

Removal and Replacement of Guardian

The following is a list of actions that are grounds for petitioning the Clerk for removal and replacement of the ward's guardian.

Permissive Removal

The Clerk has the authority to remove the guardian if the petitioner proves that the removal would be for the better management of the ward's estate (general guardian or guardian of the estate) or for the better care and maintenance of the ward and his/her dependents (general guardian or guardian of the person).

For example, a change of guardian would likely be for the ward's better care and maintenance if the ward moves to a location across the state from his/her guardian of the person.

Note that because these are grounds for permissive removal, the Clerk has the power to remove the guardian or take other action, but is not required to do so.

Emergency Removal

If the Clerk finds reasonable cause to believe that there is an emergency threatening the physical well-being of the ward or causing risk of substantial injury to the ward's estate, the Clerk may order removal of the guardian without a hearing.

Mandatory Removal

If the petitioner proves any of the grounds listed below, the Clerk will be required to remove the guardian or take other action to protect the ward's interests:

- The guardian wastes the ward's money
- The guardian uses the ward's money for himself/herself, or any person other than the ward. The guardian does not care for or maintain the ward or the ward's dependents in a suitable manner.

- The guardian is likely to become insolvent.
- The guardian is likely to move out of North Carolina.
- The guardian's original appointment was made on the basis of a false representation or a mistake.
- The guardian has a private interest which may interfere with the ability to carry out his/her duties as guardian.
- The guardian has been adjudicated incompetent and has not been restored to competence.
- The guardian has been convicted of a felony in the United States.
- The guardian was originally unqualified when he/she was appointed and remains unqualified.
- The guardian no longer meets the qualifications to be guardian.
- The guardian is the ward's spouse and has lost his/her spousal rights through divorce, separation, annulment or abandonment.
- The guardian fails to post, renew, or increase bond as required by law or court order.
- The guardian refuses or fails without justification to obey any citation, notice, or process served on him in regard to the guardianship.
- The guardian fails to file the required accountings with the Clerk.
- The Clerk finds the guardian unsuitable to continue serving as guardian for any reason.
- The guardian is a non-resident of North Carolina and refuses or fails to obey any citation, notice, or process served on him/her.

A ward (the person adjudicated incompetent), the ward's attorney, the ward's family, or any other interested person may ask the court to remove the ward's guardian and appoint a replacement guardian. This is done by filing a petition with the Clerk in the county in which the ward was originally determined to be incompetent. The petition should request that the Clerk review the guardianship and explain the reasons why the request is being made.

After receiving the petition, the Clerk will order a hearing at which the petitioner will present evidence. At the conclusion of the evidence, the Clerk may order the guardian to consider

or pursue a different course of action, be more responsive to the needs of the ward, file timely reports or accountings, or the Clerk may remove and replace the guardian.

It is strongly recommended that the petitioner consider alternatives before filing such a petition. There may be quicker, more effective, and/or less costly remedies available, such as writing a letter to the guardian or asking an ombudsman or other advocate to intervene with the guardian.

Instructions for Petitioning the Clerk

In order to remove and replace the guardian, the petitioner must prove to the Clerk that the guardian has either violated the obligations imposed upon him/her by law, or that removal of the guardian would be for the better care and maintenance of the ward. To help with this, enclosed is a list of actions that are grounds for petitioning the court for removal of a guardian.

The forms required to file a petition with the Clerk include the petition, the verification, and the certificate of service. Enclosed are samples of each of these documents that you may use, as well as samples pre-filled for Jane Doe, which may also be helpful. Below are step-by-step instructions for filling out these forms.

The Petition

1. At the top left of the form, next to "County of," fill in the name of the county in which the original incompetency determination took place.
2. At the top right, fill in the file numbers from the original determination. You can obtain this from the Clerk of Court in that county. The file from the original determination will have a number followed by "SP" and then another number. There may be another file regarding your estate and that will have a number followed by an "E" and then another number.
3. The ward's name (First name Last name) will go on the line under "In the Matter of."
4. Whoever is petitioning the court must fill in their name as Petitioner. Remember this can be the ward, a member of the ward's family, or any interested party.
5. In paragraph 2, fill in when the original incompetency determination was made (this will be on the papers from the clerk); the name of the county in which the determination took place, and who filed the petition for the determination of incompetency.
6. In paragraph 3, fill in the name of the ward's current guardian and check the box next to the type of guardianship the person has.

7. In paragraph 4, explain why the guardianship should be reviewed. Using the enclosed Grounds for Removal as a guide, describe how the guardian has violated his/her duties, or why removal of the guardian would be in the ward's best interests. Be as specific as possible.
8. In paragraph 3 on page 2, fill in the name of the ward's current guardian.
9. In paragraph 4 on page 2, fill in the name of the person or entity that you would like to be the ward's new guardian.
10. Sign and date page 2 of the petition. Print your name on the second line, next to "Pro Se."

The Verification

1. On the Verification (Page 3), print the petitioner's name in the first paragraph.
2. Verify that the petition is accurate and sign and date *in the presence of a notary public*.
3. Print your address below your signature.
4. The notary public will fill out the rest of the verification.

The Certificate of Service

1. Fill in the name and address of the current guardian.
2. Fill in the name and address of the person who originally petitioned the court for the determination of incompetence. This is the person listed in paragraph 2 on page 1 of the petition.
3. Sign and date the certificate of service.

Before filing the petition, you must send a copy of the Petition, Verification, and Certificate of Service to both the ward's current guardian and the original petitioner. Send these copies to the addresses listed on the Certificate of Service, and send them by certified mail.

You are now ready to file the petition. Mail the original and two (2) copies to the Clerk of Court at the county courthouse. Include a postage-paid envelope addressed to you and a note requesting the Clerk return a file-stamped copy to you. This way you will have a copy of the petition dated when the court received it.

You may also file your petition in person at the county courthouse. Bring the original and two (2) copies with you.

After you file your petition, you are entitled to a court hearing before the Clerk. You are entitled to be represented by an attorney, if you are able to pay for one. If the ward is not able to pay for an attorney, the Clerk will appoint a guardian ad litem (“GAL”) to represent him/her at the hearing. A GAL only represents the ward in the court case to have his/her guardian removed; a GAL is not like the ward’s guardian of the person or guardian of the estate.

If the Clerk decides the petitioner has proven that the guardian has violated his/her legal duties or that the guardian’s removal would be in the ward’s best interests, the Clerk may revoke the guardian’s letters of appointment and appoint a successor guardian, or the Clerk may order the guardian to take other action.

Disability Rights North Carolina is a 501(c)(3) nonprofit organization headquartered in Raleigh. It is a federally mandated protection and advocacy system with funding from the U.S. Department of Health and Human Services, the U.S. Department of Education, and the Social Security Administration.

Its team of attorneys, advocates, paralegals and support staff provide advocacy and legal services at no charge for people with disabilities across North Carolina to protect them from discrimination on the basis of their disability. All people with disabilities living in North Carolina are eligible to receive assistance from Disability Rights NC.

Contact us for assistance or to request this information in an alternate format.

Disability Rights North Carolina

3724 National Drive, Suite 100

Raleigh, North Carolina 27612

www.disabilityrightsncc.org

919-856-2195

877-235-4210 (toll free)

888-268-5535 (TTY)

919-856-2244 (fax)

WHEREFORE, Petitioner moves the court as follows:

1. That the court appoint a Guardian Ad Litem to represent the ward.
2. That the court hold a hearing in this matter as set out in N.C. Gen. Stat §§ 35A-1207(c)
3. That the court enter an order removing _____ as the ward's guardian.
4. That the court enter an order appointing _____ as the successor guardian.
5. For such other and further relief that the court may Order.

This the _____ day of _____, 20__.

_____, Pro Se

Verification

I, _____, affirm under penalty of perjury that I am the
Petitioner in the foregoing Petition to Remove and Replace Guardian and that all statements in
the Petition are accurate to the best of my knowledge.

Signature

Date

Address

Subscribed and sworn to before me
on this _____ day of _____, 20__.

Notary

(My Commission Expires: _____)

Certificate of Service

I hereby certify that I have served a copy of the foregoing Petition For Removal and Replacement of Guardian on all necessary parties by depositing a copy in the United States mail prepaid and addressed as follows:

Name and Address of Guardian

Name and Address of Original Petitioner

This the _____ day of _____, 20__.

Petitioner

Sample Petition for Jane Doe

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE SUPERIOR COURT
BEFORE THE CLERK

File No: _____ SP _____
_____ E _____

IN THE MATTER OF
JANE DOE

PETITION FOR
REMOVAL AND REPLACEMENT
OF GUARDIAN

Now comes Petitioner, JANE DOE [OR INTERESTED THIRD PARTY FILLING OUT THE PETITION], (hereinafter "Petitioner") without counsel and shows unto the court:

1. This is a petition for removal and replacement of a guardian pursuant to N.C. Gen. Stat §§ 35A-1290 and 35A-1207(a).
2. The ward was adjudicated incompetent on JAN 1, 2006 by the Clerk of Superior Court of WAKE County pursuant to a petition filed by JOHN DOE.
3. The ward's current guardian is SARAH DOE. The guardian is a:
 General Guardian Guardian of the Person Guardian of the Estate
4. The petitioner requests that the ward's current guardianship be reviewed for the following reason(s):

For the past six months, beginning in February, 2008, Sarah Doe has written checks from Jane Doe's personal checking account to make payments on Sarah Doe's home mortgage with Bank of America.

WHEREFORE, Petitioner moves the court as follows:

1. That the court appoint a Guardian Ad Litem to represent the ward.
2. That the court hold a hearing in this matter as set out in N.C. Gen. Stat. §35A-1207(c).
3. That the court enter an order removing SARAH DOE as the ward's guardian.
4. That the court enter an order appointing MARK DOE as the successor guardian.
5. For such other and further relief that the court may Order.

This the 11th day of August, 2008.

JANE DOE, Pro Se

Sample Verification for Jane Doe

I, JANE DOE, affirm under penalty of perjury that I am the
Petitioner in the foregoing Petition to Remove and Replace Guardian and that all statements in the
Petition are accurate to the best of my knowledge.

Signature

8-11-2008
Date

101 Main Street
Anytown, North Carolina 27612
Address

Subscribed and sworn to before me

on this ____ day of _____, 20____.

Notary

(My Commission Expires: _____)

Sample Certificate of Service for Jane Doe

I hereby certify that I have served a copy of the foregoing Petition For Removal and Replacement of Guardian on all necessary parties by depositing a copy in the United States mail prepaid and addressed as follows:

Name and Address of Guardian

Sarah Doe

102 Main Street

Another town, North Carolina 27606

Name and Address of Original Petitioner

John Doe

103 Main Street

Anytown, North Carolina 27612

This the 11th day of August, 2008.

Jane Doe, Petitioner