

A Clerk's Guide to Drafting Orders in Contested Estate Matters

The Law

- Clerk's orders in estate, trust, and guardianship matters, when appealed, are reviewed by the superior court "on the record." The judge "shall review the order or judgment of the clerk for the purpose of determining only the following:
 - (1) Whether the **findings of fact** are supported by the evidence.
 - (2) Whether the **conclusions of law** are supported by the findings of facts.
 - (3) Whether the order or judgment is consistent with the conclusions of law and applicable law." G.S. 1-301.3(d).
- In these matters, the clerk "shall determine all issues of fact and law. The clerk shall enter an order or judgment, as appropriate, containing findings of fact and conclusions of law supporting the order or judgment." G.S. 1-301.3(b).

Basic Components of an Order

- Introductory paragraph – type of hearing; date of hearing; who appeared. (Not required, but useful)
- Findings of fact
- Conclusions of law
- Clerk's order or decree

Drafting Findings of Fact

- Not mere summaries of the evidence.

Findings of fact are the clerk's statements of the determinations *he or she has made* about the material evidence. They are not mere recitations of the evidence.

- No: "Mr. Jones testified that the executor failed to inform the heirs of the transaction."
- Yes: "The executor failed to inform the heirs of the transaction."

- Should convey certainty.

Findings of fact should not sound uncertain or leave doubt about whether the clerk has actually made a determination of fact.

- No: "The evidence seems to show that [“it appears that..., “the court is inclined to find that...”] the trustee did not provide access to the account statements.”
- Yes: "The trustee did not provide access to the account statements.”

- Only ultimate facts are required.

The clerk need not include in the order every dispute of fact that he or she has resolved. The order need only include those findings of fact that bear on the ultimate issues in the case (the legal issues that must be resolved). The clerk may include less significant findings if needed to create a foundation, but this is not required.

Drafting Conclusions of Law

- Conclusions of law are statements applying the applicable law to the court's findings of fact.

- Example:

Finding of fact: "The trustee failed to provide beneficiary with access to the account statements."

Conclusion of law: "The trustee's failure to provide beneficiary with access to the account statements was a breach of the duty to inform and report under G.S. Chapter 36C."

- An order should contain conclusions of law sufficient to address each legal question before the clerk in the proceeding.
- Each conclusion of law should be supported by sufficient findings of fact.