



*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.

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**Title:** *Ozaukee County vs. S.S.Z., T.Z.*

**Court:** Court of Appeals, District II

**Date:** September 19, 2018

**Citation:** 2017AP1393 (unpublished)

**Case Summary:** Eighty-year-old S.S.Z. changed her power-of-attorney (POA) from her daughter, J.M. to her son, T.Z. The Ozaukee County Department of Human Services (the County) petitioned for guardianship of the estate and person and for protective placement. After extended proceedings, the circuit court dismissed the petitions and ordered the County to pay \$97,746.25 in attorneys' fees to S.S.Z.'s and T.Z.'s attorneys. The order was affirmed.

T.Z. cross-appealed, arguing that the court erred in denying him reasonable costs and fees in litigating the fee motion. The court of appeals agreed. The court also agreed T.Z. should be granted costs and fees for successfully defending the appeal.

### Case Details:

S.S.Z. was diagnosed with dementia and executed a POA naming J.M. and her other son, R.Z. as primary co-agents. On July 31, 2015, J.M. petitioned for temporary guardianship. On that same date, S.S.Z. through private counsel executed durable and medical POAs which named T.Z. as primary agent and R.Z. as substitute. J.M. withdrew the guardianship petition. The court soon after granted the County's petition to appoint a corporate guardian as temporary guardian of S.S.Z.'s estate.

On August 25<sup>th</sup>, the County petitioned for permanent guardianship of person and estate and protective

placement and alleged the POAs were invalid because S.S.Z. was incompetent when she executed them and was unduly influenced. T.Z. objected arguing the advance planning made guardianship unnecessary and the POAs should be enforced.

In November 2015, the circuit court concluded the County failed to prove by clear and convincing evidence that S.S.Z. did not have capacity to execute the POAs and further concluded that her advance planning made guardianship unnecessary.<sup>1</sup> The circuit court denied the petitions, vacated the order for temporary guardianship and revoked the corporate guardian's temporary letters of guardianship.

### *Capacity to execute a Power of Attorney:*

The court of appeals first addressed whether the circuit court erroneously exercised its discretion in denying the County's guardianship petition. Since case law specifically addressing mental capacity regarding POA execution is lacking, the court relied on case law regarding testamentary capacity to execute a valid will. Testamentary capacity requires that an individual has the mental capacity to understand the nature, extent and state of affairs of their property.<sup>2</sup> A perfect memory is not required, but the individual must have a general meaningful understanding of the nature, state and scope of their property.<sup>3</sup>

*(Continued on page 3)*

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<sup>1</sup>Wis. Stat. § 54.46(1)(a)(2)

<sup>2</sup>*O'Brien v. Lumphrey*, 50 Wis. 2d 143, 183 N.W.2d 133 (1971)

<sup>3</sup>*Id.*



*(Ozaukee vs. S.S.Z., T.Z., continued from page 2)*

The standard for the court to order guardianship is the petitioner has proven by clear and convincing evidence that the proposed ward is incompetent under the meaning of Wis. Stat. § 54.10(3)(a). The court must consider sixteen factors including whether the advance planning renders the guardianship unnecessary. Evidence that was heard included S.S.Z.'s diagnosis of dementia in 2012 and Alzheimer's in 2015, testimony from Dr. Batterman about her short-term memory loss and inability to manage health care and financial matters. Dr. Batterman also testified that she did not review S.S.Z.'s medical records and agreed an individual with dementia can have periods of lucidity. There was also testimony from S.S.Z.'s attorney and their staff who testified that she was of sound mind when she executed her POAs in 2015.

Conflicting evidence was presented and the circuit court weighed the evidence and indicated it was the job of the Petitioner to convince the court. The county did not establish that S.S.Z. was incompetent when she signed the POAs, therefore her advance planning rendered the guardianship unnecessary and the petitions were dismissed. The court ordered the county to pay \$97,746.25 in attorney's fees to S.S.Z. and T.Z.'s attorneys. The county appealed the denial of the guardianship petitions and the award of attorney's fees.

The circuit court's finding will not be overturned unless it was clearly erroneous. The court of appeals found the circuit court did consider the statutory factors. The fact that S.S.Z. had memory problems, dementia and was later found to be incompetent was

just "peripherally relevant."<sup>4</sup> There can be periods of lucidity during which a testator can have sufficient capacity. The circuit court's finding that S.S.Z. was competent at the time of execution was not clearly erroneous. The court of appeals could not find that the circuit court erred.

### *Undue Influence:*

The county also argued that the POA documents were invalid because T.Z. unduly influenced S.S.Z. The burden of proof is on the county is to show by clear, satisfactory and convincing evidence that T.Z.'s influence was undue and overreaching, causing her to act as he intended to the extent that her free agency had been destroyed.<sup>5</sup>

There are two tests for undue influence, one which has two-elements and one which has four-elements.<sup>6</sup> The two-element test requires proof of a confidential or fiduciary relationship along with suspicious circumstances around the execution of the documents. The four-element test requires proof of susceptibility to undue influence, opportunity to influence, disposition to influence and a coveted result.

*(Continued on page 4)*

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<sup>4</sup>*Becker v. Zoschke*, 76 Wis. 2d 336, 251 N.W.2d 431 (1977)

<sup>5</sup>*Sensenbrenner v. Sensenbrenner*, 89 Wis. 2d 677, 278 N.W.2d 887 (1979)

<sup>6</sup>*Hoefl v. Friedli*, 164 Wis. 2d 178, 473 N.W.2d 604 (Ct. App. 1991)





*(Ozaukee vs. S.S.Z., T.Z., continued from page 3)*

The circuit court found the county failed to prove either test and the court of appeals affirmed. There was no fiduciary or confidential relationship so the two-element test was not met. Dr. Batterman testified that S.S.Z. could have moments of lucidity and that she was capable of making a will. Therefore, the court found that she could not have been susceptible to undue influence. The circuit court also did not find that T.Z. had a disposition to unduly influence as just being unlikeable does not meet this standard. They also did not find that being named as a POA agent was a coveted result. The court of appeals agreed the county failed to meet the burden necessary to revoke the POAs.

### *Attorney's fees*

Private counsel represented S.S.Z. to defend against the guardianship and protective placement petitions. The court of appeals affirmed the circuit court's award of attorney's fees under Wis. Stat. § 54.46(3)(c) because a guardian was not appointed. This statute provides that when a guardian is not appointed after a hearing on a petition for guardianship that it is the petitioner that is liable for any fees due. Under Wis. Stat. § 55.105, an individual has the right to be represented by a Public Defender but they have the right to retain private counsel at their own expense. The county argued that the appointment of a public defender is required and therefore when retaining private counsel, S.S.Z. did so at her own expense. The circuit court denied public defender availability as a reason to deny S.S.Z.'s request. The court also found that the representation was so intertwined they could not unravel which fees would apply to the guardianship, protec-

tive placement and POA matter. The circuit court found the full fees were justified and the court of appeals agreed.

The court of appeals also ruled that attorney's fees must be paid at the customary rate charged and not public defender rates. The court found the hours spent and rates charged were appropriate given the complexity of the case. The circuit court had denied T.Z. the costs and fees he incurred in litigating the fee issue and the court of appeals found they had erred on this issue.

The county has filed a petition for certiorari to the Wisconsin Supreme Court.

**Title:** *Zielinski v. Zielinski*

**Court:** Court of Appeals, District II

**Date:** October 3, 2018

**Citation:** 2017AP31 (unpublished)

### **Case Summary:**

Thomas Zielinski appeals an order granting a four-year injunction against him naming his mother, Suzanne Zielinski, as the individual at risk. Only supervised contact was permitted. Thomas argues his due process rights were violated because he was not given sufficient notice and challenges the sufficiency of the evidence to find emotional abuse. The court of appeals disagreed with Thomas's argument that the county had to prove actual harmful effects or show

*(Continued on page 5)*



*(Zielinski, continued from page 4)*

emotional damage. The county instead had to show that Thomas committed the emotional abuse regardless of whether it caused damage. Since the county met this standard, the court of appeals affirmed the order of the circuit court granting the injunction.

### **Case Details:**

Suzanne has three children: Thomas, Janet and Robert. In 2012, Suzanne was diagnosed with early dementia. She named Janet and Robert as co-powers of attorney. When Thomas came into town to visit, she removed Janet as POA and named Thomas, with Robert as an alternate. Soon after this, Ozaukee County Human Services (the County) received calls for concern regarding Suzanne including that she was not paying her property taxes. There were also irregularities found in her checking account such as \$34,000 in checks made out to Thomas. In 2015, the County initiated a guardianship proceeding and petitioned for an injunction. Both cases were unsuccessful.

In 2016, the County filed a petition to review the POA. Thomas was served but he did not appear at the hearing. The court granted the petition, rescinded his agency and Robert was named as POA. The next day the County filed a temporary restraining order (TRO)/injunction petition alleging Suzanne was vulnerable to financial exploitation and emotional abuse by Thomas and that he already interfered or as shown by his conduct may interfere with their investigation.

Ozaukee County Sheriff's deputies went to Suzanne's home to serve the TRO and hearing notice on Thom-

as. Thomas was helping his mom get her house ready for sale as he was planning on moving her to New York with him. No one responded to the police knocking but after getting verbal consent from the POA, Robert, police entered the house. Upon entering, they found Suzanne covered head to foot with a blanket and Thomas in the bedroom up against the wall behind the door. The deputies handcuffed Thomas and served the TRO and Suzanne was taken into protective custody.

A two-day evidentiary hearing was held, and the court found reasonable cause to believe the County proved financial exploitation, emotional abuse and interference with their investigation. To grant an injunction, the court must find reasonable cause that one of the factors under Wis. Stat. §813.123(5)(a)3 was met. A circuit court's factual findings will not be set aside unless they are clearly erroneous.

Thomas first argued the trial court should not have admitted evidence from the 2015 cases as this was a re-litigation of a dismissed charge. The circuit court allowed the evidence so the court could get a better grasp of changes in Suzanne's condition and in her relationship with her son. The appeals court found the circuit court reasonably concluded the evidence was relevant and that the probative value did not substantially outweigh the danger of unfair prejudice.

Thomas also argued he was entitled to assert his mother's fourth amendment rights.

*(Continued on page 6)*



(*Zielinski*, continued from page 5)

The court of appeals disagreed as fourth amendment rights cannot be vicariously asserted.<sup>7</sup> The court also found the deputies had consent to enter and reasonably believed that the POA could validly give consent.<sup>8</sup> Further, they found the deputies were acting within the scope of their reasonable community caretaker function.

Thomas also argued that a standard court form was used, and that form did not provide details of the allegations against him, therefore depriving him of due process. The court of appeals concluded the petition was not fatally vague and included all the statutory requirements. The court next looked at whether the circuit court had sufficient evidence on which to base its findings. The test is whether a reasonable trier of fact can be convinced of the respondent's accountability to the required degree of certitude—here, reasonable cause to believe—by the evidence that it has a right to believe and accept as true.<sup>9</sup> Regarding financial exploitation, the circuit court considered evidence about unpaid bills, increased expenses, reports of concern for Suzanne's safety and checks Thomas wrote to himself. The court also found there was sufficient evidence to show there was interference with the County's investigation based on Thomas refusing to answer the door when the social worker came to visit, cutting that visit short and hiding when police came to serve the TRO.

Regarding emotional abuse, the circuit court considered evidence about estrangement from family members, monitoring of Suzanne's phone calls and replacing family photos with pictures of himself. Thomas argued the County needed to provide expert testimo-

ny and they did not prove there were any harmful effects. The court of appeals points out this flawed argument as this is equating emotional abuse with emotional damage which is the standard in a child abuse injunction which does require expert testimony.<sup>10</sup> "Emotional abuse" for an individual at risk means "language or behavior that serves no legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening or otherwise harassing and that does or reasonably could intimidate, humiliate, threaten, frighten or otherwise harass the individual."<sup>11</sup> The court of appeals indicated this is an actor focused standard that focuses on conduct that is intended to or reasonably could cause an effect. Emotional abuse can occur even if the intended result is not achieved.

The court of appeals concluded the circuit court's findings were supported by the record, they were not clearly erroneous, and they demonstrated reasonable grounds to issue the injunction. Order affirmed. □

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<sup>7</sup>*State v. Amos*, 153 Wis. 2d 257, 450 N.W.2d 503 (Ct. App. 1989)

<sup>8</sup>*Illinois v. Rodriguez*, 497 U.S. 177 (1990)

<sup>9</sup>*City of Milwaukee v. Wilson*, 96 Wis. 2d 11, 21, 291 N.W.2d 452 (1980).

<sup>10</sup>*M.Q. v. Z.Q.*, 152 Wis. 2d 701, 708-09, 449 N.W.2d 75 (Ct. App. 1989).

<sup>11</sup>Wis. Stat. § 813.123(1)(a)



## What does the Guardianship Support Center do?

The Guardianship Support Center (GSC) is a neutral statewide informational helpline. We can provide information on topics such as Advance Directives like Powers of Attorney, Guardianship, and Protective Placement. The GSC is unable to provide information on minor guardianships, wills, trusts, property division or family law. We are unable to provide legal advice or representation.

## What are some other free or low cost legal resources?

Other resources include the American Bar Association's website where members of the public can ask legal questions to volunteer attorneys. The website is <https://wi.freelegalanswers.org/>. An attorney can also be found through the Lawyer Referral Information Service (LRIS) with the Wisconsin State Bar. Attorneys that have signed up for this service have agreed to do an initial half hour consultation for no more than \$20. To contact the LRIS call (800) 362-9082. The State Bar also has a modest means program where applicants that income qualify can find an attorney that has agreed to take cases at a reduced rate. You can find more information on these programs at <https://www.wisbar.org/>

## **Upcoming Events and Noteworthy Dates That May Be of Interest:**

- ◇ Elder Law Workshop, January 17<sup>th</sup>-18<sup>th</sup>, Chula Vista
- ◇ Tools to Navigate the Challenges of Aging, January 25<sup>th</sup>, Ingleside Hotel, Pewaukee
- ◇ Wisconsin Assisted Living Association (WALA), March 14<sup>th</sup>-15<sup>th</sup>, Kalahari
- ◇ Disability Advocacy Day, March 20<sup>th</sup>, [www.survivalcoalitionwi.org](http://www.survivalcoalitionwi.org)
- ◇ Autism Society Conference, April 11<sup>th</sup>-12<sup>th</sup>, Kalahari
- ◇ Circles of Life, May 2<sup>nd</sup>-3<sup>rd</sup>, Holiday Inn, Stevens Point
- ◇ Aging Advocacy Day, May 14<sup>th</sup>, [www.gwaar.org](http://www.gwaar.org)
- ◇ Alzheimer's Association Conference, May 19<sup>th</sup>- 21<sup>st</sup>, Kalahari
- ◇ Senior Americans Day, June 4<sup>th</sup>, UW-Eau Claire
- ◇ Wisconsin Institute of Healthy Aging (WIHA), June 6<sup>th</sup>-7<sup>th</sup>, Wilderness Resort
- ◇ Adult Protective Services Conference, October 10<sup>th</sup>-11<sup>th</sup>, Glacier Canyon Lodge





## In the News:

Former Supreme Court Justice Sandra Day O'Connor announces she has Dementia. Read more [here](#).

USA Today reported on statistics regarding elder abuse across the nation. Last year, state adult protective services (APS) were involved in 713,000 investigations which identified 235,000 victims of neglect. Ten percent of these victims were under age 50 as some states included that data as well. These numbers are part of an initial attempt by the federal government to track this data nationwide. States already have a federal mandate to collect data on child abuse but there is no similar mandate for elder abuse. Read more [here](#).

Read about the hidden side of dementia: families fight over care, end-of-life decisions, finances, estates from USA Today. It is estimated that 5.7 million Americans are living with Alzheimer's disease which is the most common cause of dementia. This number is only expected to rise as Baby Boomers age and live longer. Sometimes families fight over where their family member should be placed, who should be the decision-maker and who will control the finances. To learn more about these family disputes, including Casey Kasem's story, read more [here](#).

Read about comforting fictions sometimes used with dementia patients from The New Yorker [here](#). □

## Public comments requested on Social Security Representative Payee Program

The Strengthening Protections for Social Security Beneficiaries Act of 2018 requires the Social Security Agency to solicit comments. They are requesting information on the appropriateness of the order of preference lists for selecting representative payees and the effectiveness of their policy and procedures in determining when to change a payee. They are seeking this information to determine whether and how they should make any changes to their representative payee program to help ensure that they select suitable payees for beneficiaries.

Comments must be submitted by January 28, 2019 and can be submitted [online](#), via fax (410) 966-2830 or by mail to Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401. □

## American Bar Association develops tool to identify guardianship alternatives

The American Bar Association (ABA) has developed a PRACTICAL Tool to help attorneys avoid guardianship, if possible, by identifying and implementing other less restrictive decision-making options for individuals with a disability. This tool highlights steps lawyers and guardians can take to bolster a client's self-determination and assess if a guardianship should be modified or terminated. The PRACTICAL Tool and Resource Guide can be found on the ABA's website at [www.ambar.org/practicaltool](http://www.ambar.org/practicaltool). □





## Helpline Highlights

**My spouse is unconscious and unable to sign a Power of Attorney for Finances. As the spouse, can't I just sign the document for them?**

No. The individual who executes a Power of Attorney document (the principal) must be the one to determine they want a POA and must be able to indicate who they want as their agent. The principal must sign or direct another to sign in their conscious presence. The principal's signature will be presumed to be genuine if the signature is notarized. A spouse or family member does not have authority to sign a Power of Attorney on someone's behalf if they have not been directed by the principal to do so. The existence of a legal spousal relationship does not give a spouse the authority to sign legal documents for the other spouse. Wis. Stat. § 244.05.

**I was told I couldn't file for guardianship for my father because he is married and because I am not his Power of Attorney agent. Who can file for guardianship in Wisconsin?**

Under Wis. Stat. § 54.34, "any person" may petition for appointment of a guardian for an individual, regardless of the individual's marital status or existence of a Power of Attorney. There is a presumption in the guardianship statutes that if there is a power of attorney for health care agent that the agent will also be the guardian of the person unless it is not in the proposed ward's best interest. The same applies for a power of attorney for finances agent and appointment of a guardian of the estate. Powers of Attorney must be considered as less restrictive options to guardianship, but their existence alone does not limit who can

actually file a petition for guardianship.

**Does Power of Attorney for Finances need a statement of incapacity to be activated?**

This will depend on how the document is drafted. If the principal used the current state form, the default is that the document is activated upon signing. The principal could indicate in the special instructions or could have a Power of Attorney for Finances (POA-F) drafted so it is only activated upon incapacity. If incapacity is not further defined or clarified within the POA document, under Wis. Stat. ch 244, this means an incapacity as determined by one physician or one psychologist. Incapacity for a POA-F is an inability to manage property, finances or business affairs because of an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance. Wis. Stat. § 244.02(7). A certification of incapacity to make health care decisions cannot by default be used to indicate the principal has an incapacity to manage finances.

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### **Interested in Receiving The Guardian?**

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](mailto:guardian@gwaar.org).





*(Helpline Highlights, continued from page 9)*

Is there a time frame requirement between the two doctors' signatures for a Power of Attorney for Health Care activation due to incapacity?

No. There is no specific time frame requirement mentioned in the statutes for when the two physicians must sign to activate a POA-HC. The only requirement is that there are two signatures indicating the person has an incapacity after an examination by two physicians or a physician and a psychologist. However, the longer the time frame between the two signatures might leave more room for someone to challenge the activation document. For example, are the two signatures describing the same reason for incapacity, did the person recover from the previous incapacity and now there is a new reason for their inability to make decisions? Best practice would be to have the signatures as close in time as possible. □

## **FIGHT FRAUD IN YOUR COMMUNITY** **Become an SMP Volunteer**

*Training near you in January 2019*

How you can help:

- Put your skills and experience to work
- Teach others how to spot Medicare fraud
- Deliver materials throughout your community
- Educate and empower consumers
- Plus more



For More Info Contact Wisconsin Senior Medicare Patrol  
at 1-888-818-2611 or email [smp-wi@gwaar.org](mailto:smp-wi@gwaar.org)





### Points of Interest

- The Acting Inspector General of Social Security warns of calls to the public where the Social Security Agency's phone number is being spoofed. The number is 1-800-772-1213. The SSA sometimes does contact citizens by phone and may sometimes request personal information over the phone but an SSA employee will never threaten you for information or promise a benefit approval or increase in exchange for information. Do not give your Social Security number out and do not confirm the last four digits. Also, do not give out a bank account or credit card number. If you believe the call to be fraudulent, hang up. For more information see [here](#). Find out what spoofing is [here](#).
- The Department of Justice will receive \$1.25 million from the federal government to fight elder abuse. This program will provide funding to the DOJ to train and organize elder abuse response teams in four project sites across the state. The project sites will include the City of Milwaukee, Outagamie County, Door County and the Oneida Nation of Wisconsin. <https://www.doj.state.wi.us/news-releases/ag-schimmel-announces-doj-will-receive-125-million-federal-government-fight-elder-abuse>
- The Centers for Medicare & Medicaid Services (CMS) released an informational bulletin related to the 2019 Spousal Impoverishment Standards. The informational bulletin can be accessed on Medicaid.gov at <http://www.medicaid.gov/Federal-Policy-Guidance/Federal-Policy-Guidance.html>. The updated 2019 Spousal Impoverishment Standards for Wisconsin can be viewed at <https://www.dhs.wisconsin.gov/dhcaa/memos/18-49.pdf>.
- MoneyGram International has agreed to pay a penalty of \$125 million to settle allegations from both the Federal Trade Commission and The United States Department of Justice that the company did not do enough to prevent fraudulent money transfers. MoneyGram failed to take steps to crack down on scams that ranged from bogus cash prizes to impersonating government officials from the IRS to posing as troubled relatives needing money. The \$125 million paid by MoneyGram will be given to fraud victims through the DOJ's victim compensation program. Visit the Department of Justice's victim website at <http://moneygramremission.com/> or call 844-269-2630 for more information on how to request compensation. □





## Social Security Administration Announces 2019 COLA

*By the GWAAR Legal Services Team (for reprint)*

Beneficiaries receiving Social Security retirement, survivors, and disability benefits will see a modest increase in their monthly benefit amount in 2019. The Social Security Administration recently announced that beneficiaries will receive a 2.8% increase in 2019 due to the cost of living adjustment (COLA).

The 2019 numbers are as follows:

	2018	2019
Federal SSI—individual	\$750	\$771
Federal SSI—couple	\$1,125	\$1,157
Quarter of coverage	\$1,320	\$1,360
SGA -non-blind person	\$1,180	\$1,220
SGA—blind person	\$1,970	\$2,040
Earnings limit (for those receiving SS retirement benefits under full retirement age)	\$17,040 (\$1,420/mo.)	\$17,640 (\$1,470)
	\$1 in SSA benefits withheld for every \$2 above limit	\$1 in SSA benefits withheld for every \$2 above limit
Earnings limit (for those receiving SS retirement benefits—in the calendar year full retirement age is attained)	\$45,360 (\$3,780/mo.)	\$46,920 (\$3,910/mo.)
	\$1 in SSA benefits withheld for every \$3 above limit	\$1 in SSA benefits withheld for every \$3 above limit
Maximum SS benefit for a worker retiring at full retirement age	\$2,788	\$2,861





## Power of Attorney, Funeral Arrangements and Medicaid Estate Recovery

As a power of attorney agent, you may be wondering when your authority ends and if it extends to making funeral arrangements for your loved one. You may also be wondering how this all works when Medicaid estate recovery is involved.

Legal authority under a power of attorney ends immediately upon the death of the person who executed the power of attorney, known as the principal. After death, a personal representative or executor has the authority to make decisions on behalf of the decedent's estate. A personal representative for the estate is appointed through the probate process.

Typically, family members can participate in funeral preparations under Wis. Stat. § 154.30(2). The statute goes through an order of priority for who can make funeral arrangements aka control final disposition. The order of priority is as follows: a representative acting under an authorization for final disposition or a successor representative, spouse, child, parent, sibling, next class of kinship<sup>1</sup>, guardian of the person or any other individual who is willing and who has attested in writing to making a good faith effort to no avail to contact the others listed above.

The person who controls final disposition will be able to make arrangements for a viewing, funeral, service or other last rite, burial, cremation or other disposition or donation of the decedent's body. To name someone as your personal representative to carry out your wishes, you can complete a form called an Authorization for Final Disposition. This form is available on the Department of Health Services (DHS) website: <https://www.dhs.wisconsin.gov/forms/advdirectives/f00086.pdf>.

If you have not completed this document, then the people to make arrangements regarding your funeral will be those listed in the order of priority above. For certain classes like adult children and siblings, the majority of that class must agree on the arrangements. This can certainly cause issues when members of that group do not get along and cannot come to a majority agreement.

If your loved one was on Medicaid you may be wondering how this works with paying for funeral expenses and following estate recovery rules. The Wisconsin probate statutes give priority to payment of reasonable funeral expenses ahead of other debts. Funeral expenses will be paid out *prior* to estate recovery's claim. However, estate recovery has developed a list of allowable expenses and non-allowable expenses for funeral costs. <https://www.dhs.wisconsin.gov/publications/p1/p13009.pdf>

(Continued on page 14)

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<sup>1</sup> Wis. Stat. § 990.001(16)





(*POA/Funeral*, continued from page 13)

Allowable	Not allowable
Funeral home charges	Travel to attend funeral (hotel, meals, flight)
Cemetery charges	Gifts or will bequests
One headstone, vase, marker & engraving	Keepsake items
One funeral meal	DVDs or videos
Flowers	Masses or memorials
Postage related to the funeral	Autopsy
Stipend for clergy, organist, or soloist	Private room costs for nursing home/hospital
Obituary and death certificates	Donations made in memory of the deceased
Transportation of the deceased's remains	
Funeral clothing for the deceased	
Last month's nursing home patient liability	

It is very important to pay debts in the correct priority order following death. Otherwise the person could be personally liable to the other debtors for the difference. It is recommended that family members consult with a probate attorney for advice specific to their own situation. □

