

Drafting Orders (and Other Documents) in the Court

JUDGE CAROLYN ALTMAN, PAULDING COUNTY

JUDGE AMANDA TRIMBLE, CLARKE AND OCONEE COUNTIES

It all started with...

“What do you all think about revisiting our model orders as a project? Some of them may need some tweaking.”

Judge Lisa Jones

August 10, 2020

Model Order Project

- ▶ **Render Heard**, Tift County
- ▶ **Joseph Wyant**, Coweta County
- ▶ Carolyn Altman, Paulding County
- ▶ Lindsay Burton, Hall County
- ▶ Michelle Harrison, Douglas County
- ▶ Michael Key, Troup County
- ▶ Kristen Pack, Cordele Circuit
- ▶ Amanda Trimble, Oconee/Clarke
- ▶ Laura Wheale, Tallapoosa Circuit
- ▶ Chris Willis, Forsyth County
- ▶ Jerry Bruce, CIP/J4C, currently OCA
- ▶ Melissa Carter, Barton Center
- ▶ Rachel Davidson, formerly OCA
- ▶ Chris Hempfling, Deputy Dir. DFCS
- ▶ Anne Kirkhope, CJCJ Staff Attorney
- ▶ Steve Messinger, Sr. Judge

We started with TPR Orders....



- ▶ But just couldn't stop ourselves.
- ▶ The project has expanded to include (but not limited to!)
 - ▶ Dependency Adjudication Orders
 - ▶ Review Orders
 - ▶ Legitimation Orders
 - ▶ Anything else judges and parties find useful

Basic Drafting Checklist

(Assuming a case is already pending in Juvenile Court)

- ▶ What am I drafting?
 - ▶ Motion?
 - ▶ Brief?
 - ▶ Order?
 - ▶ Something else?

Can the Court do what I am asking?

- ▶ Does the Court have subject matter and personal jurisdiction?
 - ▶ Juvenile Court is a court of limited jurisdiction.
 - ▶ Can the Court order what I am asking?
 - *Give particular thought to this if it is not a common request. (Ex: as to placement, as to which school...)*

Who and Where?

- ▶ Who are the parties?
- ▶ What is the proper venue?
 - If you are filing in an existing case these issues likely won't be a problem, but it is always worth a quick thought - especially if the case has visited multiple jurisdictions.

Pay Attention to Parties' Names in the Case Caption

- ▶ How are names listed in the case caption?
 - Check the petition/initial filing. It is controlling as to the case caption...even if there is an error
 - Do I need to include an “AKA” if there is an error in the name?
- *(If there are errors, consider a Motion to Correct Scrivener's Error as well. Vital Records cares.)*

As for Case Numbers

- ▶ Take the time to look it up or call the clerk to ask.
- ▶ Don't leave it blank for clerks to fill in

Appropriately Title Your Document

- ▶ How should I title my document?
 - ▶ Choose a useful, descriptive title
 - ▶ Not just “Motion” or “Emergency Motion”
 - ▶ Instead “Emergency Motion to Revert to Supervised Visits”

Especially useful if this will be a specially set motion. It helps the person calendaring with triage.

For Motions/Petitions: What is my authority?

- ▶ Cite any statutory authority.
- ▶ Cite relevant case law.
- ▶ Recall best interests factors if you are seeking authority. Cite to statute and relevant subsections if using.
 - ▶ They cover a lot of ground, and the Court has an obligation to consider.

For Motions/Petitions: The Facts

▶ What facts are required?

- ❑ Include facts for each finding the court is required to make.
- ❑ Do not include irrelevant or unnecessary facts.
- ❑ BUT a *brief* general background to orient the court is acceptable/desirable

Ex: “On August 10, 2021, this Court ordered unsupervised visitation with the Mother.”

That simple reference helps orient the court.

For Motions: Does Anyone Consent?

- ▶ Are any other parties consenting?
 - ❑ Confirm, preferably in writing, via email.
 - ❑ Include any consenting parties in the motion

For Motions: Does Anyone Object?

- ▶ Do you anticipate any objections to the motion?
 - Ex: “The Division anticipates the Father will have an objection to this Motion.”
 - Ex: “The Guardian ad Litem does not anticipate any objection to this Motion.”

For Motions: Best Interests Considerations

- ▶ Address even if this is not the primary authority you are citing for your request

- ▶ Can you state in good faith that granting the motion is made in the best interests of the child?
 - ❑ If so, say so.
 - ❑ If not, should you be filing the motion in the first place?
 - ▶ Yes, if you are a client-directed attorney.
 - ▶ Though you should always advise your client of likely considerations of the court.

For Motions: Rule Nisi

- ▶ Apparently considered optional!
- ▶ No hearing without Rule Nisi
- ▶ Within the Motion, indicate when you would like to be heard:

Examples:

- At the same time as the next Judicial Review hearing
- Within the next thirty days
- As soon as possible

Proofreading

- Take extra care when you are cutting and pasting or editing a prior document for re-use.

- Often overlooked:
 - Dates
 - Party names
 - Pronouns
 - One child vs multiple children and vice versa
 - Case numbers
 - Everything....

These kinds of errors are not confidence inspiring for the other parties or for the Court.

Service

- ▶ Did I include a certificate of service?
The certificate is not usually a problem, but....
- ▶ *Did I, in fact, serve all parties / attorneys?*
 - ❑ Every party has the Due Process right to notice and opportunity to be heard
 - ❑ Don't forget placement / foster parents
 - ❑ Failure to do this causes unnecessary inefficiency and delay

Preparing a Draft Order: Generally

- ▶ A **court order** is an official proclamation by a **judge** (or panel of judges) requiring or authorizing certain actions in a case.
- ▶ General goals of judicial orders:
 - ❑ Detail the court's ruling
 - ❑ Tell parties who needs to do what
 - ❑ Serve as a mechanism for an appellate court to review a court's reasoning and decision

Preparing a Draft Order: Must be reduced to writing & filed

“Under the Civil Practice Act (CPA), “[e]xcept when otherwise specifically provided by statute, all judgments shall be signed by the ***461 judge** and filed with the clerk.” [OCGA § 9-11-58\(a\)](#). This portion of the statute was adopted verbatim in Uniform Juvenile Court Rule 17.1. See [English v. Milby, 233 Ga. 7, 9-10\(1\), 209 S.E.2d 603 \(1974\)](#) (sections of the CPA may be adopted for the juvenile courts). Very similar language is also found in the Appellate Practice Act (APA): “The filing with the clerk of a judgment, signed by the **judge**, constitutes the entry of a judgment within the meaning of” the APA. [OCGA § 5-6-31](#). Under the case law, “[i]t is best to think of three requirements. The adjudication must be reduced to (1) writing, then (2) signed by the **judge** and finally, (3) filed with the clerk of the court.” Gregory, Ga. Civil Practice § 7-4, p. 574 (2d ed.1997)....”

Preparing a Draft Order: Must be reduced to writing & filed

“ ... ‘ “What the **judge** orally declares is no judgment until it has been put in writing and entered as such.” ’ [Cit.]” *State v. Sullivan, 237 Ga.App. 677, 678, 516 S.E.2d 539 (1999)* (involving “[t]he oral declaration of [a] juvenile **judge**”)”

Titelman, et. al., v. Stedman, 27 Ga. 460 (2003).

Preparing a Draft Order: Must be reduced to writing & filed

Uniform Rule 14.1:

Filing of Judgments: Except when otherwise specifically provided by statute, all judgments shall be signed by the judge and filed with the clerk, and, for the purposes of appeal, shall not be considered as entry of judgment until stamped as filed by the clerk.

Ga. R. Juv. Ct. 14.1

Amended May 2, 2019, effective July 1, 2019

Preparing a Draft Order: Generally

- ▶ Review statutory authority and case law to ensure a clear understanding of the law as to the issues
- ▶ Be sure to look for recent updates
- ▶ Don't be afraid to use a treatise for an overview
 - ▶ *Ask the judge if there is a particular treatise that judge tends to use*

For Draft Orders: Findings of Fact

Review the record (or hearing notes if sufficiently detailed) to determine relevant facts for the Findings of Fact section

- This should not be a straight summary, or “book report” of testimony.
- Findings of fact should be a synthesis of the facts, as the judge views them, as well as references to the source of the fact found (i.e. – a particular witness or piece of admitted evidence.)
- If the Court has resolved an issue of credibility, that should be explained as well.

For Draft Orders: Findings of Fact

- Each fact found should come directly from the record of that particular hearing – never from memory or a prior hearing.
 - The reader of the order should be able to listen to or read a transcript of the hearing and find the source of each and every fact found.

For Draft Orders: Findings of Fact

Once Findings of Fact have been drafted, re-review the statutory authority and case law to ensure the Conclusions of Law you anticipate are, in fact, supported by the record / Findings of Fact.

If Findings of Fact cannot be supported by the record, rulings may (will?) be reversed.

For Draft Orders: Conclusions of Law

- ▶ These are the decisions by the Court as to the requested action.
- ▶ These will be from your statutory authority and case law. Don't use your own words. **Quote the law.** Cite to the statute or caselaw.
- ▶ These are the conclusions / findings by the Court that will be subject to review by the appellate courts.

Findings of fact are typically reviewed at a much lower standard than conclusions of law

- ▶ Don't forget the "because."

Nuts & Bolts

We polled the judges:

What are the biggest problems you see with written TPR orders?

- A. Material information is missing from the written order
- B. Poor structure/flow of information within the written order
- C. Poor writing style
- D. All of the above

Content:

- Determined by the type and purpose of the hearing based on the evidence presented.
- Problematic when:
 - ❑ Plain error.
 - ❑ Missing information.
 - ❑ Right language in the wrong order.
 - ❑ Stipulations on conclusions, not facts.

Structure:

- Determined by the type and purpose of the hearing based on the evidence presented.
- Problematic when:
 - ❑ Don't have a structure
 - ❑ Mislabeled Findings of Fact & Conclusions of Law
 - ❑ Don't follow the Code

Structure: FoF vs. CoL

Fact: The parents and child are residents of Georgia County.

Conclusion: Venue is proper in Georgia County [because the parents and child are residents here.]

Fact: The parents were personally served with the *Petition*.

Conclusion: The court has personal jurisdiction [because they received proper notice and a summons.]

Fact: The mother last visited with the child nine months ago. The mother has not contacted the child since that last visit. The mother has not made any progress on her case plan goals or participated in any of the dependency proceedings in the past twelve months.

Conclusion: The mother has abandoned the child in that she has failed, for a period of at least six months, to meaningfully communicate with the child, maintain visitation, and make any progress on her court ordered plan designed to remedy the dependency [because it has been nine months since she has had any contact with her child and twelve months since she was last in court or made any progress on her case plan goals.]

Structure: Right Language, wrong place

Why is this language improper in a PPH order?

- ▶ The efforts made by DFCS to prevent or eliminate the necessity of the children's removal from their placement and/or to reunify these children previously adjudicated dependent with their parents include:

What is the correct language on Reasonable Efforts for a PPH order?

- To prevent or eliminate the need for removal of a child from his or her home and to make it possible for such child to safely return home.
O.C.G.A. §15-11-146(d)
- To prevent the need for removing him or her from his or her home
O.C.G.A. §15-11-202(a)

Structure: Right Language, wrong place

Why is this language improper in a PPH order?

- ▶ This Order shall remain in effect until terminated by further order of this Court. O.C.G.A. §15-11-214

Judicial Review or Permanency Order?

- ▶ There are no recommended changes to the children's placement.
- ▶ Based upon the mother's progress, it is anticipated that the child will be returned to his home within the next three to six months.
- ▶ Reunification is still the best case plan for this family.
- ▶ The child's placement in foster care remains necessary for his own safety and well-being. The placement is very appropriate to meet his complex medical and elevated behavioral needs.
- ▶ DFCS has engaged the appropriate service providers for the family. The child is receiving occupational and speech therapy for his developmental delays. The mother is in an appropriate residential treatment program to address substance abuse.

Writing Style:

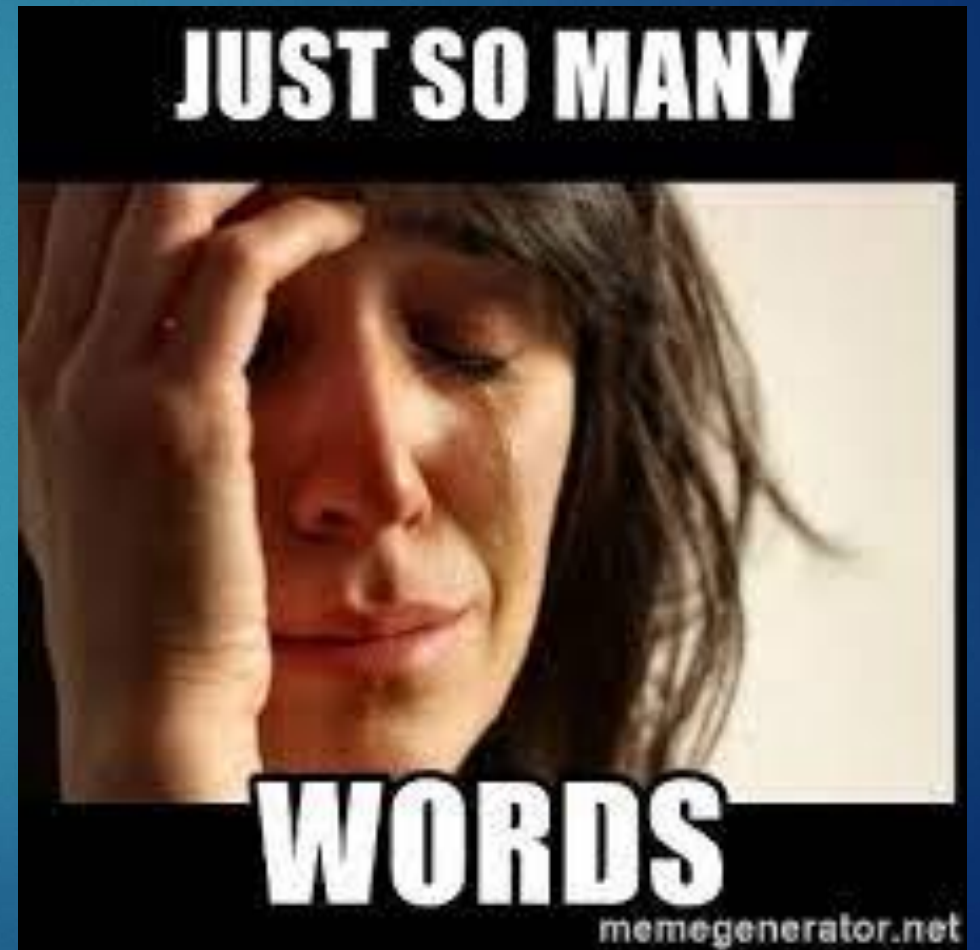
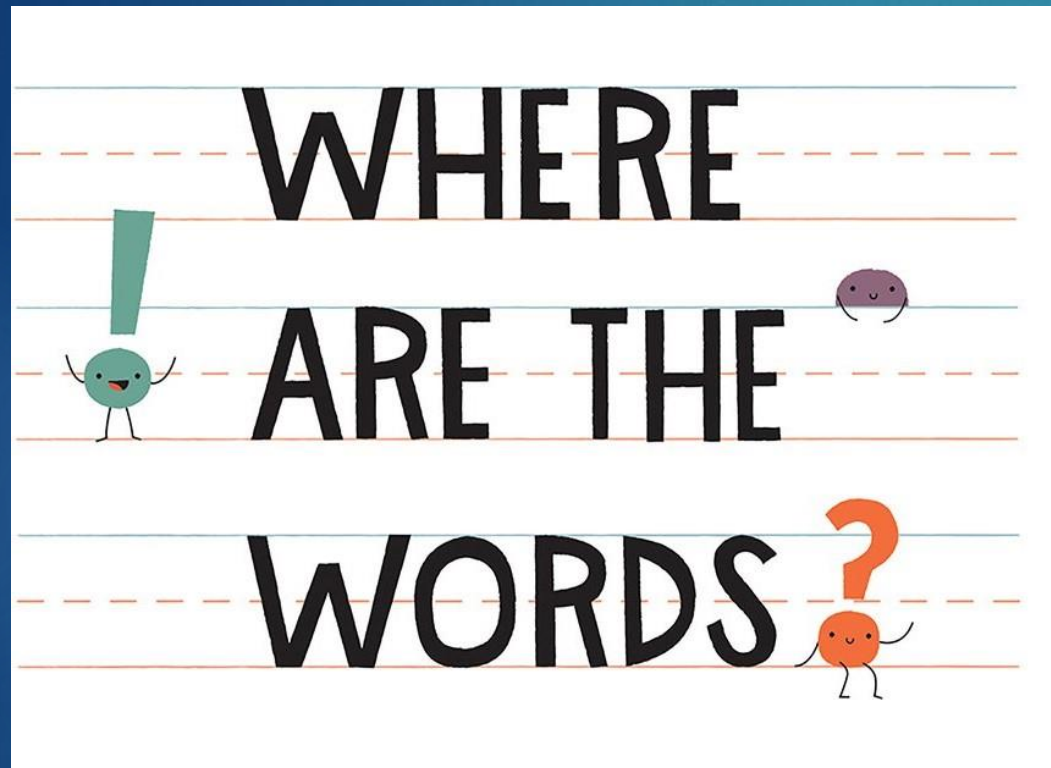
“Good writing eases the reader’s burden. Effective prose is clear and understandable. When drafting, minimize or eliminate anything that can cause confusion. Confusion will impede the reader, undermine the effectiveness of the writing and dilute the impact of the intended point.”

Robert E. Bacharach, *Legal Writing: A Judge’s Perspective on the Science and Rhetoric of the Written Word* (2020).

Writing Style:

- Format your document
 - Pick a consistent margin, spacing, font, justification
- USE headings and sub-headings, page numbers
- Write complete sentences
- READ the entire document before submitting it

Writing Style: Balance the Words



Writing Style: Avoid These

➤ Legalese

above captioned, aforementioned, aforesaid, comes now, forthwith, hereafter, hereby, herein, hereinafter, hereof, hereto, hereunder, hitherto, inasmuch as, in reference to, thereby, therein, thereto, to wit, whereas, whereby, wherein, whereof.

➤ Latin terms

arguendo (for the sake of argument)

Infra (below) / Supra (above)

Inter alia (among other things)

Sub judice (under judicial consideration)

Vel non (the existence of an issue for determination)

Viz (namely)

Writing Style: Avoid These

➤ Filler Sentences:

The Court hereby finds by clear and convincing evidence the following Findings of Fact and Conclusions of Law. Any of the “Findings of Fact herein which should have been properly classified by the Court as “Conclusions of Law” shall be considered as “Conclusions of Law,” and any “Conclusions of Law” which should have been properly classified as “Findings of Fact” shall be considered as “Findings of Fact.”

In making its determination as to the conclusions of law and the decisions as to the disposition in this matter, the Court has relied upon the evidence *in toto*, including the summary of the findings of facts set forth below, the documents tendered into evidence, and the testimony of the witnesses. The Court assigned weight, and in turn, has considered the weight of each piece of documentary evidence admitted. The Court has evaluated the credibility of each witness in this case.

Exhibits P-1 through P- 23 were admitted into evidence without objection. The Court herein adopts documents P-1 through P-23 and the contents therein as individual findings of facts and asserts that all the documents have been used in making the Court’s determination in this matter. The Court has also considered exhibits P-1 through P-23 as they were admitted into evidence when making its determination in this matter. [Followed by itemized list of the exhibits.]

Writing Style: Avoid These

➤ Passive Voice:

Prefer the active voice over the passive.

Think of it this way: if you're active, you do things; if you're passive, things are done to you. It's the same with subjects of sentences. In an active-voice construction, the subject does something (*The court dismissed the appeal*). In a passive-voice construction, something is done to the subject (*The appeal was dismissed by the court.*)

The active voice typically has four advantages over the passive:

It usually requires fewer words.

It better reflects a chronologically ordered sequence (ACTIVE: actor → action → recipient of action), as opposed to the reverse (PASSIVE: recipient of action → action → actor).

It makes the reading easier because its syntax meets the English speaker's default expectation that the subject of a sentence will perform the action of the verb.

It makes the writing more vigorous and lively (*John wrote to the company* as opposed to *The company was written to by John*).

▶ Bryan A. Garner, *Legal Writing in Plain English: A Text with Exercises* 36-37 (2nd ed. 2013)

Writing Style: Avoid These

➤ Passive Voice Examples:

Passive: Concerns regarding both of the parents' mental health were addressed by the case manager.

Active: The case manager reported her concerns about both of the parents' mental health needs.

Passive: The parents were found to be using methamphetamine.

Active: The parents used methamphetamine.

Passive: The children were left with a man by the name of Franklin, a known drug dealer in the neighborhood.

Active: The parents left the younger children with a known drug dealer, Franklin Smith.

Passive: The objection was sustained by the Court.

Active: The Court sustained the objection.

Passive: Neither parent is currently engaged in drug treatment or support group attendance.

Active: Neither parent participates in drug treatment or attends recovery support groups.

Writing Style:



EDIT

Tips for Self-editing

- ▶ **Take a break**

- ▶ Use Control + F in Word

There

Was

Its / It's

Child

- ▶ Read a hardcopy

- ▶ Read aloud

- ▶ Read from the last page forward

A Brief Note: “They” as a Gender-neutral, Singular Pronoun

- ▶ Has been added to style manuals, including the Washington Post style manual
- ▶ If you choose to use “they” as a gender-neutral, singular pronoun in your writing

Consider dropping a footnote to alert your reader in the event your reader is a grammar traditionalist.

Don't then also use “they” as a plural pronoun. It is too confusing for the reader.

Why?

- ❖ Public confidence in the judicial system
- ❖ Valid: ORDER is firmly grounded in law
- ❖ Fair: Treat similarly situated cases/families/people the same way
- ❖ The goals/expectations are consistent & steady
- ❖ Written orders are accurate & reliable



Thoughts?