

WHAT CAN I EXPECT FROM THE COURT PROCESS?

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COURT PROCEEDINGS – A hearing. Like a trial.

Contact a lawyer – all reasonable alternatives considered, but won't do the job.

Should already have talked to a lawyer at this point who knows something about how process works, and has discussed alternatives.

Need an interdiction.

Who will be curator? Lots of responsibility – but you may already be doing the work.

One thing to consider is depending on person's mental state, they may resent you doing the interdiction. Taking away their ability to do things on their own.

Now often – helping them out. If you do something they don't like they can tell someone about it. May make them feel little better. Some folks however, will not know the difference. And really, if you're doing a full interdiction, it would be a situation where the person is probably not with it enough anymore to really hold a grudge or understand what is going on – but it does not work that way all the time. Each situation is different.

Thing to remember – taking the person's rights and making them like a child again. In complete interdiction, will not be able to handle business like an adult – no checks, no bills, not able to consent to treatment in hospital, no contracts.

So – You've hired the lawyer and told her you want an interdiction.

Non-contested interdiction – person does not have capacity to oppose it themselves and all family members agree.

Interdiction where the person being interdicted does not think they need interdiction, but all family agrees.

Interdiction where there is no family.

Then contested interdiction where fighting over who is curator or whether there will be interdiction at all.

The same basic legal rules apply to all of these, but the hearing, or hearings, can be different.

Depending on the situation, there are different requests in the Petition.

Temporary Interdiction

Preliminary interdiction

Permanent interdiction

Talk with lawyer about that. If dealing with emergency situation may need temporary interdiction, in which case the hearing is set very quickly (10 days?), but then there is usually a need for a second hearing. We'll leave that out of this discussion. Assume permanent interdiction, which is not emergency.

First – interdiction where family agrees.

Petition.

Lawyer drafts the Petition for Interdiction.

It's like a lawsuit, in which you are asking a judge to appoint a curator for the person, and give the curator certain authority to handle the business of the person and perhaps handle the person himself.

Lawyer will need names of all people wanting the interdiction, and detailed reasons why it's needed, with examples of what the person has done, or cannot do.

Will need name of treating physician who knows person and has examined them and will be willing to testify in the courthouse if necessary. Often can use an affidavit, IF both attorneys agree and the judge is ok with that.

Takes extra effort to get doctor to come to courthouse and testify – half day. Missing seeing patients for half day at least, and the doctor has to be paid.

There can be issues with the doctor testifying, as the person may get mad at the doctor for testifying. Again, if they have capacity to know what's going on.

Back to Petition.

There will be attachment to the Petition called a Verification, for the people filing the Petition to sign. If you are interdicting a parent, good idea to get all children to be petitioners and to sign verifications. The verification says the allegations in the Petition are true and correct to the best of your knowledge. That gives the Judge information that the people agree with the petition. If the entire family agrees with the interdiction and curator being appointed, it makes the Judge's decision much easier. The Petition itself will be signed by the lawyer.

Bond. There will be the talk about a bond. Difficult to get bond, but can do one if needed where property curator owns is pledged to the bond – in other words if curator does something bad, or steals, then the bond can be used to get money back from curator by taking the property. A real bond, from a bond company, is expensive etc. and hard to get in most cases.

That said, sometimes a curator can be appointed without a bond – if all agree and everyone is trying to take care of the person then a judge may waive the bond requirement.

Detailed Descriptive List

In addition to the Petition with verifications, the lawyer has to draft a Detailed Descriptive List showing assets owned by the person, along with debts. That document is filed with the petition. This shows the Court what assets and liabilities the curator will be responsible for. You will have to collect that information.

Order

Along with the Petition and Detailed Descriptive List, is an Order.

The Order will have a blank space for the Judge to appoint an attorney to represent the person being interdicted. That attorney is usually someone the judge knows and trusts, and someone who will get the job done. The appointed attorney is supposed to actually go see the person being interdicted and try to talk with them. If that cannot be done due to hospitalization or some reason, or the person cannot talk, the appointed attorney is still required to say why she could not see the patient and what the situation is like.

The appointed attorney is to give a report to the court stating what he or she discovered when visiting the person.

Oath.

So – The Petition, DDL, and Order have been drafted and the Petitioners have signed the verifications and DDL. The lawyer will draft and Oath for the curator and an Oath for the undercurator.

The attorney then files the documents at the Court House, with a check to the Clerk.

Service of Citation and Petition.

The Petition then MUST be served on the person being interdicted.

This is important. A deputy will take a copy of the Petition with a paper on top called a Citation, and will hand it to the person, or do his or her best to give it to them.

If the person is capable of understanding the paper, you may want to let them know its coming, and that it is part of what you're doing to get things set up. The Citation may say "you've been sued".

Often the person is not capable of even accepting a petition, but technically the deputy still must present it to the person. If the person is not served, the interdiction cannot happen.

After service, the person will have an opportunity to hire their own lawyer, but we will assume that is not an issue.

Appointed Lawyer for person being interdicted

The appointed lawyer will go see the person. That lawyer then files a document with the court called an Answer, responding to the petition.

Remember – it is the appointed attorney’s JOB to make sure the person’s rights are protected, and that he or she is not being taken advantage of or put in an harmful situation. The lawyer is not there to make the interdiction difficult (assuming this is not a contested situation with people fighting), but the lawyer is required to make sure that the proper procedures are followed to protect his client’s rights.

Your attorney and the appointed attorney will talk. They may agree on certain things, for example whether or not an affidavit from the physician can be used at the hearing instead of the doctor going to the hearing live – this saves money and time, and possible helps prevent the patient from falling out with the doctor. The appointed attorney is certainly not required to agree an affidavit, and the Judge may want a live witness anyway.

On the Order signed by the Judge, there is a place for a hearing to be set.

For these purposes we’ll assume this is not an emergency situation and that we’ll have only one hearing.

Hearing.

The date is set. Like a trial.

Can the person being interdicted physically attend the hearing?

Will they understand what’s going on at hearing?

Person has right to be there, and the judge may well need to see and hear the person.

Sometimes, however, the person may be physically unable to go to the courthouse.

Other times, the attorneys may agree the person does not need to come to the courthouse due to the person's condition.

Witnesses.

Doctor. (sometimes by affidavit)

Family member to testify why curatorship is needed.

Or person with knowledge, say a nurse.

The curator should be at the hearing. Judge may want to hear what curator has to say.

Will ask you questions. Why interdiction. Can you handle the job? Tell us how.

Person being interdicted may be at hearing. But unusual.

If contested, say someone who is trying to take advantage of person, then there will be cross examination of that person. Hopefully not an issue, and we don't have time to go into all the issues that can come up in situation like that.

Your lawyer gets to go first, and ask a witness questions, then the lawyer for the person being interdicted gets to question the witness. Once you've gone through the witnesses your lawyer wants, then the other lawyer gets to call witnesses, if she thinks its necessary.

Hopefully there is agreement on witnesses and there is no witness who testifies the person should not be interdicted. That opens a whole other scenario.

If, after hearing all the testimony, the Judge then believes the interdiction is necessary, he or she will say so at the hearing, and will sign another document called a Judgment, which says the person is interdicted, a curator and undercurator appointed, and lists the duties and authority of the curator. It will also say whether bond is required or not, and will require a Oath from the Curator and one from the undercurator.

After the hearing.

After that, assuming the curator and undercurator have signed their oaths, which are filed with the clerk of court, the Clerk will then issue a document called

“Letters of Curatorship”, which say the curator has met the requirements of law, has signed an oath and posted a bond, if required, and will list the authority of the curator.

Your lawyer will get several certified true copies of the Judgment which can be used to prove you have authority as curator, along with Letters of Curatorship. The judgment is also filed into the Court records giving notice to the world that the person is now interdicted.

What do with Judgment and Letters of Curatorship?

You are then officially curator, and responsible.

Take Judgment and Letters to bank, investment person, doctor, nursing home, etc.

Have bills directed to you. May have some trouble getting changed, so be patient.

May still need the lawyer to help with that, but usually not.