

AN ACT concerning civil law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Guardianship and Advocacy Act is amended by changing Section 31 as follows:

(20 ILCS 3955/31) (from Ch. 91 1/2, par. 731)

Sec. 31. Appointment; availability of State Guardian; available private guardian. The State Guardian shall not be appointed if another suitable person is available and willing to accept the guardianship appointment. In all cases where a court appoints the State Guardian, the court shall indicate in the order appointing the guardian as a finding of fact that no other suitable and willing person could be found to accept the guardianship appointment. On and after the effective date of this amendatory Act of the 97th General Assembly, the court shall also indicate in the order, as a finding of fact, the reasons that the State Guardian appointment, rather than the appointment of another interested party, is required. This requirement shall be waived where the Office of State Guardian petitions for its own appointment as guardian.

(Source: P.A. 89-396, eff. 8-20-95.)

Section 10. The Clerks of Courts Act is amended by adding

Section 27.3f as follows:

(705 ILCS 105/27.3f new)

Sec. 27.3f. Guardianship and advocacy operations fee.

(a) As used in this Section, "guardianship and advocacy" means the guardianship and advocacy services provided by the Guardianship and Advocacy Commission and defined in the Guardianship and Advocacy Act. Viable public guardianship and advocacy programs, including the public guardianship programs created and supervised in probate proceedings in the Illinois courts, are essential to the administration of justice and ensure that incapacitated persons and their estates are protected. To defray the expense of maintaining and operating the divisions and programs of the Guardianship and Advocacy Commission and to support viable guardianship and advocacy programs throughout Illinois, each circuit court clerk shall charge and collect a fee on all matters filed in probate cases in accordance with this Section, but no fees shall be assessed against the State Guardian, any State agency under the jurisdiction of the Governor, any public guardian, or any State's Attorney.

(b) No fee specified in this Section shall be imposed in any minor guardianship established under Article XI of the Probate Act of 1975, or against an indigent person. An indigent person shall include any person who meets one or more of the following criteria:

(1) He or she is receiving assistance under one or more of the following public benefits programs: Supplemental Security Income (SSI), Aid to the Aged, Blind, and Disabled (AABD), Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP) (formerly Food Stamps), General Assistance, State Transitional Assistance, or State Children and Family Assistance.

(2) His or her available income is 125% or less of the current poverty level as established by the United States Department of Health and Human Services, unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of the Code of Civil Procedure are of a nature and value that the court determines that the applicant is able to pay the fees, costs, and charges.

(3) He or she is, in the discretion of the court, unable to proceed in an action without payment of fees, costs, and charges and whose payment of those fees, costs, and charges would result in substantial hardship to the person or his or her family.

(4) He or she is an indigent person pursuant to Section 5-105.5 of the Code of Civil Procedure, providing that an "indigent person" means a person whose income is 125% or less of the current official federal poverty guidelines or who is otherwise eligible to receive civil legal services under the Legal Services Corporation Act of 1974.

(c) The clerk is entitled to receive the fee specified in

this Section, which shall be paid in advance, and managed by the clerk as set out in paragraph (2), except that, for good cause shown, the court may suspend, reduce, or release the costs payable under this Section:

(1) For administration of the estate of a decedent (whether testate or intestate) or of a missing person, a fee of \$100.

(2) The guardianship and advocacy operations fee, as outlined in this Section, shall be in addition to all other fees and charges and assessable as costs. Five percent of the fee shall be retained by the clerk for deposit into the Circuit Court Clerk Operation and Administrative Fund to defray costs of collection and 95% of the fee shall be disbursed within 60 days after receipt by the circuit clerk to the State Treasurer for deposit by the State Treasurer into the Guardianship and Advocacy Fund.

Section 15. The Probate Act of 1975 is amended by changing Sections 11a-12 and 11a-20 as follows:

(755 ILCS 5/11a-12) (from Ch. 110 1/2, par. 11a-12)

Sec. 11a-12. Order of appointment.)

(a) If basis for the appointment of a guardian as specified in Section 11a-3 is not found, the court shall dismiss the petition.

(b) If the respondent is adjudged to be disabled and to

lack some but not all of the ~~be totally without~~ capacity as specified in Section 11a-3, and if the court finds that ~~limited~~ guardianship is necessary for the protection of ~~will not provide sufficient protection for~~ the disabled person, his or her estate, or both, the court shall appoint a limited ~~plenary~~ guardian for the respondent's person or estate or both. The court shall enter a written order stating the factual basis for its findings and specifying the duties and powers of the guardian and the legal disabilities to which the respondent is subject.

(c) If the respondent is adjudged to be disabled and to be totally without ~~lack some but not all of the~~ capacity as specified in Section 11a-3, and if the court finds that limited guardianship will not provide sufficient ~~is necessary for the~~ protection for ~~of~~ the disabled person, his or her estate, or both, the court shall appoint a plenary guardian for ~~limited guardian of~~ the respondent's person or estate or both. The court shall enter a written order stating the factual basis for its findings ~~and specifying the duties and powers of the guardian and the legal disabilities to which the respondent is~~ subject.

(d) The selection of the guardian shall be in the discretion of the court, which shall give due consideration to the preference of the disabled person as to a guardian, as well as the qualifications of the proposed guardian, in making its appointment.

(Source: P.A. 89-396, eff. 8-20-95.)

(755 ILCS 5/11a-20) (from Ch. 110 1/2, par. 11a-20)

Sec. 11a-20. Termination of adjudication of disability - Revocation of letters - modification.) (a) Except as provided in subsection (b-5), upon ~~Upon~~ the filing of a petition by or on behalf of a disabled person or on its own motion, the court may terminate the adjudication of disability of the ward, revoke the letters of guardianship of the estate or person, or both, or modify the duties of the guardian if the ward's capacity to perform the tasks necessary for the care of his person or the management of his estate has been demonstrated by clear and convincing evidence. A report or testimony by a licensed physician is not a prerequisite for termination, revocation or modification of a guardianship order under this subsection (a).

(b) Except as provided in subsection (b-5), a ~~A~~ request by the ward or any other person on the ward's behalf, under this Section may be communicated to the court or judge by any means, including but not limited to informal letter, telephone call or visit. Upon receipt of a request from the ward or another person, the court may appoint a guardian ad litem to investigate and report to the court concerning the allegations made in conjunction with said request, and if the ward wishes to terminate, revoke, or modify the guardianship order, to prepare the ward's petition and to render such other services

as the court directs.

(b-5) Upon the filing of a verified petition by the guardian of the disabled person or the disabled person, the court may terminate the adjudication of disability of the ward, revoke the letters of guardianship of the estate or person, or both, or modify the duties of the guardian if: (i) a report completed in accordance with subsection (a) of Section 11a-9 states that the disabled person is no longer in need of guardianship or that the type and scope of guardianship should be modified; (ii) the disabled person no longer wishes to be under guardianship or desires that the type and scope of guardianship be modified; and (iii) the guardian of the disabled person states that it is in the best interest of the disabled person to terminate the adjudication of disability of the ward, revoke the letters of guardianship of the estate or person, or both, or modify the duties of the guardian, and provides the basis thereof. In a proceeding brought pursuant to this subsection (b-5), the court may terminate the adjudication of disability of the ward, revoke the letters of guardianship of the estate or person, or both, or modify the duties of the guardian, unless it has been demonstrated by clear and convincing evidence that the ward is incapable of performing the tasks necessary for the care of his or her person or the management of his or her estate.

(c) Notice of the hearing on a petition under this Section, together with a copy of the petition, shall be given to the

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ward, unless he is the petitioner, and to each and every guardian to whom letters of guardianship have been issued and not revoked, not less than 14 days before the hearing.

(Source: P.A. 86-605.)