

1999 DRAFTING REQUEST

Bill

Received: **09/8/98**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Alberta Darling (608) 266-5830**

By/Representing: **Jerry (aide)**

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

Drafter: **kenneda**

May Contact:

Alt. Drafters:

Subject: **Mental Health - protect place**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Payment from ward's estate for attorney fees for incompetency and guardianship proceedings

Instructions:

Same as 1997 SB 466 (97-4287)

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kenneda 09/8/98	jgeller 09/9/98		_____			Local
/1			lpaasch 09/9/98	_____	lrb_docadmin 09/9/98		Local
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Vers. Drafted Reviewed Typist Proofed Submitted Jacketed Required

FE Sent For:

05-18-99

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FE Sent For:

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1?	kenneda	1-9-98 JLG	9-9-98	9-9-98 h m h			

FE Sent For:

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1999-2000

1997-1998 LEGISLATURE

0036/1
LRB-428718

DAK:kmg&kaf:hmb

SOON

Jig

1997 SENATE BILL 466

February 18, 1998 - Introduced by Senators DARLING and ROESSLER, cosponsored by Representatives SYKORA, MUSSER and F. LASEE. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

Regen

1 AN ACT to create 880.24 (3) of the statutes; relating to: requiring payment from
2 a ward's estate of reasonable attorney fees and costs for successful petitioners
3 in incompetency and guardianship proceedings.

Analysis by the Legislative Reference Bureau

Under current law, any relative, public official or other person may petition for a finding of incompetence and appointment of a guardian for another. When a court finds, after a hearing that is brought to review the petition, that an individual is incompetent, the court orders appointment of a guardian for the person and estate of the individual (the ward). The guardian must pay the ward's just debts from the ward's estate.

This bill provides that the court that finds a person to be incompetent and appoints a guardian also must allow payment, from the ward's estate, of ~~the~~ successful petitioners' reasonable attorney fees and costs. This requirement first applies to guardianship petitions that are pending on the day on which the bill becomes law.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

incurred by the person who successfully petitioned for the finding of incompetence

SENATE BILL 466

1 **SECTION 1.** 880.24 (3) of the statutes is created to read:

2 880.24 (3) FEES AND COSTS OF PETITIONER. When a guardian is appointed, the
3 court shall allow from the ward's estate payment of the petitioner's reasonable
4 attorney fees and costs.

5 **SECTION 2. Initial applicability.**

6 (1) This act first applies to petitions filed under section 880.07 (1) of the statutes
7 that are pending on the effective date of this subsection.

8 (END) ✓



Elder Law Center

Coalition of Wisconsin Aging Groups

5900 Monona Drive, Suite 400
Madison, WI 53716

608/224-0660
FAX 608/224-0607

FAX TRANSMITTAL LETTER
DELIVER THESE DOCUMENTS IMMEDIATELY

DATE: 12/18/98

TO: Debora Kennedy

FAX PHONE: Debora Kennedy - 264-8522
Jerry Statkus, 414-255-0481
Janet Resnick, 414-271-5898
Pat Jursik, 414-744-7907
Wendy Reed Bosworth, 414-297-4900

COMMENTS:

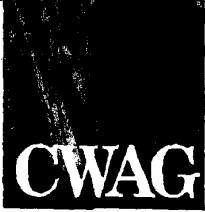
Please see attached. Thanks much.

FROM: Betsy Abramson

SENDING
OPERATOR:

TOTAL PAGES 2
WITH COVER:

PLEASE NOTE: This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender which is protected by the attorney-client privilege. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for return of the documents.



Elder Law Center

Coalition of Wisconsin Aging Groups

December 18, 1998

TO: Debora Kennedy, LRB

FROM: Betsy Abramson

CC: Jerry Statkus, Senator Darling's Milwaukee office

Re: Petitioners' Attorneys' Fees in Guardianship

Below is the proposed language for an amendment to sec. 880.24, Wis. Stats., to provide for the awarding of petitioners' attorneys' fees in cases where a guardianship is ordered by a circuit court. I have discussed and received the agreement of Attorneys Jan Resnick, Pat Jursik and Wendy Bosworth as to this language. I understand that you are going to try to squeeze in this drafting request amongst all of the budget drafting. We very much appreciate this Debora and are hopeful that our suggested language below will help make your task a little easier. Thanks much.

Proposed Amendment to sec. 880.24, Wis. Stats., to create a sub (3):

FEES AND COSTS OF PETITIONER. (a) When a guardian is appointed, the court shall award reasonable costs and attorney fees to the petitioner from the ward's estate and income unless it finds that it would be inequitable to so award costs and fees, after considering:

1. the petitioner's interest in the matter, including any conflict of interest on the part of the petitioner in pursuing the guardianship;
2. whether the ward had executed a power of attorney or engaged in other advance planning to avoid guardianship;
3. the ability of the ward's estate and income to pay;
4. whether the guardianship was contested and, if so the nature of the contest; and
5. other factors the court deems relevant.

(b) The mere existence of a power of attorney or other advance planning to avoid guardianship, without other relevant factors, shall not preclude the awarding of attorneys' fees.

I believe that Senator Darling has authorized you to speak directly with me if you have any questions about this. I can be reached at 224-0660. Thanks again.

SOON - IN Editing on 12/23

1999 - 2000 LEGISLATURE

LRB-0036/2

D-NOTE

DAK:jlg

1999 BILL

Reger

unless, after considering specified factors, the court finds that it would be inequitable to do so. One of the specified factors is whether the ward had executed a financial power of attorney or had engaged in other advance planning to avoid guardianship. However, under the bill the existence of only this factor may not preclude the awarding of attorney fees.

1 AN ACT to create 880.24 (3) of the statutes; relating to: requiring payment from
2 a ward's estate of reasonable attorney fees and costs for successful petitioners
3 in incompetency and guardianship proceedings.

Analysis by the Legislative Reference Bureau

Under current law, any relative, public official or other person may petition for a finding of incompetence and appointment of a guardian for another. When a court finds, after a hearing that is brought to review the petition, that an individual is incompetent, the court orders appointment of a guardian for the person and estate of the individual (the ward). The guardian must pay the ward's just debts from the ward's estate.

This bill provides that the court that finds a person to be incompetent and appoints a guardian also must ~~allow~~ ^(award) payment, from the ward's estate, of reasonable attorney fees and costs incurred by the person who successfully petitioned for the finding of incompetence. This requirement first applies to guardianship petitions that are pending on the day on which the bill becomes law.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

BILL

1 SECTION 1. 880.24 (3) of the statutes is created to read:

2 880.24 (3) FEES AND COSTS OF PETITIONER. ^(a) When a guardian is appointed, the
3 court shall ~~allow~~ from the ward's estate payment of the petitioner's reasonable
4 attorney fees and costs ^{award} [INSERT 2-4]

5 SECTION 2. **Initial applicability.**

6 (1) This act first applies to petitions filed under section 880.07 (1) of the statutes
7 that are pending on the effective date of this subsection.

8 (END) ✓

D-NOTE

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0036/2ins
DAK:jlg:lp

INSERT 2-4

1 NO
P unless the court finds after considering all of the following, except as provided
2 in par. (b),[✓] that it would be inequitable to do so:

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

5 2. Whether the ward had executed a durable power of attorney under s.[✓]243.07
6 or had engaged in other advance planning to avoid guardianship.

7 3. The ability of the ward's estate to pay the petitioner's reasonable attorney
8 fees and costs.

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

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

11 (b) Existence of the factor specified in par. (a) 2.,[✓] without the presence of
12 another relevant factor under par. (a) 1., 3., 4. or 5.,[✓] may not preclude the awarding
13 of attorney fees under par. (a).[✓]

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0036/2dn
DAK:jlglp

To Senator Darling:

I did not include "and income" as proposed for s. 880.24 (3) (a) (intro.)[✓] and 4.[✓] In s. 880.19 (1),[✓] stats., "estate" appears to include "income".

Debra A. Kennedy
Assistant Chief Counsel
266-0137

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0036/2dn
DAK:jl:ijs

December 28, 1998

To Senator Darling:

I did not include "and income" as proposed for s. 880.24 (3) (a) (intro.) and 4. In s. 880.19 (1), stats., "estate" appears to include "income".

Debora A. Kennedy
Assistant Chief Counsel
266-0137

Kennedy, Debora

From: Villa, Jim
Sent: Friday, February 19, 1999 2:53 PM
To: Kennedy, Debora

Please jacket LRB 0036 for Senator Darling at your convenience. I am told by Jerry Statkus, who has been working with you that the most recent draft is the final version we intend to introduce.

Thank you and have a great weekend

Kennedy, Debora

From: Villa, Jim
Sent: Tuesday, April 06, 1999 8:36 AM
To: Kennedy, Debora
Subject: LRB 0036

Debora

I'm sending back the jacket for 0036 and would appreciate the following changes:

1. Sub paragraph 2 of paragraph (a)
", power of attorney for health care under s. 155.05"
should be inserted between "s.243.07" and "or"
2. modify 880.24 (3) to include
", including those fees and costs related to protective placement of the ward"
this would be placed after "costs" in line 4

Thank you so much

SOON - In editing 4/6

1999 BILL

Regen

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or power of attorney for health care

BILL

, including those fees and costs, if any, related to protective placement of the ward,

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3 the court shall award from the ward's estate payment of the petitioner's reasonable
4 attorney fees and costs unless the court finds after considering all of the following,
5 except as provided in par. (b), that it would be inequitable to do so:

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

8 2. Whether the ward had executed a durable power of attorney under s. 243.07
9 or had engaged in other advance planning to avoid guardianship.

10 3. The ability of the ward's estate to pay the petitioner's reasonable attorney
11 fees and costs.

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

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

14 (b) Existence of the factor specified in par. (a) 2., without the presence of
15 another relevant factor under par. (a) 1., 3., 4. or 5., may not preclude the awarding
16 of attorney fees under par. (a).

17 SECTION 2. Initial applicability.

18 (1) This act first applies to petitions filed under section 880.07 (1) of the statutes
19 that are pending on the effective date of this subsection.

20 (END)

or a power of attorney for health care under s. 155.05 ✓