

COMMENTARY ON THE FORMAT OF GUARDIANSHIP/CONSERVATORSHIP PLEADINGS

The documents with these materials have a format which, the author believes, makes it easier on those having to read the documents to understand “where they’re going”. Each sentence is numbered, either numerically or alphabetically, (sometimes ‘bullets’ are used) as described below. Fancy jargon should be avoided, and used only where necessary.

Orders – particularly Guardianship – should be drafted so that third parties – banks, stock brokers, nursing homes, etc. – can understand who has what authority *without* having to fax it to *their* lawyer for interpretation. The Order needs to “tell the whole story” and NOT refer to other documents. The delay involved for “review” puts an un-necessary burden on an already frazzled fiduciary who’s trying to figure out what they’ve got control of. The author goes so far as to write the documents so even a Judge can understand them!

In the petition, allegations are numbered, the relief requested is alphabetical. And ALWAYS ask for “such other relief as may be appropriate” in case something comes up (frequently unearthed by the Guardian *ad litem*) that needs fixing.

In the Order, FIRST the Court needs to find that it actually has the jurisdiction to consider the matter. These few findings are “bulleted”.

Second, the Court needs to make detailed findings about the condition of the Respondent. These are numbered. The findings come from several sources: the medical report of the doctor; the report of the Guardian *ad litem*, and the live testimony of the petitioner or someone else as to the Respondent’s condition. Unless you’re into a guardianship hearing from Hell, you’ve got 15 minutes of the Court’s time, there’s no transcript of the hearing, and it rolls through quickly. Having the Court state that there was “evidence *ore tenus*” when there’s no transcript to rebut the findings makes the Order durn impervious to successful appeal or attack.

Third, the Court must find that the aggregate of the recited facts proves *By Clear and Convincing Evidence* that the Respondent is incapacitated.

Fourth the Court, having found the incapacity, must deal with it. Alphabetical sentences/paragraphs differentiate the *directives* of the Court from the *findings of fact*.

Separating the allegations/findings from the request/action by using numbered then alphabetical paragraphs makes it real easy to discuss those paragraphs with the court, other counsel, or third parties who must rely on the Order. Compare “Order paragraph D” with “Paragraph 4 on the second, or is it third, page, under “Ordered”.

Remember in drafting that lay people don’t have a copy of the Virginia Code handy. That’s why they hire us. Don’t just ‘incorporate’ code language where a simple line or two will tell the laity what they need to know. (This does NOT mean that you type in all of 64.1-57 – your staff will shoot you if you try!) Conversely, lawyers DO have the Code available, so there’s no need to tell a Guardian *ad litem* what **her/his** investigation and reporting duties are; an abbreviated reference is all that’s needed.

On the other hand, The Guardian *ad litem* DOES need the order appointing them to authorize anyone with info on the Respondent to disclose it, which insulates that entity from violation of privacy rights. The key to keep in mind is, *Who will read this and what information do they need in order to make their – and my – job easier?*