

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

3 SECTION 39. 880.06 (2) of the statutes is renumbered 54.30 (3) (b) (intro.) and
4 amended to read:

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

17 SECTION 40. 880.07 (title) of the statutes is renumbered 54.34 (title) and
18 amended to read:

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

20 SECTION 41. 880.07 (1) (intro.) of the statutes is renumbered 54.34 (1) (intro.)
21 and amended to read:

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

1 **SECTION 42.** 880.07 (1) (a) of the statutes is renumbered 54.34 (1) (a).

2 **SECTION 43.** 880.07 (1) (b) of the statutes is renumbered 54.34 (1) (b) and
3 amended to read:

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

6 **SECTION 44.** 880.07 (1) (c) of the statutes is renumbered 54.34 (1) (c).

7 **SECTION 45.** 880.07 (1) (d) of the statutes is renumbered 54.34 (1) (d) and
8 amended to read:

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

12 **SECTION 46.** 880.07 (1) (e) of the statutes is renumbered 54.34 (1) (e).

13 **SECTION 47.** 880.07 (1) (f) of the statutes is renumbered 54.34 (1) (f).

14 **SECTION 48.** 880.07 (1) (g) of the statutes is renumbered 54.34 (1) (g).

15 **SECTION 49.** 880.07 (1) (h) of the statutes is renumbered 54.34 (1) (h) and
16 amended to read:

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

20 **SECTION 50.** 880.07 (1) (i) of the statutes is renumbered 54.34 (1) (i) and
21 amended to read:

22 54.34 (1) (i) The name and post-office address of the person or institution
23 ~~having the~~ , if any, that has care and custody of the proposed ward or the facility, if
24 any, that is providing care to the proposed ward.

****NOTE: I have amended this paragraph because its application otherwise seems to be limited—no one would have “care and custody” of the proposed ward unless he or she had been detained or committed under ch. 51, had been confined in jail or prison, was on parole, extended supervision, or probation, or was adjudicated under ch. 971 or 980, or for a minor, was under a CHIPS order under ch. 48 or a JIPS order under ch. 938. For an elderly person, however, a facility might well be providing care only to him or her.

1 **SECTION 51.** 880.07 (1) (j) of the statutes is renumbered 54.34 (1) (j) and is
2 amended to read:

3 54.34 (1) (j) The interest of the petitioner, and, if a public official or creditor is
4 the petitioner, ~~then the fact of indebtedness or continuing liability for maintenance~~
5 ~~or continuing breach of the public peace as well as~~ and the authority of the petitioner
6 to act.

****NOTE: To me, this language seems to assume that you wish to include spendthrifts in this chapter, but that issue is unclear.

****NOTE: 880.07 (1m) (petition alleging person is not competent to refuse psychotropic medication) is totally left out of your proposal. What is your intent here?

7 **SECTION 52.** 880.07 (2) of the statutes is renumbered 54.34 (2) and amended
8 to read:

9 54.34 (2) A petition for guardianship may also include an application for
10 protective placement or protective services or both under ch. 55.

11 **SECTION 53.** 880.07 (4) of the statutes is renumbered 54.34 (3) and amended
12 to read:

13 54.34 (3) If a petition for guardianship of the estate is filed, the fee prescribed
14 in s. 814.66 (1) (b) shall be paid by the petitioner at the time of filing of the inventory
15 or other documents setting forth the value of the estate.

****NOTE: Who pays this fee? The petitioner? The ward’s estate?

16 **SECTION 54.** 880.08 (intro.) of the statutes is renumbered 54.38 (2) (intro.) and
17 amended to read:

18 54.38 (2) NOTICE OF HEARING FOR APPOINTMENTS ~~AND REHEARINGS.~~ (intro.) Upon
19 the filing of a petition for guardianship, ~~and the court being~~ of the person or of the

1 estate, including appointment or change of a guardian, if the court is satisfied as to
2 compliance with s. 880.07 54.34, the court shall, except as provided in sub. (3), order
3 delivery of notice by the petitioner of the time and place of the hearing as follows:

4 SECTION 55. 880.08 (1) (title) of the statutes is repealed.

5 SECTION 56. 880.08 (1) of the statutes is renumbered 54.38 (2) (a) and amended
6 to read:

7 54.38 (2) (a) ~~A petitioner shall have notice served of a petition for appointment~~
8 ~~or change of a guardian upon~~ On the proposed incompetent ward and existing
9 guardian, if any, by personal service at least 10 days before the time set for hearing.
10 If such ~~proposed incompetent~~ the proposed ward is in custody or confinement, a the
11 petitioner shall have notice served by registered or certified mail on the proposed
12 incompetent's ward's custodian, who shall immediately serve it on the proposed
13 incompetent ward. The custodian shall inform the proposed incompetent ward of the
14 complete contents of the notice ~~and certify thereon~~ , certify on the notice that the
15 custodian served and informed the proposed incompetent ward, and return and
16 returned the certificate and notice to the ~~circuit judge~~. ~~The notice shall include the~~
17 ~~names of all persons who are petitioning for guardianship. A copy of the petition~~
18 ~~shall be attached to the notice. The court shall cause the proposed incompetent, if~~
19 ~~able to attend, to be produced at the hearing. The proposed incompetent is presumed~~
20 ~~able to attend unless, after a personal interview, the guardian ad litem certifies in~~
21 ~~writing to the court the specific reasons why the person is unable to attend. If the~~
22 ~~person is unable to attend a hearing because of physical inaccessibility or lack of~~
23 ~~transportation, the court shall hold the hearing in a place where the person may~~
24 ~~attend if requested by the proposed ward, guardian ad litem, adversary counsel or~~
25 ~~other interested person. Such notice shall also be given personally or by mail at least~~

1 ~~10 days before the hearing to the proposed incompetent's counsel, if any, guardian~~
2 ~~ad litem, presumptive adult heirs or other persons who have legal or physical custody~~
3 ~~of the proposed incompetent whose names and addresses are known to the petitioner~~
4 ~~or can with reasonable diligence be ascertained, to any governmental or private~~
5 ~~agency, charity or foundation from which the proposed incompetent is receiving aid~~
6 ~~and to such other persons or entities as the court may require. The court shall then~~
7 ~~proceed under s. 880.33 court.~~

****NOTE: Please note that I have changed the language of s. 880.08 (1) considerably to make it more intelligible. The stricken provisions are contained in s. 54.38 (1) and (2) (b), and in s. 54.44 (4). Please review.

8 SECTION 57. 880.08 (3) (title) of the statutes is repealed.

9 SECTION 58. 880.08 (3) (am) (intro.) of the statutes is renumbered 54.38 (3)
10 (intro.) and amended to read:

11 54.38 (3) NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR A MINOR. (intro.)
12 ~~When~~ If the proposed ward is a minor, notice shall be given the court shall order
13 distribution of notice by the petitioner of the time and place of the hearing as
14 provided in s. 879.05 to all of the following persons, if applicable:

15 SECTION 59. 880.08 (3) (am) 1. of the statutes is renumbered 54.38 (3) (a) and
16 amended to read:

17 54.38 (3) (a) The proposed ward's spouse, if any.

18 SECTION 60. 880.08 (3) (am) 2. of the statutes is renumbered 54.38 (3) (b) and
19 amended to read:

20 54.38 (3) (b) The proposed ward's parents parent, unless the parent's parental
21 rights have been judicially terminated.

22 SECTION 61. 880.08 (3) (am) 3. of the statutes is renumbered 54.38 (3) (c) and
23 amended to read:

1 54.38 (3) (c) ~~A minor~~ The proposed ward, if the proposed ward is over 14 years
2 of age, unless the ~~minor proposed ward~~ appears at the hearing.

 ***NOTE: I'm not sure that I understand what this provision means—The proposed ward, if a minor, receives notice unless he or she is under 15 or unless he or she appears at the hearing? How would the 15-year-old know where and when the hearing is? Does it still make sense to have s. 879.05, stats., instead of s. 880.08 (1) (renumbered s. 54.38 (2) (a)) apply?

3 **SECTION 62.** 880.08 (3) (am) 4. of the statutes is renumbered 54.38 (3) (d) and
4 amended to read:

5 54.38 (3) (d) Any other person, ~~agency, institution, welfare department or other~~
6 ~~entity having that has~~ the legal or actual custody of the minor.

 ***NOTE: How does "actual" custody in this provision differ from "physical" custody in s. 54.38 (2) (b) 6.? Shouldn't they be the same?

7 **SECTION 63.** 880.08 (3) (e) of the statutes is repealed.

8 **SECTION 64.** 880.08 (4) of the statutes is renumbered 54.38 (4) and amended
9 to read:

10 54.38 (4) REHEARINGS. Notice of a rehearing to determine if a ward is a proper
11 subject to continue under guardianship shall be given as required for ~~the~~
12 ~~appointment of a guardian under subs. (1), (2), and (3).~~

13 **SECTION 65.** 880.09 (intro.) of the statutes is renumbered 54.15 (intro.) and
14 amended to read:

15 **54.15 ~~Nomination; selection of guardians~~ Selection of guardian;**
16 **nominations; preferences; other criteria.** (intro.) The court shall do one of all
17 of the following and shall consider all of the following nominations ~~made by any~~
18 ~~interested person and, in its discretion, shall appoint a proper guardian, having due~~
19 ~~regard for the following~~ applicable preferences, and criteria in determining who is
20 appointed as guardian:

21 **SECTION 66.** 880.09 (1) of the statutes is ~~repealed~~ *renumbered*
54.15(2)(b) and amended to read:

(See other draft)

****NOTE: Your proposed material did not address this subsection, which authorizes a minor over 14 years to nominate his or her own guardian and, if the minor is in the armed service, permits the court to dispense with the right of nomination. Therefore, I repealed it. Is that what you want?

1 **SECTION 67.** 880.09 (2) of the statutes is renumbered 54.15 (3) and amended
2 to read:

3 **54.15 (3) PREFERENCE PARENT OF A PROPOSED WARD.** If one or both of the parents
4 of a minor, ~~a developmentally disabled person~~ an individual with developmental
5 disability, or a person with other like incapacity are suitable and willing, the court
6 shall appoint one or both of them as guardian unless the proposed ward objects. ~~The~~
7 ~~court shall appoint a corporate guardian under s. 880.35 only if no suitable~~
8 ~~individual guardian is available.~~

****NOTE: I deleted the last sentence from this subsection because I included this restriction in s. 880.35 (renumbered s. 54.15 (5)).

9 **SECTION 68.** 880.09 (3) of the statutes is repealed.

****NOTE: Your proposed material did not address this subsection, which authorizes a court to appoint as guardian the nominee of a minor, if neither parent is suitable and willing. Therefore, I repealed it. Is that what you want?

10 **SECTION 69.** 880.09 (4) of the statutes is repealed.

11 **SECTION 70.** 880.09 (5) of the statutes is repealed.

12 **SECTION 71.** 880.09 (6) of the statutes is renumbered 54.15 (4) and amended
13 to read:

14 **54.15 (4) TESTAMENTARY GUARDIANSHIP OF CERTAIN PERSONS NOMINATION BY**
15 **PROPOSED WARD'S PARENTS.** Subject to the rights of a surviving parent, a parent may
16 by will nominate a guardian and successor guardian of the person or estate of ~~of~~ for any
17 of his or her minor children who ~~are~~ is in need of guardianship. ~~For a person~~ an
18 individual who is over the age of 18 and is found to be in need of guardianship under
19 s. ~~880.33~~ 54.10 by reason of a developmental disability or other like incapacity, a

1 parent may by will nominate a testamentary guardian. The parent may waive the
2 requirement of a bond for such an estate that is derived through the will.

****NOTE: I do not understand the intended meaning of the last sentence, under
your proposal and as drafted.

3 SECTION 72. 880.09 (7) of the statutes is renumbered 54.15 (2) and amended
4 to read:

5 54.15 (2) ~~ANTICIPATORY NOMINATION; PREFERENCE~~ PERSON NOMINATED BY PROPOSED
6 WARD. Any person individual other than a minor may, ~~at such time as if the person~~
7 individual has sufficient capacity to form an intelligent preference, execute a written
8 instrument, in the same manner as the execution of a will under s. 853.03,
9 nominating a person another to be appointed as guardian of his or her person or
10 property or both ~~in the event that if a guardian is in the future appointed. Such~~
11 ~~nominee shall be appointed as guardian by the~~ for the individual. The court shall
12 appoint this nominee as guardian unless the court finds that the appointment of such
13 ~~nominee is not in the best interests of the person for whom, or for whose property, the~~
14 ~~guardian is to be appointed~~ proposed ward.

15 SECTION 73. 880.10 of the statutes is renumbered 54.38 (5) and amended to
16 read:

17 54.38 (5) NOTICE OF APPOINTMENT OF GUARDIAN OF A MINOR WARD. If for any reason
18 the court fails to appoint as guardian the nominee of the minor, the guardian who
19 qualifies shall give notice of the guardian's appointment to the minor by certified
20 mail addressed to the minor's last-known post-office address and shall file an
21 affidavit of such the mailing shall be filed with the court within 10 days after the
22 ~~issuance of letters~~ notice is given.

****NOTE: This provision makes reference to the fact that, under s. 880.09 (1) and
(3), stats., a minor may nominate his or her own guardian. Your proposed material
includes it without change. However, neither s. 880.09 (1) or (3), stats., is addressed by

your proposed material (most of s. 880.09 is renumbered in this draft to be in s. 54.15), so I repealed them (see ****NOTES under those provisions). Is that what you want with respect to those provisions and in this one? If you want to keep all three, have I amended this provision accurately?

1 **SECTION 74.** 880.12 of the statutes is repealed.

 ****NOTE: I have assumed that s. 54.46 (3) was intended to replace this section, although s. 54.46 (3) makes no mention of the language under s. 880.12 (2), stats. Correct?

2 **SECTION 75.** 880.125 of the statutes is repealed.

3 **SECTION 76.** 880.13 (title) of the statutes is renumbered 54.46 (5) (title).

4 **SECTION 77.** 880.13 (1) of the statutes is renumbered 54.46 (5) (a) and amended

5 to read:

6 54.46 (5) (a) *Form Amount and sufficiency of bond.* ~~Upon the appointment of~~
7 ~~a guardian of the estate of a ward, except as provided under s. 880.60 (9), the court~~
8 ~~may require a bond given in accordance with ch. 878 and s. 895.345~~ The order under
9 sub. (3) shall specify the amount of any bond required to be given by the guardian
10 of the estate, conditioned upon the faithful performance of the duties of the guardian
11 of the estate. No bond may be required for the guardian of the person.

12 **SECTION 78.** 880.13 (2) (title) of the statutes is renumbered 54.46 (5) (b) (title).

13 **SECTION 79.** 880.13 (2) (a) of the statutes is renumbered 54.46 (5) (b) (intro.)

14 and amended to read:

15 54.46 (5) (b) (intro.) Unless required under s. 880.60 (9), the court may waive
16 the requirement of a bond at under any of the following circumstances:

17 1. At any time in its discretion or if,

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

19 **SECTION 80.** 880.13 (2) (b) of the statutes is renumbered 54.46 (5) (b) 3. and

20 amended to read:

1 54.46 (5) (b) 3. ~~Whenever~~ If a guardian has or will have possession of funds of
2 the ward with a total value of \$40,000 \$100,000 or less, and the court may direct
3 directs deposit of the funds in an insured account of a bank, credit union, savings
4 bank, or savings and loan association in the name of the guardian and the ward and
5 payable only upon further order of the court. ~~In such event the court may waive the~~
6 ~~requirement of a bond.~~

7 SECTION 81. 880.13 (3) of the statutes is ~~renumbered 54.46 (5) (c)~~ and amended
8 ~~to read~~ *repealed.*

9 54.46 (5) (c) *Blanket bond for county employee guardian or conservator.* ~~The~~
10 ~~circuit court may designate one or more persons who are county institutional~~
11 ~~employees, whose duty it is to act as guardian of one or more estates of incompetent~~
12 ~~persons upon appointment by the court, or as conservator for the estates of persons~~
13 ~~making application therefor, who are residents of the county home, patients of the~~
14 ~~county hospitals or county mental hospitals. The appointments shall be made~~
15 ~~subject to this chapter. The person, before entering upon duties, shall take an official~~
16 ~~oath. The~~ For a person who is appointed as a guardian of the estate or as conservator
17 under sub. (3) (d), the court may waive the requirement of a bond or may require the
18 person to give bond, with sufficient sureties, to the judge of the court, in a sum an
19 amount, approved by the court, that is not less than \$1,000 subject to court approval.
20 The bond shall cover the person so designated and appointed in all guardianships
21 and conservatorships to which the person has been or shall be is appointed by the
22 court. Additional The court may require additional ~~bonds may be required from time~~
23 ~~to time. The expense of surety upon the bonds shall be paid by the county treasurer~~
24 ~~on the order of the circuit judge. The term of the person appointed shall terminate~~
25 ~~upon resignation or removal and approval of the person's accounts by the court.~~

~~***NOTE: Please see the ***NOTE under s. 54.46 (3) (d).~~

1 SECTION 82. 880.14 of the statutes is renumbered 54.46 (6) and amended to
2 read:

3 54.46 (6) ~~WHEN LETTERS TO BE ISSUED~~ LETTERS OF GUARDIANSHIP. When a
4 guardian has given bond as required and the bond has been approved by the judge
5 court, letters under the seal of the court shall be issued to the guardian.

***NOTE: Should there be letters for the guardian of the person? If so, such a guardian does not give bond; what would trigger issuance of the letters?

6 SECTION 83. 880.15 (title) of the statutes is renumbered 54.50 (1) (title).

7 SECTION 84. 880.15 (1) of the statutes is renumbered 54.50 (1) (b) and amended
8 to read:

9 54.50 (1) (b) Appointment Duration and extent of authority. ~~If, after~~
10 ~~consideration of a petition for temporary guardianship, the court finds that the~~
11 ~~welfare of a minor, spendthrift or an alleged incompetent requires the immediate~~
12 ~~appointment of a guardian of the person or of the estate, or of both, it~~ The court may
13 appoint a temporary guardian for a ward for a period not to exceed 60 days unless
14 further extended for 60 days by order of the court. The court may extend the period
15 only once, except that the court may extend this period for good cause shown for one
16 additional 60-day period. The court may impose no further temporary guardianship
17 on the ward for at least 90 days after the expiration of the temporary guardianship
18 and any extension. The court's determination and order appointing the temporary
19 guardian shall specify the authority of the temporary guardian and shall be limited
20 to those acts that are reasonably related to the reasons for appointment that are
21 specified in the petition for temporary guardianship. The authority of the temporary
22 guardian shall be is limited to the performance of duties respecting specific property,
23 or to the performance of particular those acts, as stated in the order of appointment.

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

****NOTE: I have stricken the language limiting further temporary guardianships
on the same ward, in accord with the memo.

9 SECTION 85. 880.15 (1m) of the statutes is repealed.

10 SECTION 86. 880.15 (1s) of the statutes is repealed.

****NOTE: Please see the ****NOTE under s. 54.50 (1) (c) 3.

11 SECTION 87. 880.15 (2) of the statutes is repealed.

****NOTE: Please see the ****NOTE under s. 54.50 (1) (c) 3.

12 SECTION 88. 880.15 (3) of the statutes is repealed.

****NOTE: Please see the ****NOTE under s. 54.50 (1) (c) 5.

13 SECTION 89. 880.17 of the statutes is renumbered 54.54.

14 SECTION 90. 880.173 (title) of the statutes is repealed.

15 SECTION 91. 880.173 (1) of the statutes is renumbered 54.20 (2) (g) and

16 amended to read:

17 54.20 (2) (g) ~~A guardian of the estate appointed under this chapter for a~~
18 ~~married person may exercise with the approval of the court, except as limited under~~
19 ~~s. 880.37, any management and control right over the marital property or property~~
20 ~~other than marital property and any right in the business affairs which the married~~
21 ~~person could exercise under ch. 766 if the person were not determined under s. 880.12~~

1 ~~to be a proper subject for guardianship. Under this section, a guardian may consent~~
2 ~~to act together in or join in any transaction for which consent or joinder of both~~
3 ~~spouses is required or may execute Execute under s. 766.58 a marital property~~
4 ~~agreement with the other ward's spouse, but may not make, amend or revoke a will.~~

****NOTE: Because a marital property agreement may be entered into before marriage, shouldn't this also include the ward's intended spouse, if any?

****NOTE: Your proposal does not address prohibiting a guardian from making, amending, or revoking a will, so I repealed that part of the last sentence. Do you intend that a guardian have that power?

5 SECTION 92. 880.173 (2) of the statutes is repealed.

6 SECTION 93. 880.175 (title) of the statutes is repealed.

7 SECTION 94. 880.175 of the statutes is renumbered 54.20 (2) (b) and amended
8 to read:

9 54.20 (2) (b) ~~Upon petition by the guardian, a parent, the spouse, any issue or~~
10 ~~next of kin of any person, assets of the person may, in the discretion of the court and~~
11 ~~upon its order, after such notice as the court may require, be transferred Transfer~~
12 ~~assets of the ward to the trustee or trustees of an any existing revocable living trust~~
13 ~~created by the person for the benefit of that the ward has created for himself or~~
14 ~~herself and those dependent upon the person for support any dependents, or, if the~~
15 ~~ward is a minor, to the trustee or trustees of a any trust created for the exclusive~~
16 ~~benefit of the person, if a minor, which ward that distributes to him or her at age 18~~
17 ~~or 21, or, if the ward dies before age 18 or 21, to his or her estate, or as ~~he or she~~~~
18 ~~appoints if he or she dies prior to age 18 or 21 the guardian appoints.~~

****NOTE: The words "or as he or she appoints" in s. 880.175 are extremely confusing, because it is unclear what the antecedent to "he or she" is. I finally concluded that the antecedent must be the guardian, although an argument might be made that, in fact, it should be the trustee; clearly, it is not the minor. Please review. I also changed "an existing revocable living trust" to "any existing revocable living trust" and made a like change to "a trust created for the exclusive benefit of the ward," because it is not certain that such a trust exists in all cases.

1 **SECTION 95.** 880.18 (title) of the statutes is renumbered 54.60 (title).

2 **SECTION 96.** 880.18 of the statutes is renumbered 54.60 (1) and amended to
3 read:

4 54.60 (1) INVENTORY REQUIRED. ~~When a~~ The guardian of the estate has been
5 appointed an inventory shall be made in the same manner and subject to the same
6 requirements as are provided for the inventory of a decedent's estate. ~~An appraisal~~
7 ~~of all or any part of the ward's estate shall be made when ordered by the court~~ prepare
8 an inventory that lists all of the ward's property and interests in property, including
9 any marital property interest, regardless of how the asset is titled.

10 **SECTION 97.** 880.19 (title) of the statutes is repealed.

11 **SECTION 98.** 880.19 (1) (title) of the statutes is repealed.

12 **SECTION 99.** 880.19 (1) of the statutes is renumbered 54.19 (1) and amended
13 to read:

14 54.19 (1) ~~The guardian of the estate shall take~~ Take possession of all of the
15 ward's real and personal property, and of any rents, income, issues, and benefits
16 therefrom, ~~whether accruing before or after the guardian's appointment~~ from the
17 property, and of the any proceeds arising from the sale, mortgage, lease, or exchange
18 thereof of the property and prepare an inventory of these. Subject to such ~~this~~
19 possession, the title of all such ~~the~~ estate and ~~to~~ the increment and proceeds thereof
20 shall be of the estate is in the ward and not in the guardian. ~~It is the duty of the~~
21 ~~guardian of the estate to protect and preserve it, to retain, sell and invest it as~~
22 ~~hereinafter provided, to account for it faithfully, to perform all other duties required~~
23 ~~of the guardian by law and at the termination of the guardianship to deliver the~~
24 ~~assets of the ward to the persons entitled thereto.~~

****NOTE: I did not add “or a specified portion of the ward’s property,” as in your proposal, because s. 54.19 (intro.), which governs this paragraph, already requires that the guardian act within the limitations of the court order, and it would be the court order, I assume, that would specify any portion of the ward’s property that the guardian would be allowed to act upon.

1 SECTION 100. 880.19 (2) (title) of the statutes is repealed.

2 SECTION 101. 880.19 (2) (a) of the statutes is renumbered 54.20 (1) and
3 amended to read:

4 54.20 (1) STANDARD. The In exercising the powers under this section, the
5 guardian of the estate may, without the approval of the court, retain any real or
6 personal property possessed by the ward at the time of appointment of the guardian
7 or subsequently acquired by the ward by gift or inheritance without regard to ch. 881,
8 so long as such retention constitutes the exercise of shall use the judgment and care
9 under the circumstances then prevailing, which that persons of prudence, discretion,
10 and intelligence exercise in the management of their own affairs, not in regard to
11 speculation but in regard to including the permanent, rather than speculative,
12 disposition of their funds, considering and consideration of the probable income as
13 well as the probable and safety of their capital.

14 SECTION 102. 880.19 (2) (b) of the statutes is renumbered 54.20 (3) (g) and
15 amended to read:

16 54.20 (3) (g) ~~The guardian of the estate may, with the approval of the court,~~
17 ~~after such notice as the court directs, retain~~ Retain any real or personal property
18 ~~possessed by that the ward at the time of the appointment of the possesses when the~~
19 ~~guardian or subsequently acquired by is appointed or that the ward acquires by gift~~
20 ~~or inheritance for such period of time as shall be designated in the order of the court~~
21 ~~approving such retention, without regard to ch. 881 during the guardian’s~~
22 appointment.

****NOTE: Note that, as in your proposal, this provision appears to combine s. 880.19 (2) (a) and (b), stats.; with respect to s. 880.19 (2) (b), stats., it changes current law, which requires court approval, to language that specifically provides for this action without court approval; is that your intent? In addition, language in current law under s. 880.19 (2) (a) and (b), stats., includes “without regard to ch. 881”; I deleted the language “without regard to ch. 881” in this paragraph because ch. 881 does not require that the ward’s possessions be invested; rather, it sets forth standards and procedures for investing—therefore, it need not be referenced here, because it does not prohibit the guardian from exercising the power to retain the ward’s assets. Note, however, that I retained this language for s. 54.20 (3) (h) renumbered from s. 880.19 (4) (a).

1 **SECTION 103.** 880.19 (3) (title) of the statutes is repealed.

2 **SECTION 104.** 880.19 (3) of the statutes is renumbered 54.20 (2) (k) and
3 amended to read:

4 54.20 (2) (k) In all cases ~~where~~ in which the court deems it determines that it
5 is advantageous to continue the business of a ward, such business may be continued
6 by the guardian of the estate on such continue the business on any terms and
7 conditions as may be specified in the order of the court.

8 **SECTION 105.** 880.19 (4) (title) of the statutes is repealed.

9 **SECTION 106.** 880.19 (4) (a) of the statutes is renumbered 54.20 (3) (h) and
10 amended to read:

11 54.20 (3) (h) ~~The guardian of the estate may, without approval of the court,~~
12 invest Invest and reinvest the proceeds of sale of any guardianship assets of the ward
13 and any of the ward’s other moneys in the guardian’s possession in accordance with
14 ch. 881.

****NOTE: Please note my changes to the term “guardianship assets” and “moneys in the guardian’s possession.”

15 **SECTION 107.** 880.19 (4) (b) of the statutes is renumbered 54.20 (2) (L) and
16 amended to read:

17 54.20 (2) (L) ~~The guardian of the estate may, with the approval of the court,~~
18 after After such notice as the court directs and subject to ch. 786, invest the proceeds
19 of sale of any guardianship assets of the ward and any of the ward’s other moneys

1 in the guardian's possession in such the real or personal property ~~as the court~~
2 ~~determines that is determined by the court~~ to be in the best interests of the
3 guardianship estate, ~~without regard to of the ward, notwithstanding ch. 881.~~

****NOTE: Please see the **** NOTE under s. 54.20 (3) (h) (renumbered from s.
880.19 (4) (a)). Please also note my change to the term "guardianship estate."

4 SECTION 108. 880.19 (4) (c) of the statutes is renumbered 54.18 (3) (h) and
5 amended to read:

6 54.18 (3) (h) ~~No guardian shall lend guardianship~~ Lend funds of the ward to
7 himself or herself.

****NOTE: Please see the ****NOTE under s. 54.20 (2) (L) (renumbered from s.
880.19 (4) (b)).

8 SECTION 109. 880.19 (5) (title) of the statutes is repealed.

9 SECTION 110. 880.19 (5) (a) of the statutes is renumbered 54.20 (3) (i) and
10 amended to read:

11 54.20 (3) (i) ~~The guardian of the estate may, without approval of the court, sell~~
12 Subject to ch. 786, sell any property of the guardianship estate of the ward that is
13 acquired by the guardian pursuant to sub. (4) under sub. (2) (L) or par. (h).

14 SECTION 111. 880.19 (5) (b) of the statutes is renumbered 54.22 and amended
15 to read:

16 54.22 Petition for authority to sell, mortgage, pledge, lease, or
17 exchange ward's property. The court, on the application petition of the guardian
18 of the estate or of any other person interested in the estate of any a ward, after such
19 notice ~~if any, as any notice that~~ the court directs, may authorize or require the
20 guardian to sell, mortgage, pledge, lease, or exchange any property of the
21 guardianship estate of the ward upon such terms as the court may order, subject to
22 ch. 786, for the purpose of paying the ward's debts, providing for the ward's care,

1 maintenance, and education and the care, maintenance, and education of the ward's
2 dependents, investing the proceeds, or for any other purpose ~~which~~ that is in the best
3 interest of the ward.

****NOTE: This provision appears to be in direct conflict with s. 54.19 (2) and (4), each of which require the guardian to act with respect to the ward's property in ways that are redundant to this provision, but *without* requiring court approval. Which alternative do you prefer? Is the issue related to a dollar value on the property, i.e., property over a value of, say, \$100,000 would require court approval before the guardian may act? Or should either this provision or s. 54.19 (2) and (4) drop out?

4 SECTION 112. 880.19 (5) (c) of the statutes is renumbered 54.18 (3) (b) and
5 amended to read:

6 54.18 (3) (b) ~~No guardian shall purchase~~ Purchase property of the ward, unless
7 ~~sold at public sale except at fair market value, subject to ch. 786, and with the~~
8 ~~approval of the court, and then only if the guardian is a spouse, parent, child, brother~~
9 ~~or sister of the ward or is a cotenant with the ward in the property.~~

10 SECTION 113. 880.19 (5) (d) of the statutes is repealed.

11 SECTION 114. 880.19 (6) of the statutes is renumbered 54.23 and amended to
12 read:

13 **54.23 Trust Banks and trust companies; exemption from investment**
14 **restraints.** The limitations of ~~this section~~ ss. 54.18 (3) (a) and (b), 54.19 (1), (2), and
15 (6), and 54.20 (1), (2) (k) and (L), and (3) (g), (h), and (i) relating to retention, sale,
16 investment, or reinvestment of any asset shall not be applicable to any bank or trust
17 company authorized to exercise trust powers.

****NOTE: Please scrutinize this provision. It was included without change in your proposal. I have amended it, so far as I can tell that it applies. The effect of this provision in current law is to place no limitations on the sale, investment, etc., of any of a ward's assets by a bank or trust company (this, I assume, is as opposed to the restrictions that guardians must abide by, such as court approval, prudent disposition, etc.) Do you want to continue this lifting of all restrictions on these actions by banks and trust companies?

18 SECTION 115. 880.191 (title) of the statutes is repealed.

1 **SECTION 116.** 880.191 (1) of the statutes is renumbered 54.60 (7) and amended
2 to read:

3 54.60 (7) VERIFICATION, EXAMINATION IN COURT. Every guardian shall verify by
4 the guardian's oath that every inventory required of the guardian and verification
5 shall be to the effect that the inventory is true of all property which that belongs to
6 his or her decedent's estate or his or her ward, which has come to the estate of the
7 ward, in the guardian's possession or knowledge, and that upon diligent inquiry the
8 guardian has ~~not~~ been able unable to discover any property belonging to the estate
9 or ward ~~which is not included therein that the inventory does not include~~. The court,
10 at the request of any party interested, or on its own motion, may examine the
11 guardian on oath ~~in relation thereto, as to the inventory or in relation to any~~
12 supposed omission from the inventory.

 ****NOTE: The language striking reference to the decedent's estate is in accord with
the memo.

13 **SECTION 117.** 880.21 of the statutes is repealed.

 ****NOTE: I repealed this whole section, because the language is so much wordier
than s. 54.20 (3) (a) and otherwise seems unnecessary.

14 **SECTION 118.** 880.22 (title) of the statutes is repealed.

15 **SECTION 119.** 880.22 (1) (title) of the statutes is repealed.

16 **SECTION 120.** 880.22 (1) of the statutes is renumbered 54.19 (7) (a) and
17 amended to read:

18 54.19 (7) (a) ~~Every general guardian shall pay~~ Pay the just debts of the ward
19 out of from the ward's personal estate and the income of the ward's real estate, if
20 sufficient, and if not, ~~then out of the ward's real estate upon selling the same as~~
21 ~~provided by law. But a temporary guardian shall pay the debts of his or her ward only~~
22 ~~on order of the court.~~

***NOTE: This language is in accord with the memo.

1 SECTION 121. 880.22 (2) (title) of the statutes is repealed.

2 SECTION 122. 880.22 (2) of the statutes is renumbered 54.19 (7) (b) and
3 amended to read:

4 54.19 (7) (b) ~~The guardian or a creditor of any ward may apply~~ Apply to the
5 court for adjustment of any claims against the ward incurred ~~prior to~~ before entry
6 of the order appointing the guardian or the filing of a lis pendens as provided in s.
7 880.215. The court shall by order fix the time and place it will adjust claims and the
8 time within which all claims ~~must~~ shall be presented ~~or be barred~~. Notice of ~~the time~~
9 ~~and place so fixed and limited~~ these times and the place shall be given by publication
10 as ~~in estates of decedents; and all statutes relating to claims against and in favor of~~
11 ~~estates of decedents~~ provided in s. 879.05 (4), and ch. 859 generally shall apply. As
12 ~~in the settlement of estates of deceased persons, after~~ After the court has made the
13 order, no action or proceeding may be commenced or maintained in any court against
14 the ward upon any claim ~~of~~ over which the circuit court has jurisdiction.

***NOTE: Your proposal placed this provision under the duties, rather than the powers, of the guardian, notwithstanding the fact that current law uses the term “may apply to the court.” It seemed to me that, indeed, this should be a duty; therefore, I left it in s. 54.19 (which has the effect of changing “may” to “shall”) and added “any” to “claims,” because it is possible that no claims were incurred against the ward before entry of the order. Have I interpreted this correctly? Please review the reference to s. 879.05 (4) and ch. 859, stats. Also, the provision refers to s. 880.215, which is not touched by your proposal; how do you want me to deal with that provision?

15 SECTION 123. 880.23 (title) of the statutes is repealed.

16 SECTION 124. 880.23 of the statutes is renumbered 54.19 (8) and amended to
17 read:

18 54.19 (8) ~~The guardian shall settle~~ Settle all accounts of the ward and ~~may~~
19 ~~demand, sue for, collect and receive all debts and claims for damages due him or her,~~
20 ~~or may, with the approval of the circuit court, compound and discharge the same, and~~

1 shall appear for and represent ~~his or her~~ the ward in all actions and proceedings
2 except where those for which another person is appointed ~~for that purpose~~.

****NOTE: This provision is in part a duty and in part a power; accordingly, I have amended out the authority to demand, etc. Please look at s. 54.20 (2) (k), as renumbered from s. 880.19 (3), and see if the language I have amended out of this provision should be placed there.

3 SECTION 125. 880.24 (title) of the statutes is repealed.

4 SECTION 126. 880.24 (1) of the statutes is repealed.

5 SECTION 127. 880.24 (2) of the statutes is renumbered 54.42 (4) and amended
6 to read:

7 54.42 (4) ~~WARD'S~~ WARD'S RIGHT TO PAYMENT OF EXPENSES IN TO CONTEST PROCEEDINGS.
8 ~~When~~ If a guardian is appointed the court may allow reasonable expenses incurred
9 by the ward in contesting the appointment.

10 SECTION 128. 880.24 (3) of the statutes is renumbered 54.46 (4).

****NOTE: Your proposed material did not include s. 880.24 (3) (b) as an exception to s. 880.24 (3) (a), but, because s. 880.24 (3) was last affected on June 2, 2000, by 1999 Wisconsin Act 183, your proposed material may have been formulated before that language was enacted. Please review all of s. 880.24 (3), as renumbered in this bill, as compared to your proposed material, to see if I have done what you want. Note that, because the provision *requires* the court to award payment, it was necessary to renumber the provision s. 54.46 (4), rather than include it in s. 54.46 (3). Please also see the ****NOTE under s. 54.32 (renumbered from s. 880.33 (2) (a) 3.).

11 SECTION 129. 880.245 of the statutes is renumbered 54.62 (6) and amended to
12 read:

13 54.62 (6) ~~ACCOUNTING BY AGENT~~ THIRD PARTIES TO GUARDIAN. ~~The circuit court,~~
14 ~~upon the application of any~~ If a guardian appointed by it a court so requests, the court
15 may order any person ~~who has been~~ entrusted by the guardian with ~~any~~ part of the
16 estate of a decedent or ward to appear before the court, and ~~may require the person~~
17 to render a full account, on oath, of any property or papers ~~belonging to of~~ the estate
18 ~~which~~ that have come to the person's possession and of his or her ~~proceedings thereon~~

1 action regarding the property or papers. If the person refuses to appear and render
2 an account, the court may proceed against him or her as for contempt.

3 SECTION 130. 880.25 (title) of the statutes is repealed.

4 SECTION 131. 880.25 (1) of the statutes is renumbered 54.62 (1) and amended
5 to read:

6 54.62 (1) ANNUAL REPORTS. Every Except as provided in sub. (3) or unless
7 waived by a court, every guardian, except including a corporate guardian, shall, prior
8 to April 15 of each year, file an account under oath specifying that specifies the
9 amount of property received and held or invested by the guardian, the nature and
10 manner of the investment, and the guardian's receipts and expenditures during the
11 preceding calendar year. ~~When ordered by the court, The court may order the~~
12 ~~guardian shall within 30 days to~~ render and file, within 30 days, a like account for
13 ~~any shorter term less than a year.~~ In lieu of the filing of these accounts before April
14 15 of each year, the court may, by appropriate order upon motion of the guardian,
15 direct the guardian of an estate to ~~thereafter~~ render and file the annual accountings
16 within 60 days after the anniversary date of the guardian's qualification as guardian,
17 with the accounting period from the anniversary date of qualification to the ensuing
18 annual anniversary date. ~~When any guardian of a minor has custody of the ward and~~
19 ~~the care of the ward's education, the guardian's report shall state the time that the~~
20 ~~ward attended school during the time for which the account is rendered and the name~~
21 ~~of the school.~~ The guardian shall also report any change in the status of the surety
22 upon the guardian's bond. If the court determines it to be in the ward's best interests,
23 the court may specify the persons to whom the guardian shall distribute copies of the
24 account.

1 **SECTION 132.** 880.25 (2) of the statutes is renumbered 54.62 (2) and amended
2 to read:

3 **54.62 (2) DISPLAY OF ASSETS.** Upon rendering the account the guardian shall
4 produce for examination by the court, or ~~some~~ by a person satisfactory to the court,
5 all reported securities, evidences of deposit, and investments ~~reported~~, which shall
6 be described in the account in sufficient detail so that they may be readily identified.
7 ~~It shall be ascertained~~ The court or person satisfactory to the court shall ascertain
8 whether the securities, evidences of deposit, and investments correspond with the
9 account.

10 **SECTION 133.** 880.25 (3) of the statutes is renumbered 54.66 (2) and amended
11 to read:

12 **54.66 (2) SMALL ESTATES.** ~~When the whole estate of a ward or of several wards~~
13 ~~jointly, under the same guardianship, does not exceed \$1,000 in value, the~~ The
14 ~~guardian shall be required to render of a ward with a small estate, as specified in s.~~
15 ~~54.62 (3) (a), need not file a final account only upon the termination of the guardian's~~
16 ~~guardianship, unless otherwise ordered by the court. The guardian shall instead~~
17 ~~provide the court with a list of the ward's assets that remain at the time the~~
18 ~~guardianship terminates, including at the death of the ward.~~

19 **SECTION 134.** 880.25 (4) of the statutes is renumbered 54.62 (5) and amended
20 to read:

21 **54.62 (5) EXAMINATION OF ACCOUNTS.** The account shall be promptly examined
22 ~~under the court's direction and if it~~ as the court directs. If the account is not
23 ~~satisfactory it shall be examined on 8 days' notice and , the court shall make such~~
24 ~~order thereon~~ order action as justice requires. Notice and shall direct that notice be
25 provided to the guardian ~~may be served personally or by certified mail as the court~~

1 ~~directs. When the examination of a guardian's account is upon notice . If notice is~~
2 ~~provided to the guardian under this subsection, the court may appoint a guardian~~
3 ~~ad litem of for the ward may be appointed.~~

(intro.)

4 SECTION 135. 880.25 (5) of the statutes is renumbered 54.62 (7) and amended
5 to read:

(intro.)

guardian

6 54.62 (7) NOTICE OF FINAL ACTION ON AN ACCOUNT. No action by the court upon
7 any on an account shall be is final unless it is upon the court first directs that notice
8 be provided to interested parties all of the following: Provides

****NOTE: It is not clear to whom notice under this subsection must be provided. "Interested parties" is not defined; is it suitable here, or should it be "interested person"? Should, instead, notice be provided to the guardian and the ward only?

9 SECTION 136. 880.26 (title) of the statutes is repealed.

10 SECTION 137. 880.26 (1) (intro.) of the statutes is renumbered 54.64 (3) (intro.)
11 and amended to read:

12 54.64 (3) GUARDIANSHIP TERMINATION OF GUARDIANSHIP OF THE PERSON. (intro.)

13 A guardianship of the person shall terminate ~~when~~ if any of the following occurs:

****NOTE: Your proposal does not include treatment of s. 880.26 (1) (a) and (b) (a guardianship of the person must terminate when a minor ward who is not an incompetent attains majority or a minor ward marries). I have, however, not repealed these provisions, because I thought perhaps that not including them was inadvertent. Please review.

14 SECTION 138. 880.26 (1) (c) of the statutes is renumbered 54.64 (3) (a) and
15 amended to read:

16 54.64 (3) (a) The court adjudicates a ~~former ward who was formerly found to~~
17 be an incompetent to be competent no longer an incompetent.

18 SECTION 139. 880.26 (2) (intro.) of the statutes is renumbered 54.64 (4) (intro.)
19 and amended to read:

1 54.64 (4) ~~GUARDIANSHIP~~ TERMINATION OF GUARDIANSHIP OF THE ESTATE. (intro.)

2 A guardianship of the estate shall terminate ~~when~~ if any of the following occurs:

 ****NOTE: Your proposed material does not include treatment of s. 880.26 (2) (a) and (b) (a guardianship of the estate must terminate when a minor ward who is not an incompetent attains majority or a minor ward marries and the court approves the termination). I have, however, not repealed these provisions, because I thought perhaps that not including them was inadvertent. Please review.

3 **SECTION 140.** 880.26 (2) (c) of the statutes is renumbered 54.64 (4) (a) and
4 amended to read:

5 54.64 (4) (a) The court adjudicates a former incompetent ~~or a spendthrift~~ to be
6 capable of handling his or her property competent.

7 **SECTION 141.** 880.26 (2) (d) of the statutes is repealed.

 ****NOTE: Your proposed material renumbered and amended s. 880.26 (2) (d) (a guardianship of the estate must terminate when a ward dies, except when the estate is minimal). I have, instead, repealed that paragraph because (a) the termination upon death is redundant to s. 54.64 (1) (renumbered from s. 880.34 (1); and (b) the exception seems to be in conflict with s. 54.66 (2) (renumbered from s. 880.25 (3)).

8 **SECTION 142.** 880.26 (3) of the statutes is renumbered 54.64 (5) (intro.) and
9 amended to read:

10 54.64 (5) (intro.) ~~DEPLETED GUARDIANSHIPS~~ GUARDIANSHIP. ~~When the~~ If a court
11 determines that the estate of the a ward is below \$5,000 and reduced to a point where
12 it is to the advantage of the ward to dispense with the guardianship, the court may
13 terminate do one of the following:

14 (a) Terminate the guardianship and authorize order disposition of the
15 remaining assets as provided by s. ~~880.04~~ 54.12 (2). The court, as a part of the
16 disposition, may order a ~~suitable amount paid to the county treasurer under order~~
17 ~~of the court or reserved in the guardianship to assure the ward a decent burial, a~~
18 ~~marker and care for the grave. In the case of an insolvent guardianship, the court~~
19 ~~may order an amount not exceeding \$400 reserved in the guardianship or paid to the~~
20 ~~county treasurer under order of the court to assure the ward a decent burial~~ the

1 guardian to make appropriate financial arrangements for the burial or other
2 disposition of the remains of the ward.

3 SECTION 143. 880.27 of the statutes is renumbered 54.66 (1) and amended to
4 read:

5 54.66 (1) ~~SETTLEMENT OF ACCOUNTS~~ RENDER FINAL ACCOUNT. Upon termination
6 of ~~If a court terminates a guardianship, or upon resignation, removal or death of a~~
7 ~~guardian, such~~ resigns, is removed, or dies, the guardian or the guardian's personal
8 representative shall forthwith promptly render the guardian's a final account to the
9 court and to the former ward, the successor guardian, or the deceased ward's
10 personal representative as the case may be. Upon approval of the account and filing
11 proper receipts the guardian shall be discharged and the guardian's bond released
12 , as appropriate. If the ward dies and the guardian and the deceased ward's personal
13 representative are the same person, the deceased ward's personal representative
14 shall give notice of the termination and rendering of the final account to all interested
15 persons of the ward's estate.

****NOTE: Does the last sentence capture the memo's intent?

16 SECTION 144. 880.28 of the statutes is renumbered 54.66 (4) and amended to
17 read:

18 54.66 (4) SUMMARY SETTLEMENT OF SMALL ESTATES. ~~When~~ If a ward dies leaving
19 an estate ~~which~~ that can be settled summarily under s. 867.01, the court may
20 approve such the settlement and distribution by the guardian, without ~~the necessity~~
21 ~~of~~ appointing a personal representative.

22 SECTION 145. 880.31 (title) of the statutes is repealed.

23 SECTION 146. 880.31 (1) and (7) of the statutes are consolidated, renumbered
24 54.76 (1) and amended to read:

1 54.76 (1) Any adult resident who believes that he or she is unable properly to
2 manage his or her property or income may voluntarily apply to the circuit court of
3 the county of his or her residence for appointment of a conservator of the estate.
4 Upon receipt of the application, the court shall fix a time and place for hearing the
5 application and direct to whom and in what manner notice of the hearing shall be
6 given. ~~(7) If an application for conservatorship is filed, the~~ The fee prescribed in s.
7 814.66 (1) (b) shall be paid at the time of the filing of the inventory or other documents
8 setting forth the value of the estate.

 ***NOTE: I consolidated these provisions because, otherwise, they seem out of place
sequentially.

9 **SECTION 147.** 880.31 (2) of the statutes is renumbered 54.76 (2) and amended
10 to read:

11 54.76 (2) ~~At the time of such hearing for appointment of a conservator,~~ the
12 applicant shall be personally examined and if the court is satisfied that the applicant
13 desires a conservator and that the fiduciary nominated is suitable, the court may
14 appoint the nominee as conservator and issue letters of conservatorship to the
15 nominee upon the filing of a bond in the amount fixed by the court.

 ***NOTE: Do you want any specification as to who (a physician, psychologist?)
should examine the applicant?

16 **SECTION 148.** 880.31 (3) of the statutes is renumbered 54.76 (3) and amended
17 to read:

18 54.76 (3) A conservator shall have has all the powers and duties of a guardian
19 of the property estate of an incompetent person. ~~The conservator's powers shall~~
20 ~~cease upon being removed by the court or upon death of the person whose estate is~~
21 ~~being conserved~~ individual who is appointed a guardian under s. 54.10.

1 **SECTION 149.** 880.31 (4) and (5) of the statutes are consolidated, renumbered
2 54.76 (4) and amended to read:

3 54.76 (4) Any ~~person~~ individual whose estate is under conservatorship may
4 apply to the court at any time for termination ~~thereof~~ of the conservatorship or for
5 appointment of a successor conservator. Upon ~~such~~ receipt of the application, the
6 court shall fix a time and place for hearing and direct that 10 days' notice by mail be
7 given to the person's guardian, if any, the conservator and the presumptive heirs of
8 the applicant. ~~Upon such~~ At the hearing, the court shall, unless it is clearly shown
9 that the applicant is an incompetent, remove the conservator and order the property
10 restored to the applicant, ~~or if the applicant so desires and the nominee is suitable,~~
11 ~~the court may appoint a successor conservator.~~ (5). If the court shall upon such
12 hearing ~~determine~~ determines at the hearing that the person whose estate is
13 administered by a conservator may be incapable of handling his or her estate, the
14 court shall order the conservatorship continued, or, if the applicant so desires and ~~the~~
15 a nominee is suitable, ~~the court may~~ appoint a successor conservator.

****NOTE: Because of sub. (3) (renumbered from s. 880.31 (3)) and sub. (6) (created as s. 54.76 (6)), the language about giving notice to the person's guardian makes no sense, and I have therefore stricken it.

****NOTE: I have consolidated s. 880.31 (4) and (5), because, under current law, s. 880.31 (4) seems to internally conflict, and because both subsections address actions that are the outcome of a hearing held for termination of a conservatorship. With respect to the internal conflict in s. 880.31 (4), it seems to me that if the applicant is not shown to be an incompetent and has requested termination of the conservatorship that the court would not then appoint a successor conservator—that appointment would, I believe, occur only if the court has determined that the applicant continues to be incapable of handling the estate. Please review my changes.

16 **SECTION 150.** 880.31 (6) of the statutes is renumbered 54.76 (5) and amended
17 to read:

1 54.76 (5) Appointment of a conservator ~~shall not be~~ does not constitute
2 evidence of the competency or incompetency of the person whose estate is being
3 administered.

4 **SECTION 151.** 880.33 (title) of the statutes is repealed.

5 **SECTION 152.** 880.33 (1) of the statutes is renumbered 54.36 and amended to
6 read:

7 **54.36 Examination of proposed ward.** Whenever it is proposed to appoint
8 a guardian on the ground of a proposed ward's alleged incompetency, a licensed
9 physician or licensed psychologist, or both, shall furnish a written statement
10 concerning the mental condition the court shall direct that a comprehensive
11 evaluation, based on personal examination, be made of the functional incapacity of
12 the proposed ward, based upon examination and that a statement based on the
13 evaluation be submitted to the court. The court may utilize available
14 multidisciplinary resources in the community in determining the need for the
15 guardianship. The privilege under s. 905.04 shall does not apply to this the
16 statement based on the evaluation. A copy of the statement shall be provided to the
17 proposed ward, or his or her counsel, the guardian ad litem, and the petitioner's
18 attorney. Prior to the examination, under this subsection, of a person alleged to be
19 not competent to refuse psychotropic medication under s. 880.07 (1m), the person the
20 proposed ward shall be informed that his or her statements may be used as a basis
21 for a finding of incompetency and an order for protective services, including
22 psychotropic medication or protective placement. The person shall also be informed
23 that he or she has a right to remain silent refuse to participate in the examination
24 or speak to the examiner and that the examiner is required to report to the court even
25 if the person remains silent does not speak to the examiner. The issuance of such a

1 warning to the person prior to each examination establishes a presumption that the
2 person understands that he or she need not speak to the examiner. Nothing in this
3 section prohibits the use of a report by a physician or psychologist that is based on
4 an examination of the proposed ward by the physician or psychologist before filing
5 the petition for appointment of a guardian, but the court will consider the recency
6 of the report in determining whether the report sufficiently describes the proposed
7 ward's current state and in determining the weight to be given to the report.

****NOTE: Does "functional incapacity" differ from incapacity? (Please see definition of "incapacity" under s. 54.01 (5) and the NOTE that accompanies it.)

****NOTE: Because the provisions concerning providing the ward with a copy of the statement and informing the ward are written in the passive voice, it is unclear who has the responsibility for performing these actions. If the person conducting the evaluation is the likely party, the sentences should be rewritten to give him or her that duty.

****NOTE: Please review this language to make sure I've captured the intent in accord with the memo.

****NOTE: Should the statement copy be required to be provided to the petitioner's attorney? What if the petitioner has no attorney or is an attorney?

8 **SECTION 153.** 880.33 (2) (a) 1. of the statutes is renumbered 54.42 (1) (a) (intro.)

9 and amended to read:

10 54.42 (1) (a) (intro.) The proposed ward has the right to counsel ~~whether or not~~
11 ~~present at the hearing on determination of competency. The court shall in all cases~~
12 ~~require the appointment of an attorney as guardian ad litem in accordance with s.~~
13 ~~757.48 (1) and shall in addition require representation by full legal counsel whenever~~
14 ~~the petition contains the allegations under s. 880.07 (1m) or if, at least 72 hours~~
15 ~~before the hearing, the alleged incompetent requests; the guardian ad litem or any~~
16 ~~other person states that the alleged incompetent is opposed to the guardianship~~
17 ~~petition; or the court determines that the interests of justice require it. The proposed~~
18 ~~ward has the right to a trial by a jury if demanded by the proposed ward, attorney~~
19 ~~or guardian ad litem, except that if the petition contains the allegations under s.~~

1 ~~880.07 (1m) and if notice of the time set for the hearing has previously been provided~~
2 ~~to the proposed ward and his or her counsel, a jury trial is deemed waived unless~~
3 ~~demanding at least 48 hours prior to the time set for the hearing. The number of~~
4 ~~jurors shall be determined under s. 756.06 (2) (b). The proposed ward, attorney or~~
5 ~~guardian ad litem shall have the right to present and cross-examine witnesses,~~
6 ~~including the physician or psychologist reporting to the court under sub. (1). The~~
7 ~~attorney or guardian ad litem for the proposed ward shall be provided with a copy~~
8 ~~of the report of the physician or psychologist at least 96 hours in advance of the~~
9 ~~hearing. Any final decision of the court is subject to the right of appeal. if any of the~~
10 ~~following occurs:~~

****NOTE: Under this amendment, the proposed ward's formerly unconditioned right to counsel is now conditioned. It was unclear from the language of your proposal whether the 72-hour limitation was intended to apply to all instances of a right to counsel. I applied it only to s. 54.42 (1) (a) 1. Please review. Note that the reference to psychotropic medication is removed; this issue should be revisited, depending on what you decide to do about psychotropic medication.

11 **SECTION 154.** 880.33 (2) (a) 2. of the statutes is renumbered 54.42 (1) (c) and
12 amended to read:

13 54.42 (1) (c) ~~If the person requests but is par. (a) 1., 2., or 3. applies but the~~
14 ~~proposed ward is unable to obtain legal counsel, the court shall appoint legal counsel.~~
15 ~~If the person is represented by counsel appointed under s. 977.08 in a proceeding for~~
16 ~~a protective placement under s. 55.06 or for the appointment of a guardian under s.~~
17 ~~880.07 (1m), the court shall order the counsel appointed under s. 977.08 to represent~~
18 ~~the person.~~

19 **SECTION 155.** 880.33 (2) (a) 3. of the statutes is renumbered 54.32 and amended
20 to read:

21 **54.32 Liability for fees.** ~~If the person proposed ward is an adult who is~~
22 ~~indigent, the county of legal settlement shall be in which venue lies for the~~

1 guardianship proceeding is the county liable for any fees due the guardian ad litem
2 and, if counsel was not appointed under s. 977.08, for any legal fees due the person's
3 legal counsel. ~~If the person is a minor, the person's parents or the county of legal~~
4 ~~settlement shall be liable for any fees due the guardian ad litem as provided in s.~~
5 ~~48.235 (8).~~

****NOTE: I was unsure what to do here. Please review carefully your proposal and
the language of s. 54.46 (4) (renumbered from s. 880.24 (3)). Not all of the expenses
specified in your proposal are included in s. 54.46 (4). Is s. 54.46 (4) the "section position
on petitioner's counsel attorney fees" to which your proposal refers? Should there just be
a cross-reference in this provision, if the proposed ward is not indigent, to s. 54.46 (4)?

6 **SECTION 156.** 880.33 (2) (b) of the statutes is renumbered 54.42 (3).

7 **SECTION 157.** 880.33 (2) (e) of the statutes is renumbered 54.44 (5) and
8 amended to read:

9 54.44 (5) PRIVACY OF HEARING. Every hearing on a petition under s. 880.07 (1m)
10 shall be ~~open~~ closed, unless the proposed ward or his or her attorney acting with the
11 proposed ward's consent moves that it be ~~closed~~ open. If the hearing is closed, only
12 ~~persons in interest~~ interested persons, including representatives of providers of
13 service and their attorneys and witnesses, may be present.

****NOTE: Please see the **** NOTE about psychotropic medication under s. 54.42
(1) (a) (intro.) (renumbered from s. 880.33 (2) (a) 1.).

****NOTE: The definition of "interested person" under s. 54.01 (9) does not include
"representatives of providers of service and their attorneys and witnesses," so either that
definition must be expanded or these individuals must be deleted from the statute. In
the phrase, are the "witnesses" general witnesses or witnesses for the service providers?

14 **SECTION 158.** 880.33 (5) of the statutes is renumbered 54.15 (6) and amended
15 to read:

16 54.15 (6) OPINIONS OF PROPOSED WARD AND FAMILY. ~~In appointing a guardian, the~~
17 The court shall take into consideration the opinions of the ~~alleged incompetent~~
18 proposed ward and of the members of the his or her family as to what is in the best
19 interests of the proposed ~~incompetent~~ ward. However, the best interests of the

1 proposed incompetent ward shall control in making the determination when the
2 opinions of the family are in conflict with ~~the clearly appropriate decision~~ those best
3 interests. The court shall also consider potential conflicts of interest resulting from
4 the prospective guardian's employment or other potential conflicts of interest. If the
5 proposed incompetent ward has executed a power of attorney for health care under
6 ch. 155, the court shall ~~give consideration to the appointment of the health care agent~~
7 ~~for the individual~~ consider appointing the agent under that power of attorney as the
8 individual's guardian.

****NOTE: Language in your proposal for this subsection states "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." This statement is in direct conflict with language you have proposed under Subch. 3, Section One (1) (a), which I have drafted as s. 54.15 (1), and which REQUIRES appointment of the agent unless the appointment is not in the proposed ward's best interests. Which is your preference? If it is the latter, do you want the agent of a health care power of attorney also to be required to be appointed?

****NOTE: Please note that I have amended current law that refers to "proposed incompetent" to instead refer to "proposed ward," and have tried to make that change consistent in this draft. Is this drafting decision acceptable?

9 SECTION 159. 880.33 (5m) of the statutes is renumbered 54.15 (8) and amended
10 to read:

11 54.15 (8) LIMITATION ON NUMBER OF WARDS OF GUARDIAN. No person ~~one~~, except
12 a nonprofit corporation approved by the department of health and family services
13 under s. ~~880.35~~ 54.15 (5), who has guardianship of the person of 5 or more adult
14 wards who are unrelated to the person him or her may accept appointment as
15 guardian of the person of another unrelated adult ward ~~unrelated to the person,~~
16 unless approved by the department court. No such person individual may accept
17 appointment as guardian of more than 10 such adult wards who are unrelated to the
18 person him or her, and no approved nonprofit corporation may accept appointment
19 as guardian of more than 10 adult wards.

****NOTE: This subsection is extremely confusing. Most of the confusion exists in current law. First, the word “person” is used in this subsection in three different ways: as an individual, as an entity under the definition of “person” in s. 990.01 (26), stats. (which, for all the statutes, defines “person” to include all partnerships, associations, and bodies corporate and politic) and as “guardian of the person.” I think that the “person” referred to in the second sentence was intended to mean the corporation and have tried to clarify that in amending the subsection. However, that interpretation means that a nonprofit corporation is authorized to be guardian to more than 10 adult wards—is that correct? Second, your proposed change to this subsection is from “department” to “court” in the first sentence. When that change is made, I’m not exactly sure that the sentence has real meaning: it seems to say that the court may not appoint someone guardian of more than 5 adult wards unless the court wants to. Third, to add to the confusion, I don’t understand what “or more” means in the first sentence—where is the line being drawn? Fourth, under s. 54.15 (5) (renumbered from s. 880.35) in this draft, DHFS may approve not just nonprofit corporations but also nonprofit and for profit entities—shouldn’t they be added to the first sentence? Lastly, the subsection is written to prohibit a person (whatever that may be) from accepting appointment as a guardian if certain conditions exist—but isn’t this actually a prohibition on a court from appointing such a guardian?

1 **SECTION 160.** 880.33 (7) of the statutes is renumbered 54.48 and amended to
2 read:

3 **54.48 Protective placement and protective services.** A finding of
4 incompetency and appointment of a guardian under this ~~subchapter~~ chapter is not
5 grounds for involuntary protective placement. ~~Such or the provision of protective~~
6 services. Protective placement and the provision of protective services may be made
7 only in accordance with ~~s. 55.06~~ ch. 55.

8 **SECTION 161.** 880.33 (8) (b) of the statutes is renumbered 54.46 (3) (b) and
9 amended to read:

10 **54.46 (3) (b) Power of attorney for health care.** If the ~~proposed incompetent~~
11 ward has executed a power of attorney for health care under ch. 155, ~~find that the~~
12 ~~power of attorney for health care instrument should remain in effect. If the court so~~
13 ~~finds, the court shall so order and shall~~ the court may, for good cause shown, revoke
14 the power of attorney for health care or limit the power of the guardian to make those
15 ~~health care decisions for the ward that are not to be made by the health care~~ authority
16 of the agent under the terms of the power of attorney for health care instrument,

1 ~~unless the guardian is the health care agent under those terms .~~ The ward's power
2 of attorney for health care remains in effect unless so revoked or limited.

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

3 SECTION 162. 880.331 (title) of the statutes is renumbered 54.40 (title) and
4 amended to read:

5 54.40 (title) **Guardian ad litem ~~in incompetency cases; appointment;~~**
6 **duties; termination.**

7 SECTION 163. 880.331 (1) of the statutes is renumbered 54.40 (1) and amended
8 to read:

9 54.40 (1) APPOINTMENT. The court shall appoint a guardian ad litem whenever
10 it is proposed that the court appoint a guardian on the ground of incompetency-under
11 s. ~~880.33~~ 54.15, protectively place a person or order protective services under s. 55.06,
12 review any protective placement or protective service order under s. 55.06, or
13 terminate a protective placement under s. 55.06, or at any other time that the court
14 determines it is necessary.

***NOTE: Wouldn't it be more accurate to say "when a petition is brought under s. 54.34," rather than "whenever it is proposed that the court appoint a guardian on the ground of incompetency under s. 54.15"?

***NOTE: The option for the court to appoint at any other time is in accord with the memo.

15 SECTION 164. 880.331 (2) of the statutes is renumbered 54.40 (2) and amended
16 to read:

17 54.40 (2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted
18 to practice in this state and shall meet the requirement under s. 757.48 (1) (a). No
19 person who is an interested party in a proceeding, appears as counsel in a proceeding
20 on behalf of any party, or is a relative or representative of an interested party may
21 be appointed guardian ad litem in that proceeding.

****NOTE: I added the requirement that the GAL have completed 3 hours of CLE under ch. 767 to this provision, rather than s. 880.331 (4) (intro.), as proposed, because it seemed to fit better here.

1 **SECTION 165.** 880.331 (3) of the statutes is renumbered 54.40 (3) and amended
2 to read:

3 **54.40 (3) RESPONSIBILITIES.** The guardian ad litem shall be an advocate for the
4 best interests of the proposed ward ~~or alleged incompetent~~ as to guardianship,
5 protective placement, and protective services. The guardian ad litem shall function
6 independently, in the same manner as an attorney for a party to the action, and shall
7 consider, but ~~shall not be~~ is not bound by, the wishes of the proposed ward ~~or alleged~~
8 ~~incompetent~~ or the positions of others as to the best interests of the proposed ward
9 ~~or alleged incompetent~~. The guardian ad litem has none of the rights or duties of a
10 general guardian.

****NOTE: The term “alleged incompetent” appears in this section, but in very few other places in ch. 880. I have repealed it, because it does not seem to be necessary. Please let me know if this drafting decision is not correct.

11 **SECTION 166.** 880.331 (4) (intro.) of the statutes is renumbered 54.40 (4)
12 (intro.).

13 **SECTION 167.** 880.331 (4) (a) of the statutes is renumbered 54.40 (4) (a) and
14 amended to read:

15 **54.40 (4) (a)** Interview the proposed ward ~~or alleged incompetent~~ and explain
16 the contents of the petition, the applicable hearing procedure, the right to counsel,
17 and the right to request or continue a limited guardianship.

18 **SECTION 168.** 880.331 (4) (b) of the statutes is renumbered 54.40 (4) (c) and
19 amended to read:

20 **54.40 (4) (c)** Advise the proposed ward ~~or alleged incompetent~~, both orally and
21 in writing, of that person’s rights to be present at the hearing, to a jury trial, to an

1 appeal, to counsel, and to an independent medical or psychological examination on
2 the issue of competency, at county expense if the person is indigent.

****NOTE: I did not make the change in your proposal for this paragraph, from “that person’s” to “the ward’s,” because the proposed ward is not yet a ward.

****NOTE: The addition of the right to be present at the hearing is in accord with the memo.

3 SECTION 169. 880.331 (4) (c) of the statutes is renumbered 54.40 (4) (d) and
4 amended to read:

5 54.40 (4) (d) Request that the court order additional medical, psychological, or
6 other evaluation, if necessary.

7 SECTION 170. 880.331 (4) (d) of the statutes is renumbered 54.40 (4) (e) and
8 amended to read:

9 54.40 (4) (e) If applicable, inform the court and petitioner’s attorney that the
10 proposed ward ~~or alleged incompetent~~ objects to a finding of incompetency, the
11 present or proposed placement, or the recommendation of the guardian ad litem as
12 to the proposed ward’s ~~or alleged incompetent’s~~ best interests or that the proposed
13 ward’s ~~or alleged incompetent’s~~ position on these matters is ambiguous. If the
14 guardian ad litem recommends that the hearing be held in a place other than a
15 courtroom, the guardian ad litem shall provide the information under this paragraph
16 as soon as possible.

****NOTE: Shouldn’t the reference to “petitioner’s attorney” be, instead, to “petitioner”? What if the petitioner has no attorney or is an attorney?

17 SECTION 171. 880.331 (4) (e) of the statutes is renumbered 54.40 (4) (h) and
18 amended to read:

19 54.40 (4) (h) Present evidence concerning the best interests of the proposed
20 ward ~~or alleged incompetent~~, if necessary.

1 **SECTION 172.** 880.331 (4) (f) of the statutes is renumbered 54.40 (4) (i) and
2 amended to read:

3 54.40 (4) (i) Report to the court on any ~~other relevant~~ matter that the court
4 requests.

5 **SECTION 173.** 880.331 (5) (intro.) of the statutes is renumbered 54.70 (intro.)
6 and amended to read:

7 **54.70 Duties in of guardian ad litem for reviews.** (intro.) In any review
8 of a protective placement under s. 55.06 or of a protective ~~service~~ services order under
9 s. 55.05, the guardian ad litem shall do all of the following:

10 **SECTION 174.** 880.331 (5) (a) of the statutes is renumbered 54.70 (1) and
11 amended to read:

12 54.70 (1) Interview the ward to explain the review procedure, the right to an
13 independent evaluation, and the right to counsel ~~and the right to a hearing~~.

 ****NOTE: I have amended this provision in light of the memo; if *Goldie H.* requires
that a *Watts* review include a hearing, that would be subsumed under “review procedure”
and it’s superfluous for the GAL to explain that the ward has the right to a hearing.

14 **SECTION 175.** 880.331 (5) (b) of the statutes is renumbered 54.70 (2) and
15 amended to read:

16 54.70 (2) Provide the information under ~~par. (a)~~ sub. (1) to the ward in writing.

17 **SECTION 176.** 880.331 (5) (c) of the statutes is renumbered 54.70 (3) and
18 amended to read:

19 54.70 (3) Secure Request that the court order an additional medical,
20 psychological, or other evaluation of the ward, if necessary.

 ****NOTE: This language comports with the memo.

21 **SECTION 177.** 880.331 (5) (d) of the statutes is renumbered 54.70 (4).

1 **SECTION 178.** 880.331 (5) (e) of the statutes is renumbered 54.70 (5) and
2 amended to read:

3 **54.70 (5)** Review the ward's condition, placement, and rights with the
4 guardian.

5 **SECTION 179.** 880.331 (5) (f) of the statutes is renumbered 54.70 (6) and
6 amended to read:

7 **54.70 (6)** If relevant, report to the court that the ward objects to the finding of
8 continuing incompetency, the present or proposed placement, the position of the
9 guardian, or the recommendation of the guardian ad litem as to the best interests of
10 the ward or if there is ambiguity about the ward's position on these matters.

11 **SECTION 180.** 880.331 (5) (g) of the statutes is renumbered 54.70 (7) and
12 amended to read:

13 **54.70 (7)** If relevant, report to the court that the ward requests the
14 appointment of counsel ~~or an adversary hearing~~.

 ****NOTE: I have amended this provision in light of the memo. If *Goldie H.* requires
a hearing in every *Watts* review, it is unnecessary for the GAL to report to the court that
the ward requests an adversary hearing. Would a hearing under *Goldie H.* require
appointment of counsel?

15 **SECTION 181.** 880.331 (6) of the statutes is renumbered 54.40 (5) and amended
16 to read:

17 **54.40 (5) COMMUNICATION TO A JURY.** In jury trials under ch. 55 or 880, the court
18 or guardian ad litem may tell the jury that the guardian ad litem represents the
19 interests of the proposed ward ~~or alleged incompetent~~.

20 **SECTION 182.** 880.331 (7) of the statutes is renumbered 54.40 (6) and amended
21 to read:

22 **54.40 (6) TERMINATION AND EXTENSION OF APPOINTMENT.** The appointment of a
23 guardian ad litem under sub. (1) terminates upon the entry of the court's final order

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

13 **SECTION 183.** 880.331 (8) of the statutes is renumbered 54.74 and amended to
14 read:

15 **54.74 Compensation of guardian ad litem.** ~~On order of the court, the~~
16 ~~guardian ad litem appointed under this chapter shall be allowed reasonable~~
17 ~~compensation to be paid by the county of venue, unless~~ Unless the court otherwise
18 ~~directs or unless the guardian ad litem is appointed for a minor, in which case the~~
19 ~~compensation of the guardian ad litem shall be paid by the minor's parents or the~~
20 ~~county of venue as provided in s. 48.235 (8), the court shall order reasonable~~
21 compensation to be paid by the county of venue to a guardian ad litem appointed
22 under s. 54.40 (1). If the court orders a county to pay the compensation of the
23 guardian ad litem, the amount ordered may not exceed the compensation paid to a
24 private attorneys attorney under s. 977.08 (4m) (b). The guardian ad litem shall
25 receive compensation for performing all duties required under s. 54.40 (4) and for any

1 other acts that are approved by the court and are reasonably necessary to promote
2 the ward's best interests.

3 SECTION 184. 880.34 (title) of the statutes is renumbered 54.64 (title) and
4 amended to read:

5 **54.64 (title) Duration Review and termination of guardianship; review.**

6 SECTION 185. 880.34 (1) of the statutes is renumbered 54.64 (1) and amended
7 to read:

8 54.64 (1) DURATION. Any guardianship of an individual found to be an
9 incompetent under this chapter shall continue during the life of the incompetent, or
10 ward, until terminated by the court, or as provided under sub (3) or (4). Upon
11 reaching the age of majority, an incompetent subject to guardianship under this
12 chapter shall be reviewed by the court for the purpose of determining whether the
13 guardianship should be continued or modified. The court shall make a specific
14 finding of any rights under s. 880.33 (3) which the individual is competent to exercise
15 at the time.

16 SECTION 186. 880.34 (4) of the statutes is renumbered 54.64 (2) (a) (intro.) and
17 amended to read:

18 54.64 (2) (a) (intro.) A ward who is 18 years of age or older, any interested
19 person acting on the ward's behalf, or the ward's guardian may petition for a review
20 of incompetency. Upon such at any time after 180 days after any previous hearing
21 under s. 54.44, or at any time if the court determines that exigent circumstance,
22 including presentation of new evidence, requires a review. If a petition for review is
23 filed, the court shall conduct do all of the following:

24 4. Conduct a hearing at which the ward shall be is present and shall have has
25 the right to a jury trial, if demanded. The ward shall also have the right to counsel

1 and the court shall appoint counsel if the ward is unable to obtain counsel. If the
2 ward is indigent, counsel shall be provided at the expense of the ward's county of legal
3 settlement.

****NOTE: Please review to see if the language limiting review to after six months
after the previous hearing or at any time under special circumstances adequately meets
the memo's intent.

4 SECTION 187. 880.34 (5) of the statutes is renumbered 54.64 (2) (c) and
5 amended to read:

6 54.64 (2) (c) After a hearing under sub. (4) par. (a) or on its own motion, a court
7 may terminate or modify a the guardianship of an incompetent.

8 SECTION 188. 880.35 of the statutes is renumbered 54.15 (5) and amended to
9 read:

10 54.15 (5) ~~NONPROFIT CORPORATION AS GUARDIAN~~ PRIVATE NONPROFIT CORPORATION
11 OR OTHER ENTITY. A private nonprofit corporation organized under ch. 181, 187, or 188
12 is qualified to act or any other nonprofit or for profit entity that is approved by the
13 court may be appointed as guardian of the person or of the property or both, of an
14 individual found to be in need of guardianship under s. 880.33, if a proposed ward,
15 if no suitable individual is available as guardian and the department of health and
16 family services, under rules established under ch. 55, finds the corporation or entity
17 to be a suitable agency to perform such duties.

****NOTE: What would be an example of a nonprofit entity that is not organized
under ch. 181, 187, or 188? In addition, please note that I did not draft proposed
Subchapter 3 Section One (1) (e) and (f), paragraphs that were identical and are
redundant to the language in this subsection "if no suitable individual is available as
guardian."

18 SECTION 189. 880.36 (title) of the statutes is renumbered 54.52 (title).

19 SECTION 190. 880.36 (1) of the statutes is renumbered 54.52 (1) and amended
20 to read:

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

10 SECTION 191. 880.36 (2) of the statutes is renumbered 54.52 (2) and amended
11 to read:

12 54.52 (2) At any hearing conducted under this section the court may designate
13 one or more standby guardians of the person or ~~property~~ estate whose appointment
14 shall become effective immediately upon the death, incapacity, or resignation of the
15 initially appointed guardian or during a period, as determined by the initially
16 appointed guardian, when the initially appointed guardian is temporarily unable to
17 fulfill his or her duties, including during an extended vacation or illness. The powers
18 and duties of the standby guardian shall be the same as those of the initially
19 appointed guardian. The standby guardian shall receive a copy of the court order
20 establishing or modifying the initial guardianship, and the order designating the
21 standby guardian. Upon assuming office, the standby guardian shall so notify the
22 court.

****NOTE: Does the language "during a period, as determined by the initially appointed guardian" meet the intent of the memo?

****NOTE: Your proposal contains two provisions concerning standby guardians for minors. 1997 Wisconsin Act 334 created s. 48.978 (appointment or designation of standby

guardian of a child). Because these provisions exist in current law, I have not drafted the provisions in your proposal at this time. Please review.

1 **SECTION 192.** 880.38 (title) of the statutes is renumbered 54.25 (title) and
2 amended to read:

3 **54.25 (title) Guardian Duties and powers of guardian of the person of**
4 **incompetent.**

5 **SECTION 193.** 880.38 (1) of the statutes is renumbered 54.25 (1) (c) and
6 amended to read:

7 **54.25 (1) (c)** A guardian of the person of an incompetent, upon order of the court,
8 may have custody of the person, may receive all notices on behalf of the person, and
9 may act in all proceedings as an advocate of the person, but may not have the power
10 to bind the ward or the ward's property, or to represent the ward in any legal
11 proceedings pertaining to the property, unless the guardian of the person is also the
12 guardian of the property. A guardian of the person of an incompetent or a temporary
13 guardian of the person of an incompetent may not make a permanent protective
14 placement of the ward unless ordered by a court under s. 55.06 but may admit a ward
15 to certain residential facilities under s. 55.05 (5) or make an emergency protective
16 placement under s. 55.06 (11). The guardian of the person has the power to apply for
17 placement under s. 55.06 and for commitment under s. 51.20 or 51.45 (13).

****NOTE: I was confused about how to treat this provision; it does not appear in your proposal. Because I didn't know what else to do with it, I renumbered it s. 54.25 (1) (c), but I don't know what disposition you intend to make of it. It appears to be a hybrid of powers and limitations on powers of the guardian of the person. Also, it has parts that are redundant to other provisions. Did you intend that it be repealed?

18 **SECTION 194.** 880.38 (2) of the statutes is renumbered 54.25 (1) (b) (intro.) and
19 amended to read:

1 54.25 (1) (b) (intro.) ~~A guardian of the person shall endeavor~~ Endeavor to secure
2 any necessary care, or services or appropriate protective placement on behalf of for
3 the ward. that are in the ward's best interests, based on all of the following:

4 **SECTION 195.** 880.38 (3) of the statutes is renumbered 54.25 (1) (a) and
5 amended to read:

6 54.25 (1) (a) ~~A guardian of the person of an incompetent appointed under s.~~
7 ~~880.33 shall make~~ Make an annual report on the condition of the ward to the court
8 that ordered the guardianship and to the county department designated under s.
9 55.02. ~~That county department~~ The county shall develop reporting requirements for
10 the guardian of the person. The report shall include, ~~but not be limited to,~~ the
11 location of the ward, the health condition of the ward, any recommendations
12 regarding the ward, and a statement of as to whether or not the ward is living in the
13 least restrictive environment consistent with the needs of the ward. ~~The guardian~~
14 ~~may fulfill the requirement under this subsection by submitting the report required~~
15 ~~under s. 55.06 (10).~~

****NOTE: "That county department" is changed to "The county" in accord with the
memo. I'm not sure I understand this change. Who or what in the county will develop
the reporting requirements?

16 **SECTION 196.** 880.39 (title) of the statutes is repealed.

17 **SECTION 197.** 880.39 of the statutes is renumbered 54.18 (4) and amended to
18 read:

19 54.18 (4) ~~Any~~ A guardian of the person or of the estate is immune from civil
20 liability for his or her acts or omissions in performing the duties of the guardianship
21 if he or she performs the duties in good faith, in the best interests of the ward, and

1 with the degree of diligence and prudence that an ordinarily prudent person
2 exercises in his or her own affairs.

3 (END)

Kennedy, Debora

From: abramson@mailbag.com
Sent: Monday, June 09, 2003 5:51 PM
To: debora.kennedy@legis.state.wi.us
Cc: bhughes@hill-law-firm.com; jjaeger@hill-law-firm.com; bjbmwh@execpc.com
Subject: Guardianship Reform



LRB draft - FINAL
memo of corr...



APPENDIX - final -
6-9-03.doc

Dear Debora:

Attached, at long last, is a complete set of the Elder Law Section's delegated sub-committee's comments on the huge draft of Guardianship Reform. You will note that in several places in the memo, we refer to an "Appendix." This is also attached, and reflects discussions we had with Attorneys Mitch Hagopian, of WCA and Roy Froemming (formerly of WCA) as well as Jane Raymond, DHFS's Advocacy and Protection Systems Developer. We made significant modifications to proposed s. 54.10 and s. 54.25(2), based on those comments, although we did not accept ALL of their suggestions. Finally, I note that while I did review this "final" Appendix and sought input with Attorneys Jaeger, Becker and Hughes, only Barbara Hughes had a chance to provide comments. It is possible that Jim Jaeger or Barbara Becker may have additional/different thoughts.

Thanks again, and as indicated, please contact me if you have questions about this. Your tremendous work is very much appreciated.
Betsy

Betsy Abramson
Attorney/Elder Law Consultant
520 Miller Ave.
Madison, WI 53704
(608) 249-2661
abramson@mailbag.com

CHAPTER 54

TABLE OF CONTENTS

SUBCHAPTER I DEFINITIONS

CR	“Activities of daily living”	54.01 (1)
RA 880.01 (1)	“Agency”	54.01 (2)
CR	“Conservator”	54.01 (3)
CR	“Durable power of attorney”	54.01 (3m)
RA 880.01 (2)	“Individual with developmental disability”	54.01 (7)
RA 880.01 (3)	“Guardian”	54.01 (4)
CR	“Incapacity”	54.01 (5)
RA 880.01 (4)	“Incompetent”	54.01 (6)
RA 880.01 (5)	“Infirmities of aging”	54.01 (8)
RP 880.01 (6)	“Interested person”	
CR	“Interested person”	54.01 (9)
RP 880.01 (7)	“Minor”	
CR	“Meet the essential requirements for physical health or safety”	54.01 (10)
RN 880.01 (7m)	“Not competent to refuse psychotropic medication”	54.01 (11)
RP 880.01 (8)	“Other like incapacities”	
NA 880.01 (9)	“Spendthrift”	
NA 880.01 (10)	“Ward”	
CR	“Physician”	54.01 (12)
CR	“Psychologist”	54.01 (13)
CR	“Spendthrift”	54.01 (14)
CR	“Standby guardian”	54.01 (15)
CR	“Ward”	54.01 (16)

SUBCHAPTER II APPOINTMENT OF GUARDIAN

54.10 Appointment of guardian; determination of incompetence.

- (1) Standard.
- (2) Necessity of appointment.
- (3) Determination of incompetence.

54.12 Exceptions to appointment of guardian.

- (1) Emancipation of married minors.
- (2) Small estates.
- (3) Informal administration.
- (4) Uniform gifts and transfers to minors.

SUBCHAPTER III NOMINATION OF GUARDIAN; POWERS AND DUTIES; LIMITATIONS

54.15 Selection of guardian; nomination; preferences; other criteria.

- (1) Agent under durable power of attorney.
- (2) Person nominated by proposed ward.
- (3) Parent of a proposed ward.
- (4) Testamentary nomination by proposed ward's parents.
- (5) Notice of appointment of guardian of a minor ward.
- (6) Opinions of proposed ward and family.
- (7) Statement of acts by proposed guardian.
- (8) Limitation on number of wards of guardian.

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

54.19 Duties of guardian of the estate.

54.20 Powers of guardian of the estate.

- (1) Standard.
- (2) Powers requiring court approval.
- (3) Powers that do not require court approval.

54.21 Petition for authority to transfer ward's assets to another.

54.22 Petition for authority to sell, mortgage, pledge, lease, or exchange ward's property.

54.23 Banks and trust companies; exemptions from investment restraints.

54.25 Duties and powers of guardian of the person.

- (1) Duties.
- (2) Powers.

SUBCHAPTER IV PROCEDURES

54.30 Jurisdiction and venue.

54.32 Liability for fees.

54.34 Petition for guardianship.

54.36 Examination of proposed ward.

54.38 Notice.

- (1) Form and delivery of notice.
- (2) Notice of hearing for appointments.
- (3) Notice of hearing for appointment of guardian for a minor.
- (4) Rehearings.
- (5) Notice of appointment of guardian of a minor ward.

54.40 Guardian ad litem; appointment; duties; termination.

- (1) Appointment.
- (2) Qualifications.
- (3) Responsibilities.
- (4) General duties.
- (5) Communication to a jury.
- (6) Termination and extension of appointment.

54.42 Rights of proposed ward.