Article 6.

Appointment of Guardian for a Minor.

§ 35A-1220. Absence of natural guardian.

When a minor either has no natural guardian or has been abandoned, and the minor requires services from the county department of social services, the social services director in the county in which the minor resides or is domiciled shall be the guardian of the person of the minor until the appointment of a general guardian or guardian of the person for the minor under this Subchapter or the entry of an order by a court of competent jurisdiction awarding custody of the minor or appointing a general guardian or guardian of the person for the minor. (1987, c. 550, s.1.)

§ 35A-1221. Application before clerk.

Any person or corporation, including any State or local human services agency through its authorized representative, may make application for the appointment of a guardian of the estate for any minor or for the appointment of a guardian of the person or general guardian for any minor who has no natural guardian by filing an application with the clerk. The application shall set forth, to the extent known:

(1) The minor's name, date of birth, address, and county of residence;
(2) The names and address of the minor's parents, if living, and of other persons known to have an interest in the application for appointment of a guardian; the name of and date of death of the minor's deceased parent or parents;
(3) The applicant's name, address, county of residence, relationship if any to the minor, and interest in the proceeding;
(4) If a guardian has been appointed for the minor or custody of the minor has been awarded, a statement of the facts relating thereto and a copy of any guardianship or custody order, if available;
(5) A general statement of the minor's assets and liabilities with an estimate of the value of any property, including any income and receivables to which he is entitled;
(6) A statement of the reason or reasons that the appointment of a guardian is sought; whether the applicant seeks the appointment of a guardian of the person, a guardian of the estate, or a general guardian; and whom the applicant recommends or seeks to have appointed as such guardian or guardians; and
(7) Any other information that will assist the clerk in determining the need for a guardian or in appointing a guardian. (1987, c. 550, s. 1; 1989, c. 473, s. 24; 1997-443, s. 11A.16.)

§ 35A-1222. Service of application and notices.

A copy of the application and written notice of the time, date, and place set for a hearing shall be served on each parent, guardian, and legal custodian of the minor who is not an applicant, and on any other person the clerk may direct, including the minor. Service shall be provided by G.S. 1A-1, Rule 4, Rules of Civil Procedure, unless the clerk directs otherwise. When service is made by the sheriff, the sheriff shall make such service without demanding his fees in advance. Parties may waive their right to notice of the hearing and the clerk may proceed to consider the application upon determining that all necessary parties are before the court and agree to have the application considered. (1987, c. 550, s. 1; 1989, c. 473, s. 19.)

§ 35A-1223. Hearing before clerk on appointment of guardian.

The clerk shall receive evidence necessary to determine whether a guardian of the person, a guardian of the estate, or a general guardian is required. If the court determines that a guardian or guardians are required, the court shall receive evidence necessary to determine the minor's assets, liabilities, and needs, and who the guardian or guardians shall be. The hearing may be informal and the clerk may consider whatever testimony, written reports, affidavits, documents, or other evidence the clerk finds necessary to determine the minor's best interest. (1987, c. 550, s. 1.)

§ 35A-1224. Criteria for appointment of guardians.

(a) The clerk may appoint a guardian of the estate for any minor. The clerk may appoint a guardian of the person or a general guardian only for a minor who has no natural guardian.

(b) The clerk may appoint as guardian of the person or general guardian only an adult individual whether or not that individual is a resident of the State of North Carolina.

(c) The clerk may appoint as guardian of the estate an adult individual whether or not that individual is a resident of the State of North Carolina or a corporation that is authorized by its charter to serve as a guardian or in similar fiduciary capacities.

(d) If the minor's parent or parents have made a testamentary recommendation pursuant to G.S. 35A-1225 for the appointment of a guardian, the clerk shall give substantial weight to such recommendation; provided, such recommendation may not affect the rights of a surviving parent who has not willfully abandoned the minor, and the clerk shall in every instance base the appointment of a guardian or guardians on the minor's best interest.

(e) Notwithstanding any other provision of this section, an employee of a treatment facility, as defined in G.S. 35A-1101(16), may not serve as guardian for a ward who is an inpatient in or resident of the facility in which the employee works; provided, this subsection shall not apply to or affect the validity of any appointment of a guardian that occurred before October 1, 1987. (1987, c. 550, s. 1; 1989, c. 473, s. 1.)

§ 35A-1225. Testamentary recommendation; guardian for incompetent minor.

(a) Parents are presumed to know the best interest of their children. Any parent may by last will and testament recommend a guardian for any of his or her minor children, whether born at the parent's death or en ventre sa mere, for such time as the child remains under 18 years of age, unmarried, and unemancipated, or for any less time. Such will may be made without regard to whether the testator is an adult or a minor. If both parents make such recommendations, the will with the latest date shall, in the absence of other relevant factors, prevail. In the absence of a surviving parent, such recommendation shall be a strong guide for the clerk in appointing a guardian, but the clerk is not bound by the recommendation if the clerk finds that a different appointment is in the minor's best interest. If the will specifically so directs, a guardian appointed pursuant to such recommendation may be permitted to qualify and serve without giving bond, unless the clerk finds as a fact that the interest of the minor would be best served by requiring the guardian to give bond.

(b) Any person authorized by law to recommend a guardian for a minor by his last will and testament or other writing may direct that the guardian appointed for his incompetent child shall petition the clerk during the six months before the child reaches majority for an adjudication of incompetence and appointment of a guardian under the provisions of this Chapter. If so directed, the guardian shall timely file such a petition unless the minor is no longer incompetent. Notwithstanding the absence of such provision in a will or other writing, the guardian of an

incompetent child, or any other person, may file such petition during the six months before the minor reaches majority or thereafter. (1987, c. 550, s. 1.)

§ 35A-1226. Clerk's order; issuance of letters of appointment.

After considering the evidence, the clerk shall enter an appropriate order. If the clerk determines that a guardian or guardians should be appointed, the order may set forth:

(1) Findings as to the minor's circumstances, assets, and liabilities as they relate to his need for a guardian or guardians; and

(2) Whether there shall be one or more guardians, his or their identity, and if more than one, who shall be guardian of the person and who shall be guardian of the estate. The clerk shall issue the guardian or guardians letters of appointment as provided in G.S. 35A-1206. (1987, c. 550, s. 1.)

§ 35A-1227. Funds owed to minors.

(a) Certain insurance proceeds or other funds to which a minor is entitled may be paid to and administered by the public guardian or the clerk as provided in G.S. 7A-111.

(b) A devise of personal property to a minor may be distributed to the minor's parent or guardian with the approval of the clerk as provided in G.S. 28A-22-7.

(c) A personal representative or collector who holds property due a minor without a guardian may deliver the property to the clerk as provided in G.S. 28A-23-2.

(d) Inter vivos or testamentary transfers to minors may be made and administered according to the North Carolina Uniform Transfers to Minors Act, Chapter 33A of the General Statutes. (1987, c. 550, s. 1; 1989, c. 473, s. 23; 2011-284, s. 37.)

§ 35A-1228. Guardians of children of servicemen; allotments and allowances.

In all cases where a person serving in the Armed Forces of the United States has made an allotment or allowance to a resident of this State who is his child or other minor dependent as provided by the Wartime Allowances to Service Men's Dependents Act or any other act of Congress, the clerk in the county of the minor's residence may act as temporary guardian, or appoint some suitable person to act as temporary guardian, of the person's minor dependent for purposes of receiving and disbursing allotments and allowance funds for the benefit of the minor dependent, when:

(1) The other parent of the child or other minor dependent, or other person designated in the allowance or allotment to receive and disburse such moneys for the benefit of the minor dependent, dies or becomes mentally incompetent; and

(2) The person serving in the Armed Forces of the United States is reported as missing in action or as a prisoner of war and is unable to designate another person to receive and disburse the allotment or allowance to the minor dependent. (1987, c. 550, s. 1; 2011-183, s. 28.)

§ 35A-1229: Reserved for future codification purposes.