



*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](mailto:guardian@gwaar.org)

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

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

**In This Issue:**

**Points of Interest.....2-3**

- FCC Launches Affordable Connectivity Program
- Family Caregiving Video Series
- Additional Resources for Family Caregivers—National Center on Law and Elder Rights
- Free Virtual Training on Supported Decision-Making
- New Resources on Elder Justice— National Association of Social Workers
- Wisconsin Senior Medicare Patrol New Website Launched
- Marketplace Open Enrollment Period Ends January 15, 2022
- GSC Outreach Update

**News.....4-9**

- Governor Signs Bipartisan Guardian Training Bill Into Law
- What is the Medicare Advantage Open Enrollment Period?
- How to Know When It's Time to Retire from Driving
- Allegations of Incompetency and The Right to Vote

**Case Law.....10-11**

- Waukesha County v. E.J.W.

**Helpline Highlights.....12**

- What is temporary guardianship? How long does it last?
- What are the requirements for when a proxy can sign a HCPOA for the principal? Who can be the proxy?
- What is the recording space area and return address blank for on the state POA-F form?

**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](mailto:guardian@gwaar.org).



## ***FCC Launches Affordable Connectivity Program***

On December 31<sup>st</sup>, the FCC launched its new Affordable Connectivity Program, which replaces the existing Emergency Broadband Benefit Program. Eligible households can receive up to \$30 per month discount toward internet service (\$75 on Tribal lands). Eligible households can also receive a one-time discount of up to \$100 to purchase a laptop, desktop computer, or tablet from participating providers. More information, including transition information for existing Emergency Broadband Benefit Program members, is available from the [FCC's website](#).

## ***Family Caregiving Video Series***

November was National Family Caregiving Month, and in recognition of the challenges that family caregivers face, the Wisconsin Aging Advocacy Network, Survival Coalition, and Wisconsin Family Caregiver Alliance launched a video series available on YouTube:

[See Us: Wisconsin's Invisible Family Caregivers](#) (intro video)

[Two Jobs, No Breaks: Employed and Caregiving](#)

[No Time to Be Sick, No Time to Stay Well](#)

[Hidden Costs, Real Expenses: Costs of Caregiving](#)

[All On Our Own: Part Time Help for Full Time Care](#)

[Caregiver's Third Job: Navigating the Maze of Systems](#)

## ***Additional Resources for Family Caregivers – National Center on Law & Elder Rights***

In honor of Family Caregiver Month, the National Center on Law & Elder Rights also provided resources for advocates and caregivers to promote caregiver health, connect caregivers to benefits and resources, and provide tools to deliver safe and effective caregiving.

- [NCLER Training: Grandparents and Other Non-Parent Families](#): Information on kinship care, including grandparents raising grandchildren, and ways to support and serve kinship families.

- [NCLER Training: Trauma-Informed Lawyering: Effects of Secondary Trauma on Attorneys & Advocates](#): Information on vicarious and secondary trauma. Family caregivers may be grappling with secondary trauma and burnout.
- [Caregiver Action Network: Family Caregiver Toolbox](#): Videos, resources and checklists for family caregivers.
- [Diverse Elders Coalition Library: Caregivers](#): Collection of reports, fact sheets, and other research around caregiving issues and diverse older adults.
- [The National Consumer Voice & National Center on Elder Abuse: Taking Care of You: Tips for the Family Caregiver](#): A tip sheet for caregiver self-care.
- [WISER: Caregiving Resources](#): Resources for caregivers to help them plan for their future—the majority of caregivers are females providing unpaid care for family members.
- [Consumer Financial Protection Bureau: Managing Someone Else's Money](#): Guides and resources for individuals managing money or property for a loved one.

## ***Free Virtual Training on Supportive Decision-Making***

The Board for People with Developmental Disabilities (WI-BPDD) is offering a statewide free training on Supportive Decision-Making on **February 17** from 1 to 4 pm. Please [register](#) to attend. The training will cover:

- What Supported Decision-Making is
- Legal requirements of Supported Decision-Making
- How to use Supported Decision-Making strategies, both as an alternative to guardianship and within existing guardianships
- What alternatives to guardianship are available in Wisconsin
- Stories of how Wisconsin residents have used Supported Decision-Making





## ***New Resources on Elder Justice – National Association of Social Workers***

The National Association of Social Workers recently published three new resources. A fourth publication, [Social Work Roles in Elder Abuse Prevention and Response](#), is forthcoming. Although the series has been written for social workers, the information may be relevant to all people concerned about elder justice.

- **[Elder Abuse & COVID-19](#)**

The novel coronavirus (COVID-19) pandemic has had a profound and disproportionate impact on older adults, including apparent increases in elder abuse. This open-access publication, one of a four-part series on elder justice, explores these effects and highlights resources developed by social workers and other service providers to support practice with older adults.

- **[Elder Justice & Racial Justice](#)**

Systemic racism permeates all aspects of U.S. society and influences later-life experiences, including elder abuse. This open-access publication, one of a four-part NASW series on elder justice, conveys the necessity of an intersectional approach to elder abuse prevention and response and describes multiple initiatives and resources to foster such an approach.

- **[Federal Funding for and Administration of Elder Justice Programs](#)**

Many elder justice services offered by social workers are supported by federal funding. Understanding how elder abuse programs are funded and administered can help social workers both understand the breadth of existing social work roles within the elder justice movement and identify potential resources to support innovation. This open-access publication, one of a four-part NASW series on elder justice, focuses on funding for and administration of elder justice programs within four spheres: aging, disability, intimate partner violence, and crime victim assistance.

## ***Wisconsin Senior Medicare Patrol New Website Launched***

The Senior Medicare Patrol in Wisconsin is thrilled to announce they launched a new website at [www.smpwi.org](http://www.smpwi.org). This site was built to better serve Medicare beneficiaries and the older adult population in the state.

The new website offers some great new features including:

- Up-to-date information on scams and other relevant news
- An online event calendar
- The ability to request SMP participation directly from the website
- A list of valuable resources available to you
- All issues of the SMP newsletter, *The SCOOP*

The SMP can be reached at [smp-wi@gwaar.org](mailto:smp-wi@gwaar.org) or by calling the helpline at 888-818-2611.

## ***Marketplace Open Enrollment Period Ends January 15, 2022***

There is still time to choose your health insurance plan through the Marketplace Open Enrollment Period at [healthcare.gov](http://healthcare.gov) or by calling 1-800-318-2596. You have until January 15, 2022 to choose your plan.

## ***GSC Outreach Update***

The majority of our outreach events continue to be remote for now. However, we may be available to schedule in-person trainings and programs for later in the spring/summer, depending on the status of the pandemic.

If you or your organization would like us to present or record a video for you, whether it's on advance directives, supported decision-making, or guardianship, please contact us at [guardian@gwaar.org](mailto:guardian@gwaar.org).





## **Governor Signs Bipartisan Guardian Training Bill Into Law**

On December 3<sup>rd</sup>, Governor Evers [signed a bill](#) to establish initial training requirements for guardians before they are appointed. The legislation training requirements include alternatives to guardianship; legal roles, responsibilities, and requirements of guardians; rights of wards; and where to go for resources and support. These trainings will be developed in plain language and will be available online for free to prospective guardians and the general public. Courts will begin requiring proposed guardians to certify that they have completed the training in January 2023.

### ***What is the Medicare Advantage Open Enrollment Period?***

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

Beginning January 1 through March 31, 2022, individuals who are *already enrolled* in a Medicare Advantage Plan can make certain changes. Individuals can only make one change during this period, and the change is effective the first of the month following the month the plan gets the request.

If you are enrolled in a Medicare Advantage Plan as of January 1, 2022 (with or without drug coverage) you can do the following:

- Switch to another Medicare Advantage Plan (with or without drug coverage); or
- Disenroll from your Medicare Advantage Plan and return to Original Medicare. If you choose to do so, you'll be able to join a standalone Medicare drug plan.

During this time, you can't do the following:

- Switch from Original Medicare to a Medicare Advantage Plan;
- Join a Medicare drug plan if you're in Original Medicare; or
- Switch from one Medicare drug plan to another if you're in Original Medicare.

Remember: anyone *without* an Advantage Plan as of January 1, 2022 cannot choose to enroll in one at this time unless they are in their Medicare Initial Enrollment Period (IEP) or qualify for a Special Enrollment Period (SEP). Additionally, anyone with a Private Fee For Service (PFFS) plan must keep their same drug plan.

### ***How to Know When It's Time to Retire from Driving***

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

Mobility and accessibility are important to our independence and overall mental and physical well-being. In most cases, driving has provided us the ability to work, provide for our families, socialize, and live independently. Removing the ability to drive can feel debilitating, but driving isn't our only tool to access the world around us.

There are many reasons why it may become unsafe for a person to continue driving. Some signs it might be time to hang up the keys include:

- Making unsafe decisions like failing to observe traffic signs, driving at the wrong speed, or not using turn signals
- Making errors such as not obeying laws at intersections, hitting curbs, or poor lane control

*(Continued on page 5)*





*(Driving Retirement, continued from page 4)*

- Not reacting quickly to various circumstances
- Mixing up the gas and brake pedals
- Forgetting where you are going or how to find familiar places
- Taking longer to return home from a routine drive than normal
- Anger or confusion while driving
- Car crashes, new dents or dings on the vehicle, or receiving multiple traffic tickets or warnings

If any of these unsafe driving situations are familiar to you, you can set up a comprehensive driving evaluation with an occupational therapist specializing in driving rehabilitation. The occupational therapist will give you a more objective evaluation of your driving capacity and help determine strategies to help you retain independence and mobility when your amount of driving is reduced. An evaluation from an objective third party could especially come in handy if a trusted friend or family member has expressed concern about your driving ability but you do not agree there is a problem. A [national database of driving specialists](#) can be found on the American Occupational Therapy Association's website.

Whether or not it is still safe for you behind the wheel will depend entirely on your individual circumstances. Because of this, there's not one specific age that people should retire from driving. However, [according to AAA](#), healthier and more active older adults are outliving their ability to drive safely by an average of 7-10 years.

The best thing to do is make a transportation plan before driving even becomes an issue for you. You may find that creating a plan is more empowering for you because you'll have a say in your transportation before you're unable to drive.

The Alzheimer's Association has a [driving contract](#) where you can give your permission to a trusted loved one to help you when it's your time to stop driving. This can be particularly useful if you are in the early stages of Alzheimer's or are afraid that you will have a hard time committing to driving retirement when the time comes.

Keep in mind that it is totally natural to fear such a big change, and you may even mourn the loss of your ability to drive. However, if you plan ahead with your loved ones, the transition will be a lot easier for everyone involved.

Part of creating this plan is figuring out who you can count on when you need help. You are definitely not in this alone, and it may help ease your fears to know exactly who is willing and able to help you if you eventually need it.

You can also take steps now to reduce your reliance on driving, such as getting your groceries and prescriptions delivered to you. There are many transportation resources listed in this article, but you can even try asking a friend or family member if they can recommend any services and/or show you how to use them.

*(Continued on page 6)*





*(Driving Retirement, continued from page 5)*

There are plenty of transportation options available to help you get to where you need to be, such as:

- Family members and friends
- Taxi services
- Volunteer driver services
- Public transportation (bus, train)
- Biking or walking if possible
- [WisDOT Transit Assistance Programs](#)
- [Community Resource Finder](#)
- [Eldercare Locator](#)
- [Non-Emergency Medical Transportation \(NEMT\)](#)

If you are new to using some of these services like public transportation or reserving a taxi, it can be helpful to learn how to use them now and know who to contact if you need help, so that you're already used to it. Since everyone's situation is unique, the Alzheimer's Association can provide even more information and support if you call 800-272-3900.

While older adults are more likely to make safe decisions behind the wheel like wearing seatbelts, they are less likely to survive severe crashes than any other age group. There are several reasons for this, including age-related fragility and their vehicles being [less likely to have advanced safety features](#). If you are planning to continue driving for quite some time, it will be important to learn about the different safety features available in newer cars and the importance of driving a vehicle with those capabilities.

Here are some more transportation resources for adults in Wisconsin who cannot drive:

- GWAAR website <https://gwaar.org/transportation3>
- Your Local Aging and Disability Resource Center (ADRC) <https://www.dhs.wisconsin.gov/adrc/consumer/index.htm>
- Wisconsin Association of Mobility Managers (WAMM) <https://wi-mm.org>
- United Way's 211 – Call 211 on your phone
- AAA's Senior Driver Safety & Mobility Program <https://exchange.aaa.com/safety/senior-driver-safety-mobility/>
- AARP "We Need to Talk" Online Workshop <https://learn.aarp.org/we-need-to-talk-online-workshop>
- Alzheimer's Association [Dementia and Driving](#)
- National Transportation Resources <https://www.alz.org/media/Documents/national-senior-transportation-resources.pdf>
- WisDOT Transit Assistance Programs <https://wisconsindot.gov/Pages/doing-bus/local-gov/astnce-pgms/transit/default.aspx>





## ***Allegations of Incompetency and The Right to Vote***

**By Ellen J. Henningsen, J.D.**

Wisconsin's elections statute (Ch. 6) and guardianship statute (Ch. 54) govern the right of citizens to vote when they are alleged to be incompetent. Both statutes make it clear that two requirements must be met in order to prevent an otherwise qualified person from voting. First, a court order is required. Second, the standard the court applies when making the determination that an individual lacks the capacity to vote is whether or not the individual is "incapable of understanding the objective of the elective process."

The elections statute states: "No person may be denied the right to register to vote or the right to vote by reason that the person is alleged to be incapable of understanding the objective of the elective process unless the person has been adjudicated incompetent in this state." Sec. 6.03 (3), Stats.

Similarly, the guardianship statute states: "The court may, as part of a proceeding ... in which an individual is found incompetent and a guardian is appointed, declare that the individual has incapacity to exercise ... [t]he right to register to vote or to vote in an election, if the court finds that the individual is incapable of understanding the objective of the elective process." Sec. 54.25 (2) (c) 1.g., Stats.

The elections statute does seem to permit the loss of the right to vote with only a general finding of incompetency and without a specific finding about the capacity to vote. However, this author believes this is a reference to guardianships imposed under the old guardianship law, Ch. 880, when it was common for plenary (full) guardianships to be imposed without separate findings on specific rights. Moreover, Ch. 54 resolves that lack of clarity.

Wisconsin's guardianship statute, Ch. 54. does not permit rights to be removed by a general finding of incompetency and a plenary order. Removal of any right now requires a specific finding of incapacity to exercise that right. Absent a specific finding of incapacity, the right is retained. Any finding of incapacity to exercise a specific right, including voting, must be based on clear and convincing evidence. Ultimately, the court must, after applying the requisite burden of proof, make a specific finding regarding the capacity to vote. Sec. 54.25 (2) (c) 2., Stats.

The right to vote is found within Sec. 54.25 which covers guardians of the person. There is no reference to the right to vote in any of the sections of Ch. 54 covering guardians of the estate. Thus, the right to vote cannot be removed in a case where only a guardian of the estate is appointed.

The issue of voting rights within a guardianship of the person case is addressed in Sec. 54.25 (2) (c) 1. g. In relevant part, and as noted above, that section states: "The court may, as part of a proceeding ... in which an individual is found incompetent and a guardian [of the person] is appointed, declare that the individual has incapacity to exercise ... [t]he right to register to vote or to vote in an election, if the court finds that the individual is incapable of understanding the objective of the elective process."

The same section also addresses what is elsewhere called a "petition for a declaration of incompetence to vote," but which this author will call a "stand-alone case". Subsec. 4. also addresses stand-alone cases.

*(Continued on page 8)*





*(Right to Vote, continued from page 7)*

In stand-alone cases, the same procedures and standard apply as in a guardianship case, but the outcome is limited to a decision on the sole issue of capacity to vote, and no guardian of the person is appointed. These cases may be filed by any citizen living in the same municipality who believes a voter is incompetent. This author is not aware of any such cases filed in Wisconsin.

Capacity to understand the objective of the elective process is a low standard of cognition. There is no definition of the phrase in the elections or guardianship statutes, and there are no published court cases. The Merriam-Webster dictionary defines “objective” as “something toward which effort is directed: an aim, goal, or end of action.” Thus, the capacity to vote requires only that one understand the aim, goal or outcome of voting - that is, who the voter wants to win.

No cognitive standard is imposed on people not alleged to be incapable of voting. They can vote based on a rational analysis of issues and candidates – or on a whim. They are not required to research platforms, or to fact-check speeches, ads, or social media. They are not required to show why they are voting for a candidate. They are not required to show that they understand how the voting process works. The elections and guardianship statutes do not require what is not required of other voters.

In a guardianship case, the judge or court commissioner determines if the individual should lose the right to vote, among other issues. The right to vote will be lost if the court determines that the individual is “incapable of understanding the objective of the elective process.” Even if a guardian of the person is appointed, the individual will retain the right to vote if the judge or commissioner determines that the individual is capable of understanding the objective of the elective process. The court must make an affirmative decision one way or the other. The Court’s decision in a guardianship of the person case that an individual should lose their right to vote is found in the Determination and Order on Petition for Guardianship Due to Incompetency (GN-3170). Paragraph 3. A. lists several rights which can only be removed “in full”- meaning the right is extinguished altogether if the ward lacks capacity to exercise it personally. The guardian is not permitted to exercise the right on the ward’s behalf. The right to vote is one of these rights. Checkboxes are next to each of these rights. If box 3. A. (3) is checked, the right to vote is lost; if that box is not checked, the right is retained. Thus, the court’s decision on voting capacity is communicated by the presence or absence of a mark in the appropriate checkbox.

Because the right to vote is not a right that can ever be transferred to the guardian, there is nothing in the Letters of Guardianship related to it. One must look at the Determination and Order to find out if the person has lost or retained the right to vote. (An individual who has lost the right to vote may later request that their right be restored, but that’s a topic for another article).

In either a guardianship case or a stand-alone case, if the court determines that the elector is incapable of understanding the objective of the elective process, the court completes a Notice of Voter Eligibility (GN-3180). The completed form is either transmitted to the municipal clerk which forwards the information to the Wisconsin Elections Commission (WEC), or to the WEC which then forwards the information to the municipal clerk.

*(Continued on page 9)*





*(Right to Vote, continued from page 8)*

A reading of both Chapter 54 and Chapter 6 leads to several conclusions. First, there are only two ways that an individual may lose their right to vote. Both require a decision by a court in either a guardianship of the person case or a stand-alone case. A family member, friend, service provider, or staff of a care facility cannot prevent an individual who wishes to vote and who can indicate, with or without assistance, which candidate they want to vote for - from voting. Likewise, the activation of a Power of Attorney for Health Care does not prevent an individual from voting. Obviously, neither of these situations is an adjudication by a court.

Second, the standard for deciding incapacity to vote is whether the individual is incapable of understanding the objective of the elective process.

Third, any ambiguity in Ch. 6 is resolved in Ch. 54 which requires the presentation of evidence addressing the individual's capacity or incapacity to vote, culminating in a specific finding that an otherwise qualified elector is incapable of understanding the objective of the elective process, and thus loses their right to vote. A general finding of incompetency or incapacity does not suffice.

*About the Author:* Henningsen is Director of the Voting Rights and Guardianship Project at Disability Rights Wisconsin (DRW). A 1975 graduate of the University of Wisconsin Law School, she formerly staffed the Wisconsin Guardianship Support Center at the Coalition of Wisconsin Aging Groups (CWAG), serving as a registered lobbyist for the passage of 2005 Act 387 (Chapter 54). She then worked at DRW, providing technical assistance for Disability Benefit Specialists and direct representation for clients before the Social Security Administration and federal court.

*About Disability Rights Wisconsin:* As the federally mandated Protection and Advocacy system for Wisconsin, DRW is charged with protecting the voting rights of people with disabilities and mandated to help "ensure the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places." Help America Vote Act, 42 U.S.C. § 15461 (2002). As part of this charge, the DRW Voting Rights and Guardianship Project seeks to preserve and restore the voting rights of individuals under guardianship by preparing and distributing training materials and publications, and by creating a pro bono network to assist individuals in restoration cases. A brochure on voting rights and competency is available on the website of the Wisconsin Disability Vote Coalition at: <https://disabilityvote.org/2018/competency-guardianship-and-voting-in-wisconsin/>





**Title:** *Waukesha County v. E.J.W.*

**Court:** Supreme Court of Wisconsin

**Date:** November 23, 2021

**Citation:** [2021 WI 85](#)

## Case Summary:

This case addresses both the mootness doctrine and right to jury trial for someone going through the mental commitment process. After his initial hearing was adjourned and new counsel appointed, E.J.W. asserted the right to a jury trial for his recommitment. The trial court denied the request as untimely and the court of appeals upheld the decision. The Supreme Court of Wisconsin first addressed the question of mootness, since the extension in order had long since expired, and found that several mootness exceptions applied. Turning to the merits, the Supreme Court reversed, finding that the right to jury trial may be asserted after a postponed hearing, so long as it is made at least 48 hours before final hearing.

## Case Details:

E.J.W. has been subject to commitment orders and extensions since 2014. In March 2019, Waukesha County petitioned to extend his commitment once again. The hearing was scheduled for March 5. At that hearing, E.J.W. stated that he had been unable to connect with his appointed attorney. At that same hearing, the County asked the court to find that E.J.W. had waived his right to jury trial because he had not filed the demand prior to the hearing. E.J.W. then orally demanded a jury trial. The court declined to rule. After new counsel was appointed, E.J.W. renewed his demand for jury trial via his counsel, four days before the rescheduled hearing on March 12.

The day before the adjourned hearing, the court denied the request as untimely, since it was not made at least 48 hours before the first scheduled hearing per Wis. Stat. § 51.20(11)(a). The court reiterated this at the hearing, reasoning that the “final hearing” referred to in the statute was the one that had been scheduled for March 5, and that by allowing someone to renew a jury trial request after adjournment, it would potentially allow someone to find an excuse to reschedule just so they

could have more time to make the demand. E.J.W. then stipulated to an extension for 8 months.

On appeal, the court of appeals affirmed, relying on *Marathon County v. R.J.O.*, 2020 WI App 20, 392 Wis. 3d 157, N.W.2d 898, which had recently addressed this issue. In that case, the court of appeals had determined that Wis. Stat. § 51.20(11)(a) “requires a subject individual to request a jury trial at least forty-eight hours before ‘the time set for final hearing,’ not at least forty-eight hours before the final hearing actually occurs.” *R.J.O.* at ¶41.

On review, the Supreme Court began with the mootness doctrine. Because initial commitment orders have a maximum duration of 6 months and extensions have a maximum duration of 1 year, these cases can be difficult to appeal before the order(s) in question expire – even an expedited appeal can take more than six months, and a request for Supreme Court review will almost always fall outside of that timeframe. The timespan between the hearings in E.J.W.’s case and issuance of this opinion was 2.5 years. The standard for mootness is that “resolution will have no practical effect on the underlying controversy,” and once the orders expire, this is often the case for individuals under commitment.

However, the court may decide an otherwise-moot case if it meets an exception to this doctrine: 1) the issue is of great public importance, 2) it involves the constitutionality of a statute, 3) occurs frequently enough that a definitive decision is necessary to guide lower courts, 4) is likely to arise again and a decision would alleviate uncertainty, or 5) will likely be repeated, but evades review because the process cannot be completed in time to have a practical effect on the parties. While E.J.W. argued that collateral consequences of the extension (e.g., a firearms restriction, loss of other rights, impacts to costs of care, etc.) mean that this case is not moot, the Court opted not to determine whether the case itself was moot and instead proceeded under the “great public importance” and “likely to be repeated but evade review” exceptions to the doctrine. This may be helpful for others in the future who may have similar situations.

*(Continued on page 11)*





(*E.J.W.*, continued from page 10)

The merits of this case center on the meaning of this section of Wis. Stat. § 51.20(11)(a): “A jury trial is deemed waived unless demanded at least 48 hours in advance of the time set for final hearing.” The trial court and appellate court both found that hearing set for March 5 was “the time set for final hearing,” and that the court should look to when the hearing was scheduled, not when it was held. *E.J.W.* argued that the adjournment resets the 48-hour deadline. While noting that both interpretations seemed reasonable, the Court found in favor of *E.J.W.*, opining that “there is no restriction in the phrase ‘time set for final hearing’ that limits its meaning to the *first* time set for the final hearing.”

The Court noted that this interpretation fits within the remainder of Wis. Stat. § 51.20(11)(a) and ch. 51 as a whole. The 48 hour demand provision exists to provide notice to the County and court that a jury is needed so it can be seated and the parties and court can prepare appropriately. By the time the final hearing was held in this case, both County and court had had approximately twice that amount of notice. In addition, allowing the jury demand to be renewed recognizes the significant liberty interests at stake in a mental commitment proceeding. Particularly in a situation where the individual had not had the opportunity to consult with counsel, to deem a right waived would be to deny the individual full access to procedural due process as required by Ch. 51. In response to the lower courts’ (and dissent’s) concern that litigants could use this opportunity to manipulate the court, the Supreme Court also noted that whether to adjourn the hearing in the first place is at the discretion of the judge.

Finally, the Court also addressed an issue that has arisen several times over the past year – the appropriate remedy if an appellate court overturns the decision of the trial court past the date of the expiration of the order. The Court simply reversed rather than remanding for jury trial in this instance, because the order had long since expired, ending the competency of the court to move forward in that proceeding, and had been replaced by subsequent extensions. The Court further noted that the validity of the underlying order in this case did not affect subsequent extensions and that they remain valid. □

### **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**.



## **What is temporary guardianship? How long does it last?**

A common concern during the pandemic has been what options may exist for an individual who does not have a valid POA document, but who needs decisions made quickly, particularly if there is a likelihood that the person will regain competency after a period of recovery (e.g., someone who has had a stroke, someone who is on a ventilator but expected to recover). A temporary guardian can also be appointed while a permanent guardianship is pending, if the individual needs immediate assistance with decisions.

A court may appoint a temporary guardian of the person, estate, or both for an individual if the individual's particular situation, including the needs of their dependents, requires the immediate appointment of a substitute decision-maker. Wis. Stat. § 54.50. A temporary guardianship can last up to 60 days and may be extended for another 60 days for good cause. The order appointing the temporary guardian will specify the temporary guardian's authority.

Unlike permanent guardianship, the standard for temporary guardianship is "a reasonable likelihood that the proposed ward is incompetent," as reported or testified to by a physician or psychologist. Wis. Stat. § 54.50(3)(b). A hearing is typically scheduled at least 48 hours after the petition is filed, although it can take place earlier if good cause is shown. If the court appoints a temporary guardian, the ward or their counsel, the guardian *ad litem*, or an interested party may request a rehearing to take place within 10 days of the request.

A temporary guardianship ends either upon appointment of a permanent guardian, the expiration of the time period specified in the initial order, or sooner if the court determines that the situation that was the cause of the temporary guardianship has terminated.

## **What are the requirements for when a proxy can sign a HCPOA for the principal? Who can be the proxy?**

A principal may sign his or her own HCPOA in front of two disinterested witnesses. If the principal has a physical disability that impacts his or her ability to sign, the principal may still execute a valid HCPOA. Someone else may sign for the principal so long as the person signing:

- 1) is an adult,
- 2) is signing at the principal's express direction, and
- 3) signs in the principal's presence. Wis. Stat. § 155.10(1)(b).

There are no other specific guidelines about this individual. Arguably, it may be better to not have an interested person, such as a family member, agent, or health care employee sign. It may also be preferable to document any specific information about the individual that may apply. However, the law is silent in this regard and does not specify any other requirements than the three listed within the statute.

## **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.