

§ 35A-1117. Notice of rights of respondent.

(a) Notice of Rights. – Every respondent in a proceeding under this Chapter shall be given a notice of his or her rights which shall be set forth in a conspicuous manner and substantially similar to the following language:

"THE LAWS GOVERNING INCOMPETENCY AND GUARDIANSHIP ARE COMPLEX. THIS IS A SUMMARY OF RIGHTS FOR INFORMATIONAL PURPOSES ONLY. IT IS NOT INTENDED TO BE A COMPLETE DISCUSSION OF ALL RIGHTS. THE RIGHTS LISTED MAY NOT APPLY IN ALL CASES AND SHOULD NOT BE CITED AS LAW IN A COURT PROCEEDING. YOU SHOULD CONSULT WITH AN ATTORNEY OF YOUR CHOOSING IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS.

a. Rights of Respondents Before Adjudication of Incompetence:

1. **Right to Notice** – You have a right to receive a copy of the petition, the initial notice of hearing, and this notice of rights before the hearing. You also have the right at any time to request a copy of this notice of rights from your court-appointed guardian ad litem or the court.

2. **Right to an Attorney** – You have the right to hire an attorney of your choice to represent you in the proceeding. If you do not hire your own attorney, you will be represented by an attorney called a guardian ad litem. If you do hire an attorney, the court may require the guardian ad litem to continue to be involved in your case. The guardian ad litem will present your express wishes to the court and consider the possibility of a limited guardianship, making recommendations to the court regarding the rights that you should keep if the guardianship is limited. The guardian ad litem may also make recommendations to the court that the guardian ad litem feels are in your best interest, even if those recommendations differ from your express wishes.

3. **Right to Gather Evidence** – You have a right to require witnesses to appear and to gather documents concerning your ability to make decisions. You have a right to request an evaluation (called a multidisciplinary evaluation) to assist the court in determining the extent of your ability to make decisions and to assist in making an appropriate guardianship plan. You or your attorney must request a multidisciplinary evaluation in writing no later than 10 days after you are served with the petition.

4. **Right to a Hearing** – A hearing must be held before you can be adjudicated to be incompetent. The hearing will be held between 10 and 30 days after you receive a copy of the petition, notice of hearing, and this notice of rights unless the court delays the hearing for a good reason. You have the right to ask the court to change the date of the hearing for a good reason, and the court will decide whether or not to change the hearing date. You have a right to attend the hearing if you choose to do so. You can give up your right to attend the hearing. You have a right to have your express wishes communicated to the court by the court-appointed guardian ad litem at all relevant stages of the proceedings.

5. **Right to a Jury** – You have the right to request that a jury hear your case. You lose that right to a jury if you wait too long to ask.

6. **Right to a Closed Hearing** – The hearing is open to the public unless you or your attorney ask for it to be private. You or your attorney have the right to ask the court to close the hearing and exclude anyone who is not directly involved or testifying at the hearing.

7. **Right to Present Evidence and Testimony** – You have a right to present evidence at the hearing. You have a right to testify at the hearing.

8. **Right to Call Witnesses and Right to Question Witnesses** – You have the right to call and question witnesses at the hearing, including family members and medical providers. You have the right to question witnesses anyone else calls at the hearing.

9. **Right to Express Wishes Regarding Your Rights** – If you are adjudicated to be incompetent, you will lose the right to direct your healthcare, employment, interpersonal relationships, and religious, social, and community activities unless the court specifically agrees to allow you to keep those rights. You have the right to tell the court what rights you would like to keep. The court will consider your wishes, but the court is not required to follow your wishes.

10. **Right to Express Wishes as to Who Serves as Your Guardian** – If the court decides that you need a guardian, you have the right to tell the court who you want to be your guardian. The court will consider your wishes, but the court is not required to follow your wishes.

11. **Right to Appeal** – If you have a good reason to believe that your case was wrongly decided, (i) you have the right to appeal the decision adjudicating you to be incompetent by filing a written notice of appeal with the clerk within 10 days of the clerk entering the order and (ii) you have the right to appeal the clerk's decision about who is appointed as your guardian by filing a written notice of appeal with the clerk within 10 days of the order being served on you. You lose your rights to appeal any decision made by the clerk if you do not file a written notice of appeal in time.

b. **Rights of Wards After Adjudication of Incompetence:**

1. **Right to a Qualified, Responsible Guardian** – You have the right to a qualified, responsible guardian.

2. **Right to Request Transfer to Another County** – If you have a good reason to believe that your guardianship should be administered in a different county, you have the right to request that your guardianship be transferred to another county.

3. **Right to Request Restoration of Competency** – If there has been a change in your circumstances and you believe that you can show to the court that you have regained your competency, you have the right to request that the court restore your competency and end your guardianship.

4. **Right to Request a Review or Modification of Your Guardianship** – If there has been a change in your circumstances and you believe that your guardianship should be modified or reviewed, you have the right to file a motion to request that the court review or modify your guardianship.

5. **Right to Vote** – You have a right to register to vote and vote in elections if you are otherwise qualified.

6. **Right to Request a Hearing in a Petition for Procedure to Permit Sterilization** – If your guardian asks the court for an order to sterilize you, you have the right to know about it, to participate in the hearing, to have an attorney at the hearing, and to appeal the court's decision by filing a written notice of appeal with the clerk within 10 days of the clerk entering the order.

7. **Ability to Drive** – You may lose your ability to drive a car or other vehicle. The clerk must notify the Department of Motor Vehicles (DMV) that you have been adjudicated incompetent, and the clerk will make a recommendation on whether you should keep your driver's license. The DMV will contact you and you may get a letter from the DMV revoking your license. You have the right to make a written request to the DMV to review a decision to revoke your license.

8. **Additional Rights** – *Some rights depend on whether you have the capacity to exercise the right. Different rights have different tests for capacity. Examples of rights where you need to demonstrate you have the required capacity are the right to marry, make a last will*

and testament, and testify as a witness. You should consult with an attorney of your choosing to discuss whether you have the capacity to exercise these rights."

(b) The Administrative Office of the Courts shall develop a form notice as set forth in subsection (a) of this section and shall make a Spanish translation of the form available. (2023-124, s. 7.7.)