



The Guardian is a quarterly newsletter published by the Greater Wisconsin Agency on Aging Resources, Inc. (GWAAR) Wisconsin Guardianship Support Center (GSC).

The GSC provides information and assistance on issues related to guardianship, protective placement, advance directives, and more.

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www.gwaar.org/component/content/article/10-articles/aging-programs-and-services/206-wi-guardianship-support-center.html

— or send an e-mail request to:
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Elder Financial Abuse

The prevalence, the cost, and what you can do about it

Elder financial abuse — often referred to as *elder financial exploitation* — is one of the most common types of elder abuse in the United States. In Wisconsin¹, financial exploitation was the reason for nearly 17% of adults-at-risk incident reports made on those who were 60 or older in 2010. Reports of financial abuse were listed as the second most common reason a report was made in this age group; only reports of self-neglect exceeded reports of financial abuse. Wisconsin Department of Health Services, *2010 Annual Summary Tables: Adults at Risk of All Ages*, www.dhs.wisconsin.gov/aps/Publications/publications.htm (last visited on December 3, 2013).

Annual loss due to elder financial abuse is significant. In 2010, elder victims were estimated to have lost at least \$2.9 billion dollars due to financial exploitation. *The MetLife Study of Elder Financial Abuse* at 7. The average loss to those individuals who had their money and/or property stolen by family members or friends was \$145,768. That amount exceeds the average financial loss caused by strangers, which was \$95,156. *The MetLife Study of Elder Financial Abuse* at 8.

Elder financial abuse often goes unreported. One study has suggested that only one in forty-four incidents of elder financial abuse is ever reported. National Adult Protective Services Association, *Elder Financial Exploitation*, www.napsa-now.org/policy-advocacy/world-elder-abuse-awareness-day/ (last visited on November 14, 2013).

There are three types of elder financial abuse: occasion (person sees an opportunity), desperation (person needs money or resources), and predation (person forms relationship with elder and then exploits relationship for financial gain). Metlife Mature Market Institute, *The Metlife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation Against America's Elders*, 4, — [www.metlife.com/mmi/research/elder-financial-abuse.html#key findings](http://www.metlife.com/mmi/research/elder-financial-abuse.html#key%20findings) (last visited on November 15, 2013). Examples of these types of elder financial abuse include:

Grandchild scams. The contact person poses as the elder's grandchild or relative and requests financial assistance — typically by telephone or email.

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¹In Wisconsin, the statutory definition of elder financial exploitation states it is the acquiring of money or property by “deceiving or enticement or forcing the individual to give, sell at less than fair market value, or in other ways convey money or property against his or her will without his or her informed consent,” theft, identity theft, forgery, the substantial failure or neglect by an agent to fulfill his or her responsibilities, and financial transaction card crimes. Wis. Stat. § 46.90(1)(ed).



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Elder Financial Abuse, continued from page 1

Telemarketing scams. A caller tells the elder he or she won the lottery but must give identifying information or pay fee to receive the cash.

Professional fraud, scams, misuse of power: These include predatory lending, sale of unnecessary annuities, or home improvement scams.

Identity theft: A person uses the elder's name and identifying information without consent to enter into contracts, obtain credit cards, take money or property, acquire utilities, etc.

Theft of money or personal items.

Undue influence: Changing a will or power of attorney document.

Perpetrators of elder financial abuse may be anyone — friends, family members, trusted professionals, or strangers. Having a legal or substitute decision-maker in place may help prevent many instances of financial abuse. However, abuse still can occur with a legal or substitute decision-maker in place. In some instances, the financial exploitation was caused by the legal or substitute decision-makers. Careful selection of substitute decision-makers, like agents acting under powers of attorney, may help lessen the likelihood of financial abuse.

Contact the local adult protective services (APS) agency or law enforcement if you're concerned about an elder who may be a victim of financial abuse. In Wisconsin, any adult may make a good-faith report of elder financial abuse. Wis. Stat. § 46.90(4)(ar). After an investigation is initiated, further actions may be taken such as guardianship proceedings and/or criminal investigations.

Signs of Possible Elder Financial Abuse or Exploitation

Following is a non-exhaustive list of signs that may point to financial abuse:

- Unpaid bills and/or termination of utilities
- Social isolation
- The elder has a new friend that will not allow the elder to go places without him or her or the new friend is suddenly present and appears to have access to finances
- Lack of personal comforts previously enjoyed
- Change in financial behavior or is exhibiting inconsistent financial behavior
- Change in legal documents: For example, the revocation of a prior Power of Attorney (POA) and execution of a new POA
- Altered legal document(s): For example, adding a successor agent to the Power of Attorney for Finances (POAF) document after its execution
- Missing property
- Elderly individual does not understand or remember account transfers or withdrawals
- Evidence of other types of abuse
- Change in behavior or personality

If financial exploitation is suspected, contact the appropriate authorities so an investigation may occur.

To find local help for at-risk elders, go to:
www.dhs.wisconsin.gov/aps/Contacts/eaaragencies.htm

To find help for other at-risk adults, go to:
www.dhs.wisconsin.gov/aps/Contacts/aaragencies.htm

² Involving all reasons for why a report was made, 33% of the adults-at-risk had a legal or substitute decision-maker status for those 60 and older. Between 11% and almost 14% had a guardian in place, and between nearly 39% and 34% had an activated power of attorney for finances or health care. Legal or substitute decision-makers also comprised of 29% of the alleged abusers.

Wisconsin Department of Health Services, 2010 Annual Summary Tables: Adults at Risk of All Ages, www.dhs.wisconsin.gov/aps/Publications/publications.htm (last visited on December 3, 2013).



Waukesha Memorial Hospital v. Adam R. Nierenberger 2013AP480

October 15, 2013

Summary: An individual validly held on an emergency detention under Wis. Stat. § 51.15 is responsible for medical expenses incurred when determining if grounds continue to exist to justify subsequent detention.

Case Detail: Adam Nierenberger suffered from post-traumatic stress disorder (PTSD). After an argument with his wife, Nierenberger left his house after stating that his children would be taken care of with his insurance money. His wife noticed his gun was missing and notified the police. Police located Nierenberger and placed him in protective custody under Wis. Stat. Chapter 51. Nierenberger told hospital staff he was not suicidal. Nierenberger, while handcuffed to a gurney, signed the hospital's medical consent form for admission and treatment.

Nierenberger contested the hospital bill, arguing that he did not fit the criteria for emergency detention under Wis. Stat. § 51.15 and that his consent form was not valid because he signed while handcuffed to a gurney. The court held that the emergency detention was valid and that Nierenberger was responsible for the hospital bill.

An officer may take an individual into custody if the officer has cause to believe that the individual is mentally ill and evidences a substantial probability of causing harm to himself. Wis. Stat. § 51.15(1)(a)(3). Based on Nierenberger's statements to his wife and his actions, sufficient evidence existed to justify the emergency detention by the officer. Because Nierenberger's detention was valid, hospital staff was required by law to investigate if grounds for Nierenberger's continued detention still existed and then inform the director of the facility of their findings. Wis. Stat. § 51.15(5) ("When, upon the advice of the treatment staff, the director of a facility specified in sub. (2) determines that the grounds for detention no longer exist, he or she shall discharge the individual detained under this section.").

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From the Editor

Greetings! My name is Susan Fisher and I am the new managing attorney of and for the Wisconsin Guardianship Support Center (GSC). I may have worked with some of you while serving as the interim managing attorney this summer. Attorney Molly Fellenz left the GSC to return to private practice. We thank her for her hard work and wish her well in her new position. We also thank legal intern Janel Bergsbaken for her help writing case summaries this semester. We wish her much success as she continues on with her legal education.



As mentioned in the summer newsletter, I have previously worked in the areas of family, guardianship, and housing law in both private practice and through legal services agencies. My husband and I moved to the Madison area last spring and we were soon joined by our Labrador Retriever puppy. Thankfully, to date, our puppy has been uninterested in our holiday decorations.

As you look at this newsletter, there are two things to bring to your attention:

- 1) During the last quarter of 2013, we received many calls involving elder financial abuse. The loss experienced by the individual cannot be measured only by the monetary value of what was stolen. Increased deterioration in physical and mental abilities, disqualification from previously available benefit programs, and subsequent instability of housing and personal services are just a few results of elder financial abuse. Because of the prevalence of this problem and how infrequently it is reported, much of this newsletter focuses on matters involving elder financial abuse.
- 2) A new feature of the newsletter — *Points of Interest* — will provide information on pending legislation, updated or changed materials and policies, and other current issues affecting vulnerable adults in Wisconsin.

As always, the GSC is your resource. If you have questions, comments, or suggestions, please contact me at guardian@gwaar.org or call toll-free: (855) 409-9410.

Best wishes,
Susan



Waukesha Memorial Hospital v. Adam R. Nierenberger, continued from page 3

Per Wis. Stat. § 46.10(2), an individual detained under Wis. Stat. Ch. 51 “shall be liable for the cost of the care, maintenance, services...” provided to him or her. The hospital only conducted tests relating to Nierenberger’s detention and clearance. Nierenberger is responsible for those costs.

Because the hospital was required to examine Nierenberger to determine whether grounds for continued detention existed, the fact that Nierenberger was handcuffed when he signed the hospital’s medical consent form does not absolve him of his financial responsibility. Nierenberger also presented no evidence that his consent was obtained by force or coercion.

In Re the Matter of Guardianship and Protective Placement of James D.:

Wood County Human Services v. James D.
2013AP1378
November 7, 2013

Summary: For an individual to be protectively placed, the petitioner must prove by clear and convincing evidence that the disability is permanent or likely to be permanent. This must be by a testifying witness – qualified by experience, training and independent knowledge of the individual – to provide his or her medical or psychological opinion on the person’s mental health.

Case Detail: James D., who had a history of substance abuse, alcohol-induced dementia and anxiety, was placed under protective placement under Wis. Stat. Ch. 55. Several witnesses testified about James’s continued consumption of alcohol, possible safety issues if James resided in the community again, and his unseemly living conditions prior to protective placement. A psychologist testified but was unable to provide an opinion on whether James had a persistent mental illness. The circuit court ordered continuing protective placement. James appealed the court’s decision to continue his protective placement.

For an individual to be protectively placed, the petitioner must prove by clear and convincing evidence that the disability is permanent or likely to be permanent. Wis. Stat. § 55.10(4)(d) and § 55.08(1)(d). The petitioner “must present a

Upcoming Events

16th Annual WiNaela Wisconsin Elder Law Workshop
January 30-31, 2014
Chula Vista Resort, Wisconsin Dells, WI
Sponsored by WiNaela (the Wisconsin Chapter of the National Academy of Elder Law Attorneys)

WRIPA Conference
May 7-9, 2014
Sponsored by WRIPA (Wisconsin Registers in Probate Association)

28th Annual Wisconsin Network Conference on Alzheimer’s Disease and Related Dementias
May 18-20, 2014
Kalahari Resort & Convention Center, Wisconsin Dells
Contact: Kathy Davies at kdavies@alz.org or 715-869-2667
Sponsored by the Alzheimer’s Association

Think Big!
2014 Wisconsin Aging Network Conference
September 10 – 12, 2014
Kalahari Convention Center & Resort, Wisconsin Dells
Contact: Greater Wisconsin Agency on Aging Resources at 608-243-5670 or info@gwaar.org
Sponsored by Greater Wisconsin Agency on Aging Resources

If your organization or agency is hosting a statewide event related to subjects discussed in *The Guardian* and you would like to spread the word about it, contact us at guardian@gwaar.org and we may include it in our next quarterly publication.

witness who is qualified by experience, training and independent knowledge of the individual’s mental health to give a medical or psychological opinion” to this element. *James D.* at ¶ 14 (internal citations omitted). In this case, the psychologist was unable to give any testimony about the existence of a persistent mental illness. No other medical or psychological opinion was provided. The court reversed because the county had failed to prove whether a permanent or likely to be permanent disability existed.

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In the Matter of the Mental Commitment of Mary F.-R.: Milwaukee County v. Mary F.-R.

2013 WI 92

November 26, 2013

Summary: An individual who is involuntarily committed under Wis. Stat. Ch. 51 – after being tried by a six-person jury with a requirement of 5/6 verdict for initial commitment – does not have his or her equal protection rights violated because an individual involuntarily committed under Wis. Stat. Ch. 980 is tried before a 12-person jury requiring unanimity of verdict.

Case Detail: Mary F.-R. (hereafter *Mary*) was involuntarily committed under Wis. Stat. Ch. 51 in Milwaukee County. At the detention hearing to determine whether there was probable cause to detain Mary, Mary submitted a handwritten request for a 12-person jury and also orally requested a 12-person jury. She fired her attorney during the hearing and the hearing was suspended to allow for the appointment of new counsel. At the next probable cause hearing, Mary again requested a 12-person jury for her commitment trial. At the final hearing, a six-person jury was selected. Neither Mary nor her attorney objected to the six-person jury at the time it was empaneled. At the conclusion of the hearing, the jury found Mary mentally ill, a proper subject for treatment, and a danger to herself and to others. She was then committed for a period not to exceed six months.

Mary appealed the order. Before the Wisconsin Supreme Court, Mary argued the following:

1) Mary did not forfeit her equal protection argument as to the six-person jury when she did not object at the time jury was empaneled.

2) Because both involuntary commitments may occur under both Wis. Stat. Ch. 51 and Wis. Stat. Ch. 980, Mary's equal protection rights were violated because Wis. Stat. Ch. 51 does not require a 12-person jury like Wis. Stat. Ch. 980.

The majority did not address the forfeiture argument and only addressed the equal protection argument.

The majority held identical treatment of those committed

under Wis. Stat. Ch. 51 and 980 was not required. “Unlike a situation where protection for a fundamental liberty interest is interfered with impermissibly, having a six-person jury trial is not the equivalent to having no jury trial at all.” *Mary.F.-R.* at ¶ 38. Using the rationally related basis test, the Court then found the legislature had sufficient grounds to create distinct jury requirements for each group of individuals committed under the two chapters. These groups of individuals have differences that justify why the legislature created separate processes for each group. Specifically, those differences include the levels of dangerousness, the increased liberty constraints for those committed under Wis. Stat. Ch. 980, the needs of the individuals involved and the varying treatments used, the periods of confinement, and the governmental interests involved in each (for Wis. Stat. Ch. 51., the interests include public protection, the committed individual's protection, and treatment provided in the least restrictive environment versus the public's protection and treatment for those committed under Wis. Stat. Ch. 980). These differences provide a rationally related basis for the differences found in the jury provisions under each chapter.

In Re the Commitment of Michael H.: Outagamie County v. Michael H.

2013 AP 1638

November 26, 2013

Summary: Upon review of evidence available, especially Michael H.'s (hereafter *Michael*) comments about doing harm to himself, the County met its burden of proving “dangerous” under Wis. Stat. § 51.20(1)(a)(2).

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Disclaimer

This newsletter contains general legal information. It does not contain and is not meant to provide legal advice. Each situation is different and this newsletter may not address the legal issues affecting your situation. If you have a specific legal question or want legal advice, you should speak with an attorney.

Helpline Highlights



The Wisconsin Guardianship Support Center receives calls and e-mails every day about guardianships, powers of attorney, other advance directives, and more. Each quarter, we share some of the calls and e-mails here. All personal and identifying information has been removed from each selection to protect the privacy of the individuals involved.

Revocation of a Power of Attorney (POA):

After announcing his intent to revoke his powers of attorney (POA) for health care and for finances, a man living in a memory care facility destroyed both during an outing with friends. He then signed a statement saying he revoked both documents. Each friend who had witnessed the individual's announcement and the destruction of the POAs also signed a statement saying they had witnessed the individual's actions. The man informed the staff at his memory care facility about the revoked POAs and also produced the witnesses' signed statement. At that time, the staff member said the POA could not be revoked because the individual had been previously deemed incapacitated. The caller, a relative, wanted to know whether this revocation was sufficient or was it impossible for an incapacitated individual to revoke his POAs.

WI GWC: It is the GSC's position that a person who is incapacitated may revoke his POA document at any time. By the express statutory language, a POA for health care may be revoked at any time including after the individual is deemed incapacitated. Wis. Stat. § 155.40(1) ("a principal may revoke his or her power of attorney for health care and invalidate the... instrument at any time.") No mention of regaining capacity is included within that statute. Likewise, there is no provision requiring capacity to revoke within the power of attorney for finances statute. Wis. Stat. § 244.10(1)(c) states the POA for finances is terminated when "the principal revokes the power of attorney."

A POA for health care may be revoked by doing any of the following:

- ◆ Destroying the document, including canceling, defacing, obliterating, or burning the document or directing another person to do so;
- ◆ Executing a statement, in writing that is signed and dated by the principal, about his or her intent to revoke;
- ◆ Verbally expressing the intent to revoke in front of two witnesses; or
- ◆ Executing a subsequent power of attorney for health care. Wis. Stat. § 155.10(1).

In this case, the man properly revoked using not one, but three of the available methods to revoke his POA for health care. He expressed his intent to revoke in front of multiple witnesses, destroyed the document in front of multiple witnesses, executed a statement of his intent to revoke, then had the witnesses sign the statement, and told the staff of the revocation.

The man also validly revoked his POA for finances. The recommended way to revoke a POA for finances is to sign a statement articulating one's intent to revoke. The statement could be witnessed and also notarized, but neither is required. Both may be beneficial if the revocation is likely to be contentious.

Here, the individual signed a statement revoking his POA for finances which was witnessed by others and thereby adequately revoked his POA for finances.

Note, the process to revoke a POA for finances is similar to but not the same as revoking a POA for health care. Executing a new POA for finances does not automatically revoke a prior document unless the POA for finances expressly states all previous POAs for finances are revoked.

Sample revocation forms for both POAs may be found on the GSC webpage at:

www.gwaar.org/component/content/article/10-articles/aging-programs-and-services/206-wi-guardianship-support-center.html.

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Revocation of a POA, continued from page 5

The ability to revoke may not always correspond with having the capacity to execute a subsequent POA. If after the revocation, the individual is not of sound mind, a guardianship may need to be pursued to have a legal decision-maker available.

Also note, Wis. Stat. § 155.50 describes when a health care facility is immune from civil or criminal liability when responding to matters involving a POA for health care principal. A health care facility's immunity ends when it has actual knowledge of the revocation of a POA for Health Care. Wis. Stat. § 155.50(1)(c).

Guardianship of the Estate for People with Modest

Estates or Incomes: I am considering filing a petition for a woman who suffered a brain injury and is no longer able to make decisions for herself. She has no real property, is already on disability, and has a representative payee. She does not have a POA for finances. Do I need to file for both guardian of the estate and guardian of the person or can I skip doing the guardianship of the estate because she has no real property?

WI GSC: Courts may determine the ward has a small estate under Wis. Stat. § 54.12 and then may decide the appointment of a guardian of the estate is unnecessary. Before this is considered, careful analysis should be performed before determining a guardianship of the estate extraneous.

Guardians of the estate have both statutory duties and specific powers that may assist the ward even if the ward has a modest or no estate. The guardian of the estate's duties include the right to pay legally enforceable debts, file income taxes, prepare and file the annual account, and take possession of the ward's personal property. Wis. Stat. § 54.19. A guardian's powers also include establishing a special needs trust (with the court's permission), applying for public and private benefits, entering into contracts, and authorizing the release of the ward's records. Wis. Stat. §54.20.

Points of Interest

Pending Legislation: Multiple pieces of legislation affecting Wis. Stat. Ch. 51 mental health commitments are currently pending. These include the 2013 Wisconsin Assembly Bill 488 (involving commitments, three-person petitions, and corporation counsel's involvement in some of these petitions) and Wisconsin Assembly Bill 360 (involving emergency detentions). More information may be found at: docs.legis.wisconsin.gov/2013

New Guide Available: WRIPA recently released a revised version of its personal representative guide to informal estate administration. Find it at: www.wicourts.gov/services/public/selfhelp/docs/probateguide.pdf

State Updates: Those who practice guardianship law and use the applicable state forms should note that many forms changed during the last year including the GF-131: Order Appointing Guardian Ad Litem or Attorney (May 2013) and GN-3130: Examining Physician's or Psychologist's Report (November 2012). The most current forms can be accessed through the Wisconsin Circuit Court Access website located at: www.wicourts.gov/forms1/circuit/index.htm

The Wisconsin Department of Health Services has updated its background check process for corporate guardianships. For more information, go to: www.dhs.wisconsin.gov/caregiver/CBCprocess.htm

The sole fact that the person has a representative payee may not negate the need for a guardian of the estate. The representative payee does not have the legal authority to handle any other money or assets the ward may have. The removal of a Social Security representative payee may be also initiated upon the request of the individual receiving the benefit (i.e., the ward). See Social Security Administration, *Understanding Supplemental Security Income Representative Payee Program*, (2013) – www.socialsecurity.gov/pubs/10076.html (last visited on November 13, 2013).

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Outagamie County v. Michael H., continued from page 5

Case Detail: Days before Michael was admitted, he stated he believed people were after him. He rid himself of a newly-purchased cell phone because he believed it was planted in the store for him to purchase and then be tracked, and he became fearful that this family was in danger. In a one-week period, his family took him to the hospital several times before he was admitted. During the last hospital visit, Michael told the nurse he was “feeling suicidal” but that he “had no plan as to how he would harm himself.” Also, while at the hospital, he told his mother that he was suicidal. When she asked him about his plans, he said “it’s too hard to explain. It’s too long. I can’t explain it to you. I don’t know.” Michael then ran out of the hospital. He was found by a local police officer who testified that Michael “said he wanted to harm himself.”

At trial, one of the doctors who evaluated Michael testified that he “could” be a danger without treatment. The nurse, his mother, and the police officer also testified. The jury found that Michael was mentally ill, dangerous, and could be treated. He was involuntarily committed for a period up to six months. He appealed.

On appeal, Michael argued that the county had not proven he was dangerous under Wis. Stat. § 51.20(1)(a)(2)a. or c. The appellate court found clear and convincing evidence was presented to the jury justifying its determination that Michael is dangerous under Wis. Stat. § 51.20(1)(a)(2)a. The doctor’s opinion – that he could be dangerous without treatment – was not sufficient and a thought about suicide was also not enough to be deemed a threat. However, other testimony provided by Michael’s mother, the nurse, and the officer about Michael’s multiple threats to harm himself could have reasonably led a jury to believe there was a threat of serious bodily harm.

Because “dangerous” could be proven under Wis. Stat. § 51.20(1)(a)(2)a., no further review under Wis. Stat. § 51.20(1)(a)(2)c. was necessary.

Financial Institutions May Report Elder Financial Abuse

According to a joint press release issued on September 24, 2013, by seven federal regulatory agencies, financial institutions may report suspected elder financial abuse to local authorities. This guidance provided useful clarification on the Gramm-Leach-Bliley Act (GLBA) and may help reduce elder financial abuse.

The GLBA generally prohibits the release of nonpublic personal information by financial institutions. However, the GLBA allows nonpublic information to be shared by financial institutions when the disclosure is to prevent or protect against fraud, unauthorized transactions, or claims; to the extent allowed by law to law enforcement agencies or investigations involving public safety; or to comply with other federal, state, or local law. [See 15 U.S.C. § 6802(e).]

This most recent guidance clarifies the law and states that financial institutions may initiate the report of elder financial abuse as well as disclose information about the elder financial abuse. The allowable disclosures under 15 U.S.C. § 6802(e), listed above, “may be made either at the agency’s request or on the financial institution’s initiative.” Board of Governors of the Federal Reserve System, Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults, available at: www.federalreserve.gov/newsevents/press/bcreg/20130924a.htm (last visited on November 14, 2013).

The seven agencies who issued this guidance were:

- Board of Governors of the Federal Reserve System
- Consumer Financial Protection Bureau
- Federal Deposit Insurance Corporation
- Federal Trade Commission
- National Credit Union Administration
- Office of the Comptroller of the Currency
- Securities and Exchange Commission



Modest Means Program

Low-cost legal services available through the State Bar of Wisconsin

The Modest Means Program of the State Bar of Wisconsin assists people whose income is too low to pay a lawyer's standard rate. The program is run by the Lawyer Referral and Information Service (LRIS) at the State Bar. When program staff receive a completed application and documentation, they match eligible clients with an attorney who has agreed to consider certain cases at a reduced rate.

How much do the attorneys charge? Attorney fees differ from lawyer to lawyer, so be sure to ask about rates, but lawyers in this program are urged to offer rates that are substantially lower than their regular rates. Many attorneys charge flat fees for wills and powers of attorney. The fee (usually nominal) will be determined by the lawyer based on the legal matter and what the client is able to afford. You will have to discuss fees and agree on payment options at the initial consultation.

How are the lawyers chosen for individual cases?

The State bar keeps a list of lawyers who have agreed to reduce what they charge for prescreened referrals through this Modest Means Program. They attempt to find a lawyer in a convenient location for the client.

Do the clients have to hire the lawyer to whom they are referred? No. Clients are not obligated to hire the lawyer to whom they are referred and the lawyer is also not required to take the case.

Is there a charge for a referral? No. However, the lawyer may charge a \$20 fee for the initial 30-minute consultation.

How is eligibility determined? The table on this page show the basic income limits of the program. Income limits are defined based upon household size and there is a lower and upper gross income. To qualify the household income must be more than the lower number but no more than the higher number.

Modest Means Program Income Limits

Size of family	Annual Income is at least	Annual Income is not more than
1	\$14,363	\$22,980
2	\$19,388	\$31,020
3	\$24,413	\$39,060
4	\$29,438	\$47,100
5	\$34,463	\$55,140
6	\$39,488	\$63,180

Eligibility is determined by gross household income (before taxes), including earned and unearned income. Child support and maintenance payments are the only expenses that may be deducted from gross income to determine eligibility. Assets are also considered. For example, if a client has significant home equity that could be used to pay an attorney, that will be considered.

Information must be provided documenting gross household income from all sources (including wages or benefits such as Social Security disability or SSI, worker's compensation, unemployment or VA benefits), bank account balances, and the value of any real estate, stocks, and bonds, CDs and/or retirement accounts. All information must be documented.

In addition to wills and powers of attorney, the Modest Means Program accepts referrals in the following areas: bankruptcy, criminal law, foreclosure defense, consumer law, family law, and probate.

Contact the Modest Means Program by calling 1-888-529-7599 or find an application form online at: www.wisbar.org/forPublic/INeedaLawyer/Pages/Modest-Means.aspx



Guardianship of the estate, continued from page 7

The failure to appoint a guardian of the estate may inhibit the person's ability to enroll in subsequent benefit programs, plan for the future through a special needs trust, manage inherited funds, pay debts, file income taxes, or respond to any other financial situation that may occur.

Guardianship of a Cognitively-Disabled Adult Child:

I am a parent of a cognitively-disabled child who will be turning 17 in one month. Due to the nature of his disability, he is unable to make decisions for himself. I recently heard that I will not be able to make decisions for him after he turns 18 although I am his parent. Is this correct and why can't I make decisions for him? Is a guardianship required or can we have a power of attorney for health care drawn up?

WI GSC: All adults are presumed to be competent in Wisconsin. Because competency is presumed, parents lose the right to make decisions for their adult children once the child reaches the age of majority (i.e., the age of 18). This is true even if the disabled adult child is not able to make his or her own decisions without a court order.

To obtain a legal decision-maker for the adult disabled child in this instance, a parent or other party must petition the court guardianship. The court may appoint a guardian as soon as the disabled child turns 17 years and nine months old. Wis. Stat. § 54.10(3). Unless the appointment of a parent would not be in the ward's best interest, one or both parents are usually appointed as the guardian(s). Wis. Stat. § 54.15(5).

If the adult child is unable to understand the nature and contents of the POA for health care, then the adult child cannot sign the document and an executed POA for health care would be invalid. A POA for health care may only be executed by one of "sound mind." Wis. Stat. § 155.05(1).

Parents may want to consider meeting with an attorney to discuss not only the possible need for a guardianship but also their options for long-term planning involving the adult child.

Agent Suspected of Theft:

I believe my mother's POA-F agent has taken her antiques and other household items of value and the agent has sold her car. The cost of my mother's care has been previously taken care of and some of these items are things my mother does not know what happened to and would not wish to give away. I have asked the agent about these things and the agent refused to provide an explanation and will not share any related financial documents. What can I do?

WI GSC: You may petition the court for a review of the agent's conduct. Under Wis. Stat. § 244.16, various individuals may ask for court to review the POA-F's conduct. If the court finds that the agent violated his or her duties, the agent will be required to (1) restore the value of all property to the amount it would have been if the agent's violation had not occurred and (2) reimburse the principal or his or her successors in interest for attorney's costs and fees. Wis. Stat. § 244.17. If financial abuse is suspected, an individual may also contact the local adult protective services agency or law enforcement.

Guardian Gifting on Behalf of Ward:

I am in the process of petitioning the court to be my grandfather's guardian. Typically, he has given small gifts to his grandchildren and children on their birthdays and for religious holidays. He would like to continue to do so as for as long as he is financially able. May I, as the guardian of the estate, provide gifts to the other grandchildren?

WI GSC: The guardian of the estate may continue to give gifts so long as he or she has the court's permission. Gifting by a guardian of the estate requires specific court approval. Wis. Stat. § 54.20(2)(a). The guardian's petition must specify the terms of the gifting, including the frequency of the gifts, to whom the gifts will be given (including the guardian if he or she is to receive any gifts), and the amount to be spent on the gifts. A hearing on this issue will be scheduled and notice must be given to the parties as required by the court. If given, the court's approval must be in writing. *Id.*