

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

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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: Initial filings Gatekeeper Waterfall of priority: Home State, Significant Connection State, Other State
12:55pm	Transfers
1:10pm	Registrations , 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 \(UAGPPJA\)](#)

[UAGPJA 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

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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.

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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

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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.

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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 

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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



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Roadmap

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

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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?

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#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."



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#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.

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

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#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.

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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."



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35B is the Gatekeeper to 35A



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STATE to STATE Analysis



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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

- APPLICATION** In what types of guardianship proceedings does UAGPPJA apply?
 - Adult guardianships – not minors
- 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
- 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.

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Part Two: Details

- Initial Filings
- Transfer of Existing Cases
- Registration of Out of State Orders

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Effective Date: December 1, 2016

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

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INITIAL FILINGS

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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?

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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



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35B is the Gatekeeper to 35A



Can't get to a 35A substantive hearing without authority under 35B.

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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.

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Waterfall of Priority



1st: Home State

2nd: Significant Connection State(s)

3rd: Other State

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

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Home State – Physical Presence

First question upon ANY new filing on or after December 1st:

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.

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Carmen's Case

6 Month Lookback

12-1-15

NC Petition filed on 12-1-16

6 Months: 6-1-16

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Carmen's Case

March 2016: Moves from IA to NC

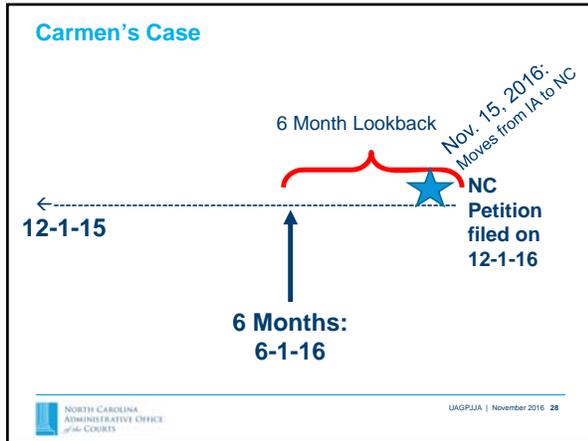
6 Month Lookback

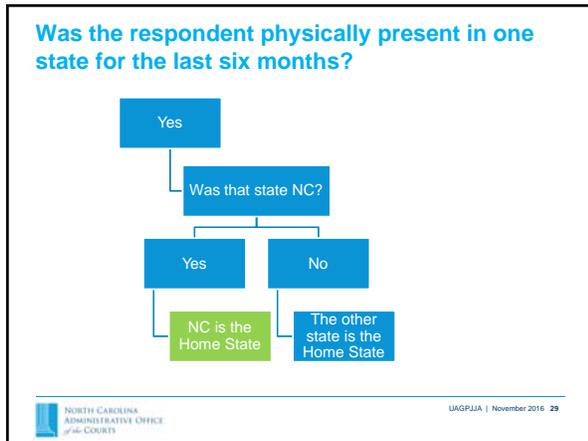
12-1-15

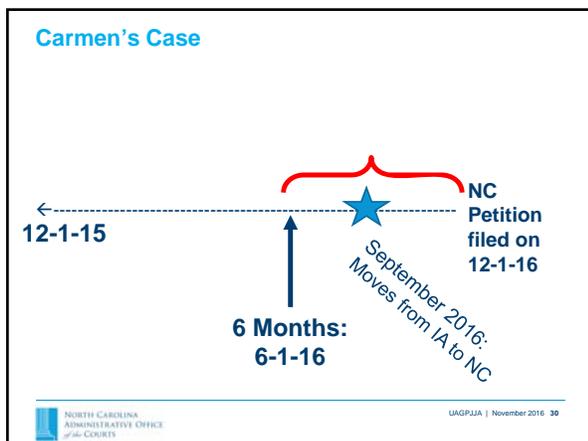
NC Petition filed on 12-1-16

6 Months: 6-1-16

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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?

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Carmen's Case

12 Month Lookback

← 12-1-15

Petition filed on 12-1-16

6 Months: 6-1-16

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Carmen's Case

12 Month Lookback

← 12-1-15

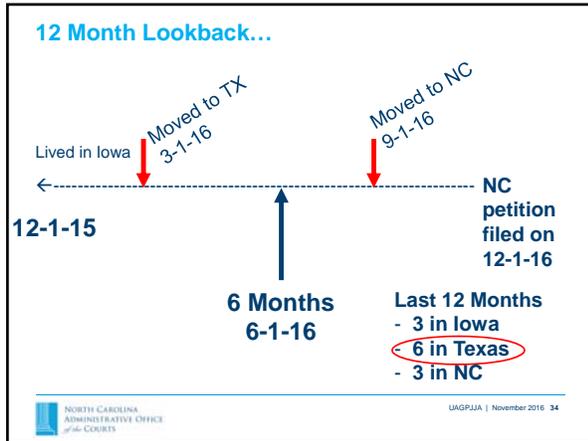
Petition filed on 12-1-16

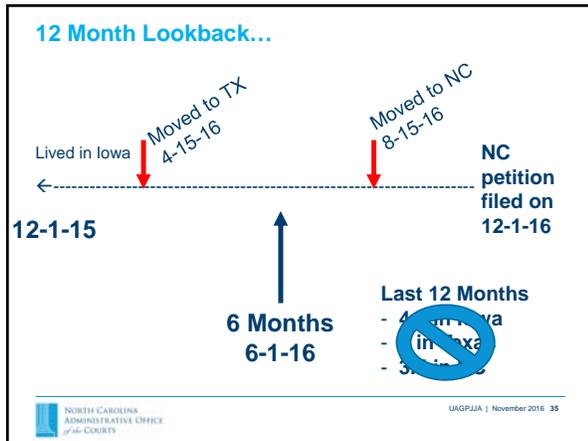
6 Months: 6-1-16

★ Sept. 2016: Moves from IA to NC

Last 12 Months
9 in Iowa
- 3 in NC

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

IN THE MATTER OF:
 Full Name Of Respondent
 Address Of Respondent
 County Of Residence Of Respondent Date Of Birth
 Respondent Indigent
 Name And Address Of Petitioner
 City Of Residence Of Petitioner Telephone No. Of Petitioner
 Petitioner's Relationship To Respondent Or Interest In Proceeding

PETITION FOR ADJUDICATION OF INCOMPETENCE AND APPLICATION FOR APPOINTMENT OF GUARDIAN OR LIMITED GUARDIAN AND INTERIM GUARDIAN

U.S. 30A 1105, 1112, 1114, 1210, 30B-17, 38
 Name And Address Of Attorney For Petitioner
 Telephone No. Of Petitioner's Attorney State Bar No.
 Name And Address Of Treatment Facility If Respondent Is An Inpatient
 Telephone No. Of Treatment Facility

The undersigned, being duly sworn, requests that the Court, after notice and hearing, adjudicate the respondent to be incompetent, and accepts 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:

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

Period of Physical Presence		Address
From	To	
Present	Present	

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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	

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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.

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Carmen's Case: NC Declines Jurisdiction

Timeline details:

- 12-1-15: Start of timeline
- March 2016: Moves from IA to NC
- 6-1-16: Start of 6-month period
- 12-1-16: NC Petition filed on

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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

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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.

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

NC still may exercise jurisdiction if:

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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

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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

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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

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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

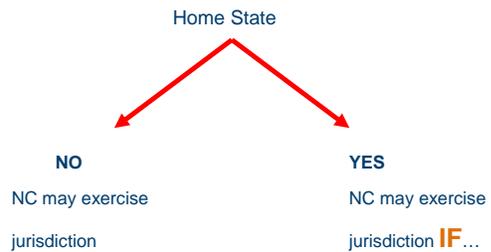
Location of R's family and other persons noticed of the proceeding

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?



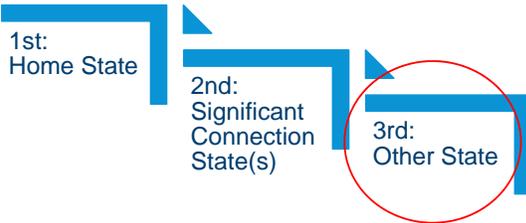
Question #3: If NC is a SCS, does R have a Home State?

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 is an "Other State"



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.

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.

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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)

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TRANSFER OF EXISTING CASES

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The Case of Frank



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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

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UAGPPJA Gives Process for Transfer In and Out

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

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



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STEP 2: Hearing upon request or clerk's motion

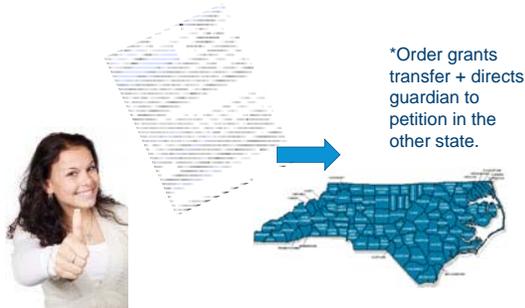


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To enter provisional order of transfer, Clerk must find:

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



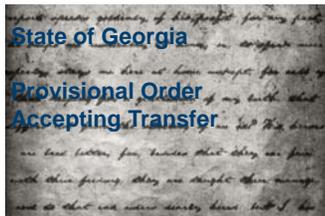
STEP 5: Hearing in that state



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.

STEP 6: GA enters provisional order accepting transfer



STEP 7: Guardian files GA provisional order with NC

**State of Georgia
Provisional Order
Accepting Transfer**

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

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

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

**State of Georgia
FINAL Order
Accepting Transfer**

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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.



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REGISTRATION OF OUT OF STATE CASES



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The Case of Diane



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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

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Process for Registration under UAGPJJA

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graph TD
  A[Guardian notifies the appointing court of intent to register.] --> B[Files certified copies of order and letters and any bond in NC (registration state).]
  B --> C[Court files as foreign judgment.]
  
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- GOP: filed in any appropriate county
- GOE/GG: filed in any county where ward has property

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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

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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**

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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 personality provisions for property of nonresident ward's with out of state guardians remain in effect.

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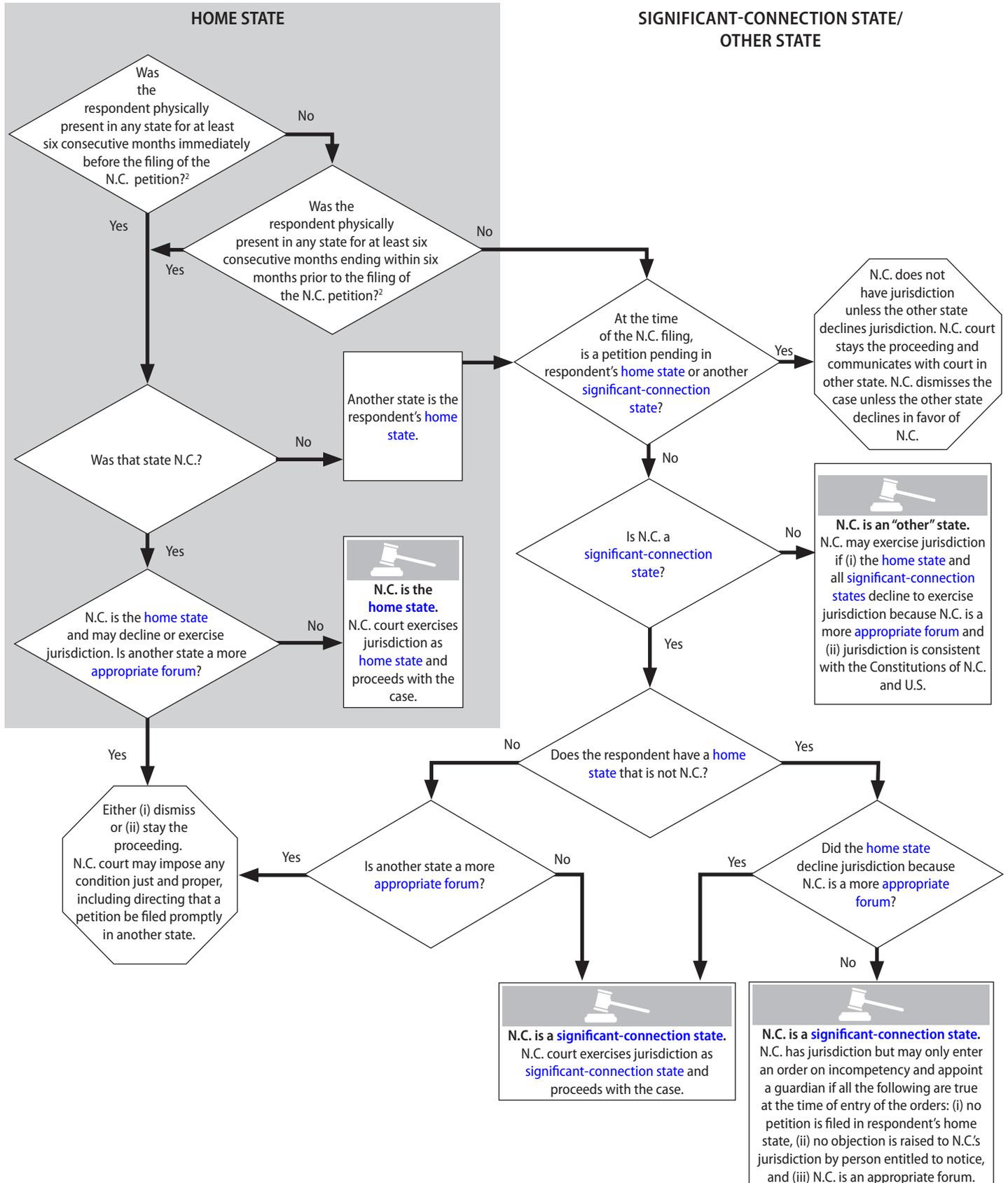
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LAW AND JUSTICE



Appendix A. Does North Carolina Have Jurisdiction to Enter an Incompetency and Adult Guardianship Order?¹ (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:

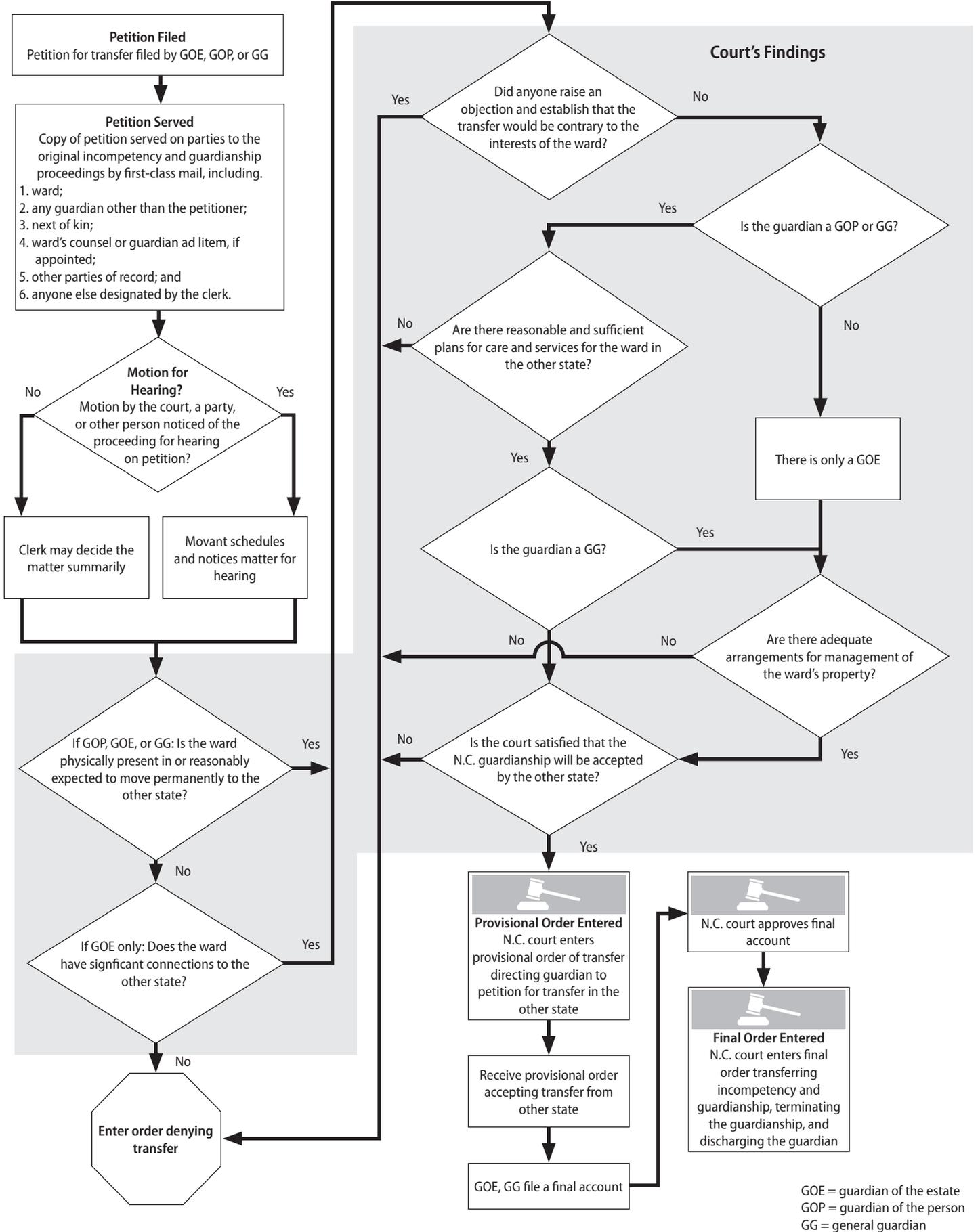
- any expressed preference of the respondent;
- whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;
- the length of time the respondent was physically present in or was 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))

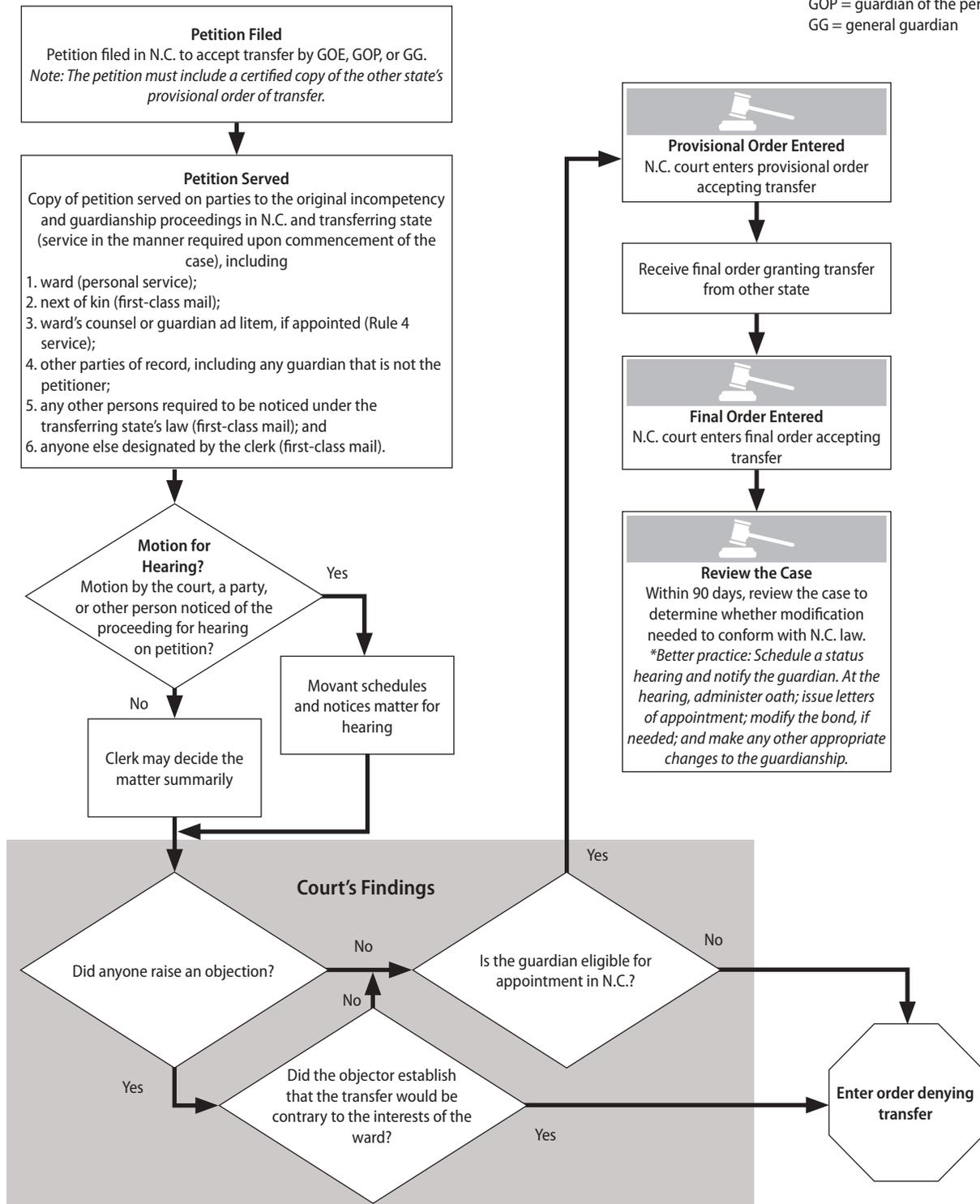
An emergency in this context is a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian of the person is necessary because no other person has authority and is willing to act on the respondent's behalf. G.S.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

GOE = guardian of the estate
 GOP = guardian of the person
 GG = general guardian



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