

(g) The current and likely future effect of the proposed transfer of assets on the ward's eligibility for public benefits, including medical assistance or a benefit under s. 46.27.

(h) Whether the guardian of the person and the guardian of the estate, if not the petitioner, agree with or object to the transfer.

(i) The names, post-office addresses, and relationships to the ward of all of the following:

1. Any presumptive adult heirs of the ward who can be ascertained with reasonable diligence.

2. If the ward has previously executed a will, trust, or other instrument for nontestamental transfers, the named or described beneficiaries, if known, under the most recent will, trust, or other instrument for nontestamental transfer executed by the ward.

**(3)** (a) If a ward has previously executed a will, trust, or other instrument for nontestamental transfers, and the petitioner is able, with reasonable diligence, to obtain a copy, the petitioner shall provide the copy to the court, together with a statement that specifies all of the following:

1. The manner in which the copy was secured.

2. The manner in which the terms of the will, trust, or other instrument for nontestamental transfers became known to the petitioner.

3. The basis for the petitioner's belief that the copy is of the ward's most recently executed will, trust, or other instrument for nontestamental transfers.

(b) If the petitioner is unable to obtain a copy of the most recently executed will or other dispositive estate planning document or is unable to determine if the ward has previously executed a will or other dispositive estate planning document, the

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petitioner shall provide a statement to the court that specifies the efforts that were made by the petitioner to obtain a copy or ascertain the information.

(c) If a copy of the most recently executed will or other dispositive estate planning document is not otherwise available, the court may order the person who has the original will or other dispositive estate planning document to provide a photocopy to the court for in camera examination. The court may provide the photocopy to the parties to the proceeding unless the court finds that doing so is contrary to the ward's best interests.

(d) The petitioner and the court shall keep confidential the information in a will or other dispositive estate planning document, or a copy of the will or other dispositive estate planning document, under this subsection, and may not, unless otherwise authorized, disclose that information.

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

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

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

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

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

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

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



(c) Whether the proposed transfer will benefit the ward, the ward's income and assets, or members of the ward's immediate family.

(d) Whether the donees or beneficiaries under the proposed disposition are reasonably expected objects of the ward's generosity and whether the proposed disposition is consistent with any ascertained wishes of the ward or known estate plan or pattern of lifetime gifts that he or she has made.

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

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

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

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

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

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

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

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

**54.22 Petition for authority to sell, mortgage, pledge, lease, or exchange ward's property.** The court, on the ~~application~~ petition of the guardian of the estate or of any other person interested in the estate of ~~any a~~ ward, after ~~such notice if any, as~~ any notice that the court directs, may authorize or require the guardian to sell, mortgage, pledge, lease, or exchange any property of the ~~guardianship estate of the ward~~ upon such terms as the court may order, subject to ch. 786, for the purpose of paying the ward's debts, providing for the ward's care, maintenance, and education and the care, maintenance, and education of the ward's dependents, investing the proceeds, or for any other purpose ~~which~~ that is in the best interest of the ward.

**54.25 Guardian Duties and powers of guardian of the person of incompetent.** (1) DUTIES. A guardian of the person shall do all of the following:

(a) ~~A guardian of the person of an incompetent appointed under s. 880.33 shall make~~ Make an annual report on the condition of the ward to the court that ordered the guardianship and to the county department designated under s. 55.02. That county department shall develop reporting requirements for the guardian of the person. The report shall include, ~~but not be limited to,~~ the location of the ward, the health condition of the ward, any recommendations regarding the ward, and a statement of as to whether or not the ward is living in the least restrictive environment consistent with the needs of the ward. ~~The guardian may fulfill the requirement under this subsection by submitting the report required under s. 55.06~~ (10).

(b) ~~A guardian of the person shall endeavor~~ Endeavor to secure any necessary care, ~~or services or appropriate protective placement on behalf of~~ for the ward, that are in the ward's best interests, based on all of the following:

1. Regular inspection, in person, of the ward's condition, surroundings, and treatment.
2. Examination of the ward's patient health care records and treatment records and authorization for redisclosure as appropriate.
3. Attendance and participation in staff meetings of any facility in which the ward resides or is a patient, if the meeting includes a discussion of the ward's treatment and care.
4. Inquiry into the risks and benefits of, and alternatives to, treatment for the ward, particularly if drastic or restrictive treatment is proposed.
5. Specific consultation with providers of health care and social services in making all necessary treatment decisions.

\*\*\*\*NOTE: Is this worded as to you intend?

(2) POWERS. (a) *Rights and powers of a guardian.* A guardian of the person has only those rights and powers that the guardian is specifically authorized to exercise by <sup>statute or</sup> court order. Any other right or power is retained by the ward, unless the ward has been declared incompetent to exercise the right under par. (c) or the power has been transferred to the guardian under par. (d).

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

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

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2. To have access to, communicate privately with, and retain legal counsel, with fees paid from the income and assets of the ward, subject to court approval.

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

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

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

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

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

(c) *Declaration of incompetence to exercise certain rights.* 1. The court may, as part of a proceeding under s. 54.44 in which an individual is found incompetent and a guardian is appointed, declare that the individual has incapacity to exercise one or more of the following rights:

- a. The right to consent to marriage.

- b. The right to execute a will.

- c. The right to serve on a jury.

- d. The right to apply for an operator's license, a license issued under ch. 29, or a credential, as defined in s. 440.01 (2) (a), if the court finds that the individual is incapable of understanding the nature and risks of the licensed or credentialed activity, to the extent that engaging in the activity would pose a substantial risk of

physical harm to the individual or others. A failure to find that an individual is incapable of applying for a license or credential is not a finding that the individual qualifies for the license or credential under applicable laws and rules.

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

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

g. ~~All the rights and privileges afforded a proposed incompetent under this section shall be given to any person who is alleged to be ineligible to register to vote or to vote in an election by reason that such person is incapable of understanding the objective of the elective process. The determination of the court shall be limited to a finding that the elector is either eligible or ineligible. The right to register to vote or to vote in an election by reason that the person is or is not capable, if the court finds that the individual is incapable of understanding the objective of the elective process. Also, in accordance with s. 6.03 (3), any elector of a municipality may petition the circuit court for a determination that an individual residing in the municipality is incapable of understanding the objective of the elective process and thereby ineligible to register to vote or to vote in an election. This determination shall be made by the court in accordance with the procedures specified in this paragraph. If a petition is filed under this subdivision unit, the finding of the court shall be limited to a determination as to voting eligibility. The appointment of a guardian or limited guardian is not required for an individual whose sole limitation is ineligibility to vote. The determination of the court shall 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 which that may be directed against that elector. The determination may be reviewed as provided in s. ~~880.34 (4) and (5)~~ 54.64 (2) (a) and (c) and any subsequent determination of the court shall be likewise communicated by the clerk of court.

\*\*\*\*NOTE: Please review this language to make sure it effects your intent; it is a combination of s. 880.07 (3), stats., which I repealed, and s. 880.33 (9), stats., which I renumbered and amended. OK

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

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

4. Regardless of whether a guardian is appointed, a court may declare that an individual is not competent to exercise the right to register to vote or to vote in an election 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 incompetence to vote is not part of a petition for guardianship, the same procedures shall apply as would apply for a petition for guardianship. The determination of the court shall 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. The determination may be reviewed as provided in s.

54.64 (2) (a) and (c) and any subsequent determination of the court shall be likewise communicated by the clerk of court.

\*\*\*NOTE: Please review this language to make sure it effects your intent. O ←

(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 this 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.

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, and subject to any limitation under s. 54.46 (3) (b) the power to give informed consent to voluntary or involuntary medical examination and treatment and to the voluntary receipt by the ward of medication, including any appropriate psychotropic medication, that is in the ward's best interest if the guardian has first made a good-faith attempt to discuss with the ward the ward's voluntary receipt of the psychotropic medication and the ward does not protest. For purposes of this subdivision 2. a., "protest" means make more than one discernible negative response, other than mere silence, to the offer of, recommendation for, or other proffering of voluntary receipt of psychotropic medication. "Protest" does not mean a discernible negative response to a proposed

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method of administration of the psychotropic medication. A guardian may consent to the involuntary administration of psychotropic medication only under a court order under s. 55.14. In determining whether medication or medical treatment, other than psychotropic medication, is in the ward's best interest, the guardian shall consider the invasiveness of the medication or treatment and the likely benefits and side effects of the medication or treatment.

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

c. The power to authorize the ward's participation in research that might not help the ward but might help others even if the research involves greater than minimal risk of harm to the ward if the guardian can establish by clear and convincing evidence that the ward would have elected to participate in such research; and the proposed research was reviewed and approved by the research and human rights committee of the institution conducting the research. The committee shall have determined that the research complies with the principles of the statement on the use of human subjects for research adopted by the American Association on Mental Deficiency, and with the federal regulations for research involving human subjects for federally supported projects.

d. Unless it can be shown by clear and convincing evidence that the ward would never have consented to any experimental treatment, the power to consent to experimental treatment if the court finds that the ward's mental or physical status presents a life-threatening condition; the proposed experimental treatment may be

a life saving remedy; all other reasonable traditional alternatives have been exhausted; 2 examining physicians have recommended the treatment; and, in the court's judgment, the proposed experimental treatment is in the ward's best interests.

e. The power to give informed consent to receipt by the ward of social and supported living services.

*and to redisclose as appropriate*

f. The power to give informed consent to release of medical, treatment, and other confidential records.

*- redisclose? - see 54.25(1)(b)2 on p.37*

\*\*\*\*NOTE: I have deleted language formerly proposed as "g.": The power to determine the individual's county or state of residence." in light of your comments concerning the decision in Jane E. P. v. Unified Board of Grant and Iowa Counties. Is that your intent? *NO, please restore, we want to codify the case in statute*

*restore*

\*\*\*\*NOTE: Your instructions were to make sure that the former language was congruent with the Leg. Council draft's provisions on venue. The Leg. Council draft (WLCS: 0220/2) (under newly created s. 55.075 (5)) states that the court in which a petition is filed shall determine venue. Please tell me explicitly if you have changes to this bill in this regard. *DAK: we'll need to discuss (with Laura Rose too)*

g. The power to make decisions related to mobility and travel.

h. The power to admit the individual to residential facilities as provided under s. 55.05 (5), make an emergency protective placement under s. 55.06 (11), or make a temporary protective placement under s. 55.06 (12).

i. The power to choose providers of medical, social, and support living services.

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

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

L. The power to receive all notices on behalf of the ward.

m. The power to act in all proceedings as an advocate of the ward, except the power to enter into a contract that binds the ward or the ward's property or to

X

represent the ward in any legal proceedings pertaining to the property, unless the guardian of the person is also the guardian of the estate.

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

h<sup>is</sup> ok

p. The power to have custody of the ward.

\*\*\*\*NOTE: 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. h. is, it would seem, significantly less than it first appears to be. If you wish to have me make changes, what changes do you want?

NO.

G of P consents to admission, then G of E must pay bill.

Ward as is  
G of P  
cannot bind estate for N.H.  
cost: Either pay or agree to go to court  
Don't change.

r. Any other power the court may specifically identify.

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

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

b. Make diligent efforts to identify and honor the individual's preferences with respect to choice of place of living, personal liberty and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression and procreation. In making a decision to act contrary to the individual's expressed wishes, the guardian shall take into account the individual's understanding of the nature and consequences of the decision, the level of risk involved, the value of the opportunity for the individual to develop decision-making skills, and the need of the individual for wider experience.

c. Consider whether the ward's estate is sufficient to pay for the needed services.

#### SUBCHAPTER IV

#### PROCEDURES

**54.30 Jurisdiction and venue. (1) JURISDICTION IN CIRCUIT COURT.** The circuit court ~~shall have~~ has subject matter jurisdiction over all petitions for guardianship. A guardianship of the estate of any ~~person~~ individual, once granted, shall extend to all of ~~his or her estate~~ the ward's income and assets in this state and shall exclude the jurisdiction of every other circuit court, except as provided in ch. 786.

\*\*\*\*NOTE: I do not yet know what, if any, changes you have for this subsection.

\*\*\*\*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. 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. RIGHT - it should be in ch. 55.

**(2) VENUE.** All petitions for guardianship of residents of the state shall be directed to the circuit court of the county of residence of the ~~person~~ subject to guardianship proposed ward or of the county in which the ~~person~~ proposed ward is physically present. A petition for guardianship of the person or estate of a nonresident may be directed to the circuit court of any county ~~where~~ in which the ~~person~~ nonresident or any ~~property~~ assets of the nonresident may be found ~~or of the~~ county in which the petitioner proposes that the proposed ward resides or where the proposed ward is physically present.

\*\*\*\*NOTE: I deleted "protectively placed" from language proposed for this subsection. Please review it carefully to see if it now reads as you wish.

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

being if it is satisfied of that an earlier filing took place in another court, summarily dismiss such the petition.

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

Any? 1. An interested person shall file a petition for change of venue in the county in which venue for the guardianship currently lies.

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

3. If no objection to the change of venue is made within 15 days after the date on which notice is given under subd. 2., the circuit court of the county in which venue for the guardianship currently lies may enter an order changing venue. If objection to the change of venue is made within 15 days after the date on which notice is given under subd. 2., the circuit court of the county in which venue for the guardianship

currently lies shall set a date for a hearing within 7 days after the objection is made and shall give notice of the hearing to the corporation counsel of that county and to the corporation counsel and register in probate of the county to which change of venue is sought.

\*\*\*\*NOTE: The provisions on venue from the Leg. Council draft (WLCS: 0220/2) are as follows: 55.075 (5) (a) (renumbered from s. 55.06 (3) (c) and amended) "The petition shall be filed in the county of residence of the individual to be protected, except that the petition may be filed in the county in which the individual is physically present if extraordinary circumstances necessitate the prevention of harm to the individual or others or require medical care for the individual in that county." (b) (created) "The court in which a petition is filed under par. (a) shall determine venue. The court shall direct that proper notice be given to any potentially responsible or affected county. After all potentially responsible or affected counties and parties have been given an opportunity to be heard, if it is determined that venue lies in another county, the court shall order the entire record certified to the proper court. A court in which a subsequent petition is filed shall, upon being satisfied of an earlier filing in another court, summarily dismiss the petition. If any county or party objects to the court's finding of venue, the issue shall be referred to the department under s. 51.40 (2) (g). The court shall suspend ruling on the motion for change of venue until the determination under s. 51.40 (2) (g) is final." Your provisions in sub. (2) are very different from these. In addition, the Leg. Council has no provisions concerning change of residence. Your instructions are to make subs. (2) and (3) consistent with the Leg. Council proposal. How, explicitly, do you wish for me to do that? Need to discuss - as with second note on p. 43.

*In general, Leg. Council language is preferred but I don't know how much notice to other counties is needed when only a guardianship not also ch. 55 involved*

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

- (a) The name, date of birth, residence and post-office address of the proposed ward.
- (b) The specific nature of the proposed ward's alleged incapacity with ~~specification of the incompetency or spendthrift habits.~~
- (c) The approximate value of the proposed ward's property and a general description of its nature.
- (d) Any assets of the proposed ward previously derived from or benefits of the proposed ward now due and payable from the U.S. department of veterans affairs.

(e) Any other claim, income, compensation, pension, insurance or allowance to which the proposed ward may be entitled.

(f) Whether the proposed ward has any guardian presently.

(g) The name and post-office address of any person nominated as guardian by the petitioner.

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

(i) The name and post-office address of the person or institution ~~having the, if any, that has care and custody of the proposed ward or the facility, if any, that is providing care to the proposed ward.~~

(j) The interest of the petitioner, and, if a public official ~~or creditor is the petitioner, then the fact of indebtedness or continuing liability for maintenance or continuing breach of the public peace as well as the authority of the petitioner to act.~~

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

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

(m) The specific authority sought by the petitioner for the guardian or the specific rights of the individual that the petitioner seeks to have removed or transferred.

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

(1) ~~whether there is another petition for guardianship or conservatorship~~  
(2) A petition for guardianship may also include an application for protective placement or protective services or both under ch. 55.

*of the proposed ward*  
*pending in another state or county*

**54.36 Examination of proposed ward. (1)** Whenever it is proposed to appoint a guardian on the ground of a proposed ward's alleged incompetency, a licensed physician or licensed psychologist, or both, shall examine the proposed ward and furnish a written statement concerning the mental condition report stating the physician's or psychologist's professional opinion regarding the presence and likely duration of any medical or other condition causing incapacity of the proposed ward, based upon examination. The privilege under s. 905.04 shall does not apply to this the statement. ~~A~~ The petitioner shall provide a copy of the statement shall be provided to the proposed ward, or his or her counsel, the guardian ad litem, and the petitioner's attorney, if any. Prior to the examination, ~~under this subsection, of a person alleged to be not competent to refuse psychotropic medication under s. 880.07 (1m), the person shall be informed that his or her~~ on which the report is based, the guardian ad litem, physician, or psychologist shall inform the proposed ward that statements made by the proposed ward may be used as a basis for a finding of incompetency and an order for protective services, including psychotropic medication. The person shall also be informed, that he or she has a right to remain silent refuse to participate in the examination, absent a court order, or speak to the physician or psychologist, and that the examiner physician or psychologist is required to report to the court even if the person remains silent proposed ward does not speak to the physician or psychologist. The issuance of such a warning to the ~~person proposed ward~~ proposed ward prior to each examination establishes a presumption that the ~~person proposed ward~~ proposed ward understands that he or she need not speak to the ~~examiner physician or psychologist.~~ Nothing in this section prohibits the use of a report by a physician or psychologist that is based on an examination of the proposed ward by the physician or psychologist before filing the petition for appointment of a guardian.

(2) A petitioner or guardian ad litem may petition the court for an order requiring the proposed ward to submit to an examination by a licensed physician or psychologist pursuant to the provisions of

but the court will consider the recency of the report in determining whether the report sufficiently describes the proposed ward's current state and in determining the weight to be given to the report.

§ 804.10(1)

(3) (2) A physician or psychologist who examines a proposed ward under a court order requiring the examination may, without the informed consent of the proposed ward, obtain access to the patient health care records and treatment records of the proposed ward.

yes \*\*\*\*NOTE: Please review my amendment to s. 51.30 (4) (b) 8m. Is this what you want? If not, sub. (2) should be drafted to provide that the court order specify access. This is necessary, I believe, to comply with the requirements of s. 51.30 (4) (b) 4., stats., (treatment records access without informed consent under a lawful order of a court of record). For s. 146.82, stats. (patient health care records informed consent requirements), s. 146.82 (2) (a) 2. b., stats. (patient health care records access without informed consent to a health care provider who is being consulted regarding the health of the patient) may suffice, but, if not, s. 146.82 (2) (a) 4., stats. (like s. 51.30 (4) (b) 4.) would suffice if the court order specifies access. Does my language comport with your intent? yes

54.38 Notice. (1) FORM AND DELIVERY OF NOTICE. A notice shall be in writing. A copy of the petition, or other required document shall be attached to the notice. Unless otherwise provided, notice may be delivered in person, by certified mail with return receipt requested, or by facsimile transmission. Notice is considered to be given by proof of personal delivery or by proof that the notice was mailed to the last-known address of the recipient or was sent by facsimile 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).

(2) NOTICE OF HEARING FOR APPOINTMENTS AND REHEARINGS, SERVICE, AND DELIVERY (intro.) Upon the filing of a petition for guardianship, and the court being of the person or of the estate, including appointment or change of a guardian, if the court is satisfied as to compliance with s. 880.07 54.34, the court shall, except as provided

OK THIS WAS IN LAST DRAFT, BUT WE DELETED IT FOR "MOTION"

in sub. (3), order the petitioner to serve notice on the proposed ward and guardian, if any, and to deliver notice to ~~serve to~~ interested persons of the time and place of the hearing, as follows:

(a) ~~A petitioner shall have notice served of a petition for appointment or change of a guardian upon~~ On the proposed incompetent and existing guardian, if any, ward by personal service and on the existing guardian, if any, by personal service or by registered or certified mail, at least 10 days before the time set for hearing. If such proposed incompetent the proposed ward is in custody or confinement, -a- the petitioner shall have notice served by registered or certified mail on the proposed incompetent's ward's custodian, who shall immediately serve it on the proposed incompetent ward. The process server or custodian shall inform the proposed incompetent ward of the complete contents of the notice and certify thereon petition, motion, or other required document; certify on the notice that the process server or custodian served and informed the proposed incompetent and returned ward; and return the certificate and notice to the circuit judge. The notice shall include the names of all persons who are petitioning for guardianship. A copy of the petition shall be attached to the notice. The court shall cause the proposed incompetent, if able to attend, to be produced at the hearing. The proposed incompetent is presumed able to attend unless, after a personal interview, the guardian ad litem certifies in writing to the court the specific reasons why the person is unable to attend. If the person is unable to attend a hearing because of physical inaccessibility or lack of transportation, the court shall hold the hearing in a place where the person may attend if requested by the proposed ward, guardian ad litem, adversary counsel or other interested person. Such notice shall also be given personally or by mail at least 10 days before the hearing to the proposed incompetent's counsel, if any, guardian

already  
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I seemed  
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~~ad litem, presumptive adult heirs or other persons who have legal or physical custody of the proposed incompetent whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained, to any governmental or private agency, charity or foundation from which the proposed incompetent is receiving aid and to such other persons or entities as the court may require. The court shall then proceed under s. 880.33 court.~~

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

1. The proposed ward's counsel, if any.
2. The proposed ward's guardian ad litem.
3. Any presumptive adult heirs, as specified in s. 851.09, of the proposed ward.
4. Any other interested persons, unless specifically waived by the court.
5. The agent under any durable power of attorney or power of attorney for health care of the ward.
6. Any person who has legal or physical custody of the proposed ward.
7. Any public or private agency, charity, or foundation from which the proposed ward is receiving aid or assistance.
8. The proposed guardian for the proposed ward.
9. Any other person that the court requires.

**(3) NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR A MINOR.** ~~When If~~ the proposed ward is a minor, ~~notice shall be given as provided in s. 879.05~~ the court shall order delivery of notice by the petitioner of the time and place of the hearing to all of the following persons, if applicable:

- (a) The proposed ward's spouse, if any.

(b) ~~The proposed ward's parents~~ parent, unless the parent's parental rights have been judicially terminated.

(c) ~~A minor~~ The proposed ward, if the proposed ward is over 14 years of age unless the minor appears at the hearing.

(d) ~~Any other person, agency, institution, welfare department or other entity having~~ that has the legal or actual physical custody of the minor.

(4) REHEARINGS. Notice of a rehearing to determine if a ward is a proper subject to continue under guardianship shall be given as required ~~for the appointment of a guardian~~ under subs. (1), (2), and (3).

(5) NOTICE OF APPOINTMENT OF GUARDIAN OF A MINOR WARD. If for any reason the court fails to appoint as guardian the nominee of the minor, the guardian who qualifies shall give notice of the guardian's appointment to the minor by certified mail addressed to the minor's last-known post-office address and shall file an affidavit of such ~~the mailing shall be filed~~ with the court within 10 days after the ~~issuance of letters~~ notice is given.

(6) NOTICE OF PETITION AND HEARING FOR TEMPORARY GUARDIANSHIP. The ~~person petitioning~~ petitioner for appointment of a temporary guardian shall ~~cause give notice to be given under s. 880.08 of that~~ the petition to the minor, ~~spendthrift or alleged incompetent and, if the appointment is made, shall give notice of the appointment to the ward. The time limits of s. 880.08 do not apply to notice given under this subsection~~ proposed ward. The notice shall be served before or at the time the petition is filed or as soon thereafter as possible and shall include notice of the right to counsel and of the right to petition for reconsideration or modification of the temporary guardianship ~~at any time under s. 880.34 within 30 days of receipt of the notice~~ 54.50 (3) (d). ~~The petitioner shall serve notice of the order for hearing on the~~

proposed ward before the hearing or not later than 3 calendar days after the hearing. If the petitioner serves notice after the hearing is conducted and the court has entered an order, the petitioner shall include the court's order with the notice of the order for hearing.

**54.40 Guardian ad litem in incompetency cases; appointment; duties; termination.** (1) APPOINTMENT. The court shall appoint a guardian ad litem

~~whenever it is proposed that the court appoint a guardian on the ground of incompetency under s. 880.33, when a petition for appointment of a guardian is brought under s. 54.34, to protectively place a person or order protective services under s. 55.06, to review any protective placement or protective service order under s. 55.06 or, to terminate a protective placement under s. 55.06, to expand an order of guardianship under s. 54.63, to review incompetency and terminate a guardianship under s. 54.64, to review the conduct of a guardian under s. 54.68, or at any other time that the court determines it is necessary.~~

*to review a guardianship*

\*\*\*\*NOTE: Please review. My notes indicate that "to review a guardianship" should be inserted after s. 54.34 in this subsection, but that seems redundant to reviewing incompetency or reviewing the conduct of a guardian. *could be scope of guardianship*

(2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted to practice in this state and in compliance with SCR chapter 36. No ~~person one~~ who is an interested party person in a proceeding, appears as counsel in a proceeding on behalf of any party, or is a relative or representative of an interested party person may be appointed guardian ad litem in that proceeding or in any other proceeding that involves the same proposed ward or ward.

(3) RESPONSIBILITIES. The guardian ad litem shall be an advocate for the best interests of the proposed ward or ~~alleged incompetent~~ ward as to guardianship, protective placement, and protective services. The guardian ad litem shall function

independently, in the same manner as an attorney for a party to the action, and shall consider, but ~~shall not be~~ is not bound by, the wishes of the proposed ward or ~~alleged incompetent ward~~ or the positions of others as to the best interests of the proposed ward or ~~alleged incompetent ward~~. The guardian ad litem has none of the rights or duties of a ~~general~~ guardian.

(4) GENERAL DUTIES. A guardian ad litem shall do all of the following:

(a) Interview the proposed ward or ~~alleged individual found incompetent~~ <sup>ward</sup> and explain the contents of the petition, the applicable hearing procedure, the right to counsel, and the right to request or continue a limited guardianship.

(b) Advise the proposed ward or ~~alleged individual found incompetent~~ <sup>ward</sup>, both orally and in writing, of that person's rights to be present at the hearing, to a jury trial, to an appeal, to counsel, and to an independent medical or psychological examination on the issue of competency, at county expense if the person is indigent.

\*\*\*NOTE: Are my changes to subs. (3) and (4) (a) and (b) what you want? I don't understand the switch between "ward" and "individual found incompetent". <sup>yes</sup>

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

(d) 1. Review any power of attorney for health care under ch. 155, any durable power of attorney under ch. 243 executed by the proposed ward, and any other advance planning for financial and health care decision making in which the proposed ward had engaged.

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

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

(e) Request that the court order additional medical, psychological, or other evaluation, if necessary.

(f) If applicable, inform the court and petitioner's attorney or, if none, the petitioner that the proposed ward or ~~alleged incompetent~~ or ward objects to a finding of incompetency, the present or proposed placement, or the recommendation of the guardian ad litem as to the proposed ward's or ~~alleged incompetent's~~ ward's best interests or that the proposed ward's or ~~alleged incompetent's~~ ward's position on these matters is ambiguous. If the guardian ad litem recommends that the hearing be held in a place other than a courtroom, the guardian ad litem shall provide the information under this paragraph as soon as possible.

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

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

(i) Present evidence concerning the best interests of the proposed ward or ~~alleged incompetent~~ ward, if necessary, except that the guardian ad litem may not testify.

(j) Report to the court on any ~~other relevant~~ matter that the court requests.

(5) COMMUNICATION TO A JURY. In jury trials under ~~ch. 55 or 880~~ this chapter or ch. 55, the court or guardian ad litem may tell the jury that the guardian ad litem represents the best interests of the proposed ward or ~~alleged incompetent~~ ward.

(6) TERMINATION AND EXTENSION OF APPOINTMENT. The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates,

even if counsel has been appointed for the proposed ward or ~~alleged incompetent ward~~. The court may extend that appointment, or reappoint a guardian ad litem whose appointment under this section has terminated, by an order specifying the scope of responsibilities of the guardian ad litem. At any time, the guardian ad litem, any party, or the ~~person~~ individual for whom the appointment is made may request that the court terminate any extension or reappointment. The guardian ad litem may appeal, or may participate in an appeal ~~or may do neither~~. If an appeal is taken by any party and the guardian ad litem chooses not to participate in that appeal, he or she shall file with the appellate court a statement of reasons for not participating. Irrespective of the guardian ad litem's decision not to participate in an appeal, the appellate court may order the guardian ad litem to participate in the appeal.

**54.42 Rights of proposed ward or ward. (1) RIGHT TO COUNSEL.** (a) The proposed ward or ward has the right to counsel ~~whether or not present at the hearing on determination of competency. The court shall in all cases require the appointment of an attorney as guardian ad litem in accordance with s. 757.48 (1) and shall in addition require representation by full legal counsel whenever the petition contains the allegations under s. 880.07 (1m) or if, at least 72 hours before the hearing, the alleged incompetent requests; the guardian ad litem or any other person states that the alleged incompetent is opposed to the guardianship petition; or the court determines that the interests of justice require it. The proposed ward has the right to a trial by a jury if demanded by the proposed ward, attorney or guardian ad litem, except that if the petition contains the allegations under s. 880.07 (1m) and if notice of the time set for the hearing has previously been provided to the proposed ward and his or her counsel, a jury trial is deemed waived unless demanded at least 48 hours prior to the time set for the hearing. The number of jurors shall be determined under~~

~~s. 756.06 (2) (b). The proposed ward, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including the physician or psychologist reporting to the court under sub. (1). The attorney or guardian ad litem for the proposed ward shall be provided with a copy of the report of the physician or psychologist at least 96 hours in advance of the hearing. Any final decision of the court is subject to the right of appeal. if any of the following occurs:~~

- ~~1. The proposed ward or ward requests counsel.~~
- ~~2. The guardian ad litem or another person states to the court that the proposed ward or ward is opposed to the guardianship petition.~~
- ~~3. The court determines that the interests of justice require counsel for the proposed ward or ward.~~

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

~~(c) If the person requests but is par. (a) 1., 2., or 3. applies but the proposed ward or ward is unable to obtain legal counsel, the court shall appoint legal counsel. If the person is represented by counsel appointed under s. 977.08 in a proceeding for a protective placement under s. 55.06 or for the appointment of a guardian under s. 880.07 (1m), the court shall order the counsel appointed under s. 977.08 to represent the person.~~

~~(2) RIGHT TO JURY TRIAL. The proposed ward or ward has the right to a trial by a jury if demanded by the proposed ward or ward, his or her attorney, or the guardian ad litem, except that the right is waived unless demanded at least 48 hours before the time set for the hearing. The number of jurors for such a trial is determined under s. 756.06 (2) (b). The proposed ward or ward, his or her attorney, or the guardian ad litem each has the right to present and cross-examine witnesses, including any~~

physician or licensed psychologist who reports to the court concerning the proposed ward or ward.

(3) RIGHT TO INDEPENDENT EXAMINATION. If requested by the proposed ward or ward or anyone on the proposed ward's or ward's behalf, the proposed ward or ward has the right at his or her own expense, or if indigent at the expense of the county where the petition is filed heard on the merits, to secure an independent medical or psychological examination relevant to the issue involved in any hearing under this chapter, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

(4) WARD'S RIGHT TO PAYMENT OF EXPENSES IN TO CONTEST PROCEEDINGS. ~~When~~ If a guardian is appointed, the court may allow reasonable expenses incurred by the ward in contesting the appointment. These expenses are payable before other attorney or guardian ad litem fees.

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

(6) RIGHT TO HEARING IN ACCESSIBLE LOCATION. The proposed ward or ward has the right to have any hearing regarding the guardianship conducted in a location and manner that is accessible to the proposed ward. *or ward* (1)

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

(b) A petition for guardianship of a person an individual who has been admitted to a nursing home or a community-based residential facility under s. 50.06 shall be

heard within 60 days after it is filed. If an individual under s. 50.06 (3) alleges that an individual is making a health care decision under s. 50.06 (5) (a) that is not in the best interests of the incapacitated individual or if the incapacitated individual verbally objects to or otherwise actively protests the admission, the petition shall be heard as soon as possible within the 60-day period.

\*\*\*NOTE: This is s. 880.075, renumbered and amended. 

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

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

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

(5) PRIVACY OF HEARING. Every hearing ~~on a petition under s. 880.07 (1m) under~~ this chapter shall be open closed, unless the proposed ward or his or her attorney

acting with the proposed ward's consent moves that it be ~~closed~~ open. If the hearing is closed, only ~~persons in interest, including representatives of providers of service and interested persons~~, their attorneys, and witnesses, may be present.

(6) PROPOSED GUARDIAN INAPPROPRIATE. If the court finds that the proposed guardian is inappropriate, the court shall request that a petition proposing a suitable guardian be filed, shall set a date for a hearing to be held within 30 days, and shall require the guardian ad litem to investigate the suitability of a new proposed guardian.

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

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

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

- a. Incompetent.
- b. A spendthrift.
- c. A minor.

2. Advance planning by the ward, as specified in s. 54.10 (3) (c) 3., renders guardianship unnecessary.

\*\*\*\*NOTE: Is this provision acceptable to you as written?

yes

3. The elements of the petition are unproven.

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

(2) APPOINTMENT OF GUARDIAN; ORDER. If the proposed ward is found to be incompetent, a minor, or a spendthrift, the court may enter a determination and

order appointing a guardian that specifies any powers of the guardian that require court approval, as provided in ss. 54.20 (2) and 54.25 (2), and may provide for any of the following:

(a) *Co-guardians.* If the court appoints co-guardians of the person or co-guardians of the estate under s. 54.10 (5), and unless otherwise ordered by the court, each decision made by a co-guardian with respect to the ward must be concurred in by any other co-guardian, or the decision is void.

(b) *Power of attorney for health care.* If the ~~proposed incompetent ward~~ has executed a power of attorney for health care under ch. 155, ~~find that the power of attorney for health care instrument should remain~~ remains in effect. ~~If the court so finds, the court shall so order and shall, except that the court may, only for good cause shown, revoke the power of attorney for health care or limit the power of the guardian to make those health care decisions for the ward that are not to be made by the health care authority of the agent under the terms of the power of attorney for health care instrument, unless the guardian is the health care agent under those terms.~~

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

(c) *Durable power of attorney.* If the ward has executed a durable power of attorney, the durable power of attorney remains in effect, except that the court may, only for good cause shown, revoke the durable power of attorney or limit the 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) FEES AND COSTS OF PETITIONER. (a) *Petitioner's attorney fees and costs.*

Except as provided in par. (b), when if a guardian is appointed, the court shall award from the ward's estate income and assets payment of the petitioner's reasonable

X

attorney fees and costs, ~~including those fees and costs, if any, related to protective placement of the ward,~~ unless the court finds, after considering all of the following, that it would be inequitable to do so:

1. The petitioner’s interest in the matter, including any conflict of interest that the petitioner may have had in pursuing the guardianship.

2. The ability of the ward’s estate to pay the petitioner’s reasonable attorney fees and costs.

3. Whether the guardianship was contested and, if so, the nature of the contest.

4. ~~If the court finds that~~ Whether the ward had executed a durable power of attorney under s. 243.07 or a power of attorney for health care under s. 155.05 or had engaged in other advance planning ~~to avoid guardianship, the court may not make the award specified in par. (a) for financial and health care decision making.~~

\*\*\*\*NOTE: I have amended this subdivision to conform the language to s. 54.40 (4) (d) 1.; another alternative would be to conform the language to sub. (1) (a) 2. of this section. A third alternative would be to make all these references identical. Which would you like?

BA:  
Fui as  
is

Make them  
identical  
please.

5. Any other factors that the court considers to be relevant.

(b) Guardian ad litem and defense fees for indigents: liability. If the person proposed ward is an adult who is indigent, the county of legal settlement shall be in which venue lies for the guardianship proceeding is the county liable for any fees due the guardian ad litem and, if counsel was not appointed under s. 977.08, for any legal fees due the person’s proposed ward’s legal counsel. ~~If the person is a minor, the person’s parents or the county of legal settlement shall be liable for any fees due the guardian ad litem as provided in s. 48.235 (8).~~

(c) Fees if guardian is not appointed. If a guardian is not appointed under sub. (2) or (3), the county in which venue lies for the guardianship proceeding is the county

liable for any fees due the guardian ad litem. The proposed ward is liable for any fees due his or her legal counsel, except as follows:

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

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

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

(4) BOND. (a) ~~Form~~ Amount and sufficiency of bond. ~~Upon the appointment of a guardian of the estate of a ward, except as provided under s. 880.60 (9), the court may require a bond given in accordance with ch. 878 and s. 895.345~~ The order under sub. (2) shall specify the amount of any bond required to be given by the guardian of the estate, conditioned upon the faithful performance of the duties of the guardian of the estate. No bond may be required for the guardian of the person.

(b) Waiver of Bond. Unless required under s. ~~880.60~~ 54.852 (9), the court may waive the requirement of a bond at under any of the following circumstances:

1. At any time in its discretion or if

2. If so requested in a will wherein in which a nomination appears.

3. Whenever If a guardian has or will have possession of funds of the ward with a total value of \$40,000 \$100,000 or less, and the court may direct directs deposit of the funds in an insured account of a bank, credit union, savings bank, or savings and loan association in the name of the guardian and the ward and payable only upon further order of the court. In such event the court may waive the requirement of a bond.

(5) ~~WHEN LETTERS TO BE ISSUED~~ LETTERS OF GUARDIANSHIP. ~~When~~ If a guardian of the estate has given bond as, if required, and the bond has been approved by the judge court, letters under the seal of the court shall be issued to the guardian of the estate. If a court determination and order appointing a guardian of the person is entered, letters under the seal of the court shall be issued to the guardian of the person.

(6) EMANCIPATION OF MARRIED MINORS. Except for ~~minors~~ a minor found to be incompetent, upon marriage, a minor shall is no longer be a proper subject for guardianship of the person and a guardianship of the person is revoked by the marriage of a minor ward. Upon application, the court may release in whole or in part the estate income and assets of a minor ward to the ward upon the ward's marriage. ~~Upon marriage, the guardianship of an incompetent is subject to review under s. 880.34.~~

\*\*\*\*NOTE: This provision now appears to be congruent with s. 54.64 (3) (d). I have no indication as to whether it was reviewed by Theresa Roetter.

*I will ask again. ? ok*

**54.47 Lis pendens, void contracts.** A certified copy of the petition and order for hearing provided for in ss. ~~880.07~~ 54.34 and ~~880.08~~ 54.38 may be filed in the office of the register of deeds for the county; ~~and if.~~ If a guardian ~~shall be~~ is appointed ~~upon such application after a hearing on the petition,~~ all contracts, except for necessities at reasonable prices, and all gifts, sales, and transfers of property made by such ~~insane or incompetent person or spendthrift,~~ the ward after the filing of a certified copy of such petition and the order as aforesaid, shall be void. ~~The validity of~~ are void unless ratified by the guardian in writing, except that a contract made by a person ward under a limited guardianship is not void, ~~however,~~ unless the determination

is made by the court in its court's order includes a finding under s. 880.33 (3) that the ward is incapable of exercising the power to may not make contracts.

**54.48 Protective placement and protective services.** A finding of incompetency and appointment of a guardian under this subchapter chapter is not grounds for involuntary protective placement. Such or the provision of protective services. Protective placement and the provision of protective services may be made only in accordance with s. 55.06 ch. 55.

**54.50 Temporary guardianships. (1) STANDARD.** If it is demonstrated to the court that a proposed ward's particular situation, including the needs of the proposed ward's dependents, requires the immediate appointment of a temporary guardian of the person or estate, the court may appoint a temporary guardian under this section.

**(2) Appointment DURATION AND EXTENT OF AUTHORITY.** ~~If, after consideration of a petition for temporary guardianship, the court finds that the welfare of a minor, spendthrift or an alleged incompetent requires the immediate appointment of a guardian of the person or of the estate, or of both, it~~ The court may appoint a temporary guardian for a ward for a period not to exceed 60 days ~~unless further extended for 60 days by order of the court. The court may extend the period only once.~~ except that the court may extend this period for good cause shown for one additional 60-day period. The court may impose no further temporary guardianship on the ward for at least 90 days after the expiration of the temporary guardianship and any extension. The court's determination and order appointing the temporary guardian shall specify the authority of the temporary guardian and shall be limited to those acts that are reasonably related to the reasons for appointment that are specified in the petition for temporary guardianship. The authority of the temporary guardian shall be ~~is~~ limited to the performance of duties respecting specific property,

~~or to the performance of particular those acts, as stated in the order of appointment. All provisions of the statutes concerning the powers and duties of guardians shall apply to temporary guardians except as limited by the order of appointment. The temporary guardian shall make the reports the court directs and shall account to the court upon termination of authority. The court assigned to exercise jurisdiction under chs. 48 and 938 has exclusive jurisdiction over the appointment of a temporary guardian of a minor for medical purposes but shall proceed in accordance with this section Unless the court first specifically approves, the temporary guardian may not sell real estate or expend an amount in excess of \$2,000.~~

(3) PROCEDURES FOR APPOINTMENT. All of the following procedures apply to the appointment of a temporary guardian:

(a) Any person may petition for the appointment of a temporary guardian for an individual. The petition shall contain the information required under s. 54.34 (1), shall specify reasons for the appointment of a temporary guardian and the powers requested for the temporary guardian, and shall include a petition for appointment of a guardian of the person or estate or state why such a guardianship is not sought.

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

(c) The court shall hold a hearing on the temporary guardianship. The hearing may be held no earlier than 48 hours after the filing of the petition unless good cause is shown. At the hearing, the petitioner shall provide a report or testimony from a physician or psychologist that indicates that there is a reasonable likelihood that the

proposed ward is incompetent. The guardian ad litem shall attend the hearing in person or by telephone or, instead, shall provide to the court a written report concerning the proposed ward for review at the hearing.

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

(4) CESSATION OF POWERS. ~~If the temporary guardianship is not sooner terminated the~~ The duties and powers of the temporary guardian shall cease upon the issuing of letters of permanent guardianship ~~to the guardian of the ward, or, if the ward is a minor, upon his becoming of age, or when it shall be judicially determined, the expiration of the time period specified in sub. (2), or if the court sooner determines~~ that any ~~other disability of the temporary ward which~~ situation of the ward that was the cause of the temporary guardianship has terminated. Upon ~~the termination of the temporary guardian's duties and powers,~~ a temporary guardian of the person shall file with the court any report that the court requires. A temporary guardian of the estate shall, upon ~~the termination of duties and powers,~~ account to the court and deliver to the person ~~or persons entitled to them all the estate of the ward in his or her hands~~ the ward's estate over which the temporary guardian of the estate has had control. Any action ~~which that~~ has been commenced by the temporary guardian may be prosecuted to final judgment by the successor or successors in interest, if any.

**54.52 Standby guardianship. (1)** A person may at any time bring a petition for the appointment of a standby guardian of the person or ~~property or both~~ estate of a minor or person found incompetent under s. 880.08 to assume the duty and authority of guardianship on the death, incapacity or resignation of the initially appointed guardian may be brought under this chapter at any time. A petition for the appointment of a standby guardian of the person or property or both of a minor to assume the duty and authority of guardianship on the incapacity, death, or debilitation and consent, of the minor's parent shall be brought under s. 48.978 an individual who is determined under s. 54.10 to be incompetent or a spendthrift.

**(2)** At any hearing conducted under this section the court may designate one or more standby guardians of the person or ~~property~~ estate whose appointment shall become effective immediately upon the death, ~~incapacity~~ unwillingness or inability to act, or resignation or court removal of the initially appointed guardian, or during a period, as determined by the initially appointed guardian or the court, when the initially appointed guardian is temporarily unable to fulfill his or her duties, including during an extended vacation or illness. The powers and duties of the standby guardian shall be the same as those of the initially appointed guardian. The standby guardian shall receive a copy of the court order establishing or modifying the initial guardianship, and the order designating the standby guardian. Upon assuming office, the standby guardian shall so notify the court. Upon notification, the court shall issue new letters of guardianship that specify that the standby guardianship is permanent or that specify the time period for a limited standby guardianship.

\*\*\*\*NOTE: Because s. 48.978 exists in current law, and because Theresa Roetter has indicated that it should not be moved to ch. 54, I have deleted mention of a minor from s. 54.52. Please review.

*I will ask Theresa*

*Restore*

**54.54 Successor guardian.** (1) APPOINTMENT. ~~When~~ If a guardian dies, is removed by order of the court, or resigns and the resignation is accepted by the court, the court, on its own motion or upon petition of any interested person, may appoint a competent and suitable person as successor guardian. The court may, upon request of any interested person or on its own motion, direct that a petition for appointment of a successor guardian be heard in the same manner and subject to the same requirements as provided under this chapter for an original appointment of a guardian.

(2) NOTICE. If the appointment under sub. (1) is made without hearing, the successor guardian shall provide notice to the ward and all interested persons of the appointment, the right to counsel, and the right to petition for reconsideration of the successor guardian. The notice shall be served personally or by mail not later than 10 days after the appointment.

**54.56 Visitation by a minor's grandparents and stepparents.** (1) In this section, "stepparent" means the surviving spouse of a deceased parent of a minor ~~child~~, whether or not the surviving spouse has remarried.

(2) If one or both parents of a minor ~~child~~ are deceased and the ~~child~~ minor is in the custody of the surviving parent or any other person, a grandparent or stepparent of the ~~child~~ minor may petition for visitation privileges with respect to the ~~child~~ minor, whether or not the person with custody is married. The grandparent or stepparent may file the petition in a guardianship or temporary guardianship proceeding under this chapter that affects the minor ~~child~~ or may file the petition to commence an independent action under this chapter. Except as provided in sub. (3m), the court may grant reasonable visitation privileges to the grandparent or stepparent if the surviving parent or other person who has custody of the ~~child~~ minor

has notice of the hearing and if the court determines that visitation is in the best interest of the child minor.

(3) Whenever possible, in making a determination under sub. (2), the court shall consider the wishes of the child minor.

(3m) (a) Except as provided in par. (b), the court may not grant visitation privileges to a grandparent or stepparent under this section if the grandparent or stepparent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child minor, and the conviction has not been reversed, set aside or vacated.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child minor. The court shall consider the wishes of the child minor in making the determination.

(4) The court may issue any necessary order to enforce a visitation order that is granted under this section, and may from time to time modify ~~such~~ the visitation privileges or enforcement order ~~upon a showing of~~ for good cause shown.

(4m) (a) If a grandparent or stepparent granted visitation privileges with respect to a child minor under this section is convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child minor, and the conviction has not been reversed, set aside or vacated, the court shall modify the visitation order by denying visitation with the child minor upon petition, motion or order to show cause by a person having custody of the child minor, or upon the court's own motion, and upon notice to the grandparent or stepparent granted visitation privileges.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the ~~child~~ minor. The court shall consider the wishes of the ~~child~~ minor in making the determination.

(5) This section applies to every minor ~~child~~ in this state whose parent or parents are deceased, regardless of the date of death of the parent or parents.

\*\*\*\*NOTE: This section is s. 880.155, renumbered and amended.

**54.57 Prohibiting visitation or physical placement if a parent kills other parent.** (1) Except as provided in sub. (2), in an action under this chapter that affects a minor ~~child~~, a court may not grant to a parent of the ~~child~~ minor visitation or physical placement rights with the ~~child~~ minor if the parent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the ~~child's~~ minor's other parent, and the conviction has not been reversed, set aside or vacated.

(2) Subsection (1) does not apply if the court determines by clear and convincing evidence that visitation or periods of physical placement would be in the best interests of the ~~child~~ minor. The court shall consider the wishes of the ~~child~~ minor in making the determination.

\*\*\*\*NOTE: This section is s. 880.157, as renumbered and amended.

## SUBCHAPTER V

### POST-APPOINTMENT MATTERS

**54.60 Inventory.** (1) INVENTORY REQUIRED. ~~When a~~ The guardian of the estate has been appointed an inventory shall be made in the same manner and subject to the same requirements as are provided for the inventory of a decedent's estate. ~~An appraisal of all or any part of the ward's estate shall be made when ordered by the court~~ prepare an inventory that lists all of the ward's income and assets, including

interests in property and any marital property interest, regardless of how the asset is titled.

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

(a) How the asset is held or titled.

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

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

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

(4) NOTICE OF INVENTORY. The court shall specify the persons to whom the guardian shall provide copies of the inventory.

(5) FEE. The guardian of the estate shall pay from the ward's income and assets the fee specified in s. 814.66 (1) (b) 2. at the time the inventory or other documents concerning the value of the income and assets are filed.

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

(7) VERIFICATION, EXAMINATION IN COURT. Every guardian shall verify by ~~the guardian's oath to the best of the guardian's information and belief that every inventory required of the guardian and verification shall be to the effect that the inventory is true of~~ includes all property which belongs to his or her decedent's estate or his or her ward, which has come to the guardian's possession or knowledge, and that upon diligent inquiry the guardian has not been able to discover any property belonging to the estate or ward which is not included therein income and assets of

the ward. The court, at the request of any party interested, or on its own motion, may examine the guardian on oath ~~in relation thereto~~, as to the inventory or ~~in relation to any supposed omission from the inventory~~.

(8) CITATION TO FILE INVENTORY AND TO ACCOUNT. If any guardian neglects to file the inventory or account when required by law, the ~~ircuit judge~~ court shall call the guardian's attention to the neglect. If the guardian ~~still neglects~~ continues to neglect his or her duty ~~in the premises~~, the court shall order the guardian to file the inventory, and the costs may be adjudged against the guardian.

\*\*\*\*NOTE: This provision is s. 880.191 (2), as renumbered and amended.

**54.62 Accounts. (1) ANNUAL REPORTS.** ~~Every~~ Except as provided in sub. (3) or unless waived by a court, every guardian, ~~except including~~ a corporate guardian, shall, prior to April 15 of each year, file an account under oath specifying that specifies the amount of property received and held or invested by the guardian, the nature and manner of the investment, and the guardian's receipts and expenditures during the preceding calendar year. ~~When ordered by the court, The court may order~~ the guardian ~~shall within 30 days to render and file, within 30 days,~~ a like account for ~~any shorter term less than a year~~. In lieu of the filing of these accounts before April 15 of each year, the court may, by appropriate order upon motion of the guardian, direct the guardian of an estate to ~~thereafter~~ render and file the annual accountings within 60 days after the anniversary date of the guardian's qualification as guardian, with the accounting period from the anniversary date of qualification to the ensuing annual anniversary date. ~~When any guardian of a minor has custody of the ward and the care of the ward's education, the guardian's report shall state the time that the ward attended school during the time for which the account is rendered and the name of the school.~~ The guardian shall also report any change in the status

X

of the surety upon the guardian's bond. If the court determines it to be in the ward's best interests, the court may specify the persons to whom the guardian shall distribute copies of the account.

(2) DISPLAY OF ASSETS. Upon rendering the account the guardian shall produce for examination by the court, or ~~some~~ by a person satisfactory to the court, evidence of all of the ward's securities, evidences of deposit depository accounts, and other investments reported, which shall be described in the account in sufficient detail so that they may be readily identified. ~~It shall be ascertained~~ The court or person satisfactory to the court shall ascertain whether the evidence of securities, evidences of deposit depository accounts, and other investments correspond with the account.

(3) SMALL ESTATES. (a) If a ward's income and assets to not exceed \$20,000 in value, the guardian need not file an account under sub. (1) unless otherwise ordered to do so by the court. For the purposes of this paragraph, the value of the ward's income and assets does not include the ward's income, any burial trust possessed by the ward, or any term or other life insurance policy that is irrevocably assigned to pay for the disposition of the ward's remains at death.

(b) If the ward's income and assets, as calculated under par. (a), increase above \$20,000 in value, the guardian shall so notify the court, which shall determine if an annual account under sub. (1) or a final account under s. 54.66 is required.

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

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

Replace with:  
the amount  
received  
is 3867.03

Refine  
with  
the  
amount  
specified  
in  
§867.03  
(1g) intro.

X

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

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

4. Total marital property of the ward, as determined under ch. 766, on December 31 of the year in question.

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

(5) EXAMINATION OF ACCOUNTS. The account shall be promptly examined under ~~the court's direction and if it~~ as the court directs. ~~If the account is not satisfactory it shall be examined on 8 days' notice and, the court shall make such order thereon~~ order action as justice requires. ~~Notice and shall direct that notice be provided to the guardian may be served personally or by certified mail as the court directs. When the examination of a guardian's account is upon notice. If notice is provided to the guardian under this subsection, the court may appoint a guardian ad litem of for the ward may be appointed.~~

(6) ACCOUNTING BY AGENT THIRD PARTIES TO GUARDIAN. ~~The circuit court, upon the application of any~~ If a guardian appointed by it a court so requests, the court may order any person ~~who has been entrusted by the guardian with any part of the estate of a decedent or ward to appear before the court, and may require the person to render a full account, on oath, of any property or papers belonging to the estate which have come to the person's possession~~ the income or assets and of his or her ~~proceedings thereon~~ action regarding the income or assets. If the person refuses to appear and render an account, the court may proceed against him or her as for contempt.

(7) NOTICE OF FINAL ACTION ON AN ACCOUNT. (intro.) No action by the court upon any on an account shall be is final unless it is upon the guardian first provides notice to all of the following, as applicable:

- (a) The ward.
- (b) Any guardian ad litem appointed by the court.
- (c) Any personal representative or special administrator of the estate of a deceased ward appointed by the court.

(8) ACCOUNTS; FAILURE OF A GUARDIAN TO FILE. If a guardian fails to file the guardian's account as required by law or ordered by the court, the court may, upon its own motion or upon the petition of any interested party interested, issue an order to the sheriff ordering, order the guardian to show cause before the court why the guardian should not immediately make and file the guardian's reports or accounts. The court shall direct that a copy of the order be served on the guardian at least 20 days before the date that the court has ordered the guardian to appear in court. If a guardian fails, neglects or refuses to make and file any report or account after having been cited by the court ~~so~~ to do so, or if the guardian fails to appear in court as directed by a citation issued ~~under direction and by authority~~ of the court, the court may, ~~upon~~ on its own motion or ~~upon~~ on the petition of any interested party, issue a warrant directed to the sheriff ordering that the guardian be brought before the court to show cause why the guardian should not be punished for contempt. If the court finds that the failure, refusal, or neglect is willful or inexcusable, the guardian may be fined not to exceed \$50 \$250 or imprisoned not to exceed 10 days or both.

\*\*\*\*NOTE: This provision is s. 880.252, as renumbered and amended. 

(9) ~~FORMAL ACCOUNTING~~ ACCOUNTING BY GUARDIANS AT ANY TIME. The judge court may at any time require an accounting by any guardian at a hearing, after providing notice to all interested persons, including sureties on the bond of a guardian. ~~The sureties on a bond of a guardian may once in every 3-year period petition the court for such a hearing.~~

\*\*\*\*NOTE: This provision is s. 880.253, as renumbered and amended. I have required the court to provide notice; is that what you want? *yes*

**54.625 Transfer of Menominees guardianship funds to trust of a Menominee.** The ~~circuit~~ court ~~which~~ that has appointed a guardian of the estate of any minor or individual found incompetent who is a legally enrolled member of the Menominee Indian tribe, as defined in s. 49.385, or a lawful distributee thereof, as defined in s. 54.850 (3), of the member may direct the guardian to transfer the assets in the guardian's possession of the minor or individual found incompetent ~~in the guardian's possession~~ to the trustees of the trust created by the secretary of interior or his or her delegate ~~which~~ that receives property of the minors or ~~incompetents~~ individuals found incompetent that is transferred from the United States or any agency thereof as provided by P.L. 83-399, as amended, and the assets shall thereafter be held, administered, and distributed in accordance with the terms and conditions of the trust.

\*\*\*\*NOTE: I am not at all sure what this provision (s. 880.195, as renumbered and amended) does, and am unable to ascertain for sure if P.L. 83-399, as amended, now is 40 USC 484. *SORRY - don't know either.*

**54.63 Expansion of order of guardianship; procedure.** (1) If the guardian or another interested person submits to the court a written statement with relevant accompanying support requesting the removal of rights from the ward and transfer to the guardian of powers in addition to those specified in the order of

*leave as is*

appointment of the guardian, based on an expansion of the ward's incapacity, the court shall do all of the following:

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

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

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

2. The ward.

3. The guardian.

4. The agent under the ward's power of attorney for health care under ch. 155, if any, and the agent under the ward's durable power of attorney under ch. 243, if any.

5. Any other persons determined by the court.

(2) (a) If, after 10 days after notice is provided under sub. (1) (b), or earlier if the court determines that the circumstances are extraordinary, no person submits to the court an objection to the request under sub. (1), the court may amend the order entered under s. 54.46 (2) and enter a determination and the amended order that specifies any change in the powers of the guardian.

(b) If, within 10 days after notice is provided under sub. (1) (b), a person submits to the court an objection to the request under sub. (1), the court shall hold a hearing unless the objector declines a hearing, under the procedure specified in s. 54.64 (2).

**54.64 Duration Review of incompetency and termination of guardianship; review.** (1) DURATION. Any guardianship of an individual found to be incompetent under this chapter shall continue during the life of the incompetent, or ward, until terminated by the court, or as provided under sub. (3) or (4). ~~Upon reaching the age of majority, an incompetent subject to guardianship under this~~

~~chapter shall be reviewed by the court for the purpose of determining whether the guardianship should be continued or modified. The court shall make a specific finding of any rights under s. 880.33 (3) which the individual is competent to exercise at the time.~~

(2) REVIEW AND MODIFICATION. (a) A ward who is 18 years of age or older, any interested person acting on the ward's behalf, or the ward's guardian may petition for a review of incompetency. Upon such, to have the guardian discharged and a new guardian appointed, or to have the guardianship limited and specific rights restored. The petition may be filed at any time after 180 days after any previous hearing under s. 54.44, or at any time if the court determines that exigent circumstances, including presentation of new evidence, require a review. If a petition for review is filed, the court shall conduct do all of the following:

\*\*\*\*NOTE: This provision now incorporates language from s. 880.34 (3), which I have repealed. *OK*

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

4. Conduct a hearing at which the ward shall be is present and shall have has the right to a jury trial, if demanded. ~~The ward shall also have the right to counsel and the court shall appoint counsel if the ward is unable to obtain counsel. If the ward is indigent, counsel shall be provided at the expense of the ward's county of legal settlement.~~

(b) The ward has the right to counsel for purposes of the hearing under par. (a). Notwithstanding any finding of incompetence for the ward, the ward may retain and

contract for the payment of reasonable fees to an attorney, the selection of whom is subject to court approval, in connection with proceedings involving review of the terms and conditions of the guardianship, including the question of incompetence. The court shall appoint counsel if the ward is unable to obtain counsel. If the ward is indigent, the county of jurisdiction for the guardianship shall provide counsel at the county's expense.

(c) After a hearing under ~~sub. (4)~~ par. (a) or on its own motion, a court may terminate or modify ~~a~~ the guardianship of an incompetent, including restoring certain of the ward's rights.

(d) The court shall review and may terminate the guardianship of the person of an individual found incompetent upon marriage to any person who is not subject to a guardianship.

\*\*\*\*NOTE: This is s. 880.34 (2), as renumbered and amended. Please see my change to sub. (3) (a). OK

(3) GUARDIANSHIP TERMINATION OF GUARDIANSHIP OF THE PERSON. A guardianship of the person shall terminate ~~when~~ if any of the following occurs:

(a) The court adjudicates a ~~former~~ ward who was formerly found to be incompetent to be competent no longer incompetent or a ward who was formerly found to be a spendthrift to be capable of handling his or her income and assets, or terminates the guardianship under sub. (2) (d).

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

(c) A formerly minor ward attains ~~his or her majority, unless the minor is incompetent~~ age 18, unless the guardianship was ordered on the grounds of incompetency.

(d) A minor ward ~~lawfully~~ whose guardianship was not ordered on the grounds of incompetence marries.

\*\*\*\*NOTE: I have changed this provision because of s. 54.46 (6). ~~OX~~

(e) The ward dies.

(4) ~~GUARDIANSHIP~~ TERMINATION OF GUARDIANSHIP OF THE ESTATE. A guardianship of the estate shall terminate ~~when~~ if any of the following occurs:

(a) The court adjudicates a ~~former~~ ward who was formerly found to be incompetent or a spendthrift to be no longer incompetent or a ward who was formerly found to be a spendthrift to be capable of handling his or her ~~property~~ income and assets.

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

(c) A ~~formerly~~ minor ward attains his or her majority age 18, unless the guardianship was ordered on the grounds of incompetency.

(d) A minor ward ~~lawfully~~ whose guardianship was not ordered on the grounds of incompetency marries and the court approves the termination.

\*\*\*\*NOTE: I have changed this provision because of s. 54.46 (6). ~~OX~~

(e) A ward dies, except when the estate can be settled as provided by s. 880.28 54.66 (4).

(5) ~~DEPLETED GUARDIANSHIPS~~ GUARDIANSHIP (intro.) ~~When the~~ If a court determines that the estate income and assets of the a ward ~~is below \$5,000~~ do not exceed the amount specified in s. 867.03 (1g) and is reduced to a point where it is to the advantage of the ward to dispense with the guardianship, the court may terminate do one of the following: