

Sample Best-Practices Circuit Court Order for Public Guardianship because:

1. Limited in scope to the unique needs of individual as appropriate (i.e. Limited Guardianship because that is all that is needed).
2. Identifies that Guardian is a local Public Guardian Program.
3. Clearly list the statutory requirements (Adult, Indigent, Incapacitated and no other suitable person available). 08

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

IN RE: [REDACTED] MS

Case No [REDACTED]

ORDER APPOINTING GUARDIAN FOR AN INCAPACITATED ADULT

This matter came on this 15th day of November, 2007 to be heard in open Court upon the Petition of the [REDACTED] Community Services Board ("CSB") to appoint a limited guardian for [REDACTED] and upon proper notice to all individuals and entities whose names and last known addresses were set forth in the Petition, and upon timely service of the Petition, Notice and Order Appointing Guardian ad litem on the Respondent. Present at the hearing were [REDACTED] the respondent; and [REDACTED], a discreet and competent attorney-at-law whom the Court had appointed guardian ad litem to serve on behalf of [REDACTED] and who made a report pursuant to Virginia Code § 37.2-1003 and who also made oral report to the Court concerning the appropriateness of appointing a limited guardian. Also present was [REDACTED] the Guardianship Coordinator for the proposed public guardian and conservator, [REDACTED] and [REDACTED] counsel for petitioner. No request for a jury having been made, the Court heard the matter without a jury.

The Court having deemed [REDACTED] to have denied the allegations in the Petition, upon the evidence presented and the exhibits filed, including the licensed professional counselor's evaluation report submitted to this Court in accordance with Virginia Code § 37.2-1005, addressing the nature and extent of the incapacity of [REDACTED] the report of the guardian ad litem, and the arguments of counsel, the Court makes the following findings of law and fact, supported by clear and convincing evidence:

1. [REDACTED] is an adult person who resides or is located within the jurisdiction of this Court.

2. Ms. [REDACTED] parents are deceased. Ms. [REDACTED] has a step-father, [REDACTED], but she does not have any contact with him. Ms. [REDACTED] has one adult half-sibling, [REDACTED] but she is not willing to become Ms. [REDACTED] legally authorized representative or guardian. The CSB could not identify or locate any other relatives of respondent. There is no other proper and suitable person willing to serve in the capacity as guardian to [REDACTED]

3. [REDACTED] was personally, timely, and reasonably served with Notice of Hearing, a copy of the Petition, and a copy of the Order Appointing Guardian ad litem, as required by Virginia Code § 37.2-1004.

4. [REDACTED] is an incapacitated adult and in need of a limited guardian with authority to make decisions concerning medical/dental treatments, confidentiality of records, living arrangements and burial arrangements. The nature of the incapacity that afflicts [REDACTED] is set forth in the evaluation report submitted to the Court, which report is incorporated by reference, and other medical conditions disclosed to this Court. Her incapacity has been determined to be perpetual in nature and her condition is likely to decline.*

5. [REDACTED] is indigent, receiving only government benefits as income. The CSB serves as representative payee for her Social Security Disability benefits. [REDACTED] resources are insufficient to fully compensate a private guardian and pay court costs or fees associated with this proceeding.

6. [REDACTED] of Virginia has established a local public guardianship program in accordance with Virginia Code § 37.2-1010 and is willing to serve as guardian. Appointment of [REDACTED] is suitable.

WHEREFORE, having specifically considered the foregoing findings of fact in conjunction with the factors set forth in Virginia Code § 37.2-1007 and § 37.2-1009, it is hereby ORDERED, ADJUDGED and DECREED:

A. That [REDACTED] is hereby appointed a limited guardian of [REDACTED], incapacitated, with the powers, liabilities and duties as set out herein.

B. That [REDACTED] shall have the power and sole discretion to exercise complete custody and control over the person of [REDACTED] with the rights and responsibilities enumerated in the definition of custody found in Virginia Code § 16.1-228. [REDACTED] may exercise control over [REDACTED]'s living arrangements as necessary or helpful to provide for her admission or retention, even if contrary to her expressed wishes, in a group home, group care facility, nursing facility, convalescent home, continuing care retirement community, assisted living facility, private home or any other residential or therapeutic placement, including any facility which is not licensed to care for more than three unrelated adults. The duty of the guardian which corresponds to the power conferred in this subparagraph may be fully and completely discharged by the exercise of such power to admit, or retain admission, of [REDACTED] to or in any nursing facility or assisted living facility licensed by the Commonwealth of Virginia, without personal liability on the part of the guardian for the expense of [REDACTED] in any such facility, and without personal liability on the part of the guardian for any act or omission by [REDACTED] or any injury which may occur to [REDACTED] once admitted to any nursing facility or assisted living facility licensed by the Commonwealth of Virginia.

C. That [REDACTED] shall have the power and sole discretion to consent, withhold consent, suspend consent, or terminate consent as to

dental or medical procedures affecting [REDACTED]. The sole duty of the guardian which corresponds to the power conferred in this subparagraph may be fully and completely discharged if, before the guardian consents, withholds consent, suspends consent, or terminates consent, the guardian makes a good faith effort to ascertain the risks and benefits of and alternatives to the procedures or treatment, or termination or withdrawal of such treatment, and the religious beliefs and basic values of [REDACTED], and informs [REDACTED] to the extent deemed reasonable by the guardian at the time of the execution of the power conferred in this subparagraph of the proposed treatment; but to the extent that the religious beliefs, basic values, and preferences of [REDACTED] are unknown or unclear to the guardian, then the guardian shall have no liability to any person if the guardian acts in the best interests of [REDACTED] as such guardian shall in such guardian's discretion alone determine.

D. That [REDACTED] shall have the power to have access to and obtain, and to provide authorization to third parties to access and obtain all medical records and information pertaining to [REDACTED] in existence now or at any time in the future, including protected health information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and substance abuse records and information protected by the Public Health Service Act, including references to such records appearing at 42 U.S.C. 290ee-3 and 42 U.S.C. 290dd-3, and including but not limited to all psychotherapy notes and alcohol or substance abuse treatment records relating to [REDACTED] to which end and for all purposes of HIPAA the guardian shall be considered a "personal representative."

E. That [REDACTED] shall have the authority to make burial arrangements for [REDACTED] if ever necessary, and to reasonably spend

***Practice Note from Janet:

I recommend also including language to clarify that this is "discretionary" authority and in no way obligates the Public Guardian to provide funeral arrangements after a client's death. §2.2-713, Code of Virginia. 88

resources of [REDACTED] to pay for such arrangements, but shall in no way become liable or responsible for such expenses on [REDACTED]'s behalf.

F. That, pursuant to § 37.2-1011, before acting as guardian of the person of [REDACTED] a shall enter into and execute a bond before the Clerk of this Court in the sum and penalty of \$1,000, without surety, for the faithful performance of its duties as guardian.

G. That this adjudication of incapacity is also a finding the [REDACTED] is "incompetent" for all purposes of the Social Security Act, particularly with reference to the appointment of a representative payee for Social Security and other governmental benefits due her, as the term "incompetent" is defined under 20 C.F.R. Section 404.2015.

H. That a fee is hereby awarded to [REDACTED] the guardian ad litem, in the amount of \$ 400⁰⁰, the guardian ad litem having certified [REDACTED] was advised of the hearing rights enumerated in Va. Code § 37.2-1003 and her other rights as required by law, which fee shall first be satisfied by presenting an invoice and a copy of this order to the CSB who shall pay up to \$500.00 of the fee with the remainder of any fee to be borne by the Commonwealth of Virginia as provided for in Virginia Code § 37.2-1008, the Court having adjudged [REDACTED] to be an indigent person.

I. That the guardian ad litem is hereby discharged from further duty and authority.

J. That the Clerk of this Court shall send a copy of the Order to all counsel of record and to spread and transmit this Order to those concerned pursuant to the provisions of Virginia Code § 37.2-1011.

K. That this matter shall be removed from the docket and placed among the ended causes.

ENTER: 11/15/07

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~~_____~~
Judge

I ask for this:

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~~_____~~
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~~_____~~
~~_____~~
Counsel for the Petitioner

CLERK OF COURT
JUDICIAL DEPARTMENT
BY ~~_____~~
CLERK

~~_____~~
~~_____~~
~~_____~~
~~_____~~
Guardian ad litem



***Practice Note from Janet:
Although not explicitly stated in the Circuit Court Order,
3 of the Client's Constitutional rights are removed
automatically by operation of law (voting, driving, and
firearms) unless these rights are preserved in the Circuit
Court Order. [See §37.2-1014 and §46.2-400, Code of
Virginia].

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