Greater Wisconsin Agency on Aging Resources, Inc.

# The Guardian

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

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

**To contact the GSC—**

**Call:**
(855) 409-9410

**E-mail:**
guardian@gwaar.org

**Website:**
http://gwaar.org/guardianship-resources

Subscriptions to *The Guardian* are free. To subscribe, fill out our newsletter contact form.

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## Save the Date! September 12-14, 2018

### Attend the 2018 Aging & Disability Network Conference

The Kalahari Resort & Convention Center
Wisconsin Dells, WI
For more information:
info@gwaar.org or gwaar.org


**Madison Office:**
1414 MacArthur Road
Suite A
Madison, WI 53714
ph. 608.243.5670
fax. 866.813.0974

**Brookfield Office:**
125 N. Executive Drive, Suite 207
Brookfield, WI 53005

**Green Bay Office:**
2900 Curry Lane, Suite 414
Green Bay, WI 54311

**Tribal Technical Assistance Center:**
Great Lakes Inter-Tribal Council
P.O. Box 9
Lac du Flambeau, WI 54538
ph. 800.472.7207
fax. 715.588.7900


## Points of Interest

The Guardianship Support Center is unfortunately limited to a few select areas of law. However, there are other options for people looking for free answers to civil legal questions. Wisconsin Free Legal Answers is one of those options.

**Wisconsin Free Legal Answers**

https://wi.freelegalanswers.org/

Wisconsin Free Legal Answers provides an easy way for lawyers to volunteer and for the public to ask civil legal questions.

**Elder Abuse Prevention and Prosecution Act of 2017**

In October, President Trump signed into law S.178, the Elder Abuse Prevention and Prosecution Act. The act encourages investigation and prosecution of perpetrators of elder abuse, enhances data collection, and supports elder abuse prevention efforts. For more information or details on the Act, please see the following link.

https://www.congress.gov/bill/115th-congress/senate-bill/178/text ❒

## Upcoming Events

National Health Care Decisions Day – April 16, 2018

Aging Advocacy Day – May 16, 2018

Wisconsin Healthy Aging Summit – June 2-8, 2018

World Elder Abuse Awareness day – June 15, 2018

Aging and Disability Network Conference – September 12-14, 2018

Self Determination Conference – October 29-31, 2018 ❒

**1. What is the recording space area and return address blank for on the state POA-F form?**

The recording area, name and return address lines, and parcel identification number box are all requirements for a document that will be recorded in the office of a register of deeds. (See Wis. Stat. 59.43(2m). These sections do not need to be completed for a power of attorney for finances to be considered valid.

**WISCONSIN STATUTORY**
**POWER OF ATTORNEY FOR**
**FINANCES AND PROPERTY**
IMPORTANT INFORMATION

This Power of Attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney for Finances and Property Act in Chapter 244 of the Wisconsin Statutes.

This Power of Attorney does not authorize the agent to make health-care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the Power of Attorney or the agent resigns or is unable to act for you.

Recording Area ↑

Name and Return Address

Parcel Identification Number (if any)

Your agent is entitled to reasonable compensation unless you state otherwise in the special instructions.

This form provides for designation of one agent. If you wish to name more than one agent, you may name a co-agent in the special instructions. Co-agents are not required to act together unless you include that requirement in the special instructions.

**2. Can a guardian complete a power of attorney document or otherwise name a person who would have authority in the event the guardian cannot be reached for a decision?**

No, a guardian cannot name a backup guardian by making a power of attorney or informally instructing someone to take over. To name someone to have decision-making authority if the primary guardian is unable to act, the court has to approve that person as standby guardian. (See Wis. Stat. § 54.52). ❐

## Learn More About Supported Decision-Making

Greater Wisconsin Agency on Aging Resources (GWAAR), Disability Rights Wisconsin, The Arc Wisconsin, and the Wisconsin Board for People with Developmental Disabilities (BPDD) hosted an informational webinar in November with updated information on Supported Decision-Making in Wisconsin.

The webinar provides general information about Supported Decision-Making in Wisconsin and introduces Assembly Bill 655 which could make legally recognized Supported Decision-Making agreements in Wisconsin.

The slides from the webinar are available here: http://www.disabilityrightswi.org/wp-content/uploads/2017/11/Training_WI_SDM_legislation_110817-FINAL.pdf

The webinar and other resources on Support Decision-Making are available here: https://arcwi.org/2017/10/30/supported-decision-making-hear-exciting-new-legislation-wisconsin/ ❐

## GWAAR Website Update:

Check out the updated GWAAR website! All of the information previously available on the Guardianship Support Center website is still on the updated GWAAR page. This relaunch will hopefully make the information more accessible. Here is the link:

https://gwaar.org/guardianship-resources ❐

**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 may want to speak with an attorney.

**Langlade County v. D.J.W. (In the matter of mental health commitment of D.J.W.)**
**Court: Court of Appeals**
**Appeal No.: 2017AP1313-FT**
**Date: November 7, 2017**

**Case Summary:**

The County filed an emergency detention of D.W.J on October 31, 2016. D.W.J. and the County entered into a court-approved settlement agreement but, due to non-compliance with the agreement, the Circuit Court set a final commitment hearing for January 30, 2017, where the court concluded that D.W.J. was mentally ill, a proper subject for treatment, and a danger to himself. D.W.J. appealed both the six-month commitment order and order for involuntary medication and treatment, arguing that the County did not meet the burden to prove dangerousness under Wis. Stat. § 51.20(1)(a)2.d.

**Case Details:**

D.W.J. was detained due to concerns over his "altered state" and schizophrenia three days before the County filed for emergency detention. Non-compliance with a settlement agreement led the county to petition for the involuntary commitment and treatment of D.W.J.

For an individual to qualify for involuntary commitment for treatment under Wis. Stat. § 51.20, the petitioner must prove by clear and convincing evidence that the individual is mentally ill, a proper subject for treatment, and dangerous to others or him/herself.

At the commitment hearing, the two doctors appointed by the court testified that D.W.J.'s conditions were treatable but that he posed a risk of danger to himself and others due to his acute psychotic state. Review of D.W.J.'s medical records revealed a history of aggressive behavior, property damage, suicidal ideations, and an inability to care for himself or properly socialize. The County argued that the doctors seemed to be relying on the dangerousness standard that reflects one's ability to care for oneself. The Circuit Court was disappointed neither doctor could give the court a specific instance where D.W.J. was demonstrably unable to care for himself, but ordered the commitment relying on the testimony and credibility of the doctors' testimony. D.W.J. appealed.

D.W.J. argued that the evidence at the hearing did not sufficiently show he was dangerous under the terms of the statute. D.W.J. contends the County never established facts relating to a recent failure to care for himself or whether there was a probability of imminent harm if he was not treated. He believes that he was determined to be dangerous only because he was schizophrenic.

The Court of Appeals affirmed the decision of the circuit court. Ultimately, the court questioned D.W.J.'s credibility and relied on the doctors' testimony concluding that D.W.J. was a danger to himself. D.W.J.'s argument questions the credibility of the witnesses the court relied on and the weight given to their testimony. The credibility of witnesses and importance of testimony is up to the trier of fact. D.W.J.'s argument does not account for the testimony of both doctors relying upon additional records that did demonstrate recent acts of omissions. The court's determination of dangerousness was appropriately based upon the weight assigned to the evidence and the emphasis on the acute nature of D.W.J.'s condition. ❐

**Waushara County v. B.G. (In the matter of the protective placement of B.G.)**
**Court: Court of Appeals**
**Appeal No.: 2017AP956**
**Date: October 26, 2017**

**Case Summary:**

B.G. is an individual who was subjected to a protective services order, which was later converted into a protective placement order by the Circuit Court per the request of Waushara County. B.G appealed the decision, contending that the county failed to comply with the statutory requirements of Wis. Stat. Ch. 55, and that the Court lacked the authority to convert a final order for protective services into a protective placement order. The Court of Appeals reversed and remanded, finding that once granted, a final protective services order may not be amended to a protective placement order.

**Case Details:**

In May of 2016, Waushara County filed a petition for protective placement of B.G., and a petition for permanent guardianship of B.G. and his estate due to incompetency. A hearing was held in June of 2016, where the court ordered guardianship of B.G.'s person and estate. However, the circuit court concluded that the County did not meet its burden to prove the need for protective placement of B.G. Instead, the court ordered a protective services order for B.G. to provide services in his home. The order stated B.G. "does not meet the standards for protective placement or need protective placement."

B.G. refused to let care workers into his residence to provide the ordered protective services. As a result, an Adult Protective Services worker filed a "Notice of Transfer of Protective Placement." The notice did not request a hearing, but requested that the court ordered B.G. to be placed in a facility. B.G. filed an objection.

In July of 2016, the court held a hearing on the requested protective placement transfer. The County's Corporation Counsel argued that the circuit court could convert its protective services order into a protective placement order, while B.G. contended that the court did not have that authority. The court found that B.G. required protective placement and ordered that B.G. be moved.

On appeal, B.G. asserted that there is no statutory provision in Ch. 55 to amend a protective services order to a protective placement order as the County requested. The County argued that the court did not modify the June 2016 order, but rather that the order was only "temporary" or "conditional," which allowed the court the jurisdiction to reconsider the matter and "convert" the protective services order to a protective placement order.

The Court of Appeals concluded that the June 2016 order was not "temporary" or "conditional," and that Wis. Stat. Ch. 55 established that a final protective services order may not be amended to a protective placement order. Because the June 2016 order was clearly final, the County should have filed and served a new protective placement petition in compliance with the requirements of Wis. Stats. §55.08-55.11.

The process for transferring an individual already subject to a protective placement order is established in §55.15. However, the statute does not authorize transfer of an individual from protective services into

*(Continued on page 7)*

(*Waushara County v. B.G.,* continued from page 6)

protective placement. Ultimately, the Court of Appeals concluded that the circuit court lacked the authority to order the protective placement of B.G. in the order of July 2016. The July 2016 order was reversed and remanded. ❒

**Estate of Miller v. Storey**
**Appeal No.: 2017 WI 99**
**Date: November 30, 2017**

**Case Summary:** The circuit court ordered Storey to pay more than $50,000 after the jury found she stole money from her uncle (Miller) while acting as his caregiver. Storey appealed the small claims judgment awarding Miller's estate an amount including restitution damages, exemplary damages, double statutory costs and attorney fees. The Court of Appeals reversed the judgment because it agreed that the award exceeded statutory limits for small claims and that the circuit court erred in ordering attorney fees, double costs and deeming the judgment restitution. The Supreme Court of Wisconsin then reversed the ruling of the Court of Appeals, upholding the actual damages award, attorney fees, and double costs in favor of the estate.

**Case Details:**

Storey moved in with her uncle (Miller) in 2010 to help him with necessary daily tasks. After Miller passed away, his personal representative grew concerned when she noticed Miller had signed up for online banking because he did not have access to the Internet. During the year Storey lived with Miller, funds were withdrawn from Miller's bank account in large amounts, and checks were written out to cash. His estate was able to correlate checks from Miller's account to amounts deposited in Storey's bank account.

At trial, the jury found that Storey had taken $10,000 from Miller prior to his death. The circuit court ordered a money judgment including $10,000 for misappropriation of funds, exemplary damages of $20,000, double taxable costs of $814.95 and attorney fees of $20,000.

On appeal, the Court reversed the Circuit Court's decision, concluding that the civil claims against Storey were actions "based in tort," and therefore subject to a $5,000 cap under §799.01(1)(cr). The Court also ruled that a provision for double costs did not apply, as an exemplary damage award must be decided by a jury. Additionally, it was determined that allowable "costs of litigation" did not include attorney fees.

The Supreme Court reversed the Court of Appeals ruling in part. The Supreme Court ruled by majority that under Wis. Stat. § 895.446, civil actions are not actions based in tort, therefore the $10,000 actual damage award and double costs awarded to the estate were authorized. The Court's interpretation of the statute concluded that the claim against Storey was an "other civil action" based on the "legislature's choice to provide a statutory civil theft claim."

The Court based its reinstatement of the award of attorney's fees based on §895.446(3) and a previous appeals decisions where the Court interpreted the statute to include attorney fees. Six changes were made to the statute since the decision, none of which excluded attorney's fees from being recoverable costs.

*Continued on page 8)*

(***Miller v. Storey***, *continued from page 7*)

The Supreme Court further supported their decision by noting that §799.25 lists attorney fees as a cost the clerks must include into judgements for prevailing parties. The Private-Attorney-General doctrine supports that attorney fees are included as costs of litigation.

The Supreme Court agreed with the Court of Appeals' decision to reverse the Circuit Court's exemplary damages award. The majority agreed that the original ruling contradicted a clear legal standard which requires that a jury decide punitive damages upon a post-verdict motion. ❒

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Do you know someone who would like to receive the *Guardian* newsletter? Do you want more information about guardianship and related issues? Signing up is easy with the link on the Guardianship Support Center Webpage: Guardian Newsletter Sign-Up. You can also subscribe by emailing your name, email address, and organization to guardian@gwaar.org. ❒

**Happy Holidays from GWAAR and the GSC!**