

SB 514 -- Redline

SB514ER to CHAP0381 -- Incapacitated persons; changes to provisions of guardianship and conservatorship.

Deletions ~~struck~~ · Insertions underlined

~~SESSION ENROLLED~~ VIRGINIA ACTS OF ASSEMBLY ~~---~~ 2022 SESSION CHAPTER ~~E381~~ An Act to amend and reenact Sec. 64.2-2003, 64.2-2004, and 64.2-2020 of the Code of Virginia, relating to guardianship and conservatorship of incapacitated persons.

~~R-O~~ [S 514] Approved ~~April~~ April 11, 2022 Be it enacted by the General Assembly of Virginia:

That Sec. 64.2-2003, 64.2-2004, and 64.2-2020 of the Code of Virginia are amended and ~~reenacted~~ reenacted as follows:

~~D~~Sec. ~~A~~64.2-2003.

Appointment of guardian ad litem.

A.

~~B~~ respondent of rights pursuant to Sec. 64.2-2006 and 64.2-2007 and certifying to the court that the respondent has been so advised;

~~Duties~~(iii) of recommending that legal counsel be appointed for the respondent, pursuant to Sec. 64.2-2006, if the guardian ad litem ~~include~~ believes (i) that personally ~~that personally~~ counsel visiting for the respondent; respondent is necessary;

~~(ii)(iv) advising~~ notifying ~~the respondent court of as rights soon pursuant as to practicable Sec. 64.2-2006 the and respondent 64.2-2007 requests and counsel certifying regardless to of the whether court that the respondent guardian has ad been litem so recommends advised; counsel;~~

~~(iii)(v) recommending~~ investigating that the legal petition counsel and be evidence, appointed requesting for additional the evaluation respondent, if pursuant necessary, considering whether a less restrictive alternative to Sec. guardianship 64.2-2006 or if conservatorship is available, including the guardian use ad of litem ~~believes advance that directive, counsel supported for decision-making the agreement, respondent or is durable necessary; power of attorney, and filing a report pursuant to subsection C;~~

~~(iv) notifying the court as soon as practicable if the respondent requests counsel regardless of whether additional evaluation if necessary, considering whether a less restrictive alternative to guardianship or conservatorship is available, including the use of an advance directive, supported decision-making agreement, or durable power of attorney, and filing a report pursuant to subsection C;~~

In the report required by clause (iv) (v) of subsection B, the guardian ad litem shall address the ~~conservator following is major needed areas based of on concern: evaluations and reviews conducted pursuant to subsection B;~~

(i) whether the court has jurisdiction;

(ii) whether a guardian or conservator is needed based on evaluations and reviews conducted pursuant to subsection B;

The report shall also contain an explanation by the guardian ad litem as to any (a) decision not to recommend the appointment of counsel for the respondent, (b) determination that a less restrictive alternative to guardianship or conservatorship is not advisable, and (c) determination that appointment of a limited guardian or conservator is not appropriate.

The respondent may not waive ~~not B~~, notice, and a failure to properly notify the respondent shall be jurisdictional.

B.

A copy of the notice, together with a copy of the petition, shall be mailed by first-class mail by the petitioner at least seven 10 days before the hearing to all adult individuals and to all entities whose ~~advance names notice and required post by office this addresses subsection appear in the petition.~~

The court, for good cause shown, may waive the advance notice required by this subsection.

~~of 3~~ D.

Any adult individual or entity whose name and post office addresses appear in the petition may become a party to the proceeding by filing a pleading in accordance with Rule 1:4 of the Rules of the of 3 Supreme Court of Virginia.

A statement of the frequency and nature of the guardian's visits with and activities on behalf of ~~of 3~~ the incapacitated person;

5.

4.

A statement of whether the guardian agrees with the current treatment or habilitation plan;

A statement of whether the incapacitated person has been an alleged victim in a report ~~of n~~of abuse, neglect, or exploitation made pursuant to Article 2 (Sec. 63.2-1603 et seq.) of Chapter 16 of Title 63.2, to the extent known, and whether there are any other indications of abuse, neglect, or

exploitation of 3 of such incapacitated person;

~~abuse, neglect, or exploitation made pursuant to Article 2 (Sec. 63.2-1603 et seq.) of Chapter 16 of Title 63.2, to the extent known, and whether there are any other indications of abuse, neglect, or exploitation of such incapacitated person;~~

A recommendation as to the need for continued guardianship, and any recommended changes ~~in the~~7, the scope of the guardianship, and any other information useful in the opinion of the guardian; and 7.

A self-assessment by the guardian as to whether he feels he is able to continue to carry out the powers and duties imposed upon him by Sec. 64.2-2019 and as specified in the court's order of ~~E~~-appointment pursuant to Sec. 64.2-2009;

~~D-9.~~

Unless the incapacitated person resides with the guardian, a statement of the frequency and nature of any (i) in-person visits from the guardian with the incapacitated person over the course of the previous year and (ii) visits over the course of the previous year from a designee who is directly ~~of the~~ supervised or contracted by the guardian, including the name of the designee performing such visit.

If no visit is made within a six-month period, the guardian shall describe any challenges or ~~lim~~11. limitations in completing such visit;

~~A11. general description of the activities taken on by the guardian for the benefit of the B incapacitated person during the past year;~~

1A 12. general description of the activities taken on by the guardian for the benefit of the incapacitated person during the past year;

12.

~~and The14. guardian shall certify by signing under oath that the information contained in the annual report is true and correct to the best of his knowledge.~~

The compensation requested and the reasonable and necessary expenses incurred by the guardian.

The guardian shall certify by signing under oath that the information contained in the annual report is true and correct to the best of his knowledge.

If the local department of social services files notice that the annual report has not been timely filed in accordance with subsection A with the clerk of the circuit court, the court may issue a summons or rule to show cause why the guardian has failed to file such annual ~~report. or report. court may issue a summons~~