

Some Q&A on UAGPPJA

More than two months have passed since the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) went into effect in North Carolina. I've blogged about this topic a couple of times before. If you are just tuning in to this new law, you can read more about UAGPPJA [here](#) and [here](#). I'd like to use the post today to go through some questions I've received since the December 1, 2016 effective date. The questions are divided up according to the three main areas of the law: initial filings, transfer, and registration. The stories you are about to read are true; names have been changed to protect the innocent.*

[Initial Filings: G.S. 35B, Article 2](#)

Jane recently returned to NC after living and working in Maine for the last 10 years. She moved to NC with her adult son, John. Jane and John have been physically present in NC for only two months, but Jane wants to file a petition here to have John adjudicated incompetent and an application to be appointed as his guardian. Does Jane have to wait until John has been physically present in NC for six months before filing the petition here?

No. Although NC is not John's [home state](#), it does not preclude Jane from filing a petition in NC and alleging NC has jurisdiction over John's case as a [significant connection](#) or [other](#) state. Despite the fact that John recently moved here, NC may have jurisdiction to act if, for example, John has a significant connection to NC other than mere physical presence and substantial evidence concerning John is available here. [G.S. 3B-15\(a\)\(3\)](#).

The Petition for Adjudication of Incompetence and Application for Appointment of Guardian ([SP-200](#)) was revised in response to UAGPPJA to obtain information from the petitioner that will be helpful to the court in determining whether it has jurisdiction to act. However, it may not be comprehensive for purposes of determining whether NC is a significant connection or other state. Therefore, if Jane intends to file in NC and allege NC has jurisdiction to act as a significant connection state, Jane may want to attach an addendum to the petition making the basis for jurisdiction clear and along with other information related to John's connection to NC – such as voting registration, vehicle registration, social relationships, and receipt of services. [G.S. 35B-15\(b\)](#).

Lisa files form SP-200 in NC alleging her father, Bob, is incompetent and needs a guardian. Bob lived his entire life in NC and owns real and personal property here. Lisa recently moved Bob to a nursing facility in Tennessee near where she lives. Due to his deteriorating condition, it is unlikely that Bob will be able to return to live at his home and he will likely stay in Tennessee. Given the petition is already filed in NC and NC has jurisdiction as a significant connection state, does the NC court have to adjudicate incompetence and appoint a guardian in NC?

No. The NC court could decline to exercise jurisdiction in favor of a more appropriate forum – such as Tennessee. Even where an NC court has jurisdiction to act as a home state, significant connection state, or other state, the court may decline to exercise jurisdiction if another state is a more appropriate forum. The NC court would look at all relevant factors to determine whether another state is a more appropriate forum, including the specific factors set forth in in [G.S. 35B-20\(c\)](#) such as the express preferences of the respondent, the nature and location of the evidence, and the ability of the court to monitor the guardian if appointed by an NC court.

In Bob's case, if the NC court determines Tennessee is a more appropriate forum, the court must dismiss or stay the proceeding. [G.S. 35B-20\(b\)](#). The court may also impose any condition that the court considers just and proper, including that a petition for the appointment of a guardian is filed in Tennessee if, for example, it appears that Bob is in need of assistance of a guardian. *Id.*

[Transfer: G.S. 35B, Article 3](#)

Is there a form petition for transfer to or from NC?*

No. The N.C. Administrative Office of the Courts may adopt forms in the future. However, no forms related to transfer of a case to or from NC are available at this time.

When will the court hold a hearing in response to a petition for transfer to or from NC?

If the guardian or a person entitled to notice of the transfer files a motion requesting a hearing on the petition, the court must hold a hearing. [G.S. 35B-30\(c\)](#); [G.S. 35B-31\(c\)](#). However, if no one entitled to notice requests a hearing, the court may decide the matter summarily (without a hearing). *Id.*

The court may elect, on the court's own motion, to hold a hearing on the petition. *Id.* The court will likely hold a hearing when an objection to transfer is filed or when the petition for transfer does not contain adequate information for the court to make the requisite findings to enter a provisional order of transfer. For example, if the court reviews a petition for transfer of a guardianship of the person to another state and determines that it lacks information satisfactory to the court concerning plans for care and services for the ward in the other state, the court may, on its own motion, hold a hearing on the petition. [G.S. 35B-30\(d\)](#).

How long after a transfer petition is filed before the court will enter a provisional order of transfer?

The transfer statutes, [G.S. 35B-30](#) (out of NC) and [G.S. 35B-31](#) (to NC), do not specify how long the court must wait after a petition for transfer is filed before entering a provisional order authorizing

transfer. The court may determine a reasonable amount of time after confirming service on those entitled to notice – it is likely that the court will want to ensure anyone who receives notice has an adequate time to file a motion requesting a hearing and/or raise objections to the transfer. Given the expedited nature of incompetency and guardianship proceedings, my guess is that a reasonable amount of time may be anywhere from 10 to 30 days from completed service. See, e.g. [G.S. 35A-1108\(a\)](#).

I am a guardian and I want to transfer a guardianship from California to NC. The ward already resides in NC and has for many years. Should my first stop be an NC courthouse to file something?

No. The guardian first needs to file a petition in the state that currently has jurisdiction over the guardianship – in this example, California. Once California enters a provisional order of transfer, the guardian then obtains a certified copy of the provisional order of transfer from the California court and files it along with a petition for transfer in NC.

May the guardian file a petition for transfer to or from NC by mail?

Yes, the guardian may mail the petition to the office of the clerk of superior court in the appropriate county in NC or file it in person.

[Registration: G.S. 35B, Article 4](#)

Tom owns real property in NC and lives in Georgia. Donna was appointed as Tom's general guardian by a Georgia court and wants to sell Tom's NC real property. Is registration of the Georgia order in NC sufficient to give Donna the authority to sell Tom's NC real property?

No. UAGPPJA as enacted in NC did not repeal the requirements for ancillary guardianship – in fact, it specifically retained them. See [S.L. 2016-72, Sec. 3](#) (“Nothing in this act shall be construed to otherwise affect the requirements for seeking an ancillary guardianship under G.S. 35A-1280 or for petitioning the court for the removal of personalty from the State under G.S. 35A-1281.”)

Therefore, the effect of registration does not change anything in NC for Donna who seeks to sell Tom's NC real property. She will still need to apply for ancillary guardianship by petition under [GS 35A-1280](#) and then as the ancillary guardian file a special proceeding to sell the real property under [GS 35A-1301](#).

An NC court adjudicated Alexis incompetent and appointed Caleb as her guardian of the person. Caleb plans to register the NC guardianship of the person order in another state. Does NC have a form Caleb may file with the NC court to give notice of his intent to register

the NC guardianship in another state?

No. A guardian of the person, guardian of the estate, and general guardian must give notice of his or her intent to register an NC order in another state. [G.S. 35B-36](#); [G.S. 35B-37](#). However, there is no form notice available at this time. A simple statement notifying the NC court of the intent to register and the name of the state of registration will likely suffice. *Id.*

*Bonus points to anyone who can name the source of this quote (without Google). Leave your answer in the comments below.

** This, by far, has been the number one question received.

- **Update as of 8/1/2017:** The NC Administrative Office of the Courts published new forms in July of 2017 related to G.S. Chapter 35B and UAGPPJA. They include the following:

- [AOC-E-350](#) (Petition To Transfer Incompetency Proceeding And Guardianship To Another State)
- [AOC-E-351](#) (Provisional Order On Petition To Transfer Incompetency Proceeding And Guardianship To Another State)
- [AOC-E-352](#) (Final Order On Petition To Transfer Incompetency Proceeding And Guardianship To Another State)
- [AOC-E-355](#) (Petition To Accept Guardianship On Transfer From Another State)
- [AOC-E-356](#) (Provisional Order On Petition To Accept Guardianship On Transfer From Another State)
- [AOC-E-357](#) (Final Order On Petition To Accept Guardianship On Transfer From Another State)
- [AOC-E-359](#) (Statements In Support Of Registration [] Guardianship Of The Person Order [] General Guardianship/Protective Order* From Another State)