

# Preventing, Identifying, and Responding to Elder Abuse in Incompetency and Adult Guardianship Cases

A BENCH CARD FOR NORTH CAROLINA  
CLERKS OF SUPERIOR COURT

## I suspect elder abuse. What do I do?

*In an emergency, call 911.*

**Make a report.** If the older adult is a disabled adult and is subject to abuse, call the county department of social services (DSS) to make a report. The primary goal of DSS is to mobilize protective services to protect disabled adults from abuse, neglect, and exploitation. A report may be made anonymously. A “disabled adult” is a person who is (1) 18 years of age or older or a lawfully emancipated minor, (2) present in the State of North Carolina, and (3) physically or mentally incapacitated. G.S. 108A-101(d).

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## Why this bench card?

This bench card is intended to help clerks of superior court prevent, identify, and respond to elder abuse in incompetency and adult guardianship cases where the clerk is the presiding judicial official.

## What is elder abuse?

Elder abuse is not defined in North Carolina law. It generally includes an intentional act, or a failure to act, by a caregiver or another person in a relationship involving an expectation of trust that causes or creates a risk of harm to an older adult.<sup>1</sup>

## Who is an older adult?

In North Carolina, some statutes recognize 60 as "older," while others focus on adults over 65. Some laws, such as those covering adult protective services (APS) and guardianship, apply more generally to all adults but are triggered only if the adult is disabled (APS) or incompetent (guardianship). This bench card focuses on incompetent older adults who are the subject of incompetency and guardianship cases.

## What is guardianship?

Guardianship is the legal relationship created by a state court that gives a person or entity (the guardian) the authority to make decisions for an individual who lacks capacity (the ward) with respect to the individual's personal affairs, financial affairs, or both. Guardianship may be an effective tool to stop ongoing abuse and protect an incompetent older adult from future abuse. Or it may be the source of abuse if, for example, the guardian fails to provide care for the older adult or takes advantage of and exploits the authority he or she is granted by the court. Guardianship is governed by Chapters 35A and 35B of the North Carolina General Statutes (hereinafter G.S.).

### Key Terms

- **Guardian of the Estate (GOE):** A guardian appointed solely for the purpose of managing the property, estate, and business affairs of a ward. G.S. 35A-1202(9).
- **Guardian of the Person (GOP):** A guardian appointed solely for the purpose of performing duties relating to the care, custody, and control of a ward. G.S. 35A-1202(10).
- **General Guardian (GG):** A guardian of both the estate and the person. G.S. 35A-1202(7).
- **Incompetent Adult:** An adult or emancipated minor who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property, whether the lack of capacity is due to mental illness, intellectual disability, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition. G.S. 35A-1101(7).
- **Respondent:** A person who is alleged to be incompetent. G.S. 35A-1101(15).
- **Ward:** A person who has been adjudicated incompetent or an adult or minor for whom a guardian has been appointed by a court of competent jurisdiction. G.S. 35A-1101(17).
- **Interim Guardian:** A guardian, appointed prior to adjudication of incompetence and for a temporary period, for a person who requires immediate intervention to address conditions that constitute imminent or foreseeable risk of harm to the person's physical well-being or to the person's estate. G.S. 35A-1101(11).
- **Multidisciplinary Evaluation:** An evaluation that contains current medical, psychological, and social work evaluations as directed by the clerk and that may include current evaluations by professionals in other disciplines. G.S. 35A-1101(14).

# Steps to Prevent, Identify, and Respond to Elder Abuse Before the Appointment of a Guardian

The provisions listed below are some of the statutory and other tools available to the clerk to prevent, identify, and respond to abuse of an older adult after an incompetency petition is filed and before the clerk issues letters of appointment to a guardian for an older adult who has been declared incompetent.

**1.** Know the **types and signs** of elder abuse.

**2.** Appoint an **effective and knowledgeable guardian ad litem attorney** to represent the older adult in the proceeding.

G.S. 35A-1107.

**3.** Continue the hearing or make other accommodations to **allow the older adult to be present** at the hearing when appropriate.

G.S. 35A-1108(a).

**4.** Consider ordering a **multidisciplinary evaluation (MDE)**; specifically request that the MDE evaluate the suitability of a prospective guardian.

G.S. 35A-1111; 35A-1212(c).

**5.** Appoint an **interim guardian** when there is (1) an imminent or foreseeable risk of harm to the older adult or the older adult's property that requires immediate intervention and (2) reasonable cause to believe that the older adult is incompetent.

G.S. 35A-1114; 35A-1112(b1).

**6.** Require **criminal and civil record checks** on potential guardians.

G.S. 35A-1201.

**7.** Close the **incompetency hearing** from all persons other than those directly involved in or testifying at the hearing when appropriate.

G.S. 35A-1112(a).

**8.** Set an **appropriate bond for the GOE or GG**.

G.S. 35A-1114(e); 35A-1231.

**9.** Call potential guardians as **witnesses** and ask them questions, in the clerk's discretion.

G.S. 8C-1, Rule 614; 35A-1212(a).

**10.** Appoint a **qualified, responsible guardian** after the older adult is adjudicated incompetent.

G.S. 35A-1201(a)(2).

## Types & Signs of Elder Abuse<sup>2</sup>

- |                               |   |
|-------------------------------|---|
| <b>Financial exploitation</b> | <ul style="list-style-type: none"><li>■ Changes in banking practices, including unexplained withdrawals of large sums of money</li><li>■ Abrupt changes in a will or in other financial documents</li><li>■ Unexplained disappearances of funds or property</li><li>■ Bills unpaid despite the availability of adequate financial resources</li><li>■ Extraordinary interest by family member or "new friend" in older adult's assets</li></ul> |
| <b>Caregiver neglect</b>      | <ul style="list-style-type: none"><li>■ Dehydration</li><li>■ Hyperthermia or hypothermia</li><li>■ Hazardous or unsafe living conditions/arrangements</li><li>■ Inadequate or inappropriate clothing</li><li>■ Absence of eyeglasses, hearing aids, dentures, or prostheses</li><li>■ Unexpected or unexplained deterioration of health</li><li>■ Untreated bed sores</li><li>■ Lack of routine medical care and/or medications</li></ul>      |
| <b>Emotional abuse</b>        | <ul style="list-style-type: none"><li>■ Being emotionally agitated</li><li>■ Being extremely withdrawn</li><li>■ Depression or suicidal ideation</li><li>■ Hypervigilance when in the presence of the abuser</li></ul>  |
| <b>Physical abuse</b>         | <ul style="list-style-type: none"><li>■ Bruises, welts, burns</li><li>■ Broken bones</li><li>■ Open wounds</li><li>■ Broken eyeglasses</li><li>■ Overdose or under-use of prescribed drugs</li><li>■ Sudden changes in behavior</li><li>■ A caregiver's refusal to allow visitors to see an older adult alone</li></ul>   |
| <b>Sexual abuse</b>           | <ul style="list-style-type: none"><li>■ Difficulty walking or sitting</li><li>■ Pain or itching in genital area</li><li>■ Unexplained venereal disease or genital infections</li><li>■ Bruises around the breasts, inner thighs, or genital areas</li></ul>   |

## Interviewing the Potential Guardian<sup>3</sup>

The clerk, as the presiding judicial official, has the authority under North Carolina law to call and ask questions of a potential guardian. G.S. 8C-1, Rule 614; 35A-1212(a). Below is a list of questions the clerk may consider asking the potential guardian when determining whether to appoint that person as guardian for an incompetent older adult.

### Relationship to the Older Adult

- What is your relationship to the older adult?
- When is the last time you saw the older adult?
- How frequently do you see the older adult in person? Talk on the phone or by other means?
- Do you have disagreements with the older adult? If so, how do you resolve them?
- Have you already been making decisions for the older adult and providing care to the older adult, such as by taking the older adult to the doctor and other appointments?

### Knowledge of the Older Adult

- What are the older adult's current problems, challenges, needs, and goals? How do you plan to address these as the older adult's guardian?
- What are the older adult's strengths?
- What are the older adult's weaknesses?

### Plans for the Older Adult

- What is your plan for providing care for the older adult in the areas where the older adult lacks capacity? Be specific as to plans for finances, healthcare, residence, and other items on the Guardianship Capacity Questionnaire (AOC-SP-208).
- How do you plan to keep the older adult safe from abuse, neglect, and exploitation?
- What are the older adult's wishes with respect to finances, healthcare, residence, employment, visitors, hygiene, etc.? How do you plan to meet those expressed wishes?
- What do you think is best for the older adult? How do you plan to ensure that the older adult's best interests are met?
- How do you plan to handle situations where you disagree with the older adult's express wishes?

### Suitability of the Potential Guardian

- Do you want to serve as the older adult's guardian?
- Do you understand what it means to be a guardian for another person?
- Do you have any medical, mental health, or substance use problems? How do you plan to manage these while caring for the older adult? Would they impact your ability to care for the older adult?
- Do you have any financial problems? Would they impact your ability to serve as a guardian? Have you ever filed for bankruptcy? Have you pre-qualified for a bond? (GOE or GG only)
- Have you served as a fiduciary for someone before? Do you understand that serving as a guardian may require you to prepare inventories and accountings of the older adult's property? If you are unable to perform that function, how do you plan to seek support or assistance when you have questions? (GOE or GG only)
- Do you understand that to take certain actions with respect to the older adult's property you may need court approval? (GOE or GG only)
- Do you live near or with the older adult? If not, how do you plan to visit and ensure appropriate care for the older adult? Do you have access to transportation?
- Have you ever been arrested? Do you have any outstanding legal matters or problems?
- Are you employed? If so, with who and for how long?
- Are you responsible for any other people?
- Is there anything else that might affect your ability to serve as guardian?
- Do you have relationships with important persons in the older adult's life? If so, identify and describe them.

# After the Appointment of a Guardian

The provisions listed below are some of the statutory tools available to the clerk to prevent, identify, and respond to elder abuse of an older adult after the clerk issues letters of appointment to a guardian for an older adult who has been declared incompetent.

**1.** Know the **red flags** for elder abuse by a guardian.

**2.** Treat any request filed related to the guardianship as a **motion in the cause and schedule a hearing**.

G.S. 35A-1207(b) and (c).

**3.** Enter appropriate **ex parte orders** to protect the older adult if there is reasonable cause to believe that an emergency exists after a guardian has been appointed, pending disposition of the matter at a hearing.

G.S. 35A-1207(d).

**4.** Adjust the bond of the GOE or GG as necessary.

G.S. 35A-1230 to -1236.

**5.** Conduct oversight of the guardian, including the following.

- Review and compel any required status reports, inventories, and accountings and
- Hold a hearing requiring the guardian to explain any deficiencies in any required status reports, inventories, and accountings.

G.S. 35A-1242 and -1244 (status reports); 35A-1261 and -1262 (inventories); 35A-1264 and -1265 (accounting).

**6.** Remove the guardian and appoint a successor guardian, when appropriate.

- Remove the guardian without a hearing if an emergency exists that requires removal or
- In the absence of an emergency, on information or complaint, hold a hearing to determine whether to remove the guardian and whether to enter an order that will ensure the better management of the older adult's estate or the better care of the older adult.

G.S. 35A-1291 (emergency); 35A-1290 (after hearing).

## Red Flags for Elder Abuse by a Guardian

### Abuse may be occurring if a GOE or a GG<sup>4</sup>

- fails to file, or inadequately or incompletely files, inventories and accountings;
- fails to respond to court notices or orders to complete such filings;
- pays the older adult's bills late, irregularly, or not at all;
- maintains a lifestyle that is more affluent than the one the guardian enjoyed prior to being appointed guardian;
- fails to post, renew, or increase a bond or has a bond revoked;
- has expenditures reflected on an accounting that are not appropriate for the older adult's lifestyle or setting;
- refuses to pay for services and care the older adult is able to afford;
- is the subject of complaints by the older adult's family or friends;
- fails to secure the older adult's property;
- executes transfers of the older adult's property to himself or herself as the guardian;
- makes gifts or loans of the older adult's property without the approval of the court;
- wastes the older adult's money; or
- lists questionable entries on an accounting, including
  - utilities charges when the older adult is not living at home;
  - items purchased that are not present in the adult's home, such as a television, cell phone, or other electronics;
  - checks written for cash;
  - unexplained ATM withdrawals;
  - vehicles purchased that are not appropriate for the older adult's transportation or not needed by the older adult; and
  - a lack of entries for expected expenses, such as health insurance, property insurance, or taxes.

### Abuse may be occurring if a GOP or GG

- fails to file, or inadequately or incompletely files, any required status reports;
- fails to respond to court notices or orders to complete such filings;
- fails to visit the older adult regularly;
- fails to oversee the older adult's care;
- isolates the older adult from others;
- induces fear, submissiveness, or unusual deference to the guardian by the older adult;
- changes the older adult's residence without notifying the court or other family members or next of kin;
- fails to take the older adult to necessary medical appointments;
- refuses to allow the older adult to be interviewed alone;
- treats the older adult like a child or in a dehumanizing way;
- responds defensively when questioned;
- blames the older adult for acts such as incontinence; or
- fails to engage the older adult in decisions about the adult's day-to-day life.

# Resources

UNC School of Government, *Legal Framework for North Carolina's Elder Protection System Manual* and Resource Library.  
[protectadults.sog.unc.edu](https://protectadults.sog.unc.edu)

N.C. Administrative Office of the Courts, Responsibilities of Guardians in North Carolina.  
<https://www.nccourts.gov/documents/forms/responsibilities-of-guardians-in-north-carolina>

N.C. Administrative Office of the Courts, Understanding Guardianship Video.  
<https://www.nccourts.gov/about/nc-administrative-office-of-the-courts/training/understanding-guardianship>

UNC School of Government, *North Carolina Guardianship Manual*.  
<https://defendermanuals.sog.unc.edu/defender-manual/5>

Consumer Financial Protection Bureau, Managing Someone Else's Money Guides.  
<https://www.consumerfinance.gov/consumer-tools/managing-someone-elses-money/>

U.S. Department of Justice, Elder Justice Initiative.  
<https://www.justice.gov/elderjustice/mdt-toolkit>

National Center for State Courts Center for Elders and the Courts.  
[www.eldersandcourts.org](http://www.eldersandcourts.org)

The National Center on Elder Abuse.  
[www.ncea.acl.gov](http://www.ncea.acl.gov)

## Notes

1. Definition from the U.S. Centers for Disease Control and Prevention (CDC).
2. Examples adapted from Lori A. Stiegel, *Legal Issues Related to Elder Abuse: A Desk Guide for Law Enforcement* 9-15 (A.B.A. COMM'N ON LAW & AGING, 2015).
3. Adapted from George J. Demakis, *Evaluating Potential Guardians for Adults Adjudicated Incompetent*, ARCHIVES OF CLINICAL NEUROPSYCHOL, vol. 31, no. 6 (Sept. 2016): 562-69, <https://academic.oup.com/acn/article/31/6/562/1726865>.
4. Adapted from Nat'l Ass'n for Ct. Mgmt., *Adult Guardianship Guide* (2013-2014), [https://nacmnet.org/sites/default/files/publications/AdultGuardianshipGuide\\_withCover.pdf](https://nacmnet.org/sites/default/files/publications/AdultGuardianshipGuide_withCover.pdf).