First and foremost, welcome to our new members of the Elder & Special Needs Law Section who have joined us this year! We're so glad you're here. A huge thank you is also owed to our returning members who contribute so much to our Section and all of the projects that we have underway at any given time. I am excited to be serving as your Chair and am looking forward to working with all of you this year.

Our Section continually strives to enrich and improve the lives of the elderly and those with disabilities, and we can do that best when we support and are supported by those with the same goal. I encourage each of you reading this to make the most of your membership and find a way to be actively involved in the Section this year. Whether you are a veteran practitioner or brand new to this practice area, we value your perspective, time, and ideas. We have several committees and projects underway already, and a few upcoming items to get you started are:

- **Law School Table Talks** – Our Membership Committee Chair, Jennifer Roden, is heading up efforts to ensure that law students know about our Section and the benefits of joining. She would love your help! If you are an alum or in the area, please register for one of these events on the NCBA website.

- **Upcoming CLE Opportunities** – We have a ROCKSTAR CLE committee this year (chaired by Nicki Applefield, Kara Gansmann and...
David Silver), and the amount of progress that they have made on the year’s CLEs is incredible. Don’t miss the 22nd Annual Elder & Special Needs Law Symposium – Feb. 22 and 23 at the Pinehurst Resort. Save the Date for two days of CLE and networking with colleagues! Our CLE committee has arranged for Valerie Peterson of ElderCounsel to be our keynote speaker this year.

- **Pro Bono** – Our Section has partnered with Legal Aid of North Carolina to develop a program that volunteer attorneys can use to present at various Senior Centers on elder abuse and financial exploitation. Please consider registering as a volunteer in your area if you have not done so already! James Young and Angeleigh Dorsey have done the heavy lifting on this for you so you already have all the materials that you need to give the presentation – we just need your time and energy in our efforts to protect this vulnerable population.

- **Newsletter** – Kathleen Rodberg and Daniel Jenkins are our co-editors of “Gray Matters” this year and are always in need of volunteer writers! Please contact them for more details on submitting articles and topics of interest. For newbies, the newsletter is a great way to contribute and get your name out there. For veteran practitioners – we need your expertise and are all interested in what you have to say!

Also, in an effort to create opportunities for our members to connect and support each other all across the state, our Council members will be hosting various meetups in their neck of the woods over the coming months. These won’t be anything formal, but rather, just a chance for us to get together and catch up on life and practice. Stay tuned for emails coming out about this, and if you don’t see a meetup in your area – create one! Just give me a call or send me an email, and I’ll be happy to help you on this.

If you have ideas, feedback, or questions, I’d love to hear from you personally. You can reach me on my cell at 704-774-0971. You can also find me at my office at cferri@ctklawyers.com or 704-553-8221. If you find yourself near me in the Charlotte area, I hope you’ll let me know. Thanks in advance for all that you do – I’m so excited to work with you in the 2017-2018 term.

Casey N. Ferri practices exclusively in the areas of elder law, estate planning, and estate administration at Conrad Trosch & Kemmy, PA in Charlotte. She is licensed to practice in both North Carolina and South Carolina. Casey is a graduate of the Elder Law Concentration program at Stetson University College of Law.
Elder Mediation, continued from the front page

Introductory Interviews

The introductory interviews, typically conducted by telephone, are, in this model, free of charge. The purpose is to explain the mediation process, identify the stakeholders, and gauge willingness to participate. The list of interviewees begins with suggestions from the person who first contacted the mediators. As the interviews proceed, other stakeholders may be identified and contacted, including financial, legal, health care or spiritual advisers, friends, or even former family members. In these discussions, the mediator assesses if there is a willingness of the key people to participate. Those willing are asked to sign an Agreement to Participate, which articulates the tenets of mediation such as neutrality and confidentiality, the role and limits of the mediator and the role of the participant. When a stakeholder is unwilling, the mediator and the family ascertain whether to proceed. The question hinges on assessing the limits and strength of decisions made without the stakeholder or perhaps the value of a discussion in the absence of a stakeholder. Indeed, a central issue may be devising ways to work with or without the family member who declines the mediation.

A key issue is whether the elder participates. Often this hinges on the elder’s emotional and cognitive capacity. Including the elder is preferred. Even with somewhat diminished capacity and inability to help with decisions, the voice of the elder may be transformative. A geriatric social worker or mental health professional may be helpful in determining the capacity of an elder to participate in the mediation. These professionals often attend the mediation to represent the voice of an elder lacking capacity to participate directly.

Private Sessions

This phase begins after securing participation agreements from the essential stakeholders. Extensive interviews, mostly by telephone, delve deeply into issues, concerns and goals for the mediation. The elder, if possible and practical, is interviewed in person. This avoids any difficulty an elder may have with telephone conversations. It also may help ease any concerns the elder might have with the mediator and the mediation process. Once interviews have been completed, a picture of the family dynamics begins to form.

During the interviews, the lead mediator screens for evidence of elder abuse or neglect. If suspected, the mediator must act decisively. Mediation may be deemed unsafe to the elder, family members or the mediator. When there is suspicion of unlawful abuse, the mediator determines whether to report it to the appropriate authority. This ethical responsibility is never taken lightly and can be one of the most difficult decisions a mediator has to make. If it is appropriate to proceed, the mediator must determine how to handle the issue and behaviors that may become problematic.

Meeting Planning

At this stage, the lead mediator briefs the co-mediator about the case. Together they prepare a proposed agenda and a topic list; these items are prepared without attribution in order to preserve the confidentiality of the stakeholders. Both items are sent to the participants, usually by email, for comment and approval.

If some topics appear to require specific information or expertise, the mediators may suggest that participants invite professional advisers, consultants or advocates to attend the mediation.

Care is taken to find the right location. Consideration is given to the neutrality of the venue, and its comfort and accessibility to the elder. Lighting and acoustics are also important as well as access to rest rooms, break out space for private caucuses should they be needed, and a place for refreshments.

Scheduling the mediation is often a challenge. Time allotted for mediation is dictated by the family’s needs, including the complexity of the issues they plan to discuss. If families are geographically dispersed, travel may become an issue. Weekends or holidays may be the best option. Video or telephonic participation, though not preferred, may be necessary. In most cases, it is advisable to reserve a full day, though it may not be needed. At other times, one session is not enough. If anticipated, the mediator may suggest contingently scheduling a meeting the following day.

Family Mediation

Because the group has been introduced to the mediator who conducted the intake interviews, when the mediation begins the co-mediator welcomes the participants individually. The co-mediator reviews the principles of mediation, underscoring that it is voluntary and affirming the duties of the mediator to maintain confidentiality, impartiality and neutrality, as well as any exceptions to these duties. The co-mediator also explains the mediation process, including the importance of active listening and keeping an open mind.

Next, the participants, all of whom were asked at the private session to prepare to share with the group their interests, concerns and goals for the mediation, are offered five minutes to do so, one at a time. In order to produce a “safe space” for the speakers, these comments proceed without interruption, cross-conversation, or criticism from other participants, and the mediators also refrain from asking questions, summarizing, or reframing.

The group is then asked if they wish to establish ground rules for the meeting. Ground rules might address how participants wish to handle interruptions or personal attacks – for example, whether they should be discouraged, and, if so, how actively and by whom, a mediator or family member? The mediators may also offer suggestions about rules they have found to be helpful in past discussions.

When the group has agreed about how they should proceed, the next step is reviewing the topic list which they helped create in the planning stage. Topics that are approved are recorded and displayed on a flip chart or a white board so the entire group is able to view the list at the same time, together. Topics are not usually listed in any particular order of importance since they may change as the conversation proceeds. The group is then asked where to start. The mediators may suggest starting with a topic that might be easier to resolve in order to acclimate the family to the process, but, again, the decision is up to the participants.

Participants explore each topic by sharing their respective interests and concerns, which the mediator also lists. The purpose is to channel attention to the intricacies of the problem rather than focusing only on solutions. Greater understanding of the issue gives rise to more creative solutions and diverts family members from pressing strongly held positions on the subject.

After individual interests are fully explored, the discussion turns to proposals. A proven method is to ask the group to list any option that comes to mind. That list is displayed alongside the one for interest and concerns. Once ideas are exhausted, the mediator facilitates a discussion of the merits of the proposals.
A test often used to assess group agreement is called the Consensus Building Model, developed by Lawrence Susskind and Jeffrey Cruikshank. Each participant is asked to rate their support of a proposal. One can wholeheartedly agree with a proposal, merely think it is a good idea, or simply agree that they can live with it. Otherwise, one can have reservations or serious concerns about a proposal and want or need to talk about these with the rest of the group. Finally, one may completely disagree with the proposal and wish to block it. Those who cannot support the idea are asked to explain their concerns and suggest constructive alternatives. A consensus is reached when everyone is able to at least live with the idea.

Another, more streamlined version of the method is the “Yes-No-Maybe” approach, in which for each proposal the stakeholder has three options: “yes,” “no,” or “maybe. A proposal is approved only when it receives all “yes” votes and rejected with a single “no”. A “maybe” voter must offer an amendment that would change their “maybe” into a “yes.”

After agreement is reached, the discussion turns to implementation – that is, how will the agreement be accomplished? This discussion centers around questions such as who will do what, and when; whether there are any costs involved and how they will be paid; are there time constraints and will a schedule be advisable or even necessary. The mediators may be more active during this phase, asking questions to help the group develop a plan that is reasonably achievable. And, if needed, they may use either of the two models described above to aid the family to achieve a consensus about how to go forward.

At the end of the mediation, the mediators may assist in drafting a summary of the session. This summary simply lists any understandings reached throughout the mediation, preferably using the group’s own words. The summary is not signed by any of the participants and states expressly that it is not intended to be a binding contract, but may be used by legal counsel to prepare one if the group desires.

Follow Up

Following up with the family can be extremely valuable, knowing that mediators will be checking progress adds motivation to continue working. Mediators ask the family at the end of the meeting for permission to follow up. This service is without charge. If the family agrees, a mediator will contact a designated family member to discuss progress and to offer advice and referrals as needed. Over time, if new issues emerge, families may choose to participate in additional mediation; follow up contact can help with this decision as well. (For later sessions telecommunication may be a more practical approach when the family members are geographically dispersed and the cost of travel is a concern. Familiarity with the process and skills learned in the first mediation can make this a more viable option than for the initial mediation.)

Conclusion

Elder mediation can be extremely beneficial to families planning proactively for the care of aging family members, or to those who are experiencing age-related family crises. It requires commitment of time, emotion, resources and patience, but that commitment can be well-rewarded. When families work hard together and find resolution to their concerns the experience is empowering. Elder mediation strives to foster communication and strengthen relationships, and it offers a model for families to later resolve – perhaps on their own, without a mediator – new issues that are likely to arise in the future.
The Kiddie Tax and a Big Exception

By Bob Mason

Recently someone asked me how the Kiddie Tax applies to trust distributions. We were discussing third party special needs trusts that were being taxed as nongrantor trusts.

Of course, it depends.

**Kiddie Tax Background**

The so-called “Kiddie Tax” taxes the unearned income of a minor (and certain other dependents) at the parents’ highest marginal tax rate. As we’ll see, there is a huge exception in the context of most of our practices.

Under the Kiddie Tax, minors (and other young adult dependents - notably college students under 24 relying on Mommy and Daddy’s largesse) are taxed at the parents’ highest marginal tax rate on UNEARNED income over $2,100. IRC § 1(g)(1). If the child is over 19 and under 24 and is earning more than half of what his or her support needs are, the Kiddie Tax will not apply (alas, my college freshman son is not thus exempted).

The first $1,050 of the child’s unearned income is not taxed. The next $1,050 is taxed at the child’s tax rate. The parents’ highest marginal tax rate kicks in over $2,100.

**Example:** Don Draper set up an investment account for the benefit of his daughter Sally Draper at a Madison Avenue advisory firm (Jonathan Blattmachr’s firm Pioneer Wealth Partners . . . it IS on Madison Avenue . . . REALLY . . . not making that up). During the year the investment account pays Sally $5,000 in interest and dividends. She has earned income of $3,500. The first $1,050 of unearned income is not taxed, the next $1,050 unearned income is taxed at Sally’s rate, as is her $3,500 earned income. The $2,900 excess unearned income is taxed to Sally at Don’s marginal rate of 39.6% (given his seven figure payout from Sterling/Cooper Advertising Agency). Alternatively, Don could report Sally’s unearned income subject to the Kiddie Tax on his return.

Distributions of income from nongrantor trusts to a beneficiary generally retain their character in the hands of the beneficiary. Under the distributable net income (DNI) rules of IRC § 634, the beneficiary will report these distributions on her tax return. If the beneficiary is a minor or (other young person covered by the Kiddie Tax) distributions of unearned income that are carried out of the trust by DNI are subject to the Kiddie Tax rules.

**Big Exception For Qualified Disability Trusts**

Distributions from a “Qualified Disability Trust” (QDT) are not considered unearned income subject to the Kiddie Tax rules. IRC § 4(g)(4)(C).

A Qualified Disability Trust “is a disability trust described in subsection (c)(2)(B)(iv) of section 1917 of the Social Security Act [42 U.S.C. § 1396p(c)(2)(B)(iv)] . . . and all of the beneficiaries of the trust as of the close of the taxable year are determined by the Commissioner of Social Security to have been disabled . . . for some portion of the year.” IRC § 642(b)(2)(C)(ii).

A “(B)(iv)” trust refers to a trust “solely for the benefit of” a disabled individual under age 65. This raises a number of interesting issues:

My narrow reading of the statute is that 42 USC § 1396p(c)(2) (B)(iv) describes just two types of trusts: D4A Trusts and Sole Benefit Trusts. Such trusts have a number of requirements, chief among them being “solely for the benefit of” a single individual. Nevertheless, the tax statute refers to “all of the beneficiaries.” Strange, no?

A number of commentators (and, in practice, apparently the IRS) take a broader view that as long as “all” of the beneficiaries have been determined to be disabled, the exemption is available to any third party trust that benefits solely disabled beneficiaries during the applicable tax year.

The QDT may have non-disabled remainder beneficiaries. IRC § 642(b)(2)(C)(ii) (last sentence).

A QDT may not be a grantor trust. Essentially a grantor trust is treated as the alter ego for income tax purposes of the grantor who funded the trust. Without getting too deep into technicalities, I take the position that a special needs trust under IRC § 1396p(d)(4)(A) (a “D4A Trust”) that has been funded by the beneficiary is always a grantor trust. If my narrow reading of IRC § 642 is correct, QDT treatment would be available to “sole benefit trusts” only, which gives credence to the more liberal interpretation of the statute because it seems improbable that Congress would wish to tailor such an incredibly narrow benefit for disabled individuals.

Incidentally, QDTs are entitled to the much larger personal exemption available to an individual ($4,050) as opposed to the $100 or $300 exemption usual available to trusts. IRC § 642(b)(2)(C). In fact, that seems to be the thrust of the QDT statute.

But the juiciest item for the special needs law attorney is that if a third party special needs trusts is, in fact, considered a QDT distributions to the beneficiary are not deemed unearned income. Accordingly, the distributions are taxed at the beneficiary’s rates and not subject to the Kiddie Tax.

**Example:** Back to Don Draper and Sally’s investment account. Because Sally has developed some sort of severe disability Don sets up the investment account under a third party special needs trust and names his partner Roger Sterling as trustee. All distributions subject to taxation will be taxed at Sally’s (no doubt) very low tax rate. That’s because the otherwise unearned income will be treated as “earned income” for purposes of the Kiddie Tax rules.
Using a Testamentary Trust to Simplify Probate: A Strategy for the Client without a Revocable Trust

By Walton Davis

A few years ago, I helped an executor administer an estate that poured over to an unfunded revocable trust. Although the decedent failed to use the trust to avoid probate, the trust made probate easy. The executor immediately transferred all the probate assets to herself as trustee and conducted the administration privately inside the trust. The probate proceeding was like a surviving spouse's summary administration: there was only one beneficiary, the trustee, who received all the assets soon after the decedent's death subject to the estate's liabilities.

After filing the inventory, her accounting to the probate court was brief. She reported one receipt, a refund collected after the inventory was filed, and no disbursements because the trustee, not the executor, paid the estate liabilities. She reported distribution of all assets to herself as trustee, the sole beneficiary under the will.

She still had to administer the trust. She paid the liabilities of the estate and trust, accounted privately to the true beneficiaries and distributed the net assets to them. Because of the abbreviated probate, though, she and I did not work as hard as we would have without the trust.

This easy probate is also available to folks who do not need or want a revocable trust or cannot afford one. A stand-alone will can leave everything to a testamentary trust, appoint the same person as executor and trustee, and require the trustee to pay all estate liabilities. Upon the testator's death, the executor can immediately distribute everything to himself as trustee and administer the estate inside the trust. The true beneficiaries are named in the testamentary trust. The trust terminates after all estate liabilities are satisfied. Under N.C.G.S. Section 36C-2-209, the administration of this trust is private unless the will requires the trustee to file court accounting.

A brief accounting is not the only advantage. The accounting is easy to prove to the court. The executor makes no disbursements and so is relieved of delivering the stack of canceled checks and bank statements that supports a conventional probate accounting. The executor does not have to prove post-death income because the assets were distributed to the trust before they could produce income. The trustee's signed receipt proves distribution of the entire estate to the trust, even when countless true beneficiaries received a share from the trustee. If the trustee fails to get a receipt from the beneficiary of the photographs or if an unhappy child refuses to acknowledge receipt of tangible personal property, the court's review of the accounting is unaffected.

If a sale of real property is necessary or advisable, the trustee can sell unless the will prohibits a sale. Title to real property is vested in the trustee under the residuary clause. The executor need not petition the court for possession, custody or control of real property to obtain the power to sell. The value of the real property will not be included in determining the maximum executor's commission.

If the fiduciary's lawyer is paid from trust assets, the executor is relieved from petitioning for approval of attorney fees. If there are publicly traded investments in the probate estate, the executor can avoid the headache of investment accounting to the court. The probate accounting does not report dividends and interest produced after distribution of the investments to the trust. It does not report reinvestments and other purchases inside the trust with the necessary adjustment to the number of units and carrying value; nor sales inside the trust with the gain or loss and necessary adjustment to units and value; nor distributions of shares of each investment to the true beneficiaries at adjusted value.

The client can designate the trust as beneficiary of a life insurance policy or transfer-on-death account if the designation of true beneficiaries is too complicated for the financial institution to accept. The death benefit and TOD assets, because they pass to the trust rather than the estate, will avoid probate.

An unreasonable true beneficiary has no standing to intervene in the estate proceeding and must initiate a separate proceeding against the trustee to pursue a claim. (This coin has another side, though, where the beneficiary is reasonable or the fiduciary breaches a duty.)

Unless there is a caveat or other litigation involving the estate, probate should be easy no matter how difficult the trust administration is.

This approach does not relieve the trustee from delivering a complete accounting to the true beneficiaries. The beneficiaries, however, may waive trust accountings under N.C.G.S. Section 36C-8-813(c). If the preparation of a formal accounting will be expensive, a beneficiary might waive the accounting if the trustee provides sufficient documentation and satisfies the beneficiary that no breach of fiduciary duty has occurred.

The probate described above is not as easy as a summary administration. Accordingly, this approach should not be used by a married client who wishes to leave everything to his spouse. It also should not be used by a client who wishes to leave the entire estate to a single nonspousal beneficiary, provided that the beneficiary is also the executor. Such an executor can distribute the entire estate to himself soon after the decedent's death, assume the liabilities of the estate and achieve the same results described above.

The “pour-over-to-a-testamentary-trust” will has disadvantages. It appears more complicated than necessary, inserting a middle man between the executor and the true beneficiaries. Clients may not like the apparent complexity.

The executor-trustee cannot elect to treat the estate and trust as the same taxpayer. She may have to file an income tax return for the estate in addition to returns for the trust. The trust is stuck with calendar year reporting and consequences that fiscal year reporting might have avoided or mitigated.

The fiduciary may be tempted to claim double compensation, seeking the maximum executor's commission and also trustee compensation. A testator can prevent this by limiting or prohibiting executor compensation. Such a limitation should not be a deal-breaker because reasonable compensation is still available under the trustee compensation statutes.
Title to the real property does not pass under the will to the true beneficiaries. Instead it passes to the trustee and the trustee must deliver a deed to the beneficiaries. If, however, the client does not want the fiduciary to have the power to sell real property, the client can achieve a direct transfer of title by specifically devising real property to the true beneficiaries.

The executor and beneficiaries lose the protections of probate court supervision. But the protections are not free. The expense explains, in part, the prevalence of revocable trusts.

I find that clients who see how the testamentary trust can reduce estate administration expenses tend to like it, despite the disadvantages. So I propose the plan to clients in situations where the client does not need or declines a revocable trust.

When drafting a pour-over-to-a-testamentary-trust will, I rely on the BB&T Estate Planning Forms Manual, using the Manual’s “Simple Will for a Married Person with Minor Children” (or “Will Form No. 2” in Part 2 of the Manual, beginning on page 3-25 of the 2016 edition). This form will qualify the estate for summary administration if the client is married and wishes to leave everything to the spouse. The form leaves the residuary estate to a testamentary trust (for the testator’s children) if the client survives his or her spouse. I change the form to:

1. Give the tangible personal property to the testamentary trust if the client survives his or her spouse (in Article I, Paragraph A of the form);
2. Remove the spouse as a beneficiary of the probate estate (in Article I, Paragraphs A and B of the form) if the client is unmarried or does not wish to leave everything to his or her spouse;
3. Rewrite the terms of the testamentary trust (Article II of the form) to distribute the assets, including the tangible personal property, to the true beneficiaries; and
4. Require the trustee to pay the estate’s liabilities.

As far as I can tell, the approach described above is not used much. There may be pitfalls I have not discovered yet. I hope that members of the Section will provide guidance and feedback.

Walton Davis is a solo practitioner in Black Mountain.

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Pro Bono Corner

By David Silver

The NCBA’s 4ALL Statewide Service Day is a program that, for one day each year, gets attorneys to answer phone calls from the general public to answer their legal questions at no charge. The next 4ALL is scheduled for Friday, March 2, 2018. This program has existed for 10 years, and I have participated every year that it has been in Greenville. Here, the attorneys gather in a phone bank at a local television station. A 1-800 number is advertised on that TV station all day, and the station will occasionally show the lawyers answering phone calls, just like a telethon. The volunteer attorneys work the phones for one of four three-hour shifts.

The three-hour shift goes very quickly, and my ear is normally burning by the end of my shift as a result of the phone being pressed against it for almost the entire time. I would guess that I take about 35 calls during my shift, with the vast majority of the calls being related to Elder Law, Estate Planning and Estate Administration. If there is a question about a topic that I am not comfortable discussing (like criminal law), then I pass the phone to a lawyer who practices in that area, and if another attorney gets a questions related to Elder Law, they will frequently pass the phone to me. I find myself switching seats every few minutes, which is preferable to having phone cords wrapped around everyone’s neck.

The volunteer attorneys are not allowed to identify themselves to the callers, so this is not something to be done to try to drum up business. However, there aren’t exactly a lot of potential paying clients calling in - the phone calls are about what you would expect from a free legal service. Many of the calls are about things that we discuss everyday (Medicaid eligibility, estate administration), but from people who might not otherwise seek our advice (the people who are calling do not claim to have much in the way of assets). This represents a significant percentage of the calls received, and therefore I feel that it is particularly important that there is an Elder Law attorney present and available to help with these kinds of calls. Some of the calls are from people who have had random legal issues lingering in their minds for years but haven’t had the money to obtain a legal opinion (one guy kept talking about a claim that came about from before I was born). Some of the calls are just ridiculous, and these stories get shared among the lawyers whenever there is a lull in the phone calls. However, I have never had any caller be anything other than thankful, no matter if I was able to provide useful advice or had to tell them that their claim had no legal basis.

When my kids are grown and I have my practice running smoothly, I hope to be more involved in some larger pro bono efforts that reach numerous people in need. Unfortunately, I don’t have the luxury of dedicating that much time to these types of projects at this time of my life, so my pro bono activities are currently limited to helping individual clients. However, I can easily set aside three-hours once a year to answer legal questions over the phone, and this allows me to reach out to people outside of my individual sphere. I would encourage other Elder Law attorneys to consider participating in the next 4ALL Service Day.
Practice Tip and Recent Developments

The following Estate and Special Proceeding AOC forms have been updated or added:

1. Application and Assignment Year’s Allowance AOC-E-100 Rev. 5/17
2. Letters of Appointment Guardian of the Person AOC-E-408 Rev. 5/17
3. Application for Administration by Clerk (not to exceed $5,000) AOC-E-432 Rev. 5/17
4. Application or Motion and Order for Modification of Bond AOC-E-433 Rev. 5/17
5. Election of Fiscal Year AOC-E-514 New 5/17
6. Order to Extend Time to File AOC-E-516 New 5/17
7. Petition to Transfer Incompetency Proceeding and Guardianship to Another State AOC-E-350 7/17
8. Provisional Order on Petition to Transfer Incompetency Proceeding and Guardianship to Another State AOC-E-351 New 7/17
9. Final Order on Petition to Transfer Incompetency Proceeding and Guardianship to Another State AOC-E-352 New 7/17
10. Petition to Accept Guardianship on Transfer from Another State AOC-E-355 New 7/17
11. Provisional Order on Petition to Accept Guardianship on Transfer from Another State AOC-E-356 New 7/17
12. Final Order on Petition to Accept Guardianship on Transfer from Another State AOC-E-357 New 7/17
13. Order on Petition for Adjudication of Incompetence AOC-SP-202 Rev. 5/17
14. Motion in the Cause for Restoration to Competency AOC-SP-215 New 5/17
15. Notice of Hearing on Restoration to Competency AOC-SP-216 New 5/17
16. Order on Motion in the Cause for Restoration to Competency AOC-SP-218
17. Affidavit and Petition for Involuntary Commitment AOC-SP-300 Rev. 5/17
18. Order of Assignment or Denial of Counsel – Inpatient Commitment AOC-SP-330 New 6/17
19. Special Proceedings Bill of Costs AOC-SP-384 Rev. 5/17
20. Petition and Custody Order for Special Emergency Substance Abuse Involuntary Commitment AOC-SP-909 Rev. 5/17

Ever wish you could have the AOC forms in editable MS Word format instead of downloading the pdf form through AOC’s website? Some companies (for example, Delridge Legal Software) offer the AOC forms in MS Word format as packages or a subscription.

Recent Developments

1. **In re Estate of Skinner**, 2017 N.C. Lexis 692 (N.C. 2017). North Carolina Supreme Court found that the North Carolina Court of Appeals erred in reversing the removal of a guardian of the estate and trustee under a special needs trust for fiduciary duty. In January 2010, Cathy Bass was adjudicated incompetent. In July 2010, Bass married Mark Skinner. In August 2011, Mark became permanent guardian of the person for Cathy. Cathy’s mother died in August 2012, leaving Cathy as a beneficiary of her estate. After a contested hearing, in August 2013 the clerk appointed Mark as guardian of the estate for Cathy. A portion of the inheritance was used to establish a special needs trust for Cathy in March 2014. In July 2014, Cathy’s siblings sought to remove Mark as guardian of the estate and trustee arguing breach of fiduciary duty. The clerk agreed and removed Mark as guardian of the estate and trustee. Before the Court of Appeals, Mark argued that there was insufficient evidence in the record to support breach of fiduciary duty. The Court of Appeals agreed. One of the main issues was the use of nearly all trust assets to purchase a home where Mark and Cathy resided and to pay legal fees related to (1) whether Mark could marry Cathy after the guardianship was established, and (2) represent Mark as guardian. In its reversal of the Court of Appeals, the North Carolina Supreme Court stated that “In view of the fact that the Assistant Clerk’s findings of fact demonstrate that Mr. Skinner expended over ninety percent of the monies committed to his custody for Ms. Skinner’s use and care within a short time after receiving them in ways that either directly or indirectly benefited himself while leaving insufficient monies in the Trust to either preserve the assets into which he had invested the bulk of the Trust’s funds or to take care of Ms. Skinner’s long term needs, we cannot say that the Assistant Clerk erred in determining that Mr. Skinner exceeded the scope of discretion that was admittedly available to him to such an extent that grounds for his removal as guardian for Ms. Skinner’s person and as trustee under the Special Needs Trust existed...and that these breaches of fiduciary duty justified his removal.”

2. **O’Neal v. O’Neal**, 808-S.E.2d 184 (2017). Trustee, while serving as guardian, could have petitioned the clerk for authority to sign deeds on behalf of the ward; however, the trustee could not sign deeds pursuant to a power of attorney that was executed well after the individual was adjudicated incompetent. The 2011 incompetency order established the ward’s incapacity to enter into contracts. Thus, the power of attorney was a nullity and of no legal effect.

