, and appoint for the appointment of the person(s) named below to serve, in the capacity indicated, as guardian(s) of the respondent.			
As Support of this Petition, the undersigned states:			
A. During the past twelve (12) months, the above-named respondent was physically present as follows:			
Period of Physical Presence		Address	
From	To		
	Present		

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS  
UAGPJJA | November 2016 36

---

---

---

---

---

---

---

---

---

---

### Revised AOC-SP-200 Form: Petition for Adjudication and Appointment of Guardian

The undersigned, being duly sworn, requests that the Court, after notice and hearing, adjudicate the respondent above to be incompetent, and also applies for the appointment of the person(s) named below to serve, in the capacity indicated, as guardian(s) of the respondent. In support of this Petition, the undersigned states:

1. During the past twelve (12) months, the above-named respondent was physically present as follows:

Period of Physical Presence <small>(include up to the 12 months prior to the filing date of the petition; do not list periods of temporary absence)</small>		Address
From	To	
	Present	

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS UAGPJJA | November 2016 37

---

---

---

---

---

---

---

---

---

---

### Recap: Is there a Home State?

- Was respondent physically present in one state for 6 months immediately preceding the petition?
- If not, was respondent physically present in one state for 6 consecutive months ending within 6 months preceding the petition?

If YES to either – then there is a HOME STATE.

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS UAGPJJA | November 2016 38

---

---

---

---

---

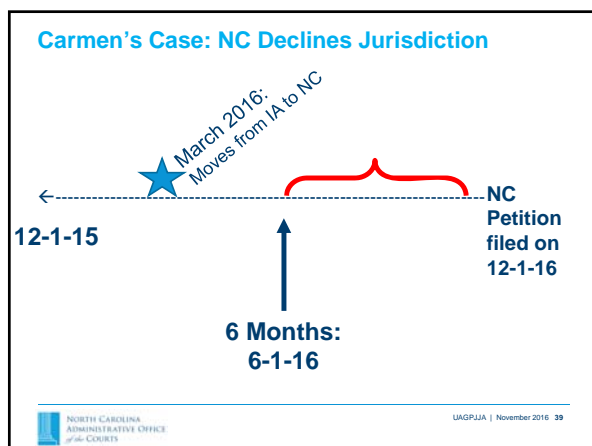
---

---

---

---

---




---

---

---

---

---

---

---

---

---

---



### Appropriate Forum

G.S. 35B-20

*Court shall consider all relevant factors, including:*

Express preference of the respondent	Whether abuse, neglect, or exploitation occurred or is likely and the state that can best protect the respondent	Length of time the respondent physically present in or legal resident of NC or another state
Distance of respondent from court in NC and other state	Financial circumstances of respondent's estate	Ability of the court to monitor the guardian, if appointed
Nature and location of evidence	Familiarity of the court in each state with facts and issues of the case	Ability of the court to decide the issue expeditiously and procedures necessary to present evidence

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS UAGPJJA | November 2016 40

---

---

---

---

---

---

---

---

### NC as Home State decides...

G.S. 35B-20(b)

**Iowa** is a more appropriate forum.

- Enter an order dismissing or staying the proceeding.
- Court may impose any condition "just and proper."
  - Including instructing to file promptly in other state.

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS UAGPJJA | November 2016 41

---

---

---

---

---

---

---

---

### NC not the Home State or R does not have a Home State

NC still may exercise jurisdiction if:

1st:  
Home State

2nd:  
Significant  
Connection  
State(s)

3rd:  
Other State

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS UAGPJJA | November 2016 42

---

---

---

---

---

---

---

---

**Question #1: If NC not Home State, is there a Prior Pending Petition?**

Is there a prior pending petition in the R's home state or any other significant connection state?

**YES**

Stay / communicate  
dismiss the case

**NO**

Proceed with  
analysis

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS UAGPJJA | November 2016 43

---

---

---

---

---

---

---

---

**Revised AOC-SP-200 Form: Petition for Adjudication and Application for Guardian**

2. (check a. or check and complete b.) (NOTE: In both a. and b., "state" includes a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.)

☐ a. There is no other pending proceeding involving the respondent in any court or agency of a state or foreign country.

☐ b. There is a pending proceeding(s) involving the respondent in the court or agency of a state or foreign country, as set forth below:

Location (County, State, and Country)	Type of Proceeding	File Number

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS UAGPJJA | November 2016 44

---

---

---

---

---

---

---

---

**Question #1: If NC not Home State, is there a Prior Pending Petition?**

Is there a prior pending petition in the R's home state or any other significant connection state?

**YES**

Stay / communicate  
dismiss the case

**NO**

Proceed with  
analysis

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS UAGPJJA | November 2016 45

---

---

---

---

---

---

---

---

**Question #2: If No, is NC Significant Connection State?**

G.S. 35B-15(a)(3)

A state, other than the home state, with which respondent has a significant connection other than mere physical presence and in which **substantial evidence** concerning respondent is available.

---

---

---

---

---

---

---

---

**Court shall consider**

Location of R's family  
and other persons  
noticed of the  
proceeding

Length of presence in  
and duration of absence  
from the state

Location of R's property

Extent of R's ties to the  
state e.g. voter reg., tax  
returns, car reg.,  
driver's license, social  
relationships, and  
services received.

---

---

---

---

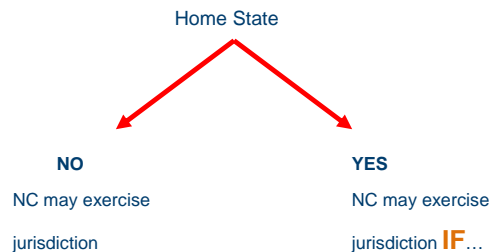
---

---

---

---

**Question #3: If NC is a SCS, does R have a Home State?**




---

---

---

---

---

---

---

---

### Question #3: If NC is a SCS, does R have a Home State?

If yes, NC may exercise jurisdiction if:

1. Home state declined jurisdiction b/c NC is appropriate forum, OR
2. Home state didn't decline but prior to entry of the order in NC on incompetency/guardianship:
  - a. No petition is filed in R's home state,
  - b. No objection is raised to NC's jurisdiction by person entitled to notice, and
  - c. NC is an appropriate forum.

---

---

---

---

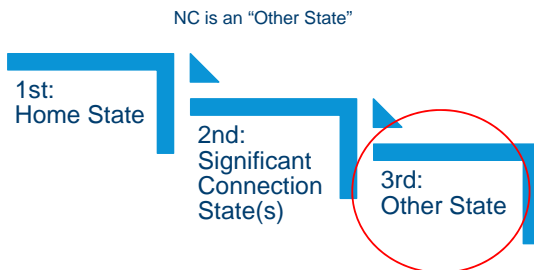
---

---

---

---

### NC not Home or Significant Connection




---

---

---

---

---

---

---

---

### NC not Home or Significant Connection

NC is an "Other State"

NC may exercise jurisdiction only if:

1. The **home state** and **all significant connection states** decline to exercise jurisdiction because NC is more **appropriate forum**, and
2. Jurisdiction consistent with constitution of NC and US.

---

---

---

---

---

---

---

---

## Revised AOC-SP-202: Order on Petition for Adjudication of Incompetence

STATE OF NORTH CAROLINA		File No.
County		In The General Court Of Justice Superior Court Division Before the Clerk
IN THE MATTER OF:		
Name And Address Of Respondent		
ORDER ON PETITION FOR ADJUDICATION OF INCOMPETENCE		
Date Of Birth	Driver's License No. Of Respondent	State
G.S. 35A-1112, -1116, -1120, -1205, 35B-17		

## Revised AOC-SP-202, continued

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 and of the person of the respondent in (C) select only one box, 1 through 6.

### Home State

- 1 ☐ North Carolina is the respondent's home state because the respondent was physically present in North Carolina, including any period of temporary absence, for at least six (6) consecutive months immediately preceding the filing of the petition.
- 2 ☐ North Carolina is the respondent's home state because the respondent was physically present in North Carolina, including any period of temporary absence, for at least six (6) consecutive months ending within the six (6) months prior to the filing of the petition.

OR

### Significant-Connection State

- 3 ☐ 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 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.
- 4 ☐ 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 has a home state that is not North Carolina and that state declined to exercise jurisdiction because North Carolina is a more appropriate forum.
- 5 ☐ 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 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

### "Other" State

- 6 ☐ 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.

## Waterfall of Priority

1st:  
Home State

2nd:  
Significant  
Connection  
State(s)

3rd:  
Other State

**\*\* Emergency provides jurisdiction for 90 day  
GOP appointment – physical presence**

### Emergency Jurisdiction

G.S. 35B-15(a)(1)

\*Circumstance likely will result in substantial harm to a respondent's health, safety, or welfare, + GOP necessary because no other person has authority and is willing to act on the respondent's behalf.

CLERK OF SUPERIOR COURT

NORTH CAROLINA ADMINISTRATIVE OFFICE OF the COURTS

UAGPJJA | November 2016 55

---

---

---

---

---

---

---

---

Emergency jurisdiction under G.S. 35B-18(a)(1)

Jurisdiction under G.S. 35B-17 to adjudicate incompetence and appoint a guardian

Jurisdiction to appoint an interim guardian of the person

CLERK OF SUPERIOR COURT

NORTH CAROLINA ADMINISTRATIVE OFFICE OF the COURTS

UAGPJJA | November 2016 56

---

---

---

---

---

---

---

---

### Other Special Jurisdiction

1. NC can issue protective order (GOE/ancillary guardian/removal) with respect to real or tangible personal property located in NC. G.S. 35B-18(a)(2)
2. Appoint GG, GOP, GOE when NC enters a provisional order of transfer into NC. G.S. 35B-18(a)(3)

CLERK OF SUPERIOR COURT

NORTH CAROLINA ADMINISTRATIVE OFFICE OF the COURTS

UAGPJJA | November 2016 57

---

---

---

---


---

---

---

---

## TRANSFER OF EXISTING CASES


UAGPJJA | November 2016 58

---

---

---

---

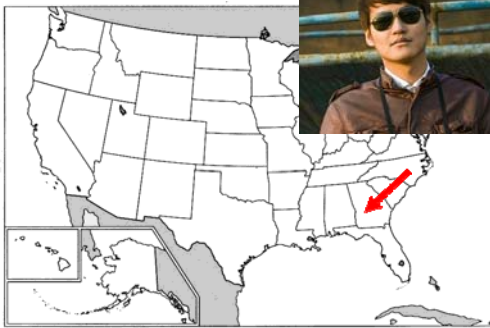

---


---

---

---

### The Case of Frank


UAGPJJA | November 2016 59

---

---

---

---

---

---

---

---

### Transfer, currently under 35A

**Into NC....G.S. 35A-1113**


Clerk's discretion to:

1. Adjudicate incompetency based on other state if grounds comparable, etc.
2. Hold new hearing – start over

*\* No process for guardian transfer*

**Out of NC...????**

- Move personal property pursuant to G.S. 35A-1281
- Whittle down to GOP


UAGPJJA | November 2016 60

---

---

---

---

---

---

---

---

**UAGPPJA Gives Process for Transfer In and Out**

**S.L. 2016-72**  
**repeals**  
**G.S. 35A-1113**

NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
of the COURTS UAGPJA | November 2016 61

---

---

---


---

---

---

---

**STEP 1: Guardian files + serves petition to transfer in NC**



NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
of the COURTS UAGPJA | November 2016 62

---

---

---

---

---

---

---

**STEP 2: Hearing upon request or clerk's motion**



NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
of the COURTS UAGPJA | November 2016 63

---

---

---

---

---

---

---



**To enter provisional order of transfer, Clerk must find:**

1. If GOP, GOE, or GG: Is the incapacitated physically present in or expected to move to another state?
  - Or, if GOE: Are there significant connections to the other state?
2. No objection or (if objection) objector does not establish transfer would be contrary to interests of ward.
3. GOP: Plans for care of person reasonable and sufficient; GOE: Adequate arrangements will be made for property.
4. Guardianship likely will be accepted by other state.

---

---

---

---

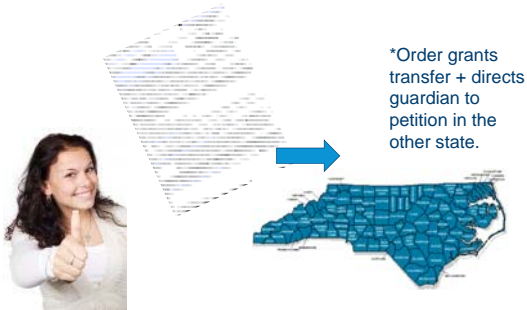
---

---

---

---

**STEP 3: Clerk enters provisional order of transfer**




---

---

---

---

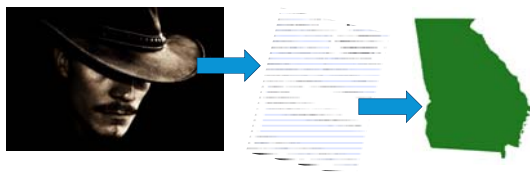
---

---

---

---

**STEP 4: Guardian files + serves petition to transfer in Georgia with certified copy of NC provisional order**




---

---

---

---

---

---

---

---

### STEP 5: Hearing in that state



NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
of the COURTS

UAGPJJA | November 2016 67

---

---

---

---

---

---

---

---

### Transferee court must enter provisional order accepting transfer unless...

1. Objection and objector establishes transfer contrary to interests of ward.
2. GG, GOE, or GOP is ineligible for appointment in that state.

NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
of the COURTS

UAGPJJA | November 2016 68

---

---

---

---

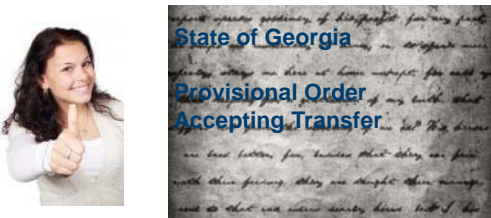
---

---

---

---

### STEP 6: GA enters provisional order accepting transfer



NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
of the COURTS

UAGPJJA | November 2016 69

---

---

---

---

---

---

---

---

**STEP 7: Guardian files GA provisional order with NC**

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS

UAGPJJA | November 2016 70

---

---

---

---

---

---

---

---

**STEP 8: NC enters final order authorizing transfer\* and terminating case**

\*Upon receipt from GOE/GG and approval of final accounting by clerk

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS

UAGPJJA | November 2016 71

---

---

---

---

---

---

---

---

**STEP 9: Guardian files NC final order in GA; GA enters final order accepting transfer**

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS

UAGPJJA | November 2016 72

---

---

---

---

---

---

---

---

### If enter order granting transfer in...

G.S. 35B-31(f) and (g)

Court accepting transfer **shall** recognize order from the other state including the determination of incapacity and appointment of guardian.

\* Within 90 days accepting court determines whether needs to be modified to conform with transferee state law.

---

---

---

---

---

---

---

---

## REGISTRATION OF OUT OF STATE CASES

---

---

---

---

---

---

---

---

### The Case of Diane




---

---

---

---

---

---

---

---

### Registration – NC – Current 35A

- Removal of personalty, G.S. 35A-1281
- Ancillary guardian under G.S. 35A-1280
  - Non resident ward
  - Real or personal property only
  - Certified copy of guardianship order filed in NC
- Then, all powers and duties of NC guardian

BUT – no GOP similar process



UAGPJJA | November 2016 76

---

---

---

---

---

---

---

---

### Process for Registration under UAGPJJA

Guardian notifies the appointing court of intent to register.

Files certified copies of order and letters and any bond in NC (registration state).

- GOP: filed in any appropriate county
- GOE/GG: filed in any county where ward has property

Court files as foreign judgment.



UAGPJJA | November 2016 77

---

---

---

---

---

---

---

---

### Effect of Registration under UAGPJJA

G.S. 35B-28(a)

Exercise all powers of guardian authorized under NC law,  
**BUT**

1. Still must obtain ancillary guardian
2. Still must file SP to remove personalty



UAGPJJA | November 2016 78

---

---

---

---

---

---

---

---

## Effect of Registration under UAGPJJA

G.S. 35B-28(a)

- Registration has limited effect for GOE that is not redundant of ancillary/removal
- Registration most useful for GOP
- **Enforcement**



UAGPJJA | November 2016 79

## Recap – Key Points

- **Initial Filing**
  - **Gatekeeper:** G.S. Ch. 35B is the gatekeeper to G.S. Ch. 35A
  - **Waterfall:** Home State, then Significant Connection State, then an "Other" state
  - **Declining Jurisdiction:** The court may decline jurisdiction if there is a more appropriate forum
- **Transfers:** There is a new process for transferring existing cases to and from NC. Old G.S. 35A-1113 (transfer in) is repealed.
- **Registrations:** The new registration provisions will have the greatest impact on guardianships of the person. Ancillary and removal of personalty provisions for property of nonresident ward's with out of state guardians remain in effect.



UAGPJJA | November 2016 80



Prepared by:

Lori Cole  
Instructional Designer

NCAOC Organizational Development

T 919 890-1276

Lori.C.Cole@nccourts.org  
www.nccourts.org

Meredith Smith  
Associate Professor

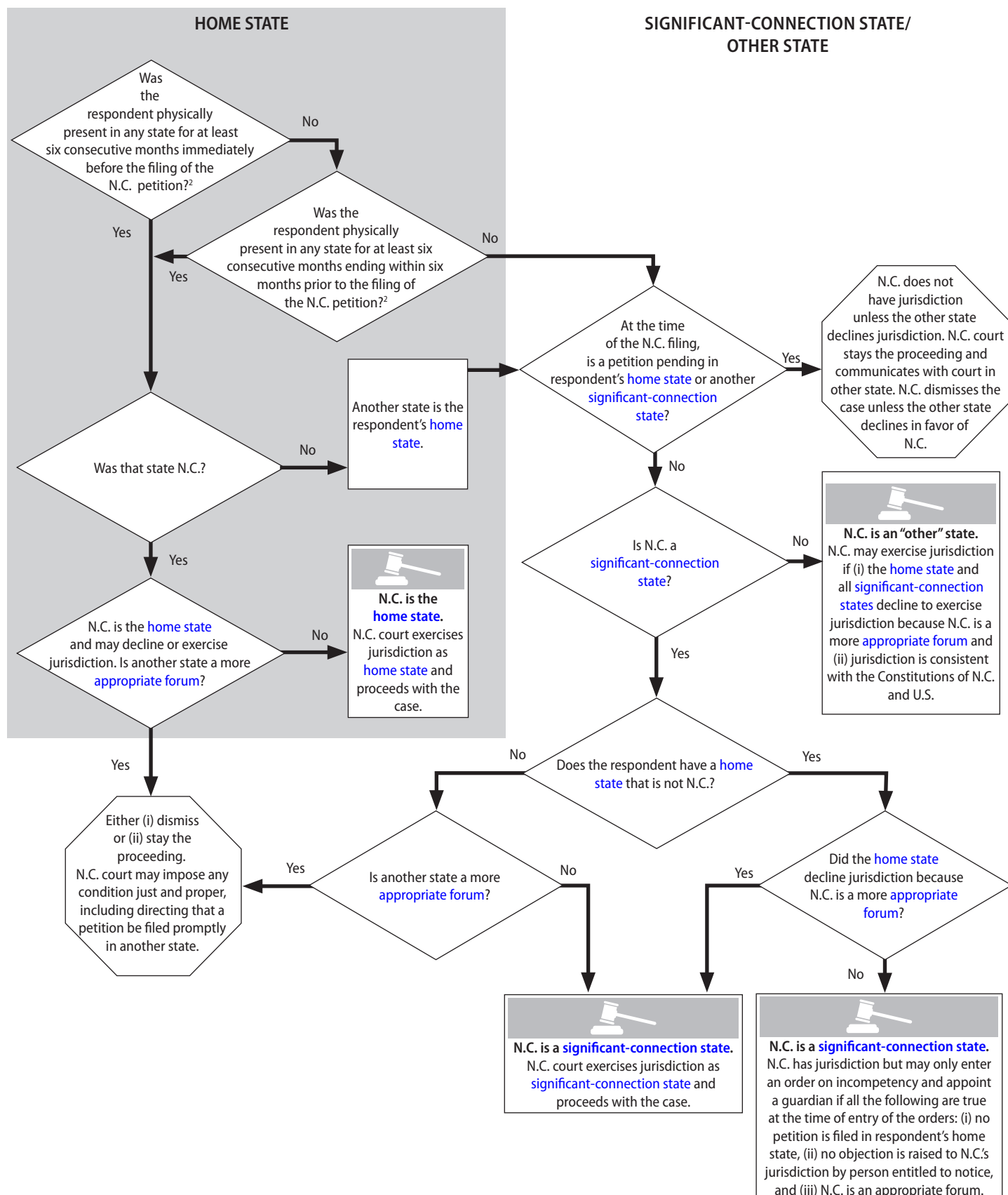
UNC School of Government

T 919 890-1300

meredith.smith@sog.unc.edu  
www.sog.unc.edu



# Appendix A. Does North Carolina Have Jurisdiction to Enter an Incompetency and Adult Guardianship Order?<sup>1</sup> (G.S. Chapter 35B, Article 2)



## Notes:

1. This flowchart does not cover an N.C. court's authority to exercise **special jurisdiction**.
2. The court does not take into account periods of **temporary absence**.

## Definitions/Explanation of Terms Used in Appendix A

**Home State** (G.S. 35B-15(a)(2)). The state where the respondent was physically present, including periods of temporary absence, for at least six consecutive months immediately prior to the filing of the petition; or, if none, the state in which the respondent was physically present, including periods of temporary absence, for at least six consecutive months ending within the six months prior to filing of the petition.

**Temporary Absence.** Temporary absence is not defined in G.S. Chapter 35B but includes short-term out-of-state travel for most purposes (e.g., vacation, business, or visits with family or friends).

**Significant-Connection State** (G.S. 35B-15(a)(3) and (b)). A state, other than the home state, with which the respondent has a significant connection other than mere physical presence and in which substantial evidence concerning respondent is available. To determine significant connection, the court shall consider

- the location of the respondent's family and of other persons required to be notified of the proceedings;
- the length of time the respondent was physically present in North Carolina and the duration of any absence;
- the location of the respondent's property; and
- the extent to which the respondent has ties to a particular state, including voting registration, tax return filings, vehicle registration, driver's license, social relationships, and receipt of services.

**Appropriate Forum** (G.S. 35B-20). To determine whether a state is an appropriate forum, the court shall consider all relevant factors, including but not limited to the following:

- any expressed preference of the respondent;
- whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;
- the length of time the respondent was physically present in or was a legal resident of this or another state;
- the distance of the respondent from the court in each state;
- the financial circumstances of the respondent's estate;
- the nature and location of relevant evidence;
- the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- the familiarity of the court of each state with the facts and issues in the proceeding; and
- if an appointment was made, the court's ability to monitor the conduct of the guardian.

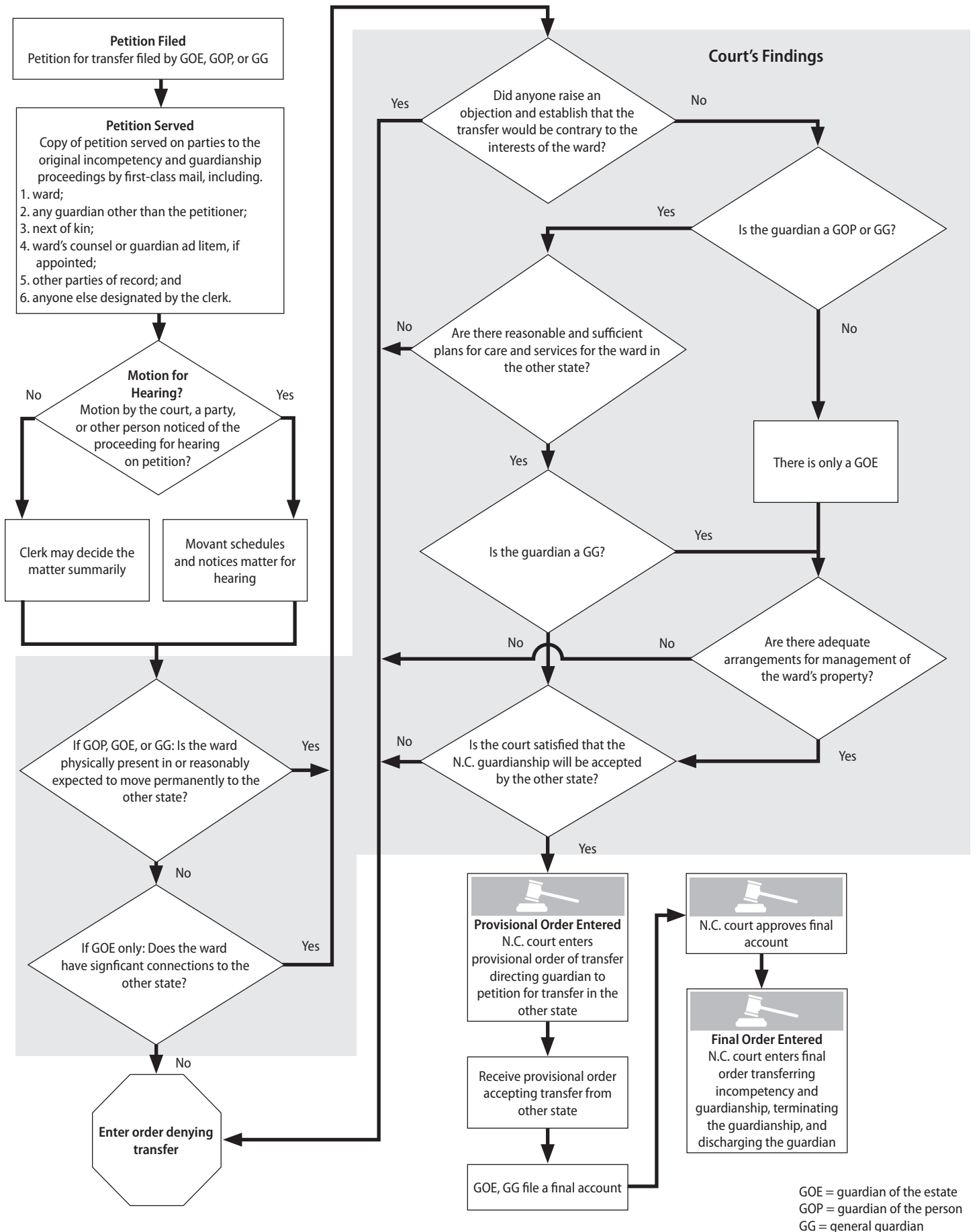
**Special Jurisdiction** (G.S. 35B-18). A court that lacks jurisdiction as a home state, significant-connection state, or "other" state has special jurisdiction to

1. appoint a guardian of the person for up to ninety days if an *emergency* exists and the respondent is present and served in North Carolina (G.S. 35B-18(a)(1)) and
2. issue a protective order with respect to real or tangible personal property located in N.C. (G.S. 35B-18(a)(2))

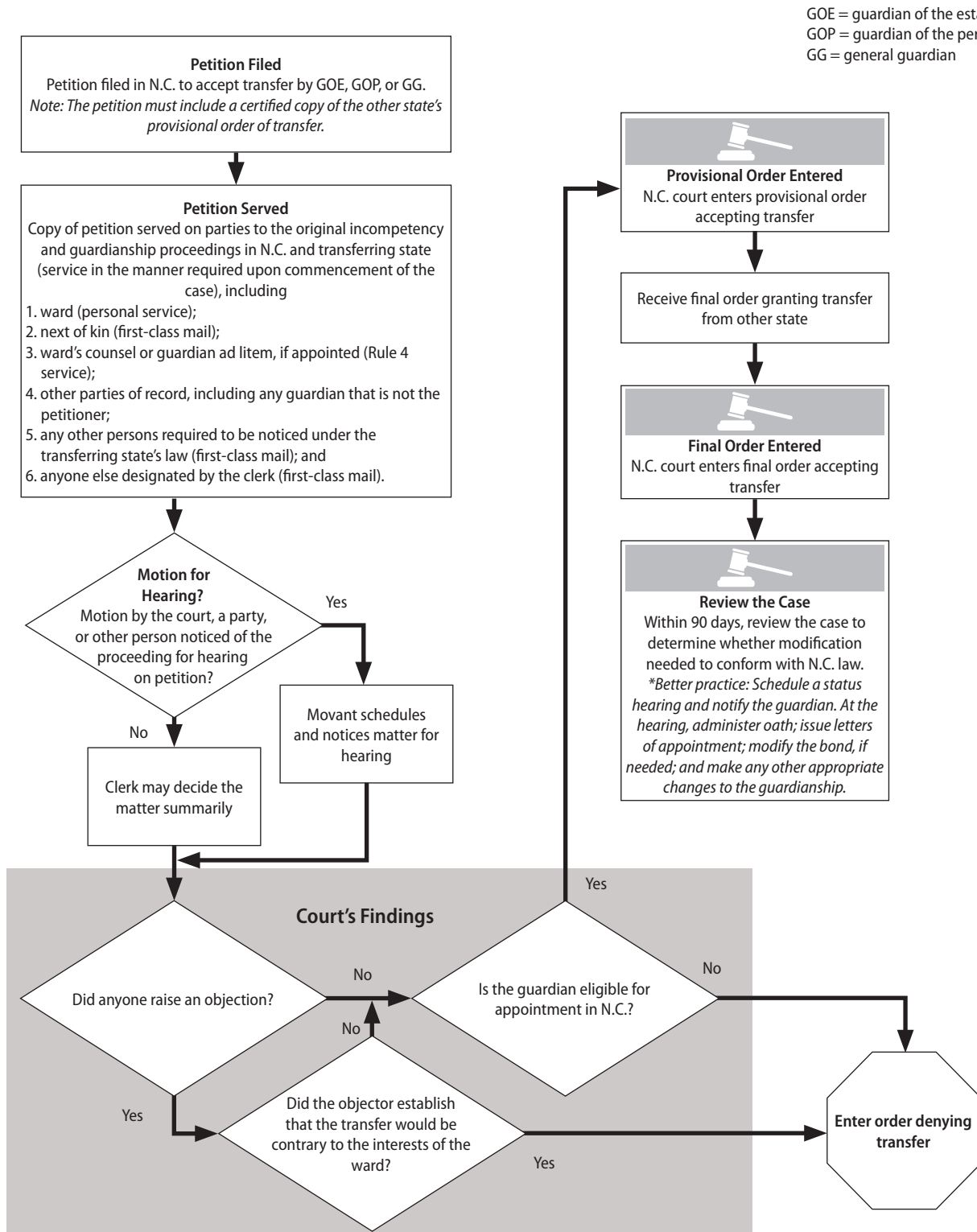
An emergency in this context is a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian of the person is necessary because no other person has authority and is willing to act on the respondent's behalf. G.S. 35B-15(a)(1).



# Appendix B. Transfer of an Existing Incompetency and Adult Guardianship Case from North Carolina to Another State (G.S. 35B-30)



# Appendix C. Transfer of an Existing Incompetency and Adult Guardianship Case to North Carolina from Another State (G.S. 35B-31)



©2016 School of Government. The University of North Carolina at Chapel Hill. This document may not be copied or posted online, nor transmitted, in printed or electronic form, without the written permission of the School of Government, except as allowed by fair use under United States copyright law. For questions about use of the document and permission for copying, contact the School of Government at [sales@sog.unc.edu](mailto:sales@sog.unc.edu) or call 919.966.4119.

To browse a complete catalog of School of Government publications, please visit the School's website at [www.sog.unc.edu](http://www.sog.unc.edu) or contact the Bookstore, School of Government, Campus Box 3330, Knapp-Sanders Building, UNC-Chapel Hill, Chapel Hill, NC 27599-3330; email [sales@sog.unc.edu](mailto:sales@sog.unc.edu); telephone 919.966.4119; or fax 919.962.2709.