

# Restoration to Competency

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Do you have a guardian? Do you want to have your guardian removed? The process to get your guardian removed is called “restoration to competency.”

You are given a guardian if a court decides that you are incompetent. This means that you may need help making decisions. But there are alternatives to guardianship. Additionally, not everyone who is declared incompetent continues to need a guardian.

This guide goes over what you have to do to have your guardian removed.



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## **Restoration to competency: An overview**

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If a court has declared you incompetent and you think your competency should be restored, you can ask the court to reconsider your case.

### **Ask the Clerk of Superior Court to re-open your competency case**

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This is done by filing a written motion or petition with the Clerk in the county in which you were originally determined to be incompetent. Your written motion or petition should explain to the Clerk why you think your competency should be restored.

### **Send a copy of your written motion or petition to your current guardian(s) and to the person/agency who petitioned the court to have you declared incompetent.**

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These people are entitled to notice that you are asking for your competency to be restored.

### **Present your case at a hearing**

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After you file your written motion or petition, you are entitled to a hearing before the Clerk. You may request that a jury hear your case. You are entitled to hire an attorney if you are able to pay for one.

## If you are not able to pay for an attorney

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The clerk will appoint a person, called a guardian ad litem, to talk about you at the hearing. A guardian ad litem is not the same as your guardian or the person or guardian of the estate.

The guardian ad litem is a lawyer, but is not your lawyer. They make decisions for you based on what they think you need. They will not keep secrets for you. They do not make decisions based on what you want. The clerk will take what the guardian ad litem says about you very seriously.

## What you must prove to the Clerk

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In order to be restored to competency, you must prove to the Clerk that you are able to manage your affairs and to make and communicate important decisions about yourself, your family, and your property (including money). It will be helpful to have a report from your doctor or service provider explaining to the Clerk that the doctor believes you are able to manage your affairs and communicate decisions.

## What the Clerk will decide:

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- If the Clerk decides you have proven that you can make decisions about every area of your life, they will remove your guardian. They will find you competent and your guardian of the person will be dismissed.
- If the Clerk decides you have proven that you can make decisions about some things in your life, but not all of them, the Clerk may reduce your guardian's decision-making power (this is called a "limited" guardianship).
- If the Clerk decides that you have not proven you can make any decisions, the Clerk will decide that your guardian should still have control over all of your decisions.

## If you disagree, you can appeal

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You have 10 days to appeal the final decision. Ask the Clerk for information about how to appeal. You will likely want to hire an attorney to help you with your appeal.

## Restoration to Competency Petition Instructions

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A guardian, ward (the person with a guardian), or any other interested person may ask the court to re-open your incompetency case. This is done by filing a written motion or petition with the Clerk in the county in which you were originally determined to be incompetent. The written motion or petition should explain to the Clerk why competency should be restored.

In order to be restored to competency, the ward must prove to the Clerk that she/he is able to manage her/his affairs. This includes proving she/he is able to make and communicate important decisions about her/himself, family, and property (including money). It will be helpful to have a report from a doctor explaining to the Clerk that the doctor believes the ward is able to manage her/his affairs and communicate decisions.

## Step-by-step instructions for filling out this form

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Use these instructions to fill out the forms.

1. At the top of the petition, fill in the name of the county in which the original incompetency determination took place.
2. You will also need to 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 guardian, the ward 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; and who filed the petition.
6. In paragraph 3, describe the decisions the ward can now make for her/himself. The listed decisions should include any particular decision-making capability that was addressed in the original determination of incompetency.
7. Read paragraphs 4, 5 and 6 to ensure that those statements are accurate. If some statements are true but not all, you may want to consider motioning the court to modify the guardianship to a limited guardianship. We can provide you with a form for that as well.
8. At the end of the petition on Page 2, you will need to again fill in the ward's name.
9. Sign and date the Petition with your name and print or type your name under your signature.
10. Now that the petition is filled out, there are two more steps: the Verification and the Certificate of Service.
11. On the Verification, you need to verify that the petition is accurate and sign in the presence of a notary public. Fill in your name and address. Sign and date in front of the notary public. The notary public will fill out everything below the address section.
12. Fill out the Certificate of Service with the Name and Address of the current guardian and the Name and Address of the Original Petitioner (the person who originally asked the court to declare the ward incompetent).
13. Finally, you will need to send a copy of the Petition, Verification **and** Certificate of Service to the guardian and the person who originally petitioned for the ward to be declared incompetent. You will need to mail these copies by certified mail. Again, sign and date.

14. You are now ready to file your petition. Mail the original and two (2) copies to the Clerk of Court at the county courthouse. Include an envelope addressed to you with postage and include a note requesting that the clerk return one file stamped copy to you. This way you will have a copy of the petition dated when the court received it. You can also file in person at the courthouse.

After you file your written motion or petition, you are entitled to a court hearing before the Clerk. You may request that a jury hear your case. You are entitled to be represented by an attorney if you are able to pay for one. If you are not able to pay for an attorney, the Clerk will appoint a guardian ad litem ("GAL") to represent you at the hearing. A GAL only represents you in your court case to have your competency restored; a GAL is not like your guardian of the person or guardian of the estate.

Visit the [NC Judicial Court website](#) to learn more about restoration to competency.

## Petition

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STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

IN THE SUPERIOR COURT  
BEFORE THE CLERK

File No: \_\_\_\_\_ SP \_\_\_\_\_

\_\_\_\_\_ E \_\_\_\_\_

IN THE MATTER OF

\_\_\_\_\_

PETITION FOR  
REMOVAL AND REPLACEMENT  
OF GUARDIAN

Now comes Petitioner, \_\_\_\_\_, (hereinafter "Petitioner") without counsel and shows unto the court:

1. This is a petition for restoration of competency pursuant to N.C. Gen. Stat § 35A-1130.
2. The ward was adjudicated incompetent on \_\_\_\_\_ by the Clerk of Superior Court of \_\_\_\_\_ County pursuant to a petition filed by \_\_\_\_\_.
3. Since the initial adjudication of incompetency, the ward has achieved significant progress in managing her/his personal affairs, and s/he no longer needs a guardian. The ward can now make the following decisions for her/himself:  
  
\_\_\_\_\_  
  
4. The ward currently is capable of making choices for her/himself and communicate decisions about where s/he lives, her/his health, her/his nutrition, her/his personal care, her/his leisure time activities, transportation and employment.
5. The ward recognizes that s/he has a lifelong disability and that s/he needs treatment and help from others from time to time. The ward has good judgment about seeking assistance when s/he needs it.
6. The ward is no longer incompetent and no longer needs a guardian. The ward is capable of managing her/his personal and financial affairs including recognizing when s/he needs assistance and seeking the help s/he needs.

WHEREFORE, Petitioner moves the court as follows:

1. That the court appoint a Guardian Ad Litem to represent Respondent.
2. That the court hold a hearing in this matter as set out in N.C. Gen. Stat. §35A-1130(b).
3. That the court enter an order restoring \_\_\_\_\_ to competency.
4. That guardian be relieved of her/his duties and obligations.
5. For such other and further relief that the court may Order.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, Pro Se

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**Verification**

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I, \_\_\_\_\_, affirm under penalty of perjury that I am the Petitioner in the foregoing Petition to Restore Competency 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: \_\_\_\_\_)

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**Certificate of Service**

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I herby certify that I have served a copy of the foregoing Petition For Restoration to Competency 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

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**Sample Petition for Jane Doe**

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STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

IN THE SUPERIOR COURT  
BEFORE THE CLERK  
File No: \_\_\_\_\_ SP \_\_\_\_\_  
\_\_\_\_\_ E \_\_\_\_\_

IN THE MATTER OF

\_\_\_\_\_

**PETITION FOR  
REMOVAL AND REPLACEMENT  
OF GUARDIAN**

Now comes Petitioner, \_\_\_\_\_, (hereinafter "Petitioner") without counsel and shows unto the court:

1. This is a petition for restoration of competency pursuant to N.C. Gen. Stat § 35A-1130.
2. The ward was adjudicated incompetent on \_\_\_\_January 1, 2021\_\_\_\_ by the Clerk of Superior Court of \_\_\_\_\_Wake \_\_\_\_County pursuant to a petition filed by \_\_\_\_\_Sara Doe\_\_\_\_\_.
3. Since the initial adjudication of incompetency, the ward has achieved significant progress in managing her/his personal affairs, and s/he no longer needs a guardian. The ward can now make the following decisions for her/himself:  
  
\_\_\_\_\_Jane can now balance her checkbook and pay bills on time. She can make her own decisions about where to live. She now does her own grocery shopping and goes to her medical appointments. [MAKE SURE TO INCLUDE PROGRESS IN AREAS THAT WERE DISCUSSED AT THE ORIGINAL INCOMPETENCY HEARING]\_\_\_\_\_
4. The ward currently is capable of making choices for her/himself and communicate decisions about where s/he lives, her/his health, her/his nutrition, her/his personal care, her/his leisure time activities, transportation and employment.
5. The ward recognizes that s/he has a lifelong disability and that s/he needs treatment and help from others from time to time. The ward has good judgment about seeking assistance when s/he needs it.
6. The ward is no longer incompetent and no longer needs a guardian. The ward is capable of managing her/his personal and financial affairs including recognizing when s/he needs assistance and seeking the help s/he needs.

WHEREFORE, Petitioner moves the court as follows:

1. That the court appoint a Guardian Ad Litem to represent Respondent.
2. That the court hold a hearing in this matter as set out in N.C. Gen. Stat. §35A-1130(b).
3. That the court enter an order restoring \_\_Jane Doe\_\_\_\_\_ to competency.
4. That guardian be relieved of her/his duties and obligations.
5. For such other and further relief that the court may Order.

This the \_\_\_\_3rd\_\_\_\_ day of \_\_\_\_\_January\_\_\_\_\_, 2021\_\_.

\_\_\_\_\_Jane Doe\_\_\_\_\_, Pro Se

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**Sample Verification for Jane Doe**

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I, \_\_\_\_\_Jane Doe\_\_\_\_\_, affirm under penalty of perjury that I am the Petitioner in the foregoing Petition to Restore Competency and that all statements in the Petition are accurate to the best of my knowledge.

\_\_\_\_\_  
Signature

\_\_\_\_1/3/2021\_\_\_\_

Date

\_101 Main Street, Anytown, North Carolina 27514\_\_

Address

Subscribed and sworn to before me **[A licensed notary public will need to fill this in]**

on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary

(My Commission Expires:\_\_\_\_\_)

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### Sample Certificate of Service for Jane Doe

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I herby certify that I have served a copy of the foregoing Petition For Restoration to Competency on all necessary parties by depositing a copy in the United States mail prepaid and addressed as follows:

Name and Address of Guardian

\_\_\_\_Sara Doe\_\_\_\_\_

\_\_\_\_101 Main Street\_\_\_\_\_

\_\_\_\_AnotherTown, NC 27516\_\_\_\_\_

Name and Address of Original Petitioner

\_\_\_\_Sara Doe\_\_\_\_\_

\_\_\_\_101 Main Street\_\_\_\_\_

\_\_\_\_AnotherTown, NC 27516\_\_\_\_\_

This the \_\_\_\_3rd\_ day of \_\_\_\_January\_\_\_\_\_, 2021.

Jane Doe, Petitioner

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Learn about [alternatives to guardianship](#).

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