

UAGPPJA is Here to Stay

I've been spending a lot of my time recently focused on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA; pronounced, "you-ah-gap-jah"). UAGPPJA is a [uniform law](#) enacted by the NC General Assembly during this past legislative session as [S.L. 2016-72](#). I previously discussed an earlier version of the bill in a blog post available [here](#). The law creates a new G.S. Chapter 35B and applies to incompetency and **adult** guardianship proceedings under [G.S. Chapter 35A](#). It does not apply to minor guardianships under Article 6 of G.S. Chapter 35A.

Initial Filings, Transfer, and Registration

As I noted in my earlier post, UAGPPJA as enacted does not change the underlying substance of G.S. Chapter 35A. The standards remain the same in NC to adjudicate someone incompetent and appoint a guardian on his or her behalf. Effective December 1, 2016 for all new filings on or after that date, Article 2 of G.S. Chapter 35B changes the way a NC court initially obtains jurisdiction (the authority of the court to hear the case) over these types of proceedings. Effectively, G.S. Chapter 35B is now a gatekeeper to G.S. Chapter 35A proceedings pertaining to adults. When a new incompetency petition is filed in NC, a party must allege and a court must determine that NC, rather than some other state, has jurisdiction to act under G.S. Chapter 35B before adjudicating incompetency and appointing a guardian under G.S. Chapter 35A. Failure to do so could result in orders entered by the NC court in the proceeding being declared void for lack of subject matter jurisdiction and vacated on appeal. See *State ex rel. Hanson v. Yandle*, 235 N.C. 532, 535 (1952) ("A lack of jurisdiction or power in the court entering a judgment always avoids the judgment, and a void judgment may be attacked whenever and wherever it is asserted . . ." (internal citation omitted)).

In addition to impacting new filings, Article 3 of G.S. Chapter 35B provides a new process for transferring existing cases in and out of NC and repeals the existing process for transferring cases into NC under [G.S. 35A-1113](#). Finally, Article 4 addresses the process for registering out of state guardian of the person, guardian of the estate, and general guardian orders in NC. The transfer and registration provisions apply as of December 1, 2016 to all cases in NC, regardless of whether they were filed before, on, or after that date.

Upcoming Webinar

In preparation for the December 1st effective date, my colleague at the School of Government, [Aimee Wall](#), and I along with legal counsel and the organizational development team at the N.C. Administrative Office of the Courts will be offering a webinar coupled with training materials on this new law. The webinar is free and will be on Monday, November 28th from 12-1:15 p.m. It will be the perfect post-Turkey Day pick me up. Registration is now available on-line [here](#) for court officials and members of the public. The session qualifies for continuing legal education (CLE)

credit.

NC Registration of Out of State Guardianship Orders

To build on what I'm sure will be overwhelming excitement about the webinar announcement, I thought I'd go ahead and initiate some discussion on the blog today about the last of the three main areas of UAGPPJA – registration of out of state orders. The purpose of registration is to facilitate the enforcement of guardianship orders in other states. [UAGPPJA, Final Act, Article 4, General Comment](#). The types of scenarios that typically invoke registration issues are when a non-resident of NC owns real or personal property here or he or she seeks some sort of medical or other personal care service in NC. The non-resident is incapacitated and a guardian has been appointed on his or her behalf in another state. The guardian and the ward have no intention of moving to NC, thus transfer of the case is inapplicable. However, the guardian does want to exercise some decision-making authority in NC – either with respect to the person or property of the ward.

On and after December 1st, a guardian of the person, guardian of the estate, or general guardian appointed in another state may register an out of state order in NC. G.S. 35B, Article 4. Registration is available whether the guardianship is full or limited. G.S. 35B-19 prescribes the process for registering a guardianship of the person order. G.S. 35B-20 sets forth the process for registering a general guardianship order or a “protective order.” Note that UAGPPJA uses the term “protective order” in a way that could generate some confusion with other areas of NC law, such as domestic violence and adult protective services. In this context, the term refers to an order appointing a guardian of the estate, general guardian, or other order related to the adult's property. UAGPPJA does not apply to G.S. 50B, G.S. 50C, or G.S. 108A proceedings. G.S. 35B-3(2) and (3).

The guardian begins the registration process notifying the court that appointed the guardian of the guardian's intent to register the order in NC. The guardian obtains certified copies of the order appointing the guardian and letters of office from the court as well as the copy of any bond. Authenticated copies are not required.

Next, the guardian files certified copies of the other state's letters and the order and a copy of the bond, if any, in NC and the NC court files the copies as a foreign judgment. If the order is an order for a guardian of the person, the documents may be filed by the guardian of the person in any appropriate county. For example, a county where a ward seeks treatment or other health care. If the order is an order for a guardian of the estate or general guardian, then the documents may be filed in any county where the ward has property.

Effect of Registration in NC

Registration of an out of state guardianship order in NC gives the guardian the authority to exercise

all powers in NC authorized in the order appointing the guardian from the other state, unless an action is prohibited by the laws of NC. G.S. 35B-21(a).

The most significant impact of the new registration provisions will be on the enforcement of out of state guardianship orders pertaining to a person. If a health care provider in NC refuses to recognize an out of state guardianship order, registering the order NC has the effect of giving the guardian the authority to exercise all powers authorized by the out of state order and not prohibited under NC law, including making certain health care decisions. If a third-party refuses to recognize any validly registered order in NC, the court may grant any relief available under NC law to enforce the registered order. G.S. 35B-21(b).

The impact is less significant with respect to guardianships involving property. The legislation expressly preserved the existing provisions in G.S. Chapter 35A applicable to ancillary guardianship under G.S. 35A-1281 and removal of personalty from the state under G.S. 35A-1280. S.L. 2016-72, Sec. 3. As a result, registering a protective order or order related to the ward's property in NC does not eliminate the obligation:

1. To seek the appointment of ancillary guardian in NC when a nonresident ward has real or personal property in NC that will remain in the state; or
2. To initiate a special proceeding by petition to remove personal property of a nonresident ward from NC.

Because these requirements were retained in NC law, registration of an out of state order appointing a guardian to manage the ward's property will often be redundant. This is in part because registration of the order in NC does not appear necessary for the NC court to obtain jurisdiction over those proceedings. G.S. Chapter 35B-11(a)(2) provides that a NC court always has special jurisdiction to issue an order with respect to real or tangible personal property located in NC.

One area that is not redundant is that registration of an order that is the other state's equivalent of a general guardianship order appears to now provide the general guardian appointed by another state with the authority to maintain actions and proceedings in NC on behalf of the incapacitated person. See G.S. 35B-21(a); G.S. 1A-1, Rule 17(b)(1) and (2) (providing that a general or testamentary guardian "within this State" has the authority to sue or defend on behalf of an incompetent person). If the general guardian initiating or defending an action is not a resident of NC, the guardian is subject to conditions imposed upon nonresident parties by NC law. G.S. 35B-21(a).

What do you think about the registration provisions? What questions do you have given this general outline of the process? Leave them below and perhaps we'll be able address them through the webinar or other training materials available on November 28th.