

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1123
Senate Judiciary II Committee Substitute Adopted 6/4/03

Short Title: Guardianship Amendments.

(Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

1
2 AN ACT TO EXPRESSLY PROVIDE FOR LIMITED GUARDIANSHIPS FOR
3 INCOMPETENT PERSONS AND TO CLARIFY THE DUTY OF A GUARDIAN
4 AD LITEM APPOINTED TO REPRESENT A PERSON IN AN
5 INCOMPETENCY ADJUDICATION AND TO CLARIFY THE APPOINTMENT
6 OF GUARDIAN AD LITEMS UNDER RULE 17 OF THE RULES OF CIVIL
7 PROCEDURE.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 35A-1212(a) reads as rewritten:

10 "(a) The clerk shall make such inquiry and receive such evidence as the clerk
11 deems necessary to determine:

12 (1) The nature and extent of the needed guardianship;

13 (2) The assets, liabilities, and needs of the ward; and

14 (3) Who, in the clerk's discretion, can most suitably serve as the guardian
15 or guardians.

16 If the clerk determines that the nature and extent of the ward's capacity justifies
17 ordering a limited guardianship, the clerk may do so."

18 **SECTION 2.** G.S. 35A-1215(b) reads as rewritten:

19 "(b) ~~The~~ If the clerk orders a limited guardianship as authorized by G.S.
20 35A-1212(a), the clerk may order that the ward retain certain legal rights and privileges
21 to which ~~he~~ the ward was entitled before ~~he~~ the ward was adjudged ~~incompetent;~~
22 ~~provided, any such incompetent.~~ Any order of limited guardianship shall include
23 findings as to the nature and extent of the ward's incompetence as it relates to the ward's
24 need for a guardian or guardians."

25 **SECTION 3.** G.S. 35A-1107 reads as rewritten:

26 "**§ 35A-1107. Right to counsel or guardian ad litem.**

27 (a) The respondent is entitled to be represented by counsel of his own choice or
28 by an appointed guardian ad litem. Upon filing of the petition, an attorney shall be
29 appointed as guardian ad litem to represent the respondent unless the respondent retains

1 his own counsel, in which event the guardian ad litem may be discharged. Appointment
2 and discharge of an appointed guardian ad litem shall be in accordance with rules
3 adopted by the Office of Indigent Defense Services.

4 (b) An attorney appointed as a guardian ad litem under this section shall
5 represent the respondent until the petition is dismissed or until a guardian is appointed
6 under Subchapter II of this Chapter. After being appointed, the guardian ad litem shall
7 personally visit the respondent as soon as possible and shall make every reasonable
8 effort to determine the respondent's wishes regarding the incompetency proceeding and
9 any proposed guardianship. The guardian ad litem shall present to the clerk the
10 respondent's express wishes at all relevant stages of the proceedings. The guardian ad
11 litem also may make recommendations to the clerk concerning the respondent's best
12 interests if those interests differ from the respondent's express wishes. In appropriate
13 cases, the guardian ad litem shall consider the possibility of a limited guardianship and
14 shall make recommendations to the clerk concerning the rights, powers, and privileges
15 that the respondent should retain under a limited guardianship."

16 **SECTION 4.** G.S. 35A-1102 reads as rewritten:

17 "**§ 35A-1102. Scope of law; exclusive procedure.**

18 This Article establishes the exclusive procedure for adjudicating a person to be an
19 incompetent adult or an incompetent child. However, nothing in this Article shall
20 interfere with the authority of a judge to appoint a guardian ad litem for a party to
21 litigation under Rule 17(b) of the North Carolina Rules of Civil Procedure."

22 **SECTION 5.** This act becomes effective December 1, 2003.