

Presentation for the Guardianship Training Program 2020

Clarity in Writing Guardian ad Litem Reports

I. Audience

Before writing a report, a Guardian ad Litem needs to ascertain her or his audience and purpose. A report is not an acceptance speech for an Oscar, a PhD thesis, nor a sermon to a church. The report has three functions.

- 1) The first is to make a recommendation as to whether or not the Alleged Incapacitated Person is, in the opinion of the Guardian ad Litem, incapacitated, as to person and/or estate. The Guardian ad Litem must investigate and find facts to support the legal conclusions of RCW 11.88.010 (1)(a) and (1)(b).
- 2) The second is to determine whether to recommend a less restrictive alternative, and/or whether or not it is appropriate that a guardianship of the person or estate, or both, be established.
- 3) The third issue is the choice of guardian.

The audience is the judicial officer hearing the matter, and secondly, the Alleged Incapacitated Person and their interested parties. Highly technical language should be avoided, such as long quotations from the DSM.

II. Brevity

Writing should be concise.

Rule 1: Be clear about your meaning. Do not use broad words like, “good”, “bad”, “fantastic”, “excellent”, or, “outstanding”. Describe specific facts and events. For example, do not say, “The Alleged Incapacitated Person’s apartment was in really bad shape.” Say instead, “The AIP seemed unaware of the dirty dishes and rotting food filling the sink. Mouse droppings surrounded a mound of cigarette butts on the kitchen table.”

“That” and, “there is” are other words to avoid. For example, “The Alleged Incapacitated Person thinks that her daughter is Satan.” Say instead, “The Alleged Incapacitated Person thinks her daughter is Satan.” In lieu of saying, “There is a reason to not name the son as guardian, because he may have a conflict of interest.” say instead, “Billy should not be appointed guardian because he has a conflict of interest.”

Avoid the use of the words, “really”, “actually”, “already”, “fairly”, “totally”, and, “very”. These have a tendency to be empty fillers.

Rule 2: Eliminate unnecessary words and phrases. My pet peeve in legal writing is to read a will or contract where the drafter inserts over and over again the phrase, “It is the intention of the parties that...” This is a complete waste of print. Rather than writing, “It is the intention of the Grantor that all of the corpus be paid out to my child Billy prior to attaining the age of thirty years.” say, “The Trustee shall pay all corpus to Billy prior to his attaining thirty years of age.”

Rule 3: Use the active voice in writing. Do not say, “The Alleged Incapacitated Person had all of her food and money taken by street people who came in to her apartment with her permission.” Say instead, “The Alleged Incapacitated Person allows street people to enter her apartment who take her food and money.”

Rule 4: Avoid repetition. Saying the same thing two different ways is a cardinal sin in contract drafting. The attorneys among us know that one can have a field day arguing which interpretation should apply.

Rule 5: Avoid using negatives.

Therefore, it is important to write concisely and concretely, to set out to the court the exact facts that lead you to your conclusions. The court needs specific facts on which to apply the law to base its conclusions.

III. The Great Exception

Of course, all rules have exceptions. If one has a disabled child with a Munchausen by proxy mother, or some other very involved but sensitive family member who will attack anybody that does not agree with them, one will need to write one’s recommendation that that person not serve as the guardian in much broader terms. One might praise the person as being an outstanding human being and a wonderful individual and having a great heart, but perhaps due to stress or not possessing a good temperament or the objectivity for the job, the Guardian ad Litem regrets not being able to nominate them for the job. One needs to show great deference and respect to that person while at the same time making an honest recommendation. A Guardian ad Litem may employ a lot of flowery language, perhaps even bad writing, to dance around that particular issue.

We come back to the issue that we started with, “Who is the audience?” You have a mother who is extremely concerned. However, you are convinced that she will never attempt file a single report, let alone correctly or on time, nor will she follow guidance, you have an obligation to the court and the Alleged Incapacitated Person to point out that person’s great virtue as a human being, but lack of character traits such as attention to detail and availability to be an effective guardian. For example, one might write the following: “Miss Large-and-in-Charge visits her son on a regular basis, cares a great deal about his happiness, and understands his feelings very deeply. She does not, however, follow the recommendations of the staff in caring for him, nor does the staff agree with her naturalistic approach, and conflict is created. I am not sufficiently trained in medicine to ascertain whose plan of care is the most appropriate, I feel a Certified Professional Guardian is needed to sort out these issues. She has not taken the training and filed the appropriate paperwork to be appointed. Perhaps her love for her son outweighs her time and energy in filing the trivial but necessary paperwork with the court. Furthermore, her inability to keep track of funds would not bode well for her dealing with the detailed requirements of the court for accountings.”