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My Minor Grandchildren Reside with Me...is Legal Guardianship Appropriate?

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This question comes up frequently in the context of school-aged children who may live with a grandparent or aunt, uncle, or someone other than their natural parents. Schools will often send grandparents, etc. to the courthouse to file for guardianship so there is some proof on record as to who has decision-making authority over the child's well-being. Unfortunately, this often results in a wasted trip and confusion.

In North Carolina, a "guardian" is someone who is appointed by the Clerk of Superior Court to make decisions for an incompetent *adult*. Once the court has determined someone *incompetent*, the court refers to this person as "the ward." There are three different types of guardians for incompetent adults.

*A **Guardian of the Person** makes decisions about the ward's personal welfare, such as their living arrangements and medical plans and decisions.*

*A **Guardian of the Estate** can make decisions about the ward's finances, such as paying bills, investing monies, etc.*

*A **General Guardian** is a combination of both the Guardian of the Person and the Guardian of the Estate, and has authority over both the ward's personal and financial decisions.*

North Carolina guardianship procedures do not provide for the needs of minor children, except in very limited circumstances. A minor cannot be appointed a Guardian of the Person or a General Guardian, unless 1) both natural parents are deceased, or 2) the court has terminated the parent's parental rights. However, the Clerk of Superior Court may appoint a Guardian of the Estate for a minor child in cases where the child requires a guardian to manage an inheritance or life insurance proceeds from a deceased family member.

North Carolina guardianship practices are primarily geared towards adults, with a few exceptions. The law, however, does address the needs of minors through the custody procedure when minor grandchildren reside with a grandparent, and at least one

natural parent is still living.

If you have questions or need would like additional information on this topic, please contact attorney Cara Williams at 919.250.2173 or by email at cwilliams@smithdebnamlaw.com.

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