



## Restoration to Competency

A guardian, ward (the person adjudicated incompetent), 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.

I have enclosed a sample petition that you may use. Below are some step-by-step instructions for filling out this form. I have also enclosed a petition filled in for Jane Doe that may be helpful to you.

1. At the top of the form, 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 (Page 3), 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.

If the Clerk decides the ward has proven that she/he can manage all of his/her affairs, the Clerk will find the ward competent and the guardian of the person will be dismissed. If the Clerk decides the ward is able to manage some (but not all) of her/his affairs, the Clerk may reduce the guardian’s decision-making power (this is called a “limited” guardianship). If the Clerk decides that the ward has not proven she/he is able to manage any of her/his affairs, the Clerk will decide that the guardian should continue to have control over all affairs.

*This document contains general information for educational purposes and should not be construed as legal advice. It is not intended to be a comprehensive statement of the law and may not reflect recent legal developments. If you have specific questions concerning any matter contained in this document or need legal advice, we encourage you to consult with an attorney.*