



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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COVID-19 Updates

Amid the uncertainty and chaos of the coronavirus pandemic, the Guardianship Support Center would like to take a moment to recognize the many, many people who must continue to go out every day to support and care for vulnerable populations. We cannot thank you enough for the work you do.

In accordance with the Governor's order, the GWAAR offices are closed. All staff are working remotely from home offices. The Guardianship Support Center helpline will continue to be available as a resource for questions on powers of attorney and guardianship as they arise; however, email is the best way to reach us at this time. We can be reached at guardian@gwaar.org.

In the meantime, we want to provide some updates on relevant topics as they have come up over the past few weeks:

Court Scheduling

The majority of courts around the state have either postponed hearings or arranged for telephone or videoconference hearings. This likely includes guardianship hearings across the board, from temporary guardianships to Watts reviews. Some counties may be extending the timeframe for a Watts review out several months. If you are expecting a hearing in the next couple of months and have not yet received notice of any changes from the court, please contact your county clerk of courts.

In addition, if you need to file guardianship documents with the court, please call ahead to ask whether your register in probate office is open to accept documents in person.

County Offices

Most ADRC and Aging Unit offices are closed to the public for in-person visits. Many ADRC staff are working remotely from home offices. If you need to contact the ADRC, call the main ADRC phone number first for directions on access and availability setting up a phone appointment. ADRC contact information is located [here](#). In addition, most Adult Protective Services/Elder Protective Services units continue to operate as usual; staff are taking measures to minimize contact and maintain social distancing where possible.

Meeting with Proposed Wards/Watts Reviews

As you may know, many facilities have instituted lockdown procedures to limit contact with their residents to avoid facility outbreaks. Physical distancing practices also suggest not meeting in person with wards or proposed wards, whether in a facility or in the community, if another means can be found. While both phone interviews and

videoconferencing have drawbacks, these have been successful in a variety of contexts thus far. Check with your local Register in Probate office or ask the court for specific instructions related to your case.

Guidance from the Department of Health Services

DHS has provided guidance for [long-term care facilities](#), including for visitation, memory care, etc. There is also guidance available for ForwardHealth program enrollees, community organizations and resources including elder nutrition programs, and more. These resources will continue to be updated in coming weeks, so please check back as needed.

In addition, [ForwardHealth](#) has been updated with a number of memos and bulletins for providers, members, and others, including an FAQ for community-based long-term care program members and applicants.

GSC Outreach

Some of our scheduled outreach has been canceled through mid-May due to the COVID-19 crisis. As the situation continues to evolve, we will keep in touch when we know beyond that. In addition to all events for school groups and county organizations, to date, the following events at which the Guardianship Support Center was scheduled to present or exhibit have been canceled or postponed:

- Ready, Set, Retire! - rescheduled for August 1
- WI Autism Society Conference
- WI Alzheimer's Association Conference
- WI Registers in Probate Association Conference

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Other events are still pending decisions from event organizers. We continue to monitor guidance from the Department of Health Services and the CDC and will resume outreach events when it is safe to do so.

In the meantime, you may contact guardian@gwaar.org to request online presentations, webinars, or materials.

Wisconsin Supreme Court Dismisses Ch. 51 Due Process Case as Improvidently Granted

After February's oral argument in *Waukesha County v. J.J.H.*, 2018AP168, the Wisconsin Supreme Court ultimately dismissed the case as improvidently granted (likely on the basis that it was moot and there were no active issues for appeal). The most significant issue for review in this case was whether the county had violated J.J.H.'s due process rights when it held a Ch. 51 probable cause hearing without providing her with a sign language interpreter. However, the Supreme Court's [pre-argument case synopsis](#) (PDF) noted that the court had gone to great lengths to try to find an interpreter within the 72-hour timeframe, and that the judge ultimately did not find probable cause for a Ch. 51 commitment, instead opting to convert the action to a temporary guardianship and protective placement proceeding, which ended after thirty days. For now, the question of whether the lack of an interpreter is a due process violation remains unresolved, as does the question of whether, and how, a conversion from a Ch. 51 action to a Ch. 54/55 action can be appealed.

National Healthcare Decisions Day—April 16, 2020

Celebrate [National Healthcare Decisions Day](#) – review your advance planning documents, or create them if you don't have any! Everyone over the age of 18 should plan for the possibility of incapacity. Take the time to discuss your wishes with your agent, family, and friends, and communicate your wishes to your providers.

Wisconsin provides [free basic forms](#) for the following:

- Power of Attorney for Finances and Property
- Power of Attorney for Healthcare
- Declaration to Physicians (aka Living Will)

- Authorization for Final Disposition (burial & funeral arrangements)

These forms don't require an attorney, but an attorney can provide legal advice and counseling for your specific circumstances to make sure your wishes are stated and carried out appropriately. The power of attorney for healthcare must be signed and dated, and must also be signed before two unrelated and disinterested witnesses. While the power of attorney for finances does not technically require witnesses or a notary, many banks and other agencies will not accept it unless it has at least been notarized. If you choose to complete your documents on your own, many banks, post offices, etc. may have notaries on staff who can help.

Please note that these requirements have not changed due to coronavirus, even though there have been many questions raised as to how to get a document properly witnessed while maintaining appropriate distance from others. There has not, as yet, been any firm guidance from the State Bar or state agencies as to whether remote witnessing (i.e., by videoconferencing) with or without digital signature may be acceptable. However, some potential workarounds might include having someone sign at the principal's direction (permissible per Wis. Stat. § 155.10), e.g., on the other side of a window or through an open doorway, with witnesses on the other side; or using something a long handle, e.g., a grabber or a pizza paddle, to get documents to another person for signature or notarization.

At this time, the Guardianship Support Center cannot advise on the validity of any particular method of witnessing or notarization. If and when additional guidance becomes available, we will update our website with that information accordingly.

Aging Advocacy Day Registration Postponed

Due to ongoing efforts to contain the spread of COVID-19 (Coronavirus), registration for Aging Advocacy Day has been postponed. We will be discussing our options over the next several weeks and as soon as decisions are made, new information will be posted at <https://gwaar.org/aging-advocacy-day-2020> and shared via email and this newsletter. Thank you for your patience and understanding. Stay safe and well. ☐





Benefit Certification Periods

The annual renewals for FoodShare and many Medicaid programs have been extended out three months due to COVID-19. For example, April renewals will now be due in July. Contact Income Maintenance with questions or concerns.

The MAPP work requirement is temporarily lifted if a person cannot work due to Coronavirus. MAPP premiums are temporarily waived.

Functional screens for FamilyCare and IRIS can now be done via phone or video conference instead of in-person.

Wisconsin Lawyer Publishes Series on Elder Law

Wisconsin Lawyer, the State Bar's monthly publication, [kicked off](#) an ongoing series on elder abuse, of interest not only to legal practitioners but also to older adults, their families, supporters, and caregivers. To date, the series has included the following articles:

January:

- [An Overview: Older Clients & Elder Abuse](#)
- [Screening for Elder Fraud and Abuse](#)
- For legal practitioners: [Ethics: Duties When Law Partner Might Have Dementia](#)

February:

- [Misunderstanding POAs: Advocating for Client's Statutory Autonomy](#)
- [You're Not the Boss of Me: Principal's Autonomy Under a POA](#)

March:

- [The Face of Elder Financial Exploitation](#)
- [Financial Elder Abuse: Returning Control to Victims](#)

What is the Guardianship Support Center able to help with?

The GSC is a neutral statewide informational helpline for anyone throughout the state. We can provide information on topics such as Powers of Attorney, Guardianship, and Protective Placement. The GSC is unable to provide information on minor guardianships, wills, trusts, property division or family law. The GSC is also unable to give legal advice or specific direction on completing court forms such as the inventory and annual accounting. The GSC does not have direct involvement in cases nor are we able to provide legal representation.

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

Other resources include the American Bar Association's Free Legal Answers [website](#) where members of the public can ask volunteer attorneys legal questions. The State Bar of Wisconsin also offers a Modest Means Program for people with lower income levels. The legal services are not free but are offered at a reduced rate. Income qualifications must be met to qualify. For more information, visit the state bar's [website](#) or call **800-362-9082**.



The #2020 Census Counts: Be Counted!

This article reprinted with permission from the Disability Vote Coalition.

This month, most households will receive an invitation in the mail to respond to the 2020 Census. Watch for a mailing from the US Census Bureau.

- March: On or between March 12-20, a letter from the Census Bureau should come in the mail. Most households will be invited to respond online. Areas with limited internet access may receive a paper questionnaire.
- April: Households that do not respond online will receive a mailing with a paper questionnaire.
- May – July: Census takers will begin visiting households that have not responded to the 2020 Census to make sure everyone is counted.

What is the Census?

- Every 10 years, the US government counts everyone in the country through the census. We will have a census in 2020. It is required by the US Constitution.
- Only one person needs to respond to the census in each home.
- This is a sample of the paper questionnaire that will be used during the 2020 Census. [Sample copy of the 2020 Census Questionnaire](#)
- The 2020 Census should be Accessible for everyone. [View the Census Fact Sheet to learn about accessibility support.](#)

How Are Group Homes Being Counted?

- People who live in a group facility such as a nursing home, group home or shelter are usually counted through the “Group Quarters” process.
- If a group home is going to be counted in the group quarters process, the administrator of the group home will be contacted by a census worker to make arrangements for how the census will be answered.
- If you are an administrator for a group facility, the [Census Bureau has information for you.](#)

Why Is the Census Important for People with Disabilities?

- Census results help determine how billions of dollars in federal funding are distributed to states and communities. This includes funding for education, housing, health care, transportation, mental health, and other services.
- In FY2016, [Wisconsin received \\$12,608,476,954 through 55 federal spending programs](#) guided by data from the 2010 Census.
- The results determine how many Congressional Representatives each state should have.

Your Privacy Matters

- When you respond to the census, your answers are kept private. They are used only to produce statistics.
- By law, the Census Bureau cannot release any identifiable information about you, your home, or your business, even to law enforcement agencies.

Census Resources For More Information

- [Disability Vote Coalition Census Guide for People with Disabilities](#)
- [Census 2020 Resource from The Arc](#)
- [US Census 2020](#)
- [State of Wisconsin WiCount Census 2020](#)

The [Wisconsin Disability Vote Coalition](#) is a project of [Disability Rights Wisconsin](#) and the [Wisconsin Board for People with Developmental Disabilities](#). □



Title: *Marathon County v. D.K.*

Court: Supreme Court of Wisconsin

Date: February 4, 2020

Citation: [2020 WI 8](#)

Case Summary:

Appealing an unpublished opinion from the District III Court of Appeals, D.K. presented two issues for review: whether his appeal of his original commitment was moot, and whether there was clear and convincing evidence that D.K. met the standard for dangerousness under Wis. Stat. § 51.20(1)(a)2.b. The Supreme Court found that the appeal was not moot and affirmed the opinion of the Court of Appeals that D.K. met the standard for dangerousness.

Case Details:

In April 2017, Winnebago County arrested D.K. and petitioned for his involuntary commitment and treatment, based on specific threats D.K. had made to strangle and kill members of the Oshkosh Police Department, including the police chief. D.K. had also claimed that the police department had bugged his phone and that others were stalking him and lying about him. Following a probable cause hearing, the Winnebago County court appointed two doctors to examine D.K. and submit reports.

At D.K.'s final hearing, only one of these doctors testified. The county did not call any other witnesses, including members of the police department who had heard or received threats. The court also did not move either of the examining doctors' reports into evidence. The psychiatrist's testimony concluded that D.K. had a "delusional disorder" that impaired his judgment and ability to perform ordinary tasks. Additionally, the psychiatrist testified that D.K. was "potentially dangerous," or "could become potentially dangerous," due to his delusional disorder, referencing his specific threats to harm the people stalking him and strangle members of the police department. Based on the psychiatrist's testimony alone, the court found that D.K. was a proper subject for treatment, ordered a six-month commitment, and issued an order prohibiting him from possessing a firearm.

Once the orders were entered, and after D.K. filed his appeal, the venue of the commitment changed to Marathon County, which was then listed as the petitioner-respondent in this appeal. The commitment ended after six months and Marathon County did not pursue an extension. The county argued to the Supreme Court that the appeal should therefore be considered moot, since D.K. was no longer subject to the commitment order. However, D.K. argued that he was still subject to collateral consequences of the order, including the ongoing prohibition against possession of a firearm. The Supreme Court agreed, since the expiration of the order did not terminate that prohibition, and found that the appeal was not moot. The decision on this point was unanimous.

In reviewing the question of whether D.K. met the standard of dangerousness to others, the justices were split. D.K. had argued that the evidence in the record – the testimony of one doctor at the final hearing, filled with words such as "potentially" – was insufficient to support the finding of dangerousness. Five of the justices disagreed, affirming the finding of dangerousness. However, these five justices could not agree on how to interpret the particular section of Ch. 51 under which D.K.'s case had been decided. Under Wis. Stat. § 51.20(1)(a)2.b., three of the five-justice majority interpreted the standard to require a finding that a person shows a substantial probability of harm to others if at least one person was placed in reasonable fear of serious physical harm as a result of a recent threat. The other two justices in the majority interpreted the standard to mean that reasonable fear can be inferred from a recent threat alone. The final two justices dissented from the majority and agreed with D.K. that the evidence was too ambiguous to support the finding.

As a result, this decision leaves in place the record of D.K.'s commitment, but leaves the interpretation of 51.20(1)(a)2.b. unsettled, for now.

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(Case Law, continued from page 6)

Title: *Waukesha County v. M.J.S.*

Court: Court of Appeals, District II

Date: May 30, 2018 (Opinion Withdrawn); August 1, 2018 (Reconsidered Opinion)

Citation: [2017AP1843](#)

Case Summary:

M.J.S. has been subject to an order for involuntary commitment and treatment with medication since 1996. Waukesha County sought to extend that commitment in 2017. The circuit court granted the extension, but M.J.S. appealed. Initially, Judge Hagedorn reversed the extension because the County failed to provide the statutorily required explanation regarding medication. However, the County filed a motion for reconsideration, which was granted. The original opinion was withdrawn. In the revised opinion, Judge Hagedorn affirmed the commitment extension, but reversed the medication extension.

Case Details:

M.J.S. was involuntarily committed for schizophrenia. In 1994, he was released from his commitment, but subsequently stopped taking his medication. He had a roadside altercation with police and was recommitted in 1996. His commitment has been extended every year since.

On January 13, 2017, M.J.S. filed a petition seeking an extension of M.J.S.'s commitment. A letter, not signed by a judge, was sent to him on January 16, 2017. The letter stated that he must be examined by two doctors prior to the hearing. The letter had contradictory instructions regarding who would set up the appointment. Thus, M.J.S. did not contact the doctors. Because he did not appear, one of the doctors issued his opinion based on treatment records. At the hearing, M.J.S.'s case manager and one of the doctors testified and recommended an extension of the commitment. In the doctor's testimony, he discussed what he would have told M.J.S. had there been an actual examination, including the advantages and disadvantages of the medication.

The circuit court determined that M.J.S.'s extension should be extended. Although the County did not actually

provide the required explanation, the circuit court concluded that the County did not have to give the explanation because M.J.S. chose "through his conduct" "not to be present to hear that information." The court also concluded that M.J.S. was substantially incapable of applying the information to make an informed choice.

Initially, the Court of Appeals reversed the entire commitment because Wis. Stat. § 51.61(1)(g)(4) requires the County to give the required explanation before arguing incapacity to receive the information. In *Outagamie County v. Melanie L.*, the Supreme Court held that an individual "is entitled to receive from one or more medical professionals a reasonable explanation of a proposed medication" and that the explanation "should be timely, and, ideally, it should be periodically repeated and reinforced." The court also rejected the argument that the M.J.S. waived his right to an explanation through his conduct. Accordingly, the Court of Appeals reversed the extension of his commitment.

However, Waukesha County filed a motion to reconsider, which was granted. The original opinion was withdrawn. In a modified opinion, the Court of Appeals affirmed the extension. Given M.J.S.'s history, including fighting a police officer and refusing treatment without a commitment order, the Court found that M.J.S. would be a proper subject for treatment. However, the Court maintained that the County erred by not giving M.J.S. an explanation of the advantages, disadvantages, and alternatives to medication as required by Wis. Stat. § 51.61(1)(g). Likewise, Judge Hagedorn found that M.J.S. had not waived his right to an explanation. Ultimately, the circuit court's order was affirmed in part and reversed in part. □

Interested in Receiving *The Guardian*?

Do you want more information about guardianship, POAs and related issues?

Signing up is easy with a link on our website:

[Guardian Newsletter Sign-Up](#).

You can also subscribe by emailing your name, email address, and organization to guardian@gwaar.org.





My power of attorney document was executed in another state. Is it valid in Wisconsin?

Generally, yes. Under Wis. Stat. § 155.70(10), a power of attorney document that is valid in the state in which it was executed “is valid and enforceable in this state to the extent that the document authorizes the health care agent to make decisions for the principal that a health care agent may make for a principal under Wisconsin law.”

In other words, if the document was validly executed under the law of another state, it is valid in Wisconsin. For example, another state might only require one witness, while Wisconsin law requires two. A document from that other state with only one witness would be valid in Wisconsin, even though Wisconsin law requires two witnesses.

However, the types of decisions that the health care agent can make in Wisconsin are covered by Wisconsin law, regardless of what the law of the other state authorizes. For example, Wisconsin law requires that specific authorization be included in the POA-HC document to allow the health care agent to admit the principal to a facility for long-term care. An out-of-state POA-HC that does not specifically address admission to a facility would not allow the agent to authorize that admission. So while a statement such as, “my agent may admit me to a rest home” *may* be sufficient to authorize the admission to a facility for long-term care, a statement such as “my agent may make any health care decision for me” is likely too vague. Please note however that this does not constitute legal advice; nursing homes, CBRFs, and other facilities should seek the advice of their own legal counsel if there are questions regarding the authority granted under an out-of-state POA-HC.

I am the guardian for a family member, and I would like to make sure that there is a plan in place to take care of them if something happens to me. What can I do? What is the difference between a standby guardian and a successor guardian?

Wisconsin’s guardianship statutes provide for either a standby guardian (someone who has been pre-

approved by the court to take over either temporarily or permanently if the initial guardian is unable or unwilling to act) or a successor guardian (someone who can take over if the initial guardian is unable or unwilling to act, and no standby has been appointed or is available).

Under Wis. Stat. § 54.52, a standby guardian’s appointment is immediately effective upon the death, unwillingness or inability to act, resignation, or court removal of the initial guardian. A standby guardian can also take over temporarily, if the initial guardian is unable to perform their duties due to an extended vacation or illness. The standby guardian will have the same powers and duties as the initial guardian.

The initial guardianship petition provides for the opportunity to establish a standby guardian, but you can also petition the court to add a standby guardian later, using standard court form GN-3435. Adding a standby guardian later requires a hearing to ensure that the guardian is fit to serve and appropriate for the ward. The court will appoint a guardian ad litem for the ward and schedule the hearing. The ward has all of the same rights as at any other hearing relating to their guardianship, including the right to attend the hearing and the right to their own attorney.

Whether the proposed standby guardian is added in the initial petition or later, they must also complete the Statement of Acts and Consent to Serve form (GN-3140).

Successor guardianship is governed by Wis. Stat. § 54.54. If the initially appointed guardian dies, is removed by court order, or resigns and no standby guardian is in place, any interested person may file a petition to be a successor guardian. The court may also appoint a suitable person on its own motion, with or without a hearing. If the court appoints the successor without a hearing, the ward and any other interested person may petition for reconsideration.

