

1 3. For a proposed ward who has no spouse, child, or parent, an heir, as defined
 2 in s. 851.09, of the proposed ward that may be reasonably ascertained with due
 3 diligence. *as defined in s. 155.01(4),* *, any individual who is*

4 4. Any individual who is nominated as guardian ~~or~~ appointed to act as guardian
 5 or fiduciary for the proposed ward by a court of any state, any trustee for a trust
 6 established by or for the proposed ward, any person appointed as agent under a
 7 power of attorney for health care ~~or any person appointed as attorney-in-fact~~ under
 8 a durable power of attorney. *under ch. 243* *agent*

****NOTE: Please note that I retained "or," rather than using "and" as proposed for s. 54.01 (12) (a) 2., 3., and 4., to avoid the implication that all persons specified would be collectively required to function as "interested persons." Also, your instructions were unclear: do you wish to retain "fiduciary" in the phrase "appointed to act as...?"

9 5. If the proposed ward is a minor, the individual who has exercised principal
 10 responsibility for the care and custody of the proposed ward during the period of 60
 11 consecutive days immediately before the filing of the petition.

12 6. If the proposed ward is a minor and has no living parent, any individual
 13 nominated to act as fiduciary for the minor in a will or other written instrument that
 14 was executed by a parent of the minor.

15 7. If the proposed ward is receiving moneys paid, or if moneys are payable, by
 16 the federal department of veterans affairs, a representative of the federal
 17 department of veterans affairs, or, if the proposed ward is receiving moneys paid, or
 18 if moneys are payable, by the state department of veterans affairs, a representative
 19 of the state department of veterans affairs.

20 8. If the proposed ward is receiving long-term support services or similar public
 21 benefits, the county department of human services or social services that is providing
 22 the services or benefits.

1 9. The corporation counsel of the county in which the petition is filed and, if the
2 petition is filed in a county other than the county of the proposed ward's residence,
3 the corporation counsel of the county of the proposed ward's residence.

****NOTE: I did not draft the language you proposed as a change to this subdivision from the language in LRB-0039/P1, because, under your wording, the corporation counsel of the county in which the petition is filed would *only* be included if the petition was filed in a county *other* than the county of the proposed ward's residence; I assumed that this result is not what you intend.

4 10. Any other person required by the court.

5 (b) For purposes of proceedings subsequent to an order for guardianship
6 ~~protective placement~~, any of the following:

****NOTE: Do you intend in this bill to amend ch. 55 with this definition? If not, the reference to "for purposes of a petition for protective placement" should be eliminated.
****NOTE: Please note that I did not make the change from "any" to "all," so as to avoid the implication that an "interested person" must include all those specified.

7 1. The guardian.

8 2. The spouse or adult child of the ward or the parent of a minor ward.

9 3. Any other individual that the court may require, including any fiduciary that
10 the court may designate.

through the county's corporation counsel,

INSERT
13-11

11 4. The county of venue, if the county has an interest.

12 (13) "Least restrictive" means that which places the least possible restriction
13 on personal liberty and the exercise of rights and that promotes the greatest possible
14 integration of an individual into his or her community that is consistent with
15 meeting his or her essential requirements for health, safety, habilitation, treatment,
16 and recovery and protecting him or her from abuse, exploitation, and neglect.

****NOTE: I did not draft "constitutional" to modify rights; presumably, you don't want to limit the person to constitutionally-guaranteed rights to the exclusion of statutory rights.

17 (14) "Meet the essential requirements for physical health or safety" means
18 perform those actions necessary to provide the health care, food, shelter, clothes,

1 personal hygiene, and other care without which serious physical injury or illness will
2 likely occur.

INSERT 14-2

24

an individual

3 (15) "Physician" has the meaning given in s. 448.01 (5).

INSERT 14-3

4 (16) "Proposed ward" means ~~an individual~~ including a minor, ~~a person~~ alleged
5 to be incompetent, ~~and~~ ^{or} an alleged spendthrift, for whom a petition for guardianship
6 is filed.

***NOTE: Please review this definition. Because you have decided to include spendthrifts in ch. 54, use of this definition eliminates the necessity of specifying spendthrifts throughout the chapter, as does the definition of "ward."

7 (17) "Psychologist" ~~has the~~ means a licensed psychologist, as defined ~~given~~ in
8 s. 455.01 (4).

9 (18) "Psychotropic medication" means a prescription drug, as defined in s.
10 450.01 (20), that is used to treat or manage a psychiatric symptom or challenging
11 behavior.

INSERT 14-11

30

that

12 (19) "Serious and persistent mental illness" means a mental illness ~~which~~ is
13 severe in degree and persistent in duration, ~~which~~ causes a substantially diminished
14 level of functioning in the primary aspects of daily living and an inability to cope with
15 the ordinary demands of life, ~~which~~ may lead to an inability to maintain stable
16 adjustment and independent functioning without long-term treatment and support
17 and ~~which~~ may be of lifelong duration. "Serious and persistent mental illness"
18 includes schizophrenia as well as a wide spectrum of psychotic and other severely
19 disabling psychiatric diagnostic categories, but does not include degenerative brain
20 disorder or a primary diagnosis of ~~mental retardation~~ or of alcohol or drug
21 dependence.

a developmental disability

***NOTE: I included this definition (the same as s. 51.01 (3g), stats.) because the term "serious and persistent mental illness" is now used in s. 54.15 (6) and is not, at present, elsewhere defined. It contains the term "infirmities of aging," which I have changed to "degenerative brain disorder." Please review.

1 (20) "Spendthrift" means an individual who, because of the use of alcohol or
 2 other drugs or because of gambling or other wasteful course of conduct, is unable to
 3 attend to business or is likely to affect the health, life, or property of himself or herself
 4 or others so as to endanger his or her support and dependents or expose the public
 5 to the support.

****NOTE: I created this definition in ch. 54, instead of renumbering it from ch. 880, stats., because it is used in subchapter IV of ch. 880, stats. Do you want to move subch. IV to ch. 54? Where? Is my changed language for the definition what you want?

INSERT 15-5

6 (21) "Standby guardian" means an individual designated by the court under
 7 s. 54.52 (2) whose appointment as guardian becomes effective immediately upon the
 8 death or resignation of the initially appointed guardian, or if the initially appointed
 9 guardian is temporarily or permanently unable or unavailable to fulfill his or her
 10 duties.

INSERT 15-10

11 (22) "Ward" means an individual for whom a guardian has been appointed.

SUBCHAPTER II

APPOINTMENT OF GUARDIAN

14 **54.10 Appointment of guardian. (1)** A court may appoint a guardian of the
 15 person or a guardian of the estate for a proposed ward if the court determines that
 16 the individual is a minor.

17 (2) A court may appoint a guardian of the estate for a proposed ward if the court
 18 determines that the individual is a spendthrift.

****NOTE: Although you indicate that you wish to include spendthrifts in ch. 54, no language proposed addresses the actual appointment or any standard to be used. I have created s. 54.10 (2) to begin to address this issue. Please review.

19 (3) (a) A court may appoint a guardian of the person or a guardian of the estate,
 20 or both, for an individual based on a finding that the individual is incompetent only
 21 if the court finds by clear and convincing evidence that all of the following are true:

1 1. The individual is aged at least 17 years and 9 months.

2 2. For purposes of appointment of a guardian of the person, because of an
3 impairment, the individual is unable effectively to receive and evaluate information
4 or to make or communicate decisions to such an extent that the individual is unable
5 to meet the essential requirements for his or her physical health and safety.

6 3. For purposes of appointment of a guardian of the estate, because of an
7 impairment, the individual is unable effectively to receive and evaluate information
8 or to make or communicate decisions related to management of his or her property
9 or financial affairs, to the extent that any of the following applies:

10 a. The individual has property that will be dissipated in whole or in part.

11 b. The individual is unable to provide for his or her support.

12 c. The individual is unable to prevent financial exploitation.

13 4. The individual's need for assistance in decision^emaking or communication
14 is unable to be met effectively and less restrictively through appropriate and
15 reasonably available training, education, support services, health care, assistive
16 devices, or other means that the individual will accept.

17 (b) Unless the proposed ward is unable to communicate decisions effectively in
18 any way, the determination under par. (a) may not be based on mere old age,
19 eccentricity, poor judgment, or physical disability.

20 (c) In appointing a guardian under this subsection, declaring incompetence to
21 exercise a right under s. 54.25 (2) (c), or determining what powers it is appropriate
22 for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2), the court shall consider
23 all of the following:

24 1. The report of the guardian ad litem, as required in s. 54.40 (4) ~~(c)~~.

report

(1)

1 2. The medical or psychological ~~statement~~ provided under s. 54.36 and any
2 additional medical, psychological, or other evaluation ordered by the court under s.
3 54.40 (4) (e) or offered by a party and received by the court.

INSERT
17-3 4

~~***NOTE: Are the cross-references in par. (c) (intro.), 1, and 2. what you intend?~~

4 3. Whether other reliable resources are available to provide for the individual's
5 personal needs or property management, and whether appointment of a guardian is
6 the least restrictive means to provide for the individual's need for a substitute
7 decision-maker.

8 4. The preferences, desires, and values of the individual with regard to personal
9 needs or property management.

10 5. The nature and extent of the individual's care and treatment needs and
11 property and financial affairs.

12 6. Whether the individual's situation places him or her at risk of abuse,
13 exploitation, neglect, or violation of rights.

14 7. Whether the individual can adequately understand and appreciate the
15 nature and consequences of his or her impairment.

16 8. The individual's management of the activities of daily living.

17 9. The individual's understanding and appreciation of the nature and
18 consequences of any inability he or she may have with regard to personal needs or
19 property management.

20 10. The extent of the demands placed on the individual by his or her personal
21 needs and by the nature and extent of his or her property and financial affairs.

22 11. Any physical illness of the individual and the prognosis of the individual.

1 (13) 12. Any mental disability, alcoholism, or other drug dependence of the
2 individual and the prognosis of the mental disability, alcoholism, or other drug
3 dependence.

4 (14) 13. Any medication with which the individual is being treated and the
5 medication's effect on the individual's behavior, cognition, and judgment.

6 (15) 14. Whether the effect on the individual's evaluative capacity is likely to be
7 temporary or long-term, and whether the effect may be ameliorated by appropriate
8 treatment.

9 (16) 15. Other relevant evidence.

10 (d) Before appointing a guardian under this subsection, declaring
11 incompetence to exercise a right under s. 54.25 (2) (c), or determining what powers
12 it is appropriate for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2), the
13 court shall determine if additional medical, psychological, social, vocational, or
14 educational evaluation is necessary for the court to make an informed decision
15 respecting the individual's competency to exercise legal rights and may obtain
16 assistance in the manner provided in s. 55.06 (8) whether or not protective placement
17 is made.

18 (e) In appointing a guardian under this subsection, the court shall authorize
19 the guardian to exercise only those powers under ss. 54.18, 54.20, and 54.25 (2) that
20 are necessary to provide for the individual's personal needs and property
21 management and to exercise the powers in a manner that is appropriate to the
22 individual and that constitutes the least restrictive form of intervention.

23 (4) If the court appoints both a guardian of the person and a guardian of the
24 estate for an individual, the court may appoint separate persons to be guardian of
25 the person and of the estate, or may appoint one person to act as both.

INSERT 18-25

1 3. Any license, certificate, permit, or registration of the proposed guardian that
2 is required under chs. 440 to 480 or by the laws of another state for the practice of
3 a profession or occupation has been suspended or revoked.

INSERT
20-3/4

(b) If par. (a) 1., 2., ~~or 3.~~ ^{or 4.} applies to the proposed guardian, he or she shall include
5 in the sworn and notarized statement a description of the circumstances
6 surrounding the applicable event under par. (a) 1., 2., ~~or 3.~~ ^{or 4.}

7 **54.18 General duties and powers of guardian; limitations; immunity.**

8 (1) A ward retains all his or her rights that are not assigned to the guardian or
9 otherwise limited by statute. A guardian acting on behalf of a ward may exercise only
10 those powers that the guardian is authorized to exercise by statute or court order.
11 A guardian may be granted only those powers necessary to provide for the personal
12 needs or property management of the ward in a manner that is appropriate to the
13 ward and that constitutes the least restrictive form of intervention.

14 (2) A guardian shall do all of the following:

15 (a) Exercise the degree of care, diligence, and good faith when acting on behalf
16 of a ward that an ordinarily prudent person exercises in his or her own affairs.

17 (b) Advocate for the ward's best interests, including, if the ward is protectively
18 placed under ch. 55 and if applicable, advocating for the ward's applicable rights
19 under ss. 50.09 and 51.61.

20 (c) Exhibit the utmost degree of trustworthiness, loyalty, and fidelity in relation
21 to the ward.

22 (d) Notify the court of any change of address of the guardian or ward.

23 (3) No guardian may do any of the following:

Subject to s. 54.18 (1) and

INSERT 20-23

24 **54.19 Duties of guardian of the estate.** Except as specifically limited in the

25 order of appointment, the guardian of the estate shall do all of the following in order

, following any applicable procedures of s. 54.22,

1 to provide a ward with the greatest amount of independence and self-determination
2 with respect to property management in light of the ward's functional level,
3 understanding, and appreciation of his or her functional limitations and the ward's
4 personal wishes and preferences with regard to managing the activities of daily
5 living:

6 (2) Retain, expend, distribute, sell, or invest the ward's property, rents, income,
7 ~~issues,~~ benefits, and proceeds and account for all of them, subject to ch. 786.

8 ~~****NOTE: Please see the ****NOTE under s. 54.22 (renumbered from s. 880.19 (5) (b)).~~

9 (3) Determine, if the ward has executed a will, the will's location, determine
10 the appropriate persons to be notified in the event of the ward's death, and, if the
11 death occurs, notify those persons.

12 ~~****NOTE: Please see the ****NOTE under s. 54.22 (renumbered from s. 880.19 (5)~~
13 ~~(b)).~~

14 (4) Use the ward's income and property to maintain and support the ward and
15 any dependents of the ward ~~and to provide for the postsecondary education expenses~~
16 ~~of any children of the ward.~~

17 ~~****NOTE: Please see the ****NOTE under s. 54.22 (renumbered from s. 880.19 (5)~~
18 ~~(b)).~~

19 (5) Prepare and file an annual account as specified in s. 54.62.

20 (6) At the termination of the guardianship, deliver the ward's assets to the
21 persons entitled to them.

22 (8) File, with the register of deeds of any county in which the ward possesses
23 real property of which the guardian has ^{actual} knowledge, a sworn and notarized statement
24 that specifies the legal description of the property, the date that the ward is
25 determined to be an incompetent, and the name, address, and telephone number of
26 the ward's guardian and any surety on the guardian's bond.

27 (9) Perform any other duty required by the court order.

1 **54.20 Powers of guardian of the estate.** (1) (a) The ward's understanding
2 of the harm that he or she is likely to suffer as the result of his or her inability to
3 manage property and financial affairs.

4 (b) The ward's personal preferences and desires with regard to managing his
5 or her activities of daily living. *and upon any*

6 (c) The least restrictive form of intervention for the ward.

~~****NOTE: Does this subsection now conform to your intent?~~

*ward's income
and assets*

7 **(2) POWERS REQUIRING COURT APPROVAL.** The guardian of the estate may do any
8 of the following with respect to the ward only with the court's prior written approval
9 following any petition, notice, and hearing that the court requires:

10 (a) Make gifts, under the terms, including the frequency, amount, and donees
11 specified by the court in approval of a petition under s. 54.21.

~~****NOTE: Please review s. 54.20 (2) (intro.) and (a); have I now captured your
intent?~~

and s. 49.454

12 (c) Establish a trust as specified under 42 USC 1396p (d) (4) and transfer assets
13 into the trust.

14 (d) Purchase an annuity or insurance contract and exercise rights to elect
15 options or change beneficiaries under insurance and annuity policies and to
16 surrender the policies for their cash value. *, establish,*

17 (e) Ascertain and exercise any rights available to the ward under a retirement
18 plan or account.

~~****NOTE: I did not draft "Establish," as proposed, because a guardian would not,
for instance, have the right to establish a right in a retirement plan; did you mean
"Ascertain," as I have drafted? "Make application for?"~~

19 (f) Exercise any elective rights that accrue to the ward as the result of the death
20 of the ward's spouse or parent.

1 (g) Release or disclaim, under s. 854.13, any interest of the ward that is received
2 by will, intestate succession, nontestamentary transfer at death, or other transfer.

***NOTE: By "lifetime transfer," do you mean during the life of the ward? If so, "lifetime" seems unnecessary, is "other" transfer, instead, okay?

3 (i) Provide support for an individual whom the ward is not legally obligated to
4 support.

5 (j) Convey or release a contingent or expectation interest in property, including
6 a marital property right and any right of survivorship that is incidental to a joint
7 tenancy or survivorship marital property.

8 (k) Adjust, compromise, and discharge all debts and claims for damages due the
9 ward.

***NOTE: Are these debts of the ward or debts payable to the ward? If the former, the language is redundant to s. 54.19 (7) (renumbered from s. 880.22 (1)).

10 (3) POWERS THAT DO NOT REQUIRE COURT APPROVAL. The guardian of the estate
11 may do any of the following ^{on behalf of the ward} without first receiving the court's approval: ^{under}

12 (a) Provide support from the ward's ~~estate~~ ^{income and assets} for an individual whom the ward is
13 legally obligated to support.

14 (b) Enter into a contract, other than a contract ~~that is specified in sub. (2)~~ ^{financial} or
15 that is otherwise prohibited under this chapter.

16 (c) Exercise options of the ward to purchase securities or other property.

17 (d) Authorize access to or release of the ward's confidential records.

18 (e) Apply for public and private benefits.

19 (k) Take any other action, except an action specified under sub. (2), that is
20 reasonable or appropriate to the duties of the guardian of the estate.

21 INSERT 23-21

54.21 Petition to transfer ward's assets to another. (1) In this section:

22 (a) "Other individual" means any of the following:

b

1 1. The ward's spouse, if any.

INSERT 24-1

2 2. The guardian ad litem of the ward's minor child, if any.

3 3. The ward's disabled child, if any.

****NOTE: What does "disabled" mean in this context? Developmental disability?
Physical disability?

4 4. Any of the ward's siblings who has an ownership interest in property that
5 is co-owned with the ward. *provided care*

6 5. Any of the ward's children who is a caregiver, as defined in s. 46.986 (1)(b),
7 for the ward. *as specified in 42 USC 1396p (c) (2) (A) iv*

***NOTE: Is the definition of "caregiver" suitable for your purposes?

8 (b) "Will or *trusts* *other* similar instrument" includes a revocable or irrevocable trust, a
9 durable power of attorney, or a marital property agreement. *authorizing and*

10 (2) A guardian or other individual who seeks an order directing the guardian
11 of the estate to transfer any of a ward's *income or* assets to or for the benefit of any person shall
12 submit to the court a petition that specifies all of the following:

****NOTE: Wouldn't "guardian" in sub. (2) (intro.) actually be "guardian of the
person," since a guardian includes a guardian of the estate?

13 (a) Whether a proceeding by anyone seeking this authority with respect to the
14 ward's *income and assets* property was previously commenced and, if so, a description of the nature of
15 the proceeding and the disposition made of it.

16 (b) The amount and nature of the ward's financial obligations, including
17 moneys currently and prospectively required to provide for the ward's maintenance,
18 support, and well-being and to provide for others dependent upon the ward for
19 support, regardless of whether the ward is legally obligated to provide the support.

20 If the petitioner has access to a copy of a court order or written agreement that

1 specifies support obligations of the ward, the petitioner shall attach the copy to the
2 petition.

income and assets

3 (c) The ~~property~~ of the ward that is the subject of the petition, the proposed
4 disposition of the property, and the reasons for the disposition.

5 (d) The wishes, if ascertainable, of the ward.

6 (e) As specified in sub. (3), whether the ward has previously executed a will or
7 similar instrument.

8 (f) A description of any significant gifts or patterns of gifts that the ward has
9 made.

INSERT
25-9

10 (1) (2) The names, post-office addresses, and relationships to the ward of all of the
11 following:

, trust,

*who can be ascertained
with reasonable
diligence*

12 1. Any presumptive adult heirs of the ward.

13 2. If the ward has previously executed a will or ~~similar~~ instrument, the named
14 or described beneficiaries, if known, under the most recent will or ~~similar~~ instrument
15 executed by the ward.

other

*for nontestamentary transfer use
5 times*

16 (3) (a) If a ward has previously executed a will or ~~similar~~ instrument, and the
17 petitioner is able, with reasonable diligence, to obtain a copy, the petitioner shall
18 provide the copy to the court, together with a statement that specifies all of the
19 following:

, trust,

20 1. The manner in which the copy was secured.

other

21 2. The manner in which the terms of the will or ~~similar~~ instrument became
22 known to the petitioner.

other

23 3. The basis for the petitioner's belief that the copy is of the ward's most recently
24 executed will or ~~similar~~ instrument.

dispositive use 6 times
other dispositive estate planning document

1 (b) If the petitioner is unable to obtain a copy of the most recently executed will
2 or ~~similar instrument~~ or is unable to determine if the ward has previously executed
3 a will or ~~similar instrument~~, the petitioner shall provide a statement to the court that
4 specifies the efforts that were made by the petitioner to obtain a copy or ascertain the
5 information.

6 (c) If a copy of the most recently executed will or ~~similar instrument~~ is not
7 otherwise available, the court may order the person who has the original will or
8 ~~similar instrument~~ to provide a photocopy to the court for in camera examination.
9 The court may provide the photocopy to the parties to the proceeding unless the court
10 finds that doing so is contrary to the ward's best interests.

11 (d) The petitioner and the court shall keep confidential the information in a will
12 or ~~similar instrument~~, or a copy of the will or ~~similar instrument~~, under this
13 subsection, and may not, unless otherwise authorized, disclose that information.

****NOTE: Does this paragraph meet your intent?*

14 (4) The petitioner shall serve notice upon all of the following, together with a
15 copy of the petition, stating that the petitioner will move the court, at a time and
16 place named in the notice, for the order described in the petition:

17 (a) If not the same as the petitioner, the guardian of the person and the
18 guardian of the estate.

19 (b) Unless the court dispenses with notice under this subsection, the persons
20 specified in sub. (2) (g), if known to the petitioner.

21 (c) The county corporation counsel, if the county has an interest in the matter.

****NOTE: This means that the petitioner determines whether the county has an interest and gets notice. Is that okay?*

22 (5) The court shall consider all of the following in reviewing the petition:

23 (a) The wishes of the ward, if known.

impairment

income and assets

1 (b) Whether the duration of the ward's ~~disability~~ is likely to be sufficiently brief
2 so as to justify dismissal of the proceedings in anticipation of the ward's recovered
3 ability to decide whether, and to whom, to transfer his or her assets.

4 (c) Whether the proposed transfer will benefit the ward, the ward's ~~estate~~ or
5 members of the ward's immediate family.

***NOTE: I understand that this provision is sought to codify *Matter of Guardianship of F.E.H.*, 154 Wis.2d 576 (1990). Therefore, I included "immediate" as an adjective modifying "family".

6 (d) ~~Except for gifting that is authorized under s. 54.20 (2) (a),~~ whether the
7 donees or beneficiaries under the proposed disposition are reasonably expected
8 objects of the ward's generosity and whether the proposed disposition is consistent
9 with any ascertained wishes of the ward or known estate plan or pattern of lifetime
10 gifts that he or she has made.

11 (e) Whether the proposed disposition will produce tax savings that will
12 significantly benefit the ward, his or her dependents, or other persons for whom the
13 ward would be concerned.

14 (f) The factors specified in sub. (2) (a) to (g) and any statements or other
15 evidence under sub. (3).

authorizing and

16 (g) Any other factors that the court determines are relevant.

17 (6) The court may grant the petition under sub. (2) and enter an order directing
18 the guardian of the estate to take action requested in the petition, if the court finds
19 and records all of the following:

20 (a) That the ward has incapacity to perform the act for which approval is sought
21 and the incapacity is not likely to change positively within a reasonable period of
22 time.

1 (b) That a competent individual in the position of the ward would likely perform
2 the act under the same circumstances.

3 (c) That, before the ward had incapacity to perform the act for which approval
4 is sought, he or she did not manifest intent that is inconsistent with the act.

5 (7) Nothing in this section requires a guardian to file a petition under this
6 section and a guardian is not liable or accountable to any person for having failed to
7 file a petition under this section.

8 54.25 (1) DUTIES. A guardian of the person shall do all of the following:

9 (b) 1. Regularly inspect, in person, the ward's condition, surroundings, and
10 treatment.

11 2. Examine the ward's patient health care records and treatment records.

12 3. Attend and participate in staff meetings of any facility in which the ward
13 resides or is a patient, if the meeting includes a discussion of the ward's treatment
14 and care.

15 4. Inquire into the risks and benefits of, and alternatives to, treatment for the
16 ward, particularly if drastic or restrictive treatment is proposed.

17 (2) POWERS. (a) ~~Presumption in favor of limited guardianship~~. A guardian of

18 the person has only those rights and powers that the guardian is specifically
19 authorized to exercise by court order. Any other right or power is retained by the

20 ward, unless the ward has been declared incompetent to exercise the right under par.
21 (c) or the power has been transferred to the guardian under par. (d).

22 (b) *Rights retained by individuals determined incompetent.* An individual
23 determined incompetent retains the power to exercise all of the following rights,
24 without consent of the guardian:

Regular inspection

Examination of

of
and authorization for
redisclosure
redisclosure as appropriate

Attendance and participation

Inquiry

I
Rights and powers
of a guardian of
the person

INSERT 28-16

1 1. To have access to and communicate privately with the court and with
 2 governmental representatives, including the right to have input into plans for
 3 support services, the right to initiate grievances, including under state and federal
 4 law regarding resident or patient rights, and the right to participate in
 5 administrative hearings and court proceedings.

*income and assets of
the ward*

6 2. To have access to, communicate privately with, and retain legal counsel, with
 7 fees paid ~~by the ward's estate~~ ^{from} subject to court approval.

8 3. To have access to and communicate privately with representatives of the
 9 protection and advocacy agency under s. 51.62 and the board on aging and long-term
 10 care.

11 4. To protest a residential placement made under s. 55.05 (5), and to be
 12 discharged from a residential placement unless the individual is protectively placed
 13 under s. 55.06 or the elements of s. 55.06 (11) are present.

14 5. To petition for court review of guardianship, protective services, protective
 15 placement, or commitment orders.

16 6. To give or withhold a consent reserved to the individual under ch. 51.

17 7. To exercise any other rights specifically reserved to the individual by statute
 18 or the constitutions of the state or the United States, including the rights to free
 19 speech, freedom of association, and the free exercise of religious expression.

20 (c) *Declaration of incompetence to exercise certain rights.*

21 1. The court may, as part of a proceeding under s. 54.44 in which an individual
 22 is found incompetent and a guardian is appointed, declare that the individual has
 23 incapacity to exercise one or more of the following rights:

24 a. The right to consent to marriage.

25 b. The right to execute a will.

1 c. The right to serve on a jury. ✓

2 d. The right to apply for an operator's license, a license issued under ch. 29, or
3 a credential, as defined in s. 440.01 (2) (a), if the court finds that the individual is
4 incapable of understanding the nature and risks of the licensed or credentialed
5 activity, to the extent that engaging in the activity would pose a substantial risk of
6 physical harm to the individual or others. A failure to find that an individual is
7 incapable of applying for a license or credential is not a finding that the individual
8 qualifies for the license or credential under applicable laws and rules.

9 e. The right to consent to sterilization, if the court finds that the individual is
10 incapable of understanding the nature, risk, and benefits of sterilization, after the
11 nature, risk, and benefits have been presented in a form that the individual is most
12 likely to understand.

13 f. The right to consent to organ, tissue, or bone marrow donation.

14 g. The right to vote, if the court finds that the individual is incapable of
15 understanding the objective of the elective process.

****NOTE: Section 880.33 (9), stats., upon which this language is based, requires that the court's determination be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925, or 6.93 with the responsibility for determining challenges to registration and voting that may be directed against that elector. Otherwise, I think it is possible that the official or agency may have no way of knowing if the vote is countable. Do you want this requirement added to the language? This NOTE also applies to subd. 4.

16 2. Any finding under subd. 1. that an individual lacks evaluative capacity to
17 exercise a right must be based on clear and convincing evidence. In the absence of
18 such a finding, the right is retained by the individual.

19 3. If an individual is declared not competent to exercise a right under subd. 1.
20 or 4., a guardian may not exercise the right or provide consent for exercise of the right
21 on behalf of the individual. If the court finds with respect to a right listed under subd.

in an
or to vote in an election

1. a., d., e., or f. that the individual is competent to exercise the right under some but not all circumstances, the court may order that the individual retains the right to exercise the right only with consent of the guardian of the person.

register to

4. Regardless of whether a guardian is appointed, a court may declare that an individual is not competent to exercise the right to vote if it finds by clear and convincing evidence that the individual is incapable of understanding the objective of the elective process. If the petition for a declaration of competence to vote is not part of a petition for guardianship, the same procedures shall apply as would apply for a petition for guardianship.

INSERT 31-9

incompetence

***NOTE: Please see the ***NOTE under subd. 1. g., above.

(d) Guardian authority to exercise certain powers.

1. A court may authorize a guardian of the person to exercise all or part of any of the powers specified in subd. 2. only if it finds, by clear and convincing evidence, that the individual lacks evaluative capacity to exercise the power. The court shall authorize the guardian to exercise only those powers that are necessary to provide for the individual's personal needs, safety, and rights and to exercise the powers in a manner that is appropriate to the individual and that constitutes the least restrictive form of intervention. The court may limit the authority of the guardian with respect to any power to allow the individual to retain power to make decisions about which the individual is able effectively to receive and evaluate information and communicate decisions.

of the person

and subject to any limitation under s. 54.46 (3)(b),

2. All of the following are powers subject to subd. 1.:

a. Except as provided under subd. 2. b., c., and d., and except for consent to psychiatric treatment and medication under ch. 51, the power to give informed consent, if in the ward's best interests, to voluntary or involuntary medical

when a court appoints a guardian for a minor, the guardian shall be granted care, custody, and control of the person of the minor.

that is in the ward's best interest

1 examination and treatment and to the voluntary receipt by the ward of medication,
 2 including any appropriate psychotropic medication if the guardian has first made
 3 a good-faith attempt to discuss with the ward the ward's voluntary receipt of the
 4 psychotropic medication and the ward does not protest. For purposes of this
 5 subdivision 2. a., "protest" means make more than one discernible negative response,
 6 other than mere silence, to the offer of, recommendation for, or other proffering of
 7 voluntary receipt of psychotropic medication. "Protest" does not mean a discernible
 8 negative response to a proposed method of administration of the psychotropic
 9 medication. A guardian may consent to the involuntary administration of
 10 psychotropic medication only pursuant to a court order under ch. 55. In determining
 11 whether medication or medical treatment is in the ward's best interest, the guardian
 12 shall consider the invasiveness of the medication or treatment and the likely benefits
 13 and side effects of the medication or treatment.

55.14

, other than psychotropic medication,

14 b. Unless it can be shown by clear and convincing evidence that the ward would
 15 never have consented to research participation, the power to authorize the ward's
 16 participation in an accredited or certified research project if the research might help
 17 the ward; or if the research might not help the ward but might help others, and the
 18 research involves no more than minimal risk of harm to the ward.

19 c. The power to authorize the ward's participation in research that might not
 20 help the ward but might help others even if the research involves greater than
 21 minimal risk of harm to the ward if the guardian can establish by clear and
 22 convincing evidence that the ward would have elected to participate in such
 23 research; and the proposed research was reviewed and approved by the research and
 24 human rights committee of the institution conducting the research. The committee
 25 shall have determined that the research complies with the principles of the

1 statement on the use of human subjects for research adopted by the American
2 Association on Mental Deficiency, and with the federal regulations for research
3 involving human subjects for federally supported projects.

4 d. Unless it can be shown by clear and convincing evidence that the ward would
5 never have consented to any experimental treatment, the power to consent to
6 experimental treatment if the court finds that the ward's mental or physical status
7 presents a life-threatening condition; the proposed experimental treatment may be
8 a life saving remedy; all other reasonable traditional alternatives have been
9 exhausted; ⁽²⁾ ~~two~~ examining physicians have recommended the treatment; and, in the
10 court's judgment, the proposed experimental treatment is in the ward's best
11 interests. *receipt by the ward of* *and to redisclose as appropriate*

12 e. The power to give informed consent to social and supported living services.

13 f. The power to give informed consent to release of medical, treatment, and
14 other confidential records. *or make a temporary protective placement under s. 55.06(12)*

15 ~~g. The power to determine the individual's county or state of residence.~~

16 *g* h. The power to make decisions related to mobility and travel.

17 *h* i. The power to admit the individual to residential facilities as provided under
18 s. 55.05 (5) ~~or~~ make an emergency protective placement under s. 55.06 (11).

19 *i* j. The power to choose providers of medical, social, and supported living
20 services.

21 *j* k. The power to make decisions regarding educational and vocational
22 placement and support services or employment.

23 *k* l. The power to make decisions regarding initiating a petition for the
24 termination of marriage.

25 *l* m. The power to receive all notices on behalf of the ward.

SECTION 31

if an adult, and the power to have care, custody, and control of the ward, if a minor

1 *m* n. The power to act in all proceedings as an advocate of the ward, except the
2 power to enter into a contract that binds the ward or the ward's property or to
3 represent the ward in any legal proceedings pertaining to the property, unless the
4 guardian of the person is also the guardian of the estate.

5 *n* o. The power to apply for protective placement under s. 55.06 or for
6 commitment under s. 51.20 or 51.45 (13) for the ward.

7 *o* p. The power to have ~~charge~~ *custody* of the ward.

****NOTE: In s. 54.25 (2) (d) 2. i., m., n., o., and p., I have attempted to "weave" in the parts of s. 880.38 (1), stats., that seemed to fit (in LRB-0039/P1, this provision was renumbered s. 54.25 (1) (c), but it didn't fit well there. The power to "have charge of" the ward is a change from the statutory "have custody of"; is it an acceptable wording change? Back again to my confusion about prohibiting the guardian of the person from entering into a contract that binds the ward — what about a contract with a facility (e.g., a nursing home), which requires a financial commitment? Would it be necessary for the guardian of the estate to sign? If the prohibition is unchanged, the power of the guardian of the person to "admit a ward to certain residential facilities" under subd. i. is, it would seem, significantly less that it first appears to be.

8 *p* r. Any other power the court may specifically identify.

9 3. In exercising powers and duties delegated to the guardian of the person
10 under this paragraph, the guardian of the person shall, consistent with meeting the
11 individual's essential requirements for health and safety and protecting the
12 individual from abuse, exploitation, and neglect, do all of the following:

13 a. Place the least possible restriction on the individual's personal liberty and
14 exercise of constitutional and statutory rights, and promote the greatest possible
15 integration of the individual into his or her community.

16 b. Make diligent efforts to identify and honor the individual's preferences with
17 respect to choice of place of living, personal liberty and mobility, choice of associates,
18 communication with others, personal privacy, and choices related to sexual
19 expression and procreation. In making a decision to act contrary to the individual's
20 expressed wishes, the guardian shall take into account the individual's

1 understanding of the nature and consequences of the decision, the level of risk
2 involved, the value of the opportunity for the individual to develop decision-making
3 skills, and the need of the individual for wider experience.

INSERT
35-34

SUBCHAPTER IV

PROCEDURES

5
6 **54.30 Jurisdiction and venue.**

An interested

7 (3) (b) 1. A person shall file a petition for change of venue in the county in which
8 venue for the guardianship currently lies.

and corporation counsel set

9 2. The person filing the petition under subd. 1. shall give notice to the
10 corporation counsel of the county in which venue for the guardianship currently lies
11 and to the register in probate for the county to which change of venue is sought.

****NOTE: Should notice also be given to the corporation counsel of the county to which change of venue is sought?

12 3. If no objection to the change of venue is made within 15 days after the date
13 on which notice is given under subd. 2., the circuit court of the county in which venue
14 for the guardianship currently lies may enter an order changing venue. If objection
15 to the change of venue is made within 15 days after the date on which notice is given
16 under subd. 2., the circuit court of the county in which venue for the guardianship
17 currently lies shall set a date for a hearing within 7 days after the objection is made
18 and shall give notice of the hearing to the corporation counsel of that county and to
19 the corporation counsel and register in probate of the county to which change of
20 venue is sought.

21 54.34 (1) (k) Whether the proposed ward is a recipient of a public benefit,
22 including medical assistance or a benefit under s. 46.27.

1 (L) The agent under any current, valid power of attorney for health care or
2 durable power of attorney that the proposed ward has executed.

3 (m) Whether the petitioner is requesting a full or limited guardianship and, if
4 limited, the specific authority sought by the petitioner for the guardian or the specific
5 rights of the individual that the petitioner seeks to have removed or transferred.

6 (n) Whether the proposed ward, if married, has children who are not children
7 of the current marriage.

8 **54.38 Notice.** (1) FORM AND DELIVERY OF NOTICE. A notice shall be in writing.

9 A copy of the petition, motion, or other required document shall be attached to the
10 notice. Unless otherwise provided, notice may be delivered in person, by certified
11 mail with return receipt requested, or by facsimile transmission. Notice is
12 considered to be given by proof of personal delivery or by proof that the notice was
13 mailed to the last-known address of the recipient or was sent by facsimile
14 transmission to the last-known facsimile transmission number of the recipient.

****NOTE: Instead of drafting "petition or other moving papers," I consulted Bob Nelson, the civil procedure drafter, who suggested "petition, motion, or other required document." This same comment applies to s. 54.38 (2) (a).

15 (2) (b) Personally or by mail at least 10 days before the time set for hearing,
16 to all of the following:

- 17 1. The proposed ward's counsel, if any.
- 18 2. The proposed ward's guardian ad litem.
- 19 3. Any presumptive adult heirs of the proposed ward.
- 20 4. Any other interested persons, unless specifically waived by the court.
- 21 5. The agent under any durable power of attorney or power of attorney for
22 health care of the ward.
- 23 6. Any person who has legal or physical custody of the proposed ward.

as specified in
s. 851.09,

INSERT 36-7

1 7. Any public or private agency, charity, or foundation from which the proposed
2 ward is receiving aid or assistance.

INSERT
37-2

3 8. Any other person that the court requires.

4 54.40 (4) (c) Interview the proposed guardian, the proposed standby guardian,
5 if any, and any other person seeking appointment as guardian and report to the court
6 concerning the fitness of each individual interviewed to serve as guardian and
7 concerning the report under s. 54.15 (8).

for financial
and health
care decision
making

***NOTE: Have I handled this provision as the memo intends? It was not clear to me that it had been agreed to employ the criminal history and patient abuse record search under s. 50.065, stats., for s. 54.15 (8) or here.

under ch. 243

and

8 (d) 1. Review any power of attorney for health care under ch. 155, ~~or~~ any
9 durable power of attorney executed by the proposed ward ~~or~~ any other advance
10 planning to ~~avoid guardianship~~ in which the proposed ward had engaged.

8

9

10

11 2. Interview any agent appointed by the proposed ward under any document
12 specified in subd. 1.

the need for

13 3. Report to the court concerning whether or not the proposed ward's advance
14 planning is adequate to preclude guardianship.

or ward

15 (g) If the proposed ward requests representation by counsel, inform the court
16 and the petitioner or the petitioner's counsel, if any.

or ward

B

17 (h) Attend all court proceedings related to the guardianship.

18 **54.42 Rights of proposed ward.** (1) RIGHT TO COUNSEL. (a) 1. The proposed
19 ward requests counsel.

or ward

20 2. The guardian ad litem or another person states to the court that the proposed
21 ward is opposed to the guardianship petition.

22 3. The court determines that the interests of justice require counsel for the
23 proposed ward.

1 (b) Any attorney obtained under par. (a) or appointed under par. (c) shall be an
2 advocate for the expressed wishes of the proposed ward.

3 (2) RIGHT TO JURY TRIAL. The proposed ward has the right to a trial by a jury
4 if demanded by the proposed ward, his or her attorney, or the guardian ad litem,
5 except that the right is waived unless demanded at least 48 hours before the time set
6 for the hearing. The number of jurors for such a trial is determined under s. 756.06

7 (2) (b). The proposed ward, his or her attorney, or the guardian ad litem each has the
8 right to present and cross-examine witnesses, including any physician or licensed
9 psychologist who reports to the court concerning the proposed ward.

****NOTE: I did not change "or" to "and" in the third sentence, as requested, because it is important to avoid the implication that the ward, attorney, and GAL must act jointly to present and cross-examine witnesses. I did, however, add "each," to distinguish the actor for that sentence from the actor in the first sentence. In ordinary statutory usage, however, "or," when used to link several actors, allows each actor to perform the action and does not exclude one from the other.

10 ~~(3) RIGHT TO INDEPENDENT MEDICAL EXAMINATION.~~

11 (5) RIGHT TO BE PRESENT AT HEARING. The proposed ward has the right to be
12 present at any hearing regarding the guardianship.

13 (6) RIGHT TO HEARING IN ACCESSIBLE LOCATION. The proposed ward has the right
14 to have any hearing regarding the guardianship conducted in a location that is
15 accessible to the proposed ward.

16 **54.44 Hearing.** (1) TIME OF HEARING; PROVISION OF REPORTS. A petition for
17 guardianship other than a petition under the circumstances of s. 54.50 (1) or (2), shall
18 be heard within 90 days after it is filed. The guardian ad litem and attorney for the
19 proposed ward shall be provided with a copy of the statement of the examining
20 physician or psychologist under s. 54.36 at least 96 hours before the time of the
21 hearing.

Time of hearing for petition =

or ward

or ward

and manner

par. (b) or

(a)

(1)

report

****NOTE: Note that I added s. 54.50 (1), as well as s. 54.50 (2), as exceptions to the 90-day time limit. Note also, that, pending your decision, s. 54.50 (2) may be moved to ch. 55, stats., as an "admission without court involvement," since it does not, at least initially, depend on a guardianship for its action. However, please see the following ****NOTE.

****NOTE: Your proposed material does not affect s. 880.075, stats. If you do not intend that I repeal it, where should I put it? Should I make an exception for it in s. 54.44 (1)?

or is a spendthrift

(a) Adult proposed ward

1 (2) STANDARD OF PROOF. Any determination by the court as to whether the
2 proposed ward is incompetent shall be by clear and convincing evidence.

3 (3) PRESENCE OF PROPOSED GUARDIAN. The proposed guardian and any proposed
4 standby guardian shall be physically present at the hearing unless the court excuses
5 the attendance of either or, for good cause shown, permits attendance by telephone.

6 (4) PRESENCE OF PROPOSED WARD. The petitioner shall ensure that the proposed
7 ward attends the hearing unless the attendance is waived by the guardian ad litem.
8 In determining whether to waive attendance by the proposed ward, the guardian ad
9 litem shall consider the ability of the proposed ward to understand and meaningfully
10 participate, the effect of the proposed ward's attendance on his or her physical or
11 psychological health in relation to the importance of the proceeding, and the
12 proposed ward's expressed desires. If the proposed ward is unable to attend the
13 hearing because of residency in a nursing home or other facility, physical
14 inaccessibility, or a lack of transportation and if the proposed ward, guardian ad
15 litem, advocate counsel, or other interested person so requests, the court shall hold
16 the hearing in a place where the proposed ward may attend.

17 (6) PROPOSED GUARDIAN INAPPROPRIATE. If the court finds that the proposed
18 guardian is inappropriate, the court shall request that a petition proposing a suitable
19 guardian be filed, shall set a date for a hearing to be held within 30 days, and shall

(b) Minor proposed ward. A minor is not required to attend the hearing.

1 require the guardian ad litem to investigate the suitability of a new proposed
2 guardian.

3 **54.46 Disposition of petition.** After the hearing under s. 54.44, the court
4 shall dispose of the case in one of the following ways:

5 (1) DISMISSAL OF THE PETITION. (a) If the court finds any of the following, the
6 court shall dismiss the petition:

7 1. Contrary to the allegations of the petition, the proposed ward is not any of
8 the following:

- 9 a. Incompetent.
- 10 b. A spendthrift.
- 11 c. A minor.

as specified in s. 54.10 (3)(c) 3.,

12 2. Advance planning by the ward renders guardianship unnecessary.

13 3. The elements of the petition are unproven.

14 (b) The court may also consider an application by the proposed ward for the
15 appointment of a conservator under s. 54.76.

16 ~~(2) PROTECTIVE ARRANGEMENT; FINANCIAL TRANSACTIONS; APPOINTMENT OF SPECIAL
17 GUARDIAN. (a) If a proposed ward is found to be a minor, incompetent, or a spendthrift,
18 the court may, without appointing a guardian, do any of the following if the court first
19 considers the interests of dependents and creditors of the ward and whether a
20 guardianship is necessary, given the ward's functional level:~~

21 1. Authorize, direct, or ratify any transaction or series of transactions
22 necessary to achieve any security, service, or care arrangement that meets the
23 foreseeable needs of the ward.

1 2. Authorize, direct, or ratify a contract, trust, or other transaction related to
2 the ward's property or financial affairs if necessary as a means of providing for the
3 personal needs of or property management for the ward.

4 (b) The court may appoint a special guardian to assist in the accomplishment
5 of any protective arrangement or transaction under par. (a). The special guardian
6 has any authority conferred by the order of appointment, shall report to the court on
7 all actions taken under the order of appointment, and shall serve until discharged
8 by order of the court. The court may approve a reasonable compensation for the
9 special guardian, except that, if the court finds that the special guardian has failed
10 to discharge his or her duties satisfactorily, the court may deny or reduce the amount
11 of compensation or remove the special guardian.

****NOTE: Should the compensation language be under subch. V, around s. 54.72 or 54.74, instead of here?

12 (3) APPOINTMENT OF GUARDIAN; ORDER. If the proposed ward is found to be
13 incompetent, a minor, or a spendthrift, the court may enter a determination and
14 order appointing a guardian that specifies any powers of the guardian that require
15 court approval, as provided in ss. 54.20 (2) and 54.25 (2), and may provide for any of
16 the following:

If under s. 54.10(5), and

****NOTE: I have assumed that s. 54.46 (3) was intended to replace s. 880.12, stats., although s. 54.46 (3) makes no mention of the language under s. 880.12 (2), stats. On Betsy Abramson's advice, I have repealed s. 880.12.

17 (a) Co-guardians. The court may appoint ^s co-guardians of the person or
18 co-guardians of the estate, ~~subject to any conditions that the court imposes.~~ Unless
19 otherwise ordered by the court, each decision made by a co-guardian with respect
20 to the ward must be concurred in by any other co-guardian, or the decision is void.

21 (c) *Durable power of attorney*. If the ward has executed a durable power of
22 attorney, the durable power of attorney remains in effect, except that the court may,

before a finding of incompetency and appointment of a guardian is made for the ward under this chapter

no# Unless the court makes this revocation or limitation, the ward's guardian may not make decisions for the ward that may be made by the agent, unless the guardian is the agent.

1 only for good cause shown, revoke the durable power of attorney or limit the
2 authority of the agent under the terms of the durable power of attorney.

****NOTE: This provision may require amending the durable power of attorney chapter, which will, if necessary, be done in a subsequent version.

3 (3) (4) (c) Fees if guardian is not appointed. If a guardian is not appointed under

4 sub. (2) *or (3)*, the county in which *venue lies* *the action is pending* for the guardianship proceeding is the
5 county liable for any fees due the guardian ad litem. The proposed ward is liable for
6 any fees due his or her legal counsel, except as follows:

7 1. If counsel is appointed under s. 977.08, the proposed ward is liable only for
8 the fees applicable under *s* s. 977.07 and 977.075.

9 2. If the court finds the petition for guardianship frivolous under s. 814.025, the
10 court may assess fees to the petitioner.

11 3. If the proposed ward is indigent and counsel is not appointed under s. 977.08,
12 the county in which venue lies for the guardianship proceeding is liable.

****NOTE: I included in this paragraph mention of public defender representation, because par. (b) mentions it. Is that drafted as you wish?

CS

no I

13 **54.50 Temporary guardianships.** (1) *(a)* *Standard*. If it is demonstrated
14 to the court that a proposed ward's particular situation, including the needs of the
15 proposed ward's dependents, requires the immediate appointment of a temporary
16 guardian of the person or estate, the court may appoint a temporary guardian under
17 this section. *(3)* *B* *CS* *no I*

18 *(c)* *Procedures for appointment*. All of the following procedures apply to the
19 appointment of a temporary guardian:

20 *(a)* Any person may petition for the appointment of a temporary guardian for
21 an individual. The petition shall contain the information required under s. 54.34 (1),
22 shall specify reasons for the appointment of a temporary guardian and the powers

including the power specified in s. 51.30(5)(e),

1 requested for the temporary guardian, and shall include a petition for appointment
2 of a guardian of the person or estate or state why such a guardianship is not sought.

****NOTE: Note that the notice provisions concerning petition and hearing for temporary guardianship have been moved from this section to s. 54.38 (6).

3 (b) 2. The court shall appoint a guardian ad litem, who shall attempt to meet with
4 the proposed ward before the hearing or as soon as is practicable after the hearing,
5 but not later than 7 calendar days after the hearing. The guardian ad litem shall
6 report to the court on the advisability of the temporary guardianship at the hearing
7 or not later than 10 calendar days after the hearing. *The hearing may be held*

8 (c) 3. The court shall hold a hearing on the temporary guardianship no earlier than
9 48 hours after the filing of the petition unless good cause is shown. At the hearing,
10 the petitioner shall provide a report or testimony from a physician or psychologist
11 that indicates that there is a reasonable likelihood that the proposed ward is
12 incompetent. The guardian ad litem shall attend the hearing in person or by
13 telephone or, instead, shall provide to the court a written report concerning the
14 proposed ward for review at the hearing.

15 (d) 4. If the court appoints a temporary guardian and if the ward, his or her
16 counsel, the guardian ad litem, or an interested party requests, the court shall order
17 a rehearing on the issue of appointment of the temporary guardian within 10
18 calendar days after the request. If a rehearing is requested, the temporary guardian
19 may take no action to expend the ward's assets, pending a rehearing, without
20 approval by the court.

21 ~~(2) (h) If the allegedly incapacitated individual, his or her guardian ad litem,~~
22 ~~or any interested person objects to the admission, the individual, guardian ad litem,~~
23 ~~or person may request the court in which the guardianship petition is pending to hold~~

1 a hearing on whether the individual is incapacitated or whether the admission shall
 2 continue before the guardianship hearing. If requested, the court shall hold such a
 3 hearing within 7 calendar days after receipt of the request.

****NOTE: If you do not want sub. (2) to be under s. 54.50, where do you want it to be placed?

4 SUBCHAPTER V

5 POST-APPOINTMENT MATTERS

6 54.60 (2) CONTENTS OF INVENTORY. The inventory shall provide all of the
 7 following information with respect to each asset:

8 (a) How the asset is held or titled.

9 (b) The name and relationship to the ward of any co-owner. ✓

10 (c) The marital property classification of the property and, for any property that
 11 is marital property, the spouse who has management and control rights with respect
 12 to the property.

13 (3) TIME FOR FILING. The guardian of the estate shall file the initial inventory
 14 within 60 days after appointment, unless the court extends or reduces the time.

15 (4) NOTICE OF INVENTORY. The court shall specify the persons to whom the
 16 guardian shall provide copies of the inventory. *of the estate* *income and assets*

17 (5) FEE. The guardian of the estate shall pay from the ward's *estate* the fee
 18 specified in s. 814.66 (1) ^v(b) 2. at the time the inventory or other documents
 19 concerning the *of the* ~~estate's~~ value are filed.

20 (6) APPRAISAL. The court may order that the guardian of the estate appraise
 21 all or any part of the ward's *estate* *assets*.

22 54.62 Accounts.

SECTION 31

income and assets do

the amount specified in s. 867.03 (1g) (intro.)

1 (3) SMALL ESTATES. (a) If a ward's ~~estate~~ ^{income and assets do} does not exceed ~~\$5,000 in value~~ ^{the amount specified in s. 867.03 (1g) (intro.)}, the
 2 guardian need not file an account under sub. (1) unless otherwise ordered to do so
 3 by the court. For the purposes of this paragraph, the value of the ward's ~~estate~~ ^{income and assets} does
 4 not include the ward's income, any burial trust possessed by the ward, or any term
 5 or other life insurance policy that is irrevocably assigned to pay for the disposition
 6 of the ward's remains at death.

7 (b) If the ward's ~~estate~~ ^{income and assets} as calculated under par. (a), increases ~~above \$5,000 in~~
 8 ~~value~~ ^{the amount specified in s. 867.03 (1g) (intro.)} the guardian shall so notify the court, which shall determine if an annual
 9 account under sub. (1) or a final account under s. 54.66 is required.

10 (4) ANNUAL ACCOUNTS OF MARRIED WARDS. (a) For a married ward, the court may
 11 waive filing of an annual account under sub. (1) or permit the filing of a modified
 12 annual account, which shall be signed by the ward's guardian and spouse and shall
 13 consist of all of the following:

14 1. Total assets of the ward, as determined under ch. 766, on January 1 of the
 15 year in question.

16 2. Income in the name of the ward, without regard to ch. 766, and the ward's
 17 joint income.

18 3. Expenses incurred on behalf of the ward, including the ward's proportionate
 19 share of household expenses if the ward and the ward's spouse reside in the same
 20 household, without regard to ch. 766. *marital property*

21 4. Total ~~assets~~ ^{income and assets do} of the ward, as determined under ch. 766, on December 31 of the
 22 year in question.

****NOTE: I may have questions about this subsection after consulting with the Domestic Relations drafter.

1 (b) The court shall provide notice of the waiver under par. (a) to any adult child
2 of the ward.

3 (7) (a) The ward.

4 (b) Any guardian ad litem appointed by the court.

5 (c) Any personal representative or special administrator appointed by the
6 court.

7 **54.63 Expansion of order of guardianship; procedure.** (1) If the
8 guardian or another interested person submits to the court a written statement with
9 relevant accompanying support requesting the removal of rights from the ward and
10 transfer to the guardian of powers in addition to those specified in the order of
11 appointment of the guardian, based on an expansion of the ward's incapacity, the
12 court shall do all of the following:

13 (a) Appoint a guardian ad litem for the ward.

14 (b) Order that notice, including notice concerning potential court action if
15 circumstances are extraordinary, be given to all of the following:

16 1. The county department of social services or human services if the ward is
17 protectively placed or receives long-term support services as a public benefit.

18 2. The ward.

19 3. The guardian.

20 4. The agent under the ward's power of attorney for health care under ch. 155
21 or durable power of attorney, if any.

22 5. Any other persons determined by the court.

23 (2) (a) If, after 10 days after notice is provided under sub. (1) (b), or earlier if
24 the court determines that the circumstances are extraordinary, no person submits
25 to the court an objection to the request under sub. (1), the court may amend the order

for the ward

of the estate of a deceased ward

and the agent under the ward's

, if any,

under ch. 243

objector
unless the objector declines a hearing,

1 entered under s. 54.46 (3) and enter a determination and the amended order that
2 specifies any change in the powers of the guardian.

3 (b) If, within 10 days after notice is provided under sub. (1) (b), a person submits
4 to the court an objection to the request under sub. (1), ~~any person may request~~ a
5 hearing under the procedure specified in s. 54.64 (2).

the court shall hold

6 54.64 (2) REVIEW AND MODIFICATION.

- 7 (a) 1. Appoint a guardian ad litem.
- 8 2. Fix a time and place for hearing.
- 9 3. Designate the persons who are entitled to notice of the hearing and designate
- 10 the manner in which the notice shall be given.

11 (b) The ward has the right to counsel for purposes of the hearing under par. (a).
12 Notwithstanding any finding of incompetence for the ward, the ward may retain and
13 contract for the payment of reasonable fees to an attorney, the selection of whom is
14 subject to court approval, in connection with proceedings involving review of the
15 terms and conditions of the guardianship, including the question of incompetence.
16 The court shall appoint counsel if the ward is unable to obtain counsel. If the ward
17 is indigent the county of jurisdiction for the guardianship shall provide counsel at the
18 county's expense.

19 (3) (b) The ward changes residence from this state to another state and a
20 guardian is appointed in the new state of residence.

***NOTE: What if the guardian changes residence from this state to another state?

21 (e) The ward dies.

22 (4) (b) The ward changes residence from this state to another state and a
23 guardian is appointed in the new state of residence.

***NOTE: What if the guardian changes residence from this state to another state?

1 (5) (b) Continue the guardianship, but waive requirements for a bond for the
2 guardian and ~~for~~ accounting by the guardian. *wave of require an*

3 **54.66 Final accounts.**

4 (3) DISCHARGE. After approving the final account and after the guardian has
5 filed proper receipts, the court shall discharge the guardian and release the
6 guardian's bond.

7 **54.68 Review of conduct of guardian.** (1) CONTINUING JURISDICTION OF

8 COURT. The court that appointed the guardian ~~shall have~~ *has* continuing jurisdiction over
9 the guardian. *income or assets*

10 (2) CAUSE FOR COURT ACTION AGAINST A GUARDIAN. Any of the following, if
11 committed by a guardian with respect to a ward or the ward's ~~estate~~ *estate* constitutes
12 cause for a remedy of the court under sub. (4):

13 (a) Failing to *timely file* an inventory or account, as required under this
14 chapter, that is accurate and complete.

15 (b) Committing fraud, waste, or mismanagement.

16 (c) Abusing or neglecting the ward or knowingly permitting others to do so.

17 (d) Engaging in self-dealing.

18 (e) Failing to *adequately provide* for the personal needs of the ward from
19 available ~~estate~~ *income, including any available* assets and public benefits. *+the ward's*

20 (f) Failing to exercise due diligence and reasonable care in assuring that the
21 ward's personal needs are being met in the least restrictive environment consistent
22 with the ward's needs and incapacities.

23 (g) Failing to act in the best interests of the ward.

24 (h) Failing to disclose conviction for a crime that would have prevented
25 appointment of the person as guardian.

INSERT 48-25

1 (j) (i) Other than as provided in pars. (a) to (h), failing to perform any duties of a
 2 guardian or performing acts prohibited to a guardian as specified in ss. 54.18, 54.19,
 3 54.20, 54.22, 54.25, and 54.62.

****NOTE: In LRB-0039/P1, my ****NOTE under this paragraph in part stated that, although the memo specified ss. 880.192 and 880.251, stats., as cross-references, they were not otherwise touched by the proposal. I now think that s. 880.192, stats., is duplicated by provisions in pars. (b), (d), and (e) and so is unnecessary; I have repealed it. Section 880.251, stats., seems pretty well, although not entirely, duplicated by sub. (2) and s. 54.18 (3); I have repealed it. Please review.

4 (3) PROCEDURE. Upon the filing of a petition for review of the conduct of a
 5 guardian, the court shall hold a hearing in not less than 10, nor more than 60, days
 6 and shall order that ^{the petitioner provide} notice of the hearing ~~be provided~~ to the ward, the guardian, and
 7 any other persons as determined by the court. INSERT 49-7

****NOTE: The provider of notice is, I assume, specified in the order. Is "notice of the hearing" correct, or is there additional notice of the filing of the petition? Should any of this be under s. 54.38?

8 (4) REMEDIES OF THE COURT. If petitioned by any party or on the court's own
 9 motion and after finding cause as specified in sub. (2), a court may do any of the
 10 following:

11 (a) Order the guardian to file an inventory or other report or account required
 12 of the guardian. or, if deceased, the ward's estate

13 (b) Require the guardian to reimburse ~~the estate of~~ the ward for losses incurred
 14 as the result of the guardian's breach of a duty to the ward.

15 (c) Impose a ~~financial penalty~~ on the guardian, ~~including denial of~~
 16 ~~compensation for the guardian.~~ or both forfeiture of up to \$10,000

17 (d) Remove the guardian. or deny

18 (e) Enter any other order that may be necessary or appropriate to compel the
 19 guardian to act in the best interests of the ward or to otherwise carry out the
 20 guardian's duties.

1 (5) REMOVAL OF PAID GUARDIAN. The court may remove a paid guardian if
2 changed circumstances indicate that a previously unavailable volunteer guardian is
3 available to serve and that the change would be in the best interests of the ward.

4 (6) FEES AND COSTS IN PROCEEDINGS. In any proceeding under sub. (2) or (5), all
5 of the following apply:

6 (a) The court may require the guardian to pay personally any costs of the
7 proceeding, including costs of service and attorney fees.

8 (b) Notwithstanding a finding of incompetence, a ward who is petitioning the
9 court under sub. (2) may retain an attorney, the selection of whom is subject to court
10 approval, and contract for the payment of fees, regardless of whether or not the
11 guardian consents or whether or not the court finds cause under sub. (2).

legal counsel

12 54.70 (7) Provide a summary written report to the court.

13 (9) Attend the hearing.

***NOTE: You asked why 54.70 (6m) (now renumbered 54.70 (7)) and (9m) (now renumbered 54.70 (9)) had had odd numbering. I've been unable to figure out why, but it doesn't seem to have been the result of an underlying problem.

14 **54.72 Guardian compensation and reimbursement.** A guardian of the
15 person or a guardian of the estate is entitled to compensation and to reimbursement
16 for expenses as follows:

17 (1) COMPENSATION. (a) Subject to the court's approval, as determined under par.
18 (b), a guardian shall receive reasonable compensation for the guardian's services.

19 (b) The court shall use all of the following factors in deciding whether
20 compensation for a guardian is just and reasonable:

- 21 1. The reasonableness of the services rendered.
- 22 2. The fair market value of the services rendered.
- 23 3. Any conflict of interest of the guardian.

1 4. The availability of another to provide the services.

assets and income, including the sources of the ward's income

INSERT 51-2

2 5. The value and nature of the ward's estate.

3 6. The hourly or other rate proposed by the guardian for the services.

7

4 (c) The amount of the compensation may be determined on an hourly basis, as
5 a monthly stipend, or on any other basis that the court determines is reasonable
6 under the circumstances. The court may establish the amount or basis for computing
7 the guardian's compensation at the time of the guardian's initial appointment.

8 (2) REIMBURSEMENT OF EXPENSES. The guardian shall be reimbursed for the
9 amount of the guardian's reasonable expenses incurred in the execution of the
10 guardian's duties, including necessary compensation paid to an attorney, an
11 accountant, a broker, and other agents or service providers.

12 (3) WHEN COURT APPROVAL REQUIRED. A court must approve compensation and
13 reimbursement of expenses before payment to the guardian is made, but court
14 approval need not be obtained before charges are incurred.

~~INSERT 51-14~~

SUBCHAPTER VI

VOLUNTARY PROCEEDINGS;

CONSERVATORS

income or assets

18 **54.76 Conservator; appointment; duties and powers; termination.**

INSERT 51-18

19 (6) The court that appointed the conservator shall have continuing jurisdiction
20 over the conservator. Any of the following, if committed by a conservator with respect
21 to a conservatee or the conservatee's estate, constitutes cause for removal of the
22 conservator under sub. (7) (a) 5:

23 (a) Failing to (timely file) an inventory or account, as required under this
24 chapter, that is accurate and complete.

25 (b) Committing fraud, waste, or mismanagement.

1 (c) Abusing or neglecting the conservatee or knowingly permitting others to do
2 so.

3 (d) Engaging in self-dealing.

4 (e) Failing to adequately provide for the personal needs of the conservatee from
5 available ~~estate~~ assets and public benefits. *income and any available*

6 (g) Failing to act in the best interests of the conservatee.

f ~~****NOTE: Section 54.76 (6) does not contain all the elements for cause for removal of a guardian that are specified in s. 54.68 (2). Please review.~~

INSERT 52-6

7 (7) (a) The powers of a conservator may not be terminated without a hearing
8 and may not be terminated unless any of the following occurs:

9 1. The court removes the conservator on the court's own motion or under sub.
10 (4). *income and assets are*

11 2. The court appoints a guardian for the individual whose ~~estate is~~ conserved.

12 3. The individual whose ~~estate is~~ conserved dies.

13 4. The conservator or individual whose ~~estate is~~ conserved changes residence
14 to another state.

~~****NOTE: Instead of drafting s. 54.76 (7) (a) 5 concerning the court's receipt of "notice from an interested person," I allowed anyone to file a petition under s. 54.76 (4). Please review.~~

15 5. The court finds cause, as specified in sub. (6), for removal of the conservator.

16 (b) If anyone objects to termination of the conservatorship and alleges that the
17 individual whose ~~estate is~~ conserved is appropriate for appointment of a guardian,
18 the court may stay the hearing under par. (a) for 14 days to permit any interested
19 person to file a petition for guardianship. If no petition is filed, the court may
20 terminate the conservatorship and may appoint a guardian ad litem for the
21 individual.

or special administrator

***NOTE: I did not add the authority for the guardian ad litem to contact the county Adult Protective Services unit; statutory authorization is not needed for such an action.

1 (8) If a court terminates a conservatorship or a conservator resigns, is removed,
 2 or dies, the conservator or the conservator's personal representative shall promptly
 3 render a final account to the court and to the former conservatee, any guardian of the
 4 former conservatee, or any deceased conservatee's personal representative or special
 5 administrator, as appropriate. If the conservator dies and the conservator and the
 6 deceased conservatee's personal representative or special administrator are the
 7 same person, the deceased conservatee's personal representative or special
 8 administrator shall give notice of the termination and rendering of the final account
 9 to all interested persons of the conservatee's estate.

*former ee's
of the conservatee's
income and
assets*

***NOTE: This provision mirrors s. 54.66(1). Please review.

- INSERTS
- ✓ 53-9A,
- ✓ 53-9B,
- ✓ 53-9C,
- ✓ 53-9D,
- ✓ 53-9E,
- ✓ 53-9F,
- ✓ 53-9G,
- ✓ 53-9H
- ✓ 53-9I
- ✓ 53-9J
- ✓ 53-9K
- ✓ 53-9L

INSERTS
 53-9DA,
 53-9DB,
 53-9DC,
 53-9DD

SECTION 32. 343.06 (1) (L) of the statutes is created to read:

343.06 (1) (L) To any person who has been declared incompetent under s. 54.25 (2) (c) 1. d. to apply for an operator's license.

SECTION 33. 343.31 (title) of the statutes is amended to read:

343.31 (title) Revocation or suspension of licenses after certain convictions or declarations.

SECTION 34. 343.31 (2x) of the statutes is created to read:

343.31 (2x) The department shall suspend a person's operating privilege upon receiving a record of a declaration under s. 54.25 (2) (c) 1. d. that the person is incompetent to apply for an operator's license. The department may reinstate the person's operator's license upon receiving a record of a declaration that the person is no longer incompetent to apply for an operator's license under s. 54.25 (2) (c) 1. d., if the person is otherwise qualified under this chapter to obtain an operator's license.

SECTION 35. 343.31 (3) (a) of the statutes is amended to read:

PLAIN TEXT

and that includes training on the dynamics of domestic violence and the effects of domestic violence on victims of domestic violence and on children

~~or~~ (2s),

1 343.31 (3) (a) Except as otherwise provided in this subsection or sub. (2m) or

2 (2x), all revocations or suspensions under this section shall be for a period of one year.

INSERT 54-2

3 SECTION 36. 440.121 of the statutes is created to read:

4 440.121 Credential denial, nonrenewal, and revocation based on

5 incompetency. Notwithstanding any other provision of chs. 440 to 480 relating to

6 issuance or renewal of a credential, the department shall deny an application for an

7 initial credential or credential renewal or revoke a credential issued to an individual

8 for whom the department receives a record of a declaration under s. 54.25 (2) (c) 1.

9 d. stating that the individual is incompetent to apply for a credential under chs. 440

10 to 480.

INSERTS 54-10A, 54-10B, 54-10C

11 SECTION 37. 757.48 (1) (a) of the statutes is amended to read:

12 757.48 (1) (a) Except as provided in s. 879.23 (4), in all matters in which a

13 guardian ad litem is appointed by the court, the guardian ad litem shall be an

14 attorney admitted to practice in this state. In order to be appointed as a guardian

15 ad litem under s. 767.045, an attorney shall have completed 3 hours of approved

16 continuing legal education relating to the functions and duties of a guardian ad litem

that relates ← plain

17 under ch. 767. In order to be appointed as a guardian ad litem under s. 54.40 (1), an

18 attorney shall have completed any approved continuing legal education

19 requirements.

complied with SRC chapter 36

INSERTS 54-19A, 54-19B, 54-19C, 54-19D, 54-19E, 54-19F

20 SECTION 38. 880.01 (1) of the statutes is renumbered 54.01 (2) and amended

21 to read:

22 54.01 (2) "Agency" means any public or private board, corporation, or

23 association which, including a county department under s. 51.42 or 51.437, that is

24 concerned with the specific needs and problems of mentally retarded,

25 developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons,

1 including a county department under s. 51.42 or 51.437 individuals with
2 developmental disability, mental illness, alcoholism, or drug dependency and of
3 aging individuals.

4 SECTION 39. 880.01 (2) of the statutes is renumbered 54.01 (11) and amended
5 to read:

6 54.01 (11) "Developmentally disabled person Individual with developmental
7 disability" means ~~any individual having~~ a disability attributable to mental
8 retardation, cerebral palsy, epilepsy, autism or another neurological condition
9 closely related to mental retardation or requiring treatment similar to that required
10 for ~~mentally retarded individuals with mental retardation~~, which has continued or
11 can be expected to continue indefinitely, substantially impairs ^{an} the individual from
12 adequately providing for his or her own care or custody, and constitutes a substantial
13 handicap to the afflicted individual. The term does not include ~~a person an~~
14 ~~individual affected by senility which is primarily caused by the process of aging or~~
15 ~~the infirmities of aging~~ degenerative brain disorder.

16 SECTION 40. 880.01 (3) of the statutes is renumbered 54.01 (7) and amended
17 to read:

18 54.01 (7) "Guardian" means ~~one~~ a person appointed by a court under s. 54.10
19 to have care, custody and control of the person ~~or on behalf of a minor or an~~
20 individual determined incompetent or the management of ~~to manage the estate of~~
21 provide for the personal needs of a minor, an individual determined incompetent, or
22 a spendthrift.

***NOTE: I did not include corporate guardians or entity guardians in this definition as requested. Please look at the definition of "person" in s. 990.01 (26), stats., (which applies to all the statutes). It encompasses corporate guardians and entity guardians. This definition indicates that only a guardian of the estate is appointed for a spendthrift; correct?

the income and assets and

1 SECTION 41. 880.01 (4) of the statutes is repealed.

2 SECTION 42. 880.01 (5) of the statutes is repealed.

3 SECTION 43. 880.01 (6) and (7) of the statutes are repealed.

4 SECTION 44. 880.01 (7m) of the statutes is repealed.

5 SECTION 45. 880.01 (8) of the statutes is repealed.

INSERT 56-5

6 SECTION 46. 880.02 of the statutes is renumbered 54.30 (1) and amended to

7 read:

individual

the ward's income and assets

8 54.30 (1) JURISDICTION IN CIRCUIT COURT. The circuit court shall have has subject

9 matter jurisdiction over all petitions for guardianship. A guardianship of the estate

10 of any person, once granted, shall extend to all of his or her estate in this state and

11 shall exclude the jurisdiction of every other circuit court, except as provided in ch.

12 786.

***NOTE: I believe that you have changes for this subsection, based on changes from the Legislative Council ch. 55 committee, but am not sure what they are.

***NOTE: I did not draft language in your proposal that establishes jurisdiction in circuit court over all petitions for protective placement, as such a provision properly belongs in ch. 55. Do you want me to draft it there? Or, because ch. 55, stats., is proposed to undergo extensive changes under the Legislative Council committee, perhaps such a provision, if not included in the Legislative Council proposal, should be an amendment to one of the committee's appropriate bills.

13 SECTION 47. 880.03 of the statutes is repealed.

14 SECTION 48. 880.04 (title) of the statutes is renumbered 54.12 (title) and

15 amended to read:

16 54.12 (title) Exceptions to appointment of guardian.

17 SECTION 49. 880.04 (1) of the statutes is renumbered 54.46 (7) and amended

18 to read:

19 54.46 (7) EMANCIPATION OF MARRIED MINORS. Except for minors a minor found

20 to be incompetent, upon marriage, a minor shall is no longer be a proper subject for

income and assets

RESTORE TO PLAIN TEXT

1 guardianship of the person and a ~~guardianship~~ guardianship of the person is revoked by the
 2 marriage of a minor ward. Upon application, the court may release in whole or in
 3 part the ~~estate~~ of a minor ward to the ward upon the ward's marriage. Upon
 4 marriage, the guardianship of an incompetent is subject to review under s. 880.34.

***NOTE: I repealed the last sentence (it is broader than merely applying to a minor), but am uncertain if that is what you want. Your proposal does not touch s. 880.34 (2)--do you no longer want to have marriage of an incompetent considered as a trigger for review of the guardianship?

5 SECTION 50. 880.04 (2) of the statutes is renumbered 54.12 (1) and amended
 6 to read: the amount specified in s. 867.03 (1g) (intro.) assets individual found possess assets

7 54.12 (1) SMALL ESTATES. If a minor or an incompetent, except for his or her
 8 incapacity, is entitled to possession of ~~possess~~ personal property of a value of valued
 9 at \$10,000 or less, any court wherein in which an action or proceeding involving said
 10 the property is pending may, in its discretion, without requiring the appointment of
 11 a guardian, order that the ~~clerk of court~~ register in probate do one of the following:

***NOTE: I have assumed from the language in par. (a) (below) that the clerk of court would perform these functions. Correct?

12 (a) Deposit the property in a ~~savings~~ an interest-bearing account in a bank, the payment of whose
 13 accounts in cash immediately upon default of the bank are or other financial
 14 institution insured by an agency of the federal deposit insurance corporation; deposit
 15 in a savings account in a savings bank or a savings and loan association that has its
 16 deposits insured by the federal deposit insurance corporation; deposit in a savings
 17 account in a credit union having its deposits guaranteed by the Wisconsin credit
 18 union savings insurance corporation or by the national board, as defined in s. 186.01
 19 (3m); government or invest the property in interest-bearing obligations of the
 20 United States. The fee for the clerk's services of the clerk of court in depositing and
 21 disbursing the funds under this paragraph is prescribed in s. 814.61 (12) (a).

814.61(12)(a)

register in probate

parent

1 (b) ~~Payment~~ Make payment to the ~~natural guardian~~ of the minor or to the
2 person having actual custody of the minor.

***NOTE: The proposed material referred to "the natural guardian of the minor, as defined in sub. _____," but no definition was included, unless you were referring to the definition of "minor." What is a "natural" guardian? Is it the parent?

individual found

3 (c) ~~Payment~~ Make payment to the minor.

of the individual found incompetent

4 (d) ~~Payment~~ Make payment to the person having actual or legal custody of the
5 incompetent or to the person providing for the ~~incompetent's~~ care and maintenance
6 for the benefit of the incompetent.

individual found

7 **SECTION 51.** 880.04 (2m) of the statutes is renumbered 54.12 (2) and amended

8 to read: the amount specified in s. 867.03 (1g) (intro.)

individual found

assets

9 54.12 (2) INFORMAL ADMINISTRATION. If a minor or an incompetent, except for
10 his or her incapacity, is entitled to possession of ~~personal property~~ of a value of \$5,000
11 ~~\$10,000~~ or less from an estate administered through informal administration under
12 ch. 865, the personal representative may, without the appointment of a guardian, do
13 any of the following:

f

14 (a) With the approval of the register in probate, take one of the actions ~~under~~
15 specified in sub. (2) (1) (a) to (e).

individual found

16 (b) With the approval of the guardian ad litem of the minor or incompetent, take
17 one of the actions ~~under~~ specified in sub. (2) (1) (a) to (e) and file proof of the action
18 taken and of the approval of the guardian ad litem with the probate registrar instead
19 of filing a receipt under s. 865.21.

20 **SECTION 52.** 880.04 (3) of the statutes is renumbered 54.12 (3) and amended
21 to read:

22 54.12 (3) UNIFORM GIFTS AND TRANSFERS TO MINORS. If a minor, except for his or
23 her incapacity, is entitled to possession of personal property of any value, any court

RESTORE TO PLAIN TEXT

1 ~~wherein~~ in which an action or proceeding involving the property is pending may,
2 without requiring the appointment of a guardian, order payment, subject to any
3 limitations the court may impose, to a custodian for the minor designated by the
4 court under ss. 880.61 to 880.72 ~~subch. III of ch. 880~~ or under the uniform gifts to
5 minors act or uniform transfers to minors act of any other state.

54.854 to
54.898

***NOTE: This cross-reference must be fixed if you choose to renumber the remaining subchapters in ch. 880.

6 **SECTION 53.** 880.05 of the statutes is renumbered 54.30 (2) and amended to
7 read: assets or of the county in which the petitioner proposes that the proposed ward reside

8 54.30 (2) VENUE. All petitions for guardianship of residents of the state shall
9 be directed to the circuit court of the county of residence of the ~~person subject to~~
10 guardianship proposed ward or of the county in which the person proposed ward is
11 physically present. A petition for guardianship of the person or estate of a
12 nonresident may be directed to the circuit court of any county ~~where~~ in which the
13 person nonresident or any property of the nonresident may be found.

***NOTE: I did not draft language of your proposal that requires that petitions for protective placement be directed to the circuit court, because such a provision more properly belongs in ch. 55. Do you want me to draft it there?

***NOTE: Please let me know specifically what you want me to do about the definition of "residence" and change of residence of a ward by a guardian.

14 **SECTION 54.** 880.06 (title) of the statutes is renumbered 54.30 (3) (title).

15 **SECTION 55.** 880.06 (1) of the statutes is renumbered 54.30 (3) (a) and amended
16 to read:

INSERT 59-18

17 54.30 (3) (a) *Original proceeding.* The court ~~wherein~~ in which a petition is first
18 filed shall determine venue. ~~If it is determined~~ the court determines that venue lies
19 in another county, the court shall order the entire record certified to the proper court.
20 A court ~~wherein~~ in which a subsequent petition is filed shall, ~~upon being~~ if it is

1 satisfied of that an earlier filing took place in another court, summarily dismiss such
2 the petition. INSERT 60-2

3 **SECTION 56.** 880.06 (2) of the statutes is renumbered 54.30 (3) (b) (intro.) and
4 amended to read:

5 54.30 (3) (b) (intro.) *Change of residence of ward ~~or guardian~~.* If a guardian
6 ~~removes from the county where appointed to another county within the state or a~~
7 ~~ward removes from the county in which he or she has resided~~ changes residence from
8 one county to another county within the state, ~~the circuit court for the county in~~
9 ~~which the ward resides may appoint a new guardian as provided by law for the~~
10 ~~appointment of a guardian. Upon verified petition of the new guardian, accompanied~~
11 ~~by a certified copy of appointment and bond if the appointment is in another county,~~
12 ~~and upon the notice prescribed by s. 879.05 to the originally appointed guardian,~~
13 ~~unless he or she is the same person, and to any other persons that the court shall~~
14 ~~order, the court of original appointment may order the guardianship accounts settled~~
15 ~~and the property delivered to the new guardian. venue may be transferred to the~~
16 ward's new county of residence under the following procedure:

17 **SECTION 57.** 880.07 (title) of the statutes is renumbered 54.34 (title) and
18 amended to read:

19 **54.34 (title) Petition; fees for guardianship.**

20 **SECTION 58.** 880.07 (1) (intro.) of the statutes is renumbered 54.34 (1) (intro.)
21 and amended to read:

22 54.34 (1) (intro.) Any relative, ~~public official or other person,~~ may petition for
23 the appointment of a guardian ~~of a person subject to guardianship~~ for an individual.
24 Such The petition shall state, so far as may be all of the following, if known to the
25 petitioner:

****NOTE: I did not add "or agency" after "person" in s. 54.34 (1), as requested; the definition of "person" in 990.01 (26), stats., which controls terms used throughout the statutes, is broad enough to encompass agencies.

✓ 1 **SECTION 59.** 880.07 (1) (a) of the statutes is renumbered 54.34 (1) (a).

✓ 2 **SECTION 60.** 880.07 (1) (b) of the statutes is renumbered 54.34 (1) (b) and
3 amended to read:

✓ 4 54.34 (1) (b) The specific nature of the proposed ward's alleged incapacity-with
5 ~~specification of the incompetency~~ or spendthrift habits.

✓ 6 **SECTION 61.** 880.07 (1) (c) of the statutes is renumbered 54.34 (1) (c).

✓ 7 **SECTION 62.** 880.07 (1) (d) of the statutes is renumbered 54.34 (1) (d) and
8 amended to read:

✓ 9 54.34 (1) (d) Any assets of the proposed ward previously derived from or
10 benefits of the proposed ward now due and payable from the U.S. department of
11 veterans affairs.

✓ 12 **SECTION 63.** 880.07 (1) (e) of the statutes is renumbered 54.34 (1) (e).

✓ 13 **SECTION 64.** 880.07 (1) (f) of the statutes is renumbered 54.34 (1) (f).

✓ 14 **SECTION 65.** 880.07 (1) (g) of the statutes is renumbered 54.34 (1) (g).

✓ 15 **SECTION 66.** 880.07 (1) (h) of the statutes is renumbered 54.34 (1) (h) and
16 amended to read:

✓ 17 54.34 (1) (h) The names and post-office addresses of ~~the spouse and~~
18 ~~presumptive or apparent adult heirs of the proposed ward, and all other persons~~
19 ~~believed by the petitioner to be interested parties.~~

✓ 20 **SECTION 67.** 880.07 (1) (i) of the statutes is renumbered 54.34 (1) (i) and
21 amended to read: