



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/17/2004 (Per: DAK)



☞ The 2003 drafting file for LRB 03-0039

has been transferred to the drafting file for

2005 LRB 05-0027

☞ This cover sheet, the final request sheet, and the final version of the 2003 draft were copied on yellow paper, and returned to the original 2003 drafting file.

☞ The attached 2003 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2003 DRAFTING REQUEST

Bill

Received: **09/16/2002**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Miller (608) 266-5342**

By/Representing: **Jamie Kuhn (aide)**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Mental Health - protect place**

Extra Copies: **PJK, MJL, RPN, MGG, PJH,**

Submit via email: **YES**

Requester's email: **Rep.Miller@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Guardianship reform

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P1	dkennedy 09/19/2002		pgreensl 09/19/2002	_____	mbarman 09/19/2002		
/P2	dkennedy	csicilia	chaugen	_____	Inorthro		

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	01/05/2004	01/07/2004	01/16/2004	_____	01/16/2004		

FE Sent For:

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2003 DRAFTING REQUEST

Bill

Received: 09/16/2002

Received By: dkennedy

Wanted: As time permits

Identical to LRB:

For: ~~Legislative Reference Bureau~~ George

By/Representing: Debora Kennedy

This file may be shown to any legislator: NO

Drafter: dkennedy

May Contact:

Addl. Drafters:

Subject: Mental Health - protect place

Extra Copies: PJK, MJL, RPN

Submit via email: NO

Pre Topic:

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Topic:

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2003 DRAFTING REQUEST

Bill

Received: **09/16/2002**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Gary George (608) 266-2500**

By/Representing: **Debora Kennedy**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Mental Health - protect place**

Extra Copies: **PJK, MJL, RPN**

Submit via email: **YES**

Requester's email: **Sen.George@legis.state.wi.us** ✓

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For: ^{Miller}~~Gary George~~ (608) 266-2500

By/Representing: **Debora Kennedy**

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Drafter: **dkennedy**

May Contact:

Adl. Drafters:

Subject: **Mental Health - protect place**

Extra Copies: **PJK, MJL, RPN, MGG, PJH, MDK**

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May Contact:

Addl. Drafters:

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Submit via email: **YES**

Requester's email: **Rep.Miller@legis.state.wi.us**

Carbon copy (CC:) to: **PA's -- please e-mail the document DAK-0039/P2 Stat Read to Rep Miller along with the draft**

or the version that is the same as the draft

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No specific pre topic given

(and hard copy)

Topic:

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Instructions:

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/P2	dkennedy 01/05/2004	csicilia 01/07/2004	lrb_lps	_____			

FE Sent For:

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PA's --
If that note makes no
sense or I should
write it differently to
ensure the DAK draft
gets out w/ each
version, please let
me know.
cmH

State of Wisconsin



GARY R. GEORGE
SENATOR

MEMORANDUM

CONFIDENTIAL

TO: Debora Kennedy,
Legislative Reference Bureau Drafting Attorney

FROM: Dan Rossmiller *DR*

DATE: January 5, 19998

RE: Drafting Request

As a follow-up to our phone conversation yesterday afternoon, I am sending this written request.

Senator George would like to have legislation drafted on behalf of the Elder Law Section of the State Bar of Wisconsin and the Coalition of Wisconsin Aging Groups.

As I understand the request, the proposal to be drafted would be a comprehensive reform/redrafting of the current statutes affecting guardianship protections for aging adults and adults with disabilities.

Mr. Matt Bromley of the State Bar of Wisconsin has indicated to me that he will be contacting you shortly to arrange a meeting with a representative of the Elder Law Section and perhaps CWAG to discuss this drafting request. In the meantime, I have attached a brief outline of the proposal that summarizes the intent of the reform proposal.

Thank you for your assistance. Please feel free to contact me (6-2500) if you have any questions.

GUARDIANSHIP REFORM PROPOSAL

Introduction

The enclosed document represents the conclusions of the State Bar of Wisconsin Elder Law Section's Guardianship Reform Study and the recommendations in the form of specific statutory language. This report is the result of two years and many hours of volunteer work by members of the Elder Law Section. In addition, the Coalition of Wisconsin Aging Groups, through the work of Attorney Betsy Abramson as coordinator and Attorney Ann Flynn as reporter, were consultants for the project. The proposal has also been endorsed by the Coalition of Wisconsin Aging Groups' (CWAG) Elder Law Center.

Many of the proposals are also based on recommendations made in response to research findings, *Adult Guardianships in Wisconsin: An Empirical Assessment*, which was prepared for the Center for Public Representation and the Elder Law Center of the Coalition of Wisconsin Aging Groups by Professor Herbert M. Kritzer, University of Wisconsin Department of Political Science, funded by the State Justice Institute, in January 1992. This report and its recommendations were later published as *Adult Guardianships in Wisconsin: How is the System Working?*, Marquette Law Review, Vol. 76, No. 3, Spring 1993, authored by Professor Kritzer and CWAG Elder Law Center Attorneys Betsy Abramson and Helen Marks Dicks.

NOTE: The Elder Law Section and the CWAG Elder Law Center recognize that much of the language will be modified to meet statutory drafting requirements; however, presentation in this format allows the views to be more clearly set forth.

Need for the Proposal – A Growing Number of Individuals Who Need the Guardianship System's Protections

Like the rest of the population, Wisconsin's citizens are aging. As a result, there has been a sharp increase in the number of individuals with diminished mental incapacities including Alzheimer's Disease and other dementias. In addition, the successful efforts at de-institutionalization of other adults with mental disabilities (e.g., individuals with brain injuries or developmental disabilities) has also increased the number of individuals living in the community who need the benefit of the guardianship system's protections. If not amended, however, these alleged protections are quite illusory; rather, an outmoded statute without proper procedural protections, will continue to result in individuals having rights taken away that don't need to be, guardians appointed who do not understand their roles and responsibilities and other serious abuses.

The current statute is badly organized, needs to be modernized in many regards, must more readily facilitate more limited (i.e., less "full") guardianships, must more clearly define the duties and powers of the guardian of the estate and guardian of the person, must simplify the processes for short-term guardianships, emergencies and admissions to facilities and address marital property concerns.

are also specified. In addition, remedies for failure to carry out these duties and responsibilities are provided.

(5) The Statute Needs to Simplify the Processes for Short-Term Guardianships, Emergencies and Admissions to Certain Facilities.

Current statutes do not adequately address problems relating to emergency situations, which are growing even faster because of the alarming amount of abuse of vulnerable adults. Current law also does not adequately address situations where an adult's incompetence is alleged to be only temporary or where an admission to a nursing home or other residential setting is being recommended. This proposal attempts to address all of those issues.

(6) The Statute Needs to Address the Impact of Marital Property.

As another example of how antiquated Wisconsin's guardianship law is, the current statute does not integrate marital property law, although Wisconsin's Marital Property Law has been in existence since 1983. These include issues related to guardianships of married wards, in such areas as filing the guardianship inventory and annual accounting or in transferring married wards' funds within the marriage. This statute attempts to address these concerns as well.

* * * * *

The above is a listing of the major areas in this proposal for a comprehensive statutory overhaul of the guardianship statute. Many other specific issues are also addressed. It is important to note, however, that certain specific issues are *not* addressed. First, the proposal does not attempt to modify ch. 55, the Wisconsin Protective Services law, though there may be issues that relate to the matters under consideration in this proposal. Second, because this was prepared by the Elder Law Section of the Bar, it does not address questions relating to guardianships of children. The proposal has been shared with advocates representing other adults with disabilities (e.g., adults with developmental disabilities).

The Elder Law Section of the State Bar of Wisconsin, with over 700 members, and the Coalition of Wisconsin Aging Groups, with its 640 member groups, urges legislative attention to this important issue of major reform of the Wisconsin Guardianship law as soon as possible. These groups also pledge their commitment to working with legislative leadership to help ensure passage by helping to organize individuals to provide meaningful testimony at committee hearings and to work with legislators in both parties in both houses for passage.

For More Information, Please Contact:

Matt Bromley, State Bar of Wisconsin, 608-250-6128 or

Betsy Abramson, Coalition of Wisconsin Aging Groups – Elder Law Center, 608-224-0660

(1) The Current Statute is Badly Organized.

The current guardianship statute, ch. 880, Wis. Stats., has significant problems. First, it is a patchwork of laws that follows no logical order. For example, the law governing the court process to establish a guardianship should begin the chapter, but it is sandwiched in the late middle, and provisions governing the petition's contents, notice required, etc., are not even in the same section. Statute headings, in many cases, bear no relationship to the substance of the statute. Attorneys from the CWAG Elder Law Center, which operates the statewide clearinghouse, *The Wisconsin Guardianship Support Center*, report that large numbers of the over 1,200 annual callers to their toll-free hotline simply cannot find the law in the guardianship statute because of its illogical organization. This proposal provides a more logical format that tracks the temporal progression of a normal guardianship – from the petition, to the pre-hearing stage, the hearing, order, duration of the guardianship, monitoring and accounting and termination.

(2) The Definition of "Incompetence" Needs to be Modernized.

Primary among the needs for the statute's modernization is the definition of "incompetence" – the criteria to be met before an individual can be made subject to a guardianship. Our current definition is antiquated, relying, in part, on diagnoses rather than functional limitations of a proposed ward. The current trend, across the country, is to use strictly functional descriptions. This proposal, drawing heavily on the New York guardianship statute, adopts a functional view of incompetence, looking at specific *functional* disabilities that would warrant the imposition of guardianship. The proposed definition of incompetence is also more narrowly drawn to identify the specific reasons why a guardian is needed, rather than permitting a full guardianship to be imposed, thereby removing all rights, without a proper showing of need.

(3) The Statute Needs to More Readily Facilitate Limited Guardianships.

Under our current guardianship law, a full (or "complete" or "plenary") guardianship is the rule. Under the proposed statute, this would be the exception. Attempts are made to identify the functional incapacities requiring the interposition of the guardianship process and then to develop remedies that specifically address these incapacities. Remedies short of guardianship are also expanded accordingly.

(4) The Statute Needs to Clearly Define the Duties and Powers of both the Guardian of the Person and the Guardian of the Estate.

Current duties and responsibilities of the guardians are scattered throughout ch. 880, Wis. Stats., and are also only minimally addressed. Furthermore, in recent years several important court decisions have addressed these issues (e.g., power to make gifts, power to terminate life-support) yet their holdings are not codified in the law. As a result, guardians, who are in the majority of situations family or citizen volunteers, not surprisingly have no clear listing of their responsibilities and authority, i.e., what they must do, what they should do, what they may do or what they may not do. In addition, non-profit corporate guardians (e.g., businesses as guardians) are also increasing. This proposal clearly and thoroughly spells out these duties and responsibilities in separately delineated sections. The powers to carry out those duties

STATE BAR OF WISCONSIN

ELDER LAW SECTION

GUARDIANSHIP REFORM PROPOSAL

Introduction

The enclosed document represents the conclusions of the State Bar of Wisconsin Elder Law Section's Guardianship Reform Study and the recommendations in the form of specific statutory language. While we recognize that much of this language will be modified to meet statutory drafting requirements, we believe that a presentation in this format allows us to set forth our views most clearly.

This project had several goals that we hope are reflected in this report.

(1) **To reorganize the statute in a more coherent form.** The current chapter 880 is badly organized and hard to follow. We have tried to provide a more logical format that to some extent tracks the temporal progression of a normal guardianship proceeding.

(2) **To modernize the definition of incompetence.** This statute, drawing heavily on the New York guardianship statute, adopts a functional view of incompetence, looking at specific functional disabilities that would warrant imposition of guardianship. The definition of incompetence is more narrowly drawn to identify the specific reasons why a guardian is needed.

(3) **To facilitate limited guardianships.** Under our current guardianship law, a complete or plenary guardianship is the rule. Under the new statute, it would be the exception. Attempts would be made to identify the functional incapacities requiring the interposition of the guardianship process and then to develop remedies that would specifically deal with these incapacities. Remedies short of guardianship are also expanded.

(4) **To more clearly define the duties and powers and duties of the guardian of the person and estate.** These duties and responsibilities are spelled out more clearly in separately delineated sections and the powers to carry out those duties are also specified. In addition, remedies for failure to carry out these duties and responsibilities are provided.

(5) **To modify the processes for short term guardianships and admissions to facilities.** Current statutes do not adequately deal with problems relating to emergency and temporary guardianships and facilities admissions. This statute attempts to deal with these issues.

(6) **To modify accounting procedures to address marital property concerns.** When the marital property act was passed, special problems were created for guardians of married wards. This statute attempts to address these concerns.

These are only the highlights of this report. Many other issues are addressed.

Please note, however, that certain issues are not addressed.

(1) No attempts are made to modify Ch. 55, though there may be issues that relate to the matters under consideration in this proposal.

(2) Because this was prepared by the Elder Law Section, it does not really address questions relating to guardianships of children or adult disabled individuals and input from persons advocating for those groups needs to be sought.

This report is the result of two years and many hours of volunteer work by members of the Elder Law Section. In addition, the Coalition of Wisconsin Aging Groups and Attorney Ann Flynn acted as reporter and consultant for this project. We wish to thank all of these persons for their invaluable assistance.

Proposed Guardianship Statute Revision

October 26, 1998 Rev.

Subchapter 1--General Provisions

Section One. Declaration of Policy

Section Two. Definitions. For the purpose of this chapter, unless the context otherwise requires:

(1) "Agency" means any public or private board, corporation or association which is concerned with the specific needs and problems of mentally retarded, developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons, including a county department under s. 51.42 or 51.437.

(2) "Activities of Daily Living" means activities relating to the performance of self care, work and leisure or play activities, including dressing, feeding or eating, grooming, mobility and object manipulation.

(3) "Conservator" means a person appointed or qualified by a court at an individual's request pursuant to s. _____ to manage the estate of the individual.

(4) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody and constitutes a substantial handicap to the afflicted individual.

(5) "Guardian" means a person who is eighteen years of age or older, a corporation or a public agency, including a local department of social services, or any other person or legal entity appointed by a court to act on behalf of a minor or an incompetent to provide for personal needs, or manage the estate of a minor, an incompetent or a spendthrift.

(6) "Incompetent" means a person adjudged by a court of record to be unable to meet the essential requirements for the person's physical health or safety or to be unable to adequately manage his or her property or financial affairs so as to meet the essential requirements for his or her physical health or safety.

(a) due to his or her inability to receive and evaluate information effectively or to communicate decisions, and

(b) for reasons including, but not limited to, mental deficiency, physical illness or

disability, chronic mental illness, chronic use of drugs or controlled substances or chronic alcohol abuse.

(7) "Meeting the essential requirements for physical health and safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur. Mere old age, eccentricity, poor judgment or physical disability, either singly or together, without mental impairment, shall not be used to establish incompetence.

(8) "Minor" means a person who has not attained the age of 18 years.

(9) "Interested person" means

(a) for purposes of the petition for guardianship or protective placement:

1. The proposed ward, if he or she has attained 14 years of age.
2. The spouse, and adult children of the proposed ward, and the parents of a minor proposed ward.
3. If the proposed ward does not have a spouse, parent or adult child, the heirs at law of the proposed ward
4. Any person who has been nominated as fiduciary or appointed to act as fiduciary for the proposed ward by a court of any state, any trustee for a trust established by or for the proposed ward, and any person appointed an agent or attorney in fact under a power of attorney for health care or financial power of attorney.
5. If the proposed ward is a minor, the person who has exercised principal responsibility for the care and custody of the proposed ward during the 60-day period before the filing of the petition.
6. If the proposed ward is a minor and has no living parents, any person nominated to act as fiduciary for the minor in a will or other written instrument prepared by a parent of the minor.
7. If the proposed ward is receiving monies paid or payable by the United States or State of Wisconsin, through their respective Departments of Veterans' Affairs, a representative of the United States or State of Wisconsin Department of Veterans' Affairs.
8. If the proposed ward is receiving medical assistance, community options program or similar benefits, the county department of human or social services.
9. Corporation Counsel of the County of the proposed ward's residence if the petition is not being filed in the county of residence.
10. Any other person that the court requires.

(b) for purposes of proceedings subsequent to the petition for guardianship or

protective placement:

1. The guardian.
2. The spouse, and adult children of the ward, and the parents of a minor ward.
3. Such other persons as the court may require, including any fiduciary that the court may designate.

(c) The court may specifically waive notice to any person named above.

(10) "Standby guardian" means any person designated by the court under s. ____ whose appointment as guardian shall become effective immediately upon the death, incapacity, or resignation of the initially appointed guardian, or when the initially appointed guardian is unable or unavailable to fulfill his or her duties.

(11) "Ward" means a person for whom a guardian has been appointed.

Subchapter 2--Standard for Appointment of Guardian

Section One. General Provisions

(1) The court may appoint a guardian for a proposed ward if the court determines any of the following:

(a) That the person is a minor as defined in sub. ____.

(b) That the person is incompetent as defined in sub. (2)., and:

1. That the appointment is necessary to provide for the personal needs of that person, including food, clothing, shelter, health care or safety and/or to manage the property and financial affairs of that person.

2. In deciding whether the appointment is necessary, the court shall consider the report of the guardian ad litem, as required in sec. ____, and the sufficiency and reliability of available resources, as defined in sub. ____, to provide for personal needs or property management without the appointment of a guardian. Any guardian appointed under this article shall be granted only those powers which are necessary to provide for personal needs and/or property management of the proposed ward in such a manner as appropriate to the individual and which shall constitute the least restrictive form of intervention, as defined in sub. ____.

(2) The determination of incompetence shall be based on clear and convincing evidence and

shall consist of a determination that a person is likely to suffer harm because:

- (a) The person is unable to provide for personal needs and/or property management.
- (b) The person cannot adequately understand and appreciate the nature and consequences of such inability.
- (c) Mere old age, eccentricity, poor judgment or physical disability, either singly or together, without (a) or (b) above, shall not alone be used to establish incompetence.

(3) In reaching its determination of incompetence, the court shall give primary consideration to the functional level and functional limitations of the person. Such consideration shall include an assessment of that person's:

- (a) Management of the activities of daily living, as defined in sub. ____.
- (b) Understanding and appreciation of the nature and consequences of any inability to manage the activities of daily living.
- (c) Preferences, wishes, and values with regard to managing the activities of daily living.
- (d) The nature and extent of the person's property and financial affairs and his or her ability to manage them.

It shall also include an assessment of (i) the extent of the demands placed on the person by that person's personal needs and by the nature and extent of that person's property and financial affairs; (ii) any physical illness and the prognosis of such illness; (iii) any mental disability, as that term is defined in sec. ____, alcoholism or substance dependence as those terms are defined in sec., and the prognosis of such disability, alcoholism or substance dependence; and (iv) any medications with which the person is being treated and their effect on the person's behavior, cognition and judgment.

(4) In addition, the court shall consider all other relevant facts and circumstances regarding the person's:

- (a) Functional level.
- (b) Understanding and appreciation of the nature and consequences of his or her functional limitations.

(5) Separate guardians of the person and of the estate may be appointed

Section 2. Exceptions to Normal Guardianship Rules

(1) **EMANCIPATION OF MARRIED MINORS.** Except for minors found to be incompetent, upon marriage, a minor shall 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, in its discretion, release in whole or in part the estate 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. _____

(2) **SMALL ESTATES.** If a minor or an incompetent, except for his or her incapacity, is entitled to possession of personal property of a value of \$10,000 or less, any court wherein an action or proceeding involving said property is pending may, in its discretion, appoint a guardian of the estate subject to such conditions as the court may require, or, without requiring the appointment of a guardian, order one of the following:

(a) Deposit in a savings account in a bank or other financial institution, the payment of whose accounts in cash immediately upon default are insured by an agency of the federal government; or invest in interest-bearing obligations of the United States. The fee for the clerk's services in depositing and disbursing the funds under this paragraph is prescribed in s. 814.61 (12) (a).

(b) Payment to the natural guardian of the minor (as defined in sub. ____) or to the person having actual custody of the minor.

(c) Payment to the minor.

(d) Payment to the person having actual or legal custody of the incompetent or to the person providing for the incompetent's care and maintenance for the benefit of the incompetent.

(e) Payment to an agent under a durable power of attorney for the ward.

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

(a) With the approval of the register in probate, take one of the actions under sub. (2).

(b) With the approval of the guardian ad litem of the minor or incompetent, take one of the actions under sub. (2) and file proof of the action taken and of the approval of the guardian ad litem with the probate registrar instead of filing a receipt under s. 865.21.

(4) UNIFORM GIFTS AND TRANSFERS TO MINORS. If a minor, except for his or her incapacity, is entitled to possession of personal property of any value, any court wherein an action or proceeding involving the property is pending may, without requiring the appointment of a guardian, order payment to a custodian for the minor designated by the court or under the uniform gifts to minors act or uniform transfers to minors act of any state subject to any limitations the court may impose.

Subchapter 3--Guardians of the Person and Estate

Section One. Who May be a Guardian.

(1) NOMINATION OF GUARDIANS. The court shall consider the following nominations and preferences if they exist, in determining who should be appointed as guardian:

(a) AGENT UNDER WARD'S DURABLE POWER OF ATTORNEY. Such nominee shall be appointed as guardian by the court unless the court finds that the appointment of such nominee is not in the best interests of the person for whom, or for whose property, the guardian is to be appointed.

(b) PERSON NOMINATED BY THE WARD. Any person other than a minor may, at such time as the person has sufficient capacity to form an intelligent preference, execute a written instrument, in the same manner as the execution of a will under s. 853.03, nominating a person to be appointed as guardian of his or her person or property or both in the event that a guardian is in the future appointed. Such nominee shall be appointed as guardian by the court unless the court finds that the appointment of such nominee is not in the best interests of the person for whom, or for whose property, the guardian is to be appointed.

(c) PARENTS OF A WARD. If one or both of the parents of a minor, a developmentally disabled person or a person with other like incapacity are suitable and willing, the court shall appoint one or both of them as guardian unless the proposed ward objects. The court shall appoint a corporate or other guardian described in subsection (2) only if no suitable individual guardian is available.

(d) TESTAMENTARY NOMINATION BY WARD'S PARENTS. Subject to the rights of a surviving parent, a parent may by will nominate a guardian and successor guardian of the person or estate of any of his or her minor children who are in need of guardianship. For a person over the age of 18 found to be in need of guardianship by reason of a developmental disability or other like incapacity, a parent may by will nominate a testamentary guardian. The parent may waive the requirement of bond as to such estate derived through the will.

(e) NOMINATIONS BY INTERESTED PERSONS. PREFERENCE OF INDIVIDUALS OVER CORPORATIONS/AGENCIES. The court shall appoint a corporate or other guardian described in subsection (2) only if no suitable individual guardian is available.

(f) PREFERENCE OF INDIVIDUALS OVER CORPORATIONS/AGENCIES. The court shall appoint a corporate or other guardian described in subsection (2) only if no suitable individual guardian is available.

(2) PRIVATE NONPROFIT CORPORATIONS OR OTHER ENTITIES. A private nonprofit corporation organized under ch. 181, 187 or 188 or any other non profit or for profit entity approved by the court is qualified to act as guardian of the person or of the estate or both, of an individual found to be in need of guardianship under if the department of health and family services, under rules established under ch. 55, finds the entity a suitable agency to perform such duties.

(3) OTHER CRITERIA FOR GUARDIAN SELECTION.

(a) The proposed guardian must submit a sworn and notarized statement to the court at least 96 hours before the hearing, stating that the guardian has not been convicted of a crime as defined in sub ____, filed for or received protection under the bankruptcy laws or has had a license revoked or canceled that was required by the laws of any state for the practice of a profession or occupation.

(b) If the proposed guardian has been convicted of a crime, filed for or received protection under the bankruptcy laws or has had a license revoked or canceled that was required by the laws of any state for the practice of a profession or occupation, then the statement must contain a description of the circumstances surrounding those events.

(c) If, at the hearing, the court finds that the proposed guardian is inappropriate, the court shall request a petition proposing a suitable guardian and set a hearing date to be held in less than 30 days,. The guardian ad litem shall investigate the suitability of the new proposed guardian.

(4) In appointing a guardian, the court shall take into consideration the opinions of the alleged incompetent and of the members of the family as to what is in the best interests of the proposed incompetent. However, the best interests of the proposed incompetent shall control in making the determination when the opinions of the family conflict with the best interests of the ward. The court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest. If the proposed incompetent has executed a power of attorney for health care under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual

as the individual's guardian of the person. If the proposed incompetent has executed a durable financial power of attorney under Ch. 243, the court shall give consideration to the appointment of the agent or the person nominated as guardian in the document, if different, for the individual as the individual's guardian of the estate.

(5) No person, except a nonprofit corporation or other entity approved by the department of health and family services under s. _____, who has guardianship of the person of 5 [??] or more adult wards unrelated to the person may accept appointment as guardian of the person of another adult ward unrelated to the person, unless approved by the court. No such person may accept appointment as guardian of the person of more than 10 such wards unrelated to the person.

Section Two--Duties and Powers of the Guardian In General

(1) A guardian shall exercise only those powers that the guardian is authorized to exercise by court order. All other rights are reserved to the ward.

(2) A guardian shall exercise the utmost care and diligence and good faith when acting on behalf of the ward.

(3) A guardian shall act in all proceedings as an advocate of the ward, and if the ward is protectively placed, advocate for the ward's rights including but not limited to those set forth in secs. 50.09 and 51.61, Stats.

(4) A guardian shall exhibit the utmost degree of trust, loyalty and fidelity in relation to the ward.

Section Three--Duties and Powers of the Guardian of the Estate

(1) DUTIES OF THE GUARDIAN OF THE ESTATE. The guardian of the estate shall afford the ward the greatest amount of independence and self-determination with respect to property management in light of that person's functional level, understanding and appreciation of his or her functional limitations, and personal wishes, preferences and desires with regard to managing the activities of daily living. To this end, to the extent provided in the Determination and Order Appointing Guardian, the guardian of the estate shall:

(a). Take possession of all or a specified portion of the ward's real and personal property, and of rents, income, issues and benefits therefrom, whether accruing before or after the guardian's appointment, and of the proceeds arising from the sale, mortgage, lease or exchange thereof and prepare an inventory of same. Subject to such possession the title of all such estate and to the increment and proceeds thereof shall be in the ward and not in the guardian.

(b). Retain, expend or distribute, sell and invest such property, as hereinafter provided, and account for it faithfully.

(c). Determine whether the ward has executed a will, determine the location of any will, and the appropriate persons to be notified in the event of the death of the ward and, in the event of the death of the ward, notify those persons.

(d). Use the property and financial resources and income available therefrom to maintain and support the ward, and to maintain and support those persons legally dependent upon the ward; and to pay for the post secondary education expenses of the children of the ward.

(e). Prepare and file an annual account as provided in sec. ____.

(f). At the termination of the appointment, deliver such property to the person legally entitled to it.

(g) Claims

(1) Payment. Every guardian of the estate shall pay the just debts of the ward out of the ward's personal estate and the income of the ward's real estate, if sufficient, and if not, then out of the ward's real estate upon selling the same as provided by law.

(2) Proceedings to Adjust Claims. The guardian or a creditor of any ward may apply to the court for adjustment of claims against the ward incurred prior to entry of the order appointing the guardian or the filing of a lis pendens as provided in s. _____. The court shall by order fix the time and place it will adjust claims and the time within which all claims must be presented or be barred. Notice of the time and place so fixed and limited shall be given by publication as in estates of decedents; and all statutes relating to claims against and in favor of estates of decedents shall apply. As in the settlement of estates of deceased persons, after the court has made the order no action or proceeding may be commenced or maintained in any court against the ward upon any claim of which the circuit court has jurisdiction.

(h) Actions. The guardian shall settle all accounts of the ward and may demand, sue for, collect and receive all debts and claims for damages due him or her, or may, with the approval of the circuit court, compound and discharge the same, and shall appear for and represent his or her ward in all actions and proceedings except where another person is appointed for that purpose.

(i). File with the recording officer of the county wherein the ward is possessed of real property, an acknowledged statement to be recorded and indexed under the name of the ward identifying the real property possessed by the ward, and the tax map numbers of the property, and stating the date of adjudication of incompetency of the ward regarding property management, and the name, address, and telephone number of the guardian and the guardian's surety.

(j). Perform all other duties required by law.

(2) POWERS OF THE GUARDIAN OF THE ESTATE. Consistent with the functional limitations of the ward, the ward's understanding and appreciation of the harm that he or she is likely to suffer as the result of the inability to manage property and financial affairs, and the ward's personal wishes, preferences and desires with regard to managing the activities of daily living, and the least restrictive form of intervention, the court may authorize the guardian to exercise those powers necessary and sufficient to manage the property and financial affairs of the ward; to provide for the maintenance and support of the ward, and those persons depending upon the ward; to transfer a part of the ward's assets to or for the benefit of another person on the ground that the ward would have made the transfer if he or she had the capacity to act. Transfers made pursuant to this section may be in any form that the ward could have employed if he or she had the requisite capacity, except in the form of a will or codicil. Except as to the powers enumerated in subs. _____ below, all such powers may be exercised by the guardian without approval of the court. In exercising its powers hereunder, the guardian of the estate shall exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(a) Those powers which may be exercised by the guardian only with prior written court approval are:

(1) Make gifts.

(2) Transfer assets of the ward to the trustee or trustees of an existing revocable living trust created by the ward for the benefit of himself or herself and those dependent upon the ward for support. or to the trustee or trustees of a trust created for the exclusive benefit of the ward, if a minor, which distributes to him or her at age 18 or 21, or to his or her estate, or as he or she appoints if he or she dies prior to age 18 or 21.

(3) Establish a trust under 42 USC 1396p(d)(4) (OBRA '93 Supplemental Needs Trusts) and transfer assets into the trust.

(4) Purchase an annuity and/or insurance contract and exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value.

(5) Exercise any elective rights accruing to the ward by reason of the death of the ward's spouse or parents.

(6) Release or disclaim any interest by testate or intestate succession, by non testamentary transfer at death or by inter vivos transfer as provided in Secs. _____, Wis. Stats.

(7) Enter into marital property agreement with the ward's spouse pursuant to Sec. 766.58, Stats.

(8) Provide support for persons whom the ward is not legally obligated to support.

(9) Convey or release contingent and expectant interest in property, including marital property rights and any right of survivorship incidental to joint tenancy or survivorship marital property.

(b) The following powers may be exercised by the guardian without court approval:

(1) Provide support for persons the ward is legally obligated to support.

(2) Enter into contracts except those requiring court approval under sub (a) or otherwise prohibited by this Chapter.

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

(4) Authorize access to or release of confidential records.

(5) Apply for government and private benefits.

(6) Take such other actions as may be reasonable or appropriate to carry out the duties of the guardian of the estate except for those actions specified in sub a..

(c) If the petitioner or the guardian seeks the authority to exercise a power which involves the transfer of a part of the ward's assets to or for the benefit of another person, including the petitioner or guardian, the petitions shall include the following information:

(1) Whether any prior proceeding has at any time been commenced by any person seeking such power with respect to the property of the ward and, if so, a description of the nature of such application and the disposition made of such application.

(2) The amount and nature of the financial obligations of the ward including funds presently and prospectively required to provide for the ward's own maintenance, support, and well-being and to provide for other persons dependent upon the ward for support, whether or not the ward is legally obligated to provide that support. A copy of any court order or written agreement setting forth support obligations of the ward shall be attached to the petition if available to the petitioner or guardian.

(3) The property of the ward that is the subject of the present application.

(4) The proposed disposition of such property and the reasons why such disposition should be made.

(5) The wishes of the ward if those can be ascertained.

(6) Whether the ward has previously executed a will or similar instrument (including but not limited to any durable powers of attorney) and if so, the terms of the most recently executed will or similar instrument together with a statement as to how the terms of the will or similar instrument became known to the petitioner or guardian. For purposes of this section, the phrase "will or similar instrument" shall include a revocable or irrevocable trust or durable power of attorney.

1. If the petitioner or guardian can, with reasonable diligence, obtain a copy of the most recently executed will or similar instrument, the petitioner or guardian shall deliver it to the Court, with appropriate safeguards for confidentiality. In such case, the petition shall contain a statement as to how the copy was secured and the basis for the petitioner or guardian's belief that such copy is a copy of the ward's most recently executed will or similar instrument.

2. If the petitioner or guardian is unable to obtain a copy of the most recently executed will or similar instrument, or if the petitioner or guardian is unable to determine whether the ward has previously executed a will or similar instrument, what efforts were made by the petitioner or guardian to ascertain such information.

3. If a copy of the most recently executed will or similar instrument is not

otherwise available, the court may direct an attorney or other person who has the original will or similar instrument in his or her possession to turn a photocopy over to the court for its examination, in camera. A photocopy of the will or similar instruments may, in the discretion of the court, be turned over by the court to the parties in such proceeding unless the court finds that to do so would be contrary to the best interests of the ward.

(7) A description of any significant gifts or patterns of gifts made by the ward.

(8) The names, post-office addresses and relationships of the presumptive adult heirs of the ward and of the named or described beneficiaries under the most recent will or similar instrument executed by the ward.

(9) Notice of a petition seeking relief under this section shall be served upon:

1. The persons entitled to notice under sub. ____.
2. If known to the petitioner or guardian, the persons described in sub (8) unless the court dispenses with such notice.
3. The County Corporation Counsel in the discretion of the court.

(10) In determining whether to approve the application, the court shall consider:

1. The wishes of the ward, if known.
2. Whether the disability of the ward is likely to be of sufficiently short duration such that he or she should make the determination with respect to the proposed disposition when no longer disabled.
3. Whether the needs of the ward and his or her spouse or other legally dependent persons depending upon the ward for support can be met from the remainder of the assets of the ward after the transfer is made without causing the ward to need public assistance; provided however that nothing herein shall prohibit gifts by a ward that would be permitted under Sec.[MA exempt gift statute].
4. Whether the donees or beneficiaries of the proposed disposition are the natural objects of the bounty of the ward and whether the proposed disposition is consistent with any ascertained wishes of the ward or known testamentary or other estate plan or pattern of lifetime gifts he or she has made.

5. Whether the proposed disposition will produce estate, gift, income or other tax savings which will significantly benefit the ward or his or her dependents or other persons for whom the ward would be concerned.

6. Such other factors as the court deems relevant.

(11) The court may grant the application if satisfied of the following and shall make a record of these findings:

1. The ward lacks the requisite mental capacity to perform the act or acts for which approval has been sought and is not likely to regain such capacity within a reasonable period of time.

2. A competent individual in the position of the ward would be likely to perform the act or acts under the same circumstances.

3. The ward has not manifested an intention inconsistent with the performance of the act or acts for which approval has been sought at some earlier time when he or she had the requisite capacity or, if such intention was manifested, the particular person would be likely to have changed such intention under the circumstances existing at the time of the filing of the petition.

(12) Nothing in this section imposes any duty on the guardian to commence a special proceeding pursuant to this section seeking to transfer a part of the assets of the ward to or for the benefit of another person and the guardian shall not be liable or accountable to any person for having failed to commence a special proceeding pursuant to this article seeking to transfer a part of the assets of the ward to or for the benefit of another person.

(c) **Retention of Assets.** The guardian of the estate may, without the approval of the court, retain any real or personal property possessed by the ward at the time of appointment of the guardian or subsequently acquired by the ward by gift or inheritance without regard to ch. 881.

(d) **Continuation of Business.** In all cases where the court deems it advantageous to continue the business of a ward, such business may be continued by the guardian of the estate on such terms and conditions as may be specified in the order of the court.

(e) **Investments.**

(1) The guardian of the estate may, without approval of the court, invest and

reinvest the proceeds of sale of any guardianship assets and any other moneys in the guardian's possession in accordance with ch. 881.

(2) The guardian of the estate may, with the approval of the court, after such notice as the court directs, invest the proceeds of sale of any guardianship assets and any other moneys in the guardian's possession in such real or personal property as the court determines to be in the best interests of the guardianship estate, without regard to ch. 881.

(f) Loans to Guardian. No guardian shall lend guardianship funds to himself or herself.

(g) Sales and Other Dispositions.

(1) The guardian of the estate may, without approval of the court, sell any property of the guardianship estate acquired by the guardian pursuant to sub. (e)

(2) The court, on the application of the guardian of the estate or of any other person interested in the estate of any ward, after such notice if any, as the court directs, may authorize or require the guardian to sell, mortgage, pledge, lease or exchange any property of the guardianship estate upon such terms as the court may order, 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 is in the best interest of the ward.

(3) No guardian shall purchase property of the ward, except at fair market value and with the approval of the court.

(4) The provisions of this subsection insofar as they apply to real estate shall be subject to ch. 786.

(h) Trust Companies, Exemption from Investment Restraints. The limitations of this section relating to retention, sale, investment or reinvestment of any asset shall not be applicable to any bank or trust company authorized to exercise trust powers.

(3) Exemption from civil liability. Any guardian of the person or of the estate is immune from civil liability for his or her acts or omissions in performing the duties of the guardianship if he or she performs the duties in good faith, in the best interests of the ward and with the degree of diligence and prudence that an ordinarily prudent person exercises in his or her own affairs.

Section 4--Duties and Powers of the Guardian of the Person

(1) DUTIES OF THE GUARDIAN OF THE PERSON.

(a) A guardian shall 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 whether or not the ward is living in the least restrictive environment consistent with the needs of the ward.

(b) A guardian of the person shall secure necessary care or services for the ward, in the ward's best interests, based on the following:

1. Regular physical inspection of the ward's condition, surroundings and treatment;
2. Examination of medical and treatment records;
3. Attendance at and participation in staffings where treatment and care are discussed; and
4. Inquiry into risks, benefits and alternatives, particularly where drastic or restrictive treatments are proposed;

(c) A guardian of the person may bind the ward or the ward's property, to carry out the powers and duties set forth in subs. (1) and (2) of this section.

(2) **POWERS OF GUARDIAN OF THE PERSON.** Consistent with the functional limitations of the ward, the ward's understanding and appreciation of the harm that he or she is likely to suffer as the result of the inability to provide for personal needs, and the ward's personal wishes, preferences and desires with regard to managing the activities of daily living as defined in sub. _____, and the least restrictive form of intervention, and subject to the limitations contained in the Determination and Order Appointing Guardian, the court may grant to the guardian powers necessary and sufficient to provide for the personal needs of the ward. Those powers which may be granted include, but are not limited to, the power to:

- (a) Make decisions about who shall provide personal care or assistance.
- (b) Make decisions regarding social environment and other social aspects of the life of

the ward including but not limited to decisions regarding marriage.

(c) Make decisions regarding the ward's travel restrictions.

(d) Make decisions relating to the ward's right to obtain or retain licenses for which the ward is deemed qualified.

(e) Authorize access to or release of confidential records.

(f) Make decisions regarding education.

(g) Apply for government and private benefits if no guardian of the estate has been appointed and there is no other person legally authorized to apply for such benefits.

(h) [Decisions on consenting to or refusing medical treatment including tube feeding. Address issues raised by L.W. and Edna M.F. Have Betsy Abramson try her hand at drafting this section--Betsy has political concerns regarding trying to address this issue legislatively]

(i) Choose the ward's place of residence. In making this decision, the guardian may consider the existence of and availability of family, friends and social services in the community; the care, comfort and maintenance, and where appropriate, rehabilitation of the ward; and the needs of those with whom the ward resides. A guardian may admit a ward to skilled nursing facilities and certain community based residential facilities as provided by Secs. _____

Subchapter 4--Procedures

Section One--Jurisdiction and Venue

(1) JURISDICTION. The circuit court shall have jurisdiction over all petitions for guardianship and protective placement. A guardianship of the estate of any person, once granted, shall extend to all of his or her estate in this state and shall exclude the jurisdiction of every other circuit court, except as provided in ch. 786.

(2) VENUE. All petitions for guardianship and protective placement of residents of the state shall be directed to the circuit court of the county of residence of the person subject to guardianship or protective placement or of the county in which the person 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 the person or any property of the nonresident may be found.

(3) CHANGE OF VENUE.

(a) ORIGINAL PROCEEDING. The court wherein a petition is first filed shall determine venue. If it is determined that venue lies in another county, the court shall order the entire record certified to the proper court. A court wherein a subsequent petition is filed shall, upon being satisfied of an earlier filing in another court, summarily dismiss such petition..

(b) CHANGE OF RESIDENCE OF WARD OR GUARDIAN. If a ward removes from the county in which he or she has resided to another county within the state, venue may be transferred to the new county of residence as follows:

1. A Petition for Change of Venue shall be filed in the County in which venue for the guardianship originally lie.
2. Notice shall be given to the Corporation Counsels of the County of original venue and the proposed new venue and to the Register in Probate for the County of the proposed new venue.
3. If there is no objection within fifteen (15) days from the date notice is given, then an Order changing venue may be entered. If there is objection to the change of venue, then a hearing shall be set within seven (7) days and notice of such hearing shall be given to the Corporation Counsels of the two counties and to the Register in Probate for the proposed new venue.

Section Two--Liability for Fees. If the proposed ward is indigent, the county having venue of the guardianship proceeding shall be 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 proposed ward's legal counsel. It shall be presumed that if a guardianship is imposed, the ward's estate or income pays for the GAL, initial medical examination, petitioner's attorney fees, advocate counsel and ward's transportation if funds are available, unless otherwise ordered by the court. [Incorporate section position on petitioner's counsel attorneys fees] See Insert

Section Three--Petition for Guardianship.

(1) Any relative, public official or other person, may petition for the appointment of a guardian of a person subject to guardianship. Such petition shall state, so far as may be known:

- (a) The name, date of birth, residence and post-office address of the proposed ward.
- (b) The nature of the proposed ward's incapacity with specification of the incompetency.
- (c) The approximate value of the proposed ward's property and a general description of its nature.

(d) Any assets previously derived from or benefits 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 all interested parties as defined in sec. ____.

(i) The name and post-office address of the person or institution having the care and custody of the proposed ward.

(j) The interest of the petitioner, and if a public official or creditor is the petitioner, then, the fact of indebtedness as well as the authority of the petitioner to act.

(k) Whether the proposed ward is receiving public benefits, including but not limited to medical assistance and community options program or similar benefits.

(l) Whether there is already an existing power of attorney for health care or financial power of attorney and if so, the identity of the appointed agents.

(m) Whether a full or limited guardianship is requested.

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

(o) A petition for guardianship may also include an application for protective placement or protective services or both under ch. 55.

(2) If a petition for guardianship of the estate is filed, the fee prescribed in s. 814.66 (1) (b) shall be paid at the time of filing of the inventory or other documents setting forth the value of the estate.

Section Five--Examination of Proposed Ward. Whenever it is proposed to appoint a guardian on the ground of incompetency, a licensed physician or licensed psychologist, or both, shall furnish a written statement concerning the functional incapacity of the proposed ward as defined in Sec. _____, based upon such physician or psychologist's personal examination. The privilege under s. 905.04 shall not apply to this statement. A copy of the statement shall be provided to the proposed ward or his or her advocacy counsel, guardian ad litem and attorney for

petitioner. Prior to such examination a person alleged to be incompetent shall be informed that his or her statements may be used as a basis for a finding of incompetency and an order for protective services or protective placement. The person shall also be informed that he or she has a right to refuse to participate in the examination or speak to the examiner and that the examiner is required to report to the court even if the person does not speak to the examiner. The issuance of such a warning to the person prior to each examination establishes a presumption that the person understands that he or she need not speak to the examiner. Nothing herein shall prohibit use of a physician or psychologist's report based on an examination of the proposed ward by the physician or psychologist prior to filing the petition for guardianship.

Section Six--Notice

(1) Form and Delivery of Notice. Except as otherwise provided herein, Notices shall be in writing and may be delivered personally, by certified mail, return receipt requested or by facsimile transmission. Notice shall be deemed given either by proof of personal delivery or by proof that the notice was mailed to the last known address of the recipient or sent by facsimile transmission to the last known facsimile telephone number of the recipient.

(2) Notice of hearing for appointments and rehearings. Upon the filing of a petition for guardianship of the person or of the estate, and the court being satisfied as to compliance with s. 880.07, the court shall order notice of the time and place of hearing as follows:

(a) A petition for guardianship of the person or of the estate shall be heard within 60 days after it is filed.

(b) A petitioner shall have notice served of a petition for appointment of a guardian upon the proposed incompetent and existing guardian, if any, by personal service at least 10 days before the time set for hearing.

(c) If such proposed incompetent is in custody or confinement, a petitioner shall have notice served by registered or certified mail or facsimile transmission (followed by registered or certified mail) on the proposed incompetent's custodian, who shall immediately serve it on the proposed incompetent. The custodian shall inform the proposed incompetent of the complete contents of the notice and certify thereon that the custodian (i) served and informed the proposed incompetent and (ii) returned the certificate and notice to the circuit judge.

(d) 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.

(e) 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 ad litem, presumptive

adult heirs, other interested persons agent under a financial or health care power of attorney, or other persons who have legal or physical custody of the proposed incompetent, 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. Notice need only be give to those persons whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained.

(3) **MINORS.** When the proposed ward is a minor, notice shall be given as provided in s. 879.05 to the following persons:

- (a) To the proposed ward's spouse;
- (b) To parents except those whose rights have been judicially terminated;
- (c) To a minor over 14 years of age unless the minor appears at the hearing;
- (d) To any other person, agency, institution, welfare department or other entity having the legal or actual 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 unless otherwise directed by the court.

(5) **NOTICE OF APPOINTMENT.** 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 an affidavit of such mailing shall be filed with the court within 10 days after the issuance of letters.

Section Seven--Guardian Ad Litem Appointment and Duties

(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 Sec. _____, protectively place a person or order protective services under s. 55.06, review any protective placement or protective service order under s. 55.06 or terminate a protective placement under s. 55.06.

(2) **QUALIFICATIONS.** The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding.

(3) RESPONSIBILITIES. The guardian ad litem shall be an advocate for the best interests of the proposed ward or alleged incompetent 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 bound by, the wishes of the proposed ward or alleged incompetent or the positions of others as to the best interests of the proposed ward or alleged incompetent. The guardian ad litem has none of the rights or duties of a general guardian.

(4) GENERAL DUTIES. The court shall in all cases require the appointment of an attorney as guardian ad litem in accordance with s. 757.48 (1). The guardian ad litem shall do all of the following:

- (a) Interview the proposed ward or alleged incompetent 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) Interview the proposed guardian and any other person seeking appointment as guardian.
- (c) Advise the proposed ward or alleged incompetent, both orally and in writing, of the ward's rights 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.
- (d) Request that the court order additional medical, psychological or other evaluation, if necessary.
- (e) If applicable, inform the court that the proposed ward or alleged incompetent 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 best interests or that the proposed ward's or alleged incompetent's position on these matters is ambiguous.
- (f) Inform the court and the petitioner (or petitioner's counsel where the petitioner is represented) if the proposed ward requests representation by counsel.
- (g) Attend all court proceedings related to the guardianship.
- (h) Present evidence concerning the best interests of the proposed ward or alleged incompetent, if necessary.
- (i) Report to the court on any other relevant matter that the court requests.

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

(7) 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. 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 for whom the appointment is made may request that the court terminate any extension or reappointment. The guardian ad litem may appeal, 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.

Section Eight--Hearing

(1) STANDARD OF PROOF. Any determination by the court as to whether or not the proposed ward is incompetent shall be by clear and convincing evidence.

(2) PRESENCE OF GUARDIAN. The guardian must be physically present at the hearing, unless such attendance is excused by the court. The court may, for good cause shown, permit attendance by telephone.

(3) PRESENCE OF WARD. The petitioner shall ensure that the proposed ward attends the hearing unless such attendance is waived by the GAL. In making this determination the GAL shall consider the effect of the proposed ward's attendance on the ward's physical or psychological health in relation to the importance of the proceeding and the ward's expressed wishes. 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, advocate counsel or other interested person. If the ward is a resident of a nursing home or other facility and is unable to personally attend the hearing, the court shall hold the hearing at such nursing home or other facility if requested by the proposed ward, the proposed ward's counsel or the guardian ad litem.

(4) PRIVACY OF HEARING. Every hearing on a petition for guardianship shall be closed, unless the proposed ward or his or her attorney acting with the proposed ward's consent moves that it be open. If the hearing is closed, only persons in interest, including representatives of providers of service and their attorneys and witnesses, may be present.

(5) TIME OF HEARING AND PROVISION OF REPORTS. A petition for guardianship shall be heard within 60 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 at least 96 hours in advance of the hearing.

Section Nine--Disposition of Petition. Following the hearing as provided in sec. ____ above, the Court shall dispose of the case as follows:

(1) DISMISSAL OF THE PETITION. If the person alleged to be incompetent under this Chapter is found not to be incompetent, the court shall dismiss the petition. The court may also consider an application by the alleged incompetent for the appointment of a conservator pursuant to Sec. ____.

(2) PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS. If a person is a minor or is found to be incompetent (a ward), the court without appointing a guardian may authorize, direct, or ratify any transaction or series of transactions necessary to achieve any security, service or care arrangement meeting the foreseeable needs of the ward, or may authorize, direct or ratify any contract, trust, or other transaction relating to the ward's property and financial affairs if the court determines that the transaction is necessary as a means of providing for personal needs and/or property management for the alleged ward. Before approving a protective arrangement or other transaction under this subdivision, the court shall consider the interests of dependents and creditors of the ward, and in view of the person's functional level, whether a guardianship is necessary. The court may appoint a special guardian to assist in the accomplishment of any protective arrangement or other transaction authorized under this subdivision. The special guardian shall have the authority conferred by the order of appointment, shall report to the court on all matters done pursuant to the order of the appointment and shall serve until discharged by order of the court. The court may approve a reasonable compensation for the special guardian; however, if the court finds that the special guardian has failed to discharge his or her duties satisfactorily in any respect, the court may deny or reduce the amount of compensation or remove the special guardian.

(3) APPOINTMENT OF GUARDIAN. If the proposed ward is found to be incompetent, the Court may enter a Determination and Order Appointing guardian, specifying the powers to be granted to the guardian as provided in Sec. ____.

(a) Co-Guardians. Co-guardians of the person and/or estate may be appointed in the court's discretion subject to such conditions as the court may impose. It is presumed that any guardian's or co-guardian's individual decisions will be binding unless otherwise ordered by the court.

(b) Powers of Attorney for Health Care. If the incompetent has executed a power of

attorney for health care under ch. 155, the power of attorney for health care shall remain in effect unless otherwise ordered by the court. The court shall have the discretion to revoke the power of attorney for health care or limit the authority of the health care agent.

(c) **Financial Power of Attorney.** If the proposed ward has executed a financial durable power of attorney, the financial durable power of attorney shall remain in effect unless otherwise ordered by the court. The court shall have the discretion to revoke the financial durable power of attorney or limit the authority of the agent under such power of attorney.

(d) **Power of Guardian to Revoke Powers of Attorney.** The guardian of the person or estate may only revoke a financial durable power of attorney or power of attorney for health care with the authorization of the court.

(e) In exercising its discretion under (b) and (c), the court shall presume that the power of attorney for health care and the financial durable power of attorney shall remain in effect unless good cause is shown.

(f) **Fees and Costs of Petitioner.** When a guardian is appointed, the court shall award reasonable costs and attorney fees to the petitioner from the ward's estate and income unless it finds that it would be inequitable to so award costs and fees after considering: the petitioner's interest in the matter, including any conflict of interest on the part of the petitioner in pursuing the guardianship; whether the ward had executed a power of attorney or engaged in other advance planning to avoid guardianship; the ability of the ward's estate and income to pay; whether the guardianship was contested and, if so, the nature of the contest; and other factors the court deems relevant.

(4) BOND.

(a) **Amount and Sufficiency of Bond.** The order shall specify the amount of the bond, if any, 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 shall be required for the guardian of the person.

(b) **Waiver of Bond.** Unless required under s. _____, the court may waive the requirement of a bond at any time in its discretion or if so requested in a will wherein a nomination appears. Whenever a guardian has or will have possession of funds with a total value of \$100,000 or less, the court may direct 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.

(c) **Blanket Bond for Employee Guardian or Conservator.** The circuit court may

designate one or more persons who are county institutional employees, whose duty it is to act as guardian of one or more estates of incompetent persons upon appointment by the court, or as conservator for the estates of persons making application therefor, who are residents of the county home, patients of the county hospitals or county mental hospitals. The appointments shall be made subject to this chapter. The person, before entering upon duties, shall take an official oath. The court may waive the requirement of a bond or may require the person to give bond, with sufficient sureties, to the judge of the court, in a sum not less than \$1,000 subject to court approval. The bond shall cover the person so designated and appointed in all guardianships and conservatorships to which the person has been or shall be appointed by the court. Additional bonds may be required from time to time. The expense of surety upon the bonds shall be paid by the county treasurer on the order of the circuit judge. The term of the person appointed shall terminate upon resignation or removal and approval of the person's accounts by the court.

(5) **LETTERS OF GUARDIANSHIP.** When a guardian has given bond as required and the bond has been approved by the judge, letters under the seal of the court shall be issued to the guardian.

Section Ten--Rights of Proposed Ward

(1) **RIGHT TO COUNSEL.** The proposed ward has the right to counsel if, at least 72 hours before the hearing, the alleged incompetent requests counsel; 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. Such advocate counsel shall be a zealous advocate for the ward's expressed wishes and shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. If the person requests but is unable to afford advocate counsel, the court shall appoint advocate counsel.

(2) **RIGHT TO JURY TRIAL.** The proposed ward has the right to a trial by a jury if demanded by the proposed ward, his or her attorney or the guardian ad litem. 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. 756.096 (3) (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.

(3) **RIGHT TO INDEPENDENT MEDICAL EXAMINATION.** If requested by the proposed ward or anyone on the proposed ward's behalf, the proposed ward has the right at his or her own expense, or if indigent at the expense of the county where the petition is filed, 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) **RIGHT TO PAYMENT OF EXPENSES TO CONTEST PROCEEDING.** When a guardian

is appointed the court shall allow reasonable expenses incurred by the ward in contesting the appointment.

Section Eleven--Relation to Protective Placement. A finding of incompetency and appointment of a guardian under this subchapter is not grounds for involuntary protective placement. Such placement may be made only in accordance with s. 55.06.

Section Twelve--Procedures for Limited Term Guardianships

(1) EMERGENCY TEMPORARY GUARDIAN

(a) When Permitted. If it is demonstrated to the Court that a particular situation requires the appointment of a temporary guardian of the person or estate of an individual, then the Court may appoint a Temporary Guardian upon the following terms and conditions.

(b) Duration and Extent of Authority. The Temporary Guardian may be appointed for a term not to exceed 60 days. This period may be extended by the court for good cause for one additional 60 day period. No further temporary guardianship may be imposed by the court on the ward under this provision for a period of three (3) months following the expiration of the preceding temporary guardianship. The authority of the Temporary Guardian shall be limited to those acts specified in the Determination and Order Appointing Temporary Guardian and which acts shall be limited to those that are reasonably related to the reasons specified in the Petition for Temporary guardianship. The Temporary Guardian shall not have the power to sell real estate or to expend an amount in excess of \$2,000 without prior court approval.

(c) Procedure for Appointment. The following procedures shall be followed in appointing the Temporary Guardian:

(1) A petition shall be filed containing the information specified in Sec. _____. In addition the Petition shall recite the reasons for the need to appoint a temporary guardian and the powers requested for the Temporary Guardian. The Petition shall also include a Petition for appointment of a permanent guardian of the person and/or estate or shall state why a permanent guardianship is not being sought.

(2) The petition and order for hearing shall be served on the proposed ward either before the hearing or as soon as practicable thereafter, but in no event not later than 3 calendar days after the hearing.

(3) A guardian ad litem shall be appointed in all cases. The guardian ad litem shall attempt to meet with the proposed ward prior to the hearing or as soon as

practicable thereafter, 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.

(4) The Court shall hold a hearing on the Temporary Guardianship no earlier than 48 hours from the filing of the Petition unless good cause is shown for an earlier hearing. At the hearing, the petitioner shall produce a report from a licensed physician or psychologist showing that there is a reasonable likelihood that the proposed ward will meet the definition of incompetence set forth in Sec. _____ above. The guardian ad litem shall attend the hearing in person or by telephone or may provide a written report.

(5) If the Temporary Guardian is appointed, the ward shall be given notice of the appointment not later than 3 calendar days after the hearing. If the ward, his/her counsel, the guardian ad litem or another interested party so request, the Court shall order a rehearing on the issue of appointment of the temporary guardian within 10 calendar days. If a rehearing is requested, the Temporary Guardian shall take no actions to spend the assets of the ward without the approval of the court.

(2) CERTAIN ADMISSIONS TO FACILITIES.

(a) In this section, "incapacitated" means unable to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her health care decisions, including decisions about his or her post-hospital care.

(b) An individual under sub. (c) may consent to admission to a facility, of an incapacitated individual who does not have a valid power of attorney for health care and who has not been adjudicated incompetent under ch. 880, if all of the following apply:

(1) No person who is listed under sub. (c) in the same order of priority as, or higher in priority than, the individual who is consenting to the proposed admission disagrees with the proposed admission.

(2)

1. Except as provided in subd. 2., no person who is listed under sub. (c) and who resides with the incapacitated individual disagrees with the proposed admission.

2. Subdivision 1. does not apply if any of the following applies:

a. The individual who is consenting to the proposed admission resides with the incapacitated individual.

b. The individual who is consenting to the proposed admission is the spouse of the ward.

(3) The individual for whom admission is sought is not diagnosed as developmentally disabled or as having a mental illness at the time of the proposed admission.

(4) A petition for guardianship for the individual under Sec. ___ and a petition for protective placement of the individual under s. 55.06 (2) are filed prior to the proposed admission. In such cases a guardian ad litem shall be immediately appointed and shall interview the proposed ward not later than 5 calendar days following the date of filing of the petition.

(c) The following individuals, in the following order of priority, may consent to an admission under sub. (2):

(1) The spouse of the incapacitated individual.

(2) An adult son or daughter of the incapacitated individual.

(3) A parent of the incapacitated individual.

(4) An adult brother or sister of the incapacitated individual.

(5) A grandparent of the incapacitated individual.

(6) An adult grandchild of the incapacitated individual.

(7) An adult close friend of the incapacitated individual.

(d) A determination that an individual is incapacitated for purposes of sub. (2) shall be made by 2 physicians, as defined in s. 448.01 (5), or by one physician and one licensed psychologist, as defined in s. 455.01 (4), who personally examine the individual and sign a statement specifying that the individual is incapacitated. Mere old age, eccentricity or physical disability, either singly or together, are insufficient to make a finding that an individual is incapacitated. Neither of the individuals who make a finding that an individual is incapacitated may be a relative, as defined in s. 242.01 (11), of the individual or have knowledge that he or she is entitled to or has a claim on any portion of the individual's estate. A copy of the statement shall be included in the individual's records in the facility to which he or she is admitted.

(e)

(1) Except as provided in par. (2), an individual who consents to an admission under this section may, for the incapacitated individual, make health care decisions to the same extent as a guardian of the person may and authorize expenditures related to health care to the same extent as a guardian of the estate may, until the earliest of the following:

1. Sixty days after the admission to the facility of the incapacitated individual.
2. Discharge of the incapacitated individual from the facility.
3. Appointment of a guardian for the incapacitated individual.

(2) An individual who consents to an admission under this section may not authorize expenditures related to health care if the incapacitated individual has an agent under a durable power of attorney, as defined in s. 243.07 (1) (a), who may authorize expenditures related to health care.

(f) If the incapacitated individual is in the facility after 60 days after admission and a guardian has not been appointed, the authority of the person who consented to the admission to make decisions and, if sub. (5) (a) applies, to authorize expenditures is extended for 30 days for the purpose of allowing the facility to initiate discharge planning for the incapacitated individual.

(g) An individual who consents to an admission under this section may request that an

assessment be conducted for the incapacitated individual under the long-term support community options program under s. 46.27 (6).

(h) If the allegedly incapacitated individual, his/her guardian ad litem or any interested person under Sec. ____ [of the guardianship statute] objects to the admission, the Court in which the guardianship petition is pending shall hold a hearing within 10 calendar days of a request by any person on the issue of whether the individual is incapacitated and/or whether the placement shall continue pending the final guardianship hearing.

Section Thirteen--Standby Guardianships

(1) A petition for the appointment of a standby guardian of the person or estate or both of a minor or person found incompetent under s. 880.08 may be brought at any time.

(2) At any hearing conducted under this section the court may designate one or more standby guardians of the person or estate whose appointment shall become effective immediately upon the death, incapacity, or resignation of the initially appointed guardian, or when the initially appointed guardian is unable to fulfill his or her duties, for example, 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,

(3) A standby guardianship of a minor is not applicable so long as a person has living one natural or adoptive parent who is willing and capable of exercising legal guardianship. Upon the death of the surviving parent, or upon a determination that the parents or surviving parent are incapable of exercising legal guardianship of the person, the standby guardian of the person or estate or both shall automatically assume the duties of guardian, subject only to confirmation by the court within 60 days following assumption of the standby guardian's duties of office.

(4) A standby guardianship of a minor becomes inoperative at the age of 18 unless there is a further determination of incompetency at that time.

Section Fourteen--Successor Guardianships

(1) Appointment. When 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.

Subchapter 5--Post-Appointment Matters

Section One--Inventories.

(1) INVENTORY REQUIRED. When a guardian of the estate has been appointed an inventory shall be made which shall list all of the ward's property and interests in property (including any marital property interests, regardless of how the asset is titled)

(2) CONTENTS OF INVENTORY. The following information shall be provided regarding each asset:

(a) How the asset is held or titled;

(b) The name and relationship of any co-owners;

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

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

(4) NOTICE OF INVENTORY. The court shall direct the guardian as to which interested parties shall receive copies of the inventory.

(5) FEE. The fee prescribed in s. 814.66 (1) (b) shall be paid at the time of filing of the inventory.

(6) APPRAISAL. An appraisal of all or any part of the ward's estate shall be made when ordered by the court.

(7) VERIFICATION, EXAMINATION IN COURT. Every guardian shall verify by the guardian's oath every inventory required of the guardian and verification shall be to the effect that the inventory is true of 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. The court, at the request of any party interested, or on its own motion, may examine the guardian on oath in relation thereto, or in relation to any supposed omission.

Section Two--Accounts

(1) ANNUAL ACCOUNTS REQUIRED. Except as provided in subd. 3, unless waived by the court, every guardian, including corporate guardians, shall, prior to April 15 of each year, file an account under oath specifying 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 guardian shall within 30 days render and file a like account for any shorter term. 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. The guardian shall also report any change in the status of the surety upon the guardian's bond. At the court's discretion and if determined to be in the ward's best interests, the court may direct the guardian as to which interested parties shall receive copies of the account.

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

(3) SMALL ESTATES.

a. When the estate of a ward does not exceed \$5,000 in value, no annual accounting is required unless otherwise ordered by the court.

b. If, after a determination under sub.1, the ward's estate at any time increases above \$5,000 in value, the guardian is to notify the court, which will determine whether annual and final accountings will be required.

c. For purposes of this subsection (3), the estate of the ward shall not include his or her income, burial trusts, or term life insurance or life insurance irrevocably assigned to pay for the disposition of the remains of the ward upon death.

(4) ANNUAL ACCOUNTS OF MARRIED WARDS. For a married ward, the court in its discretion may waive filing of an annual account or permit the filing of a "Modified Annual Account." The Modified Annual Account shall consist of the following:

a. Total assets of the ward at the beginning of the year as determined under Ch. 766;

b. Income in the name of the ward without regard to the provisions of Ch. 766 and