

1 AN ACT concerning civil law.

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

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

6 (20 ILCS 3955/31) (from Ch. 91 1/2, par. 731)

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

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

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

1 Section 27.3f as follows:

2 (705 ILCS 105/27.3f new)

3 Sec. 27.3f. Guardianship and advocacy operations fee.

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

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

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

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

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

20 (4) He or she is an indigent person pursuant to Section
21 5-105.5 of the Code of Civil Procedure, providing that an
22 "indigent person" means a person whose income is 125% or
23 less of the current official federal poverty guidelines or
24 who is otherwise eligible to receive civil legal services
25 under the Legal Services Corporation Act of 1974.

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

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

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

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

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

19 (755 ILCS 5/11a-12) (from Ch. 110 1/2, par. 11a-12)

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

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

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

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

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

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

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

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

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

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

1 as the court directs.

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

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

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

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