

**7055 PETITION FOR GUARDIANSHIP OF THE ESTATE: INCOMPETENCY;
WIS. STAT. § 54.10(3)(a)3.**

(Insert Wis JI-Civil 100, Opening)

A petition has been filed to appoint a guardian for the estate of (individual). The petition alleges that (individual) is an incompetent person by reason of (a developmental disability) (degenerative brain disorder) (serious and persistent mental illness) (or other like incapacities) and needs a guardian appointed for (his) (her) estate. A guardian is a person appointed by a court to manage the income and assets and provide for the essential requirements for health and safety and the personal needs of an individual found incompetent.

The fact that a petition has been filed is not evidence that (individual) is incompetent. Every person is presumed to be competent. The burden of proving incompetency is upon (petitioner). The evidence must show the incompetence exists at the time of this hearing.

This is a civil, not a criminal case. While (individual) is not on trial to be punished for any offense, nevertheless, this trial and your verdict could have a significant impact on (his) (her) life. Therefore, you should approach your task with a sense of serious duty.

Wis JI-Civil 110, Arguments of Counsel

Wis JI-Civil 115, Objections of Counsel

Wis JI-Civil 120, Judge's Demeanor

Wis JI-Civil 130, Stricken Testimony

Wis JI-Civil 215, Credibility of Witnesses; Weight of Evidence

Wis JI-Civil 260, Expert Testimony: General

Wis JI-Civil 265, Expert Testimony: Hypothetical Question

At the end of the trial, you will be given a special verdict consisting of one question. You must answer it according to the evidence and to the instructions I will give you.

Wis JI-Civil 205, Burden of Proof: Middle

Wis JI-Civil 145, Special Verdict Questions: Interrelationship

Question 1 in the verdict reads: Is (individual) incompetent at the time of this hearing?

To answer question 1 "yes," you must find all of the following:

- a. That (individual) is aged at least 17 years and 9 months; and
- b. That (individual) suffers from (a developmental disability) (degenerative brain disorder) (serious and persistent mental illness), (or other like incapacities); and
- c. That because of (impairment), (individual) is unable to effectively receive and evaluate information or to make or communicate decisions related to the management of his or her property or financial affairs, to the extent that any of the following applies:
 1. (individual) has property that will be dissipated in whole or in part.
 2. (individual) is unable to provide for his or her support.
 3. (individual) is unable to prevent financial exploitation; and
 4. That (individual)'s need for assistance in decision-making or communication cannot be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, or other means that the individual will accept.

[A "developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, or autism or any other neurological conditions closely related to mental retardation or requiring treatment similar to that required for individuals with mental retardation which has continued or can be expected to continue indefinitely. The condition must substantially impair the individual so that he or she cannot adequately provide for his or her own care or custody; it must constitute a substantial handicap to the afflicted individual. The term does not include dementia that is primarily caused by degenerative brain disorder.]

["Degenerative brain disorder" means the loss or dysfunction of an individual's brain cells to the extent that he or she is substantially impaired in his or her ability to provide adequately for his or her own care or custody or to manage adequately his or her property or financial affairs.]

["Serious and persistent mental illness" means a mental illness that is severe in degree and persistent in duration, that causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, that may lead to an inability to maintain stable adjustment and independent functioning without long-term treatment and support, and that may be of lifelong duration. It includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include degenerative brain disorder or a primary diagnosis of a developmental disability or of alcohol or drug dependence.]

["Other like incapacities" means those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability, or continued consumption or absorption of substances, and that produce a condition which substantially impairs an individual from providing for his or her own care or custody.]

Unless (individual) is unable to communicate decisions effectively in any way, your determination of incompetency may not be based on mere old age, eccentricity, poor judgment, or physical disability.

Wis JI-Civil 180, Five-Sixths Verdict

Wis JI-Civil 190, Closing

SPECIAL VERDICT

Question 1: Is (individual) incompetent?

Answer: _____

Yes or No

COMMENT

This instruction and comment were approved in 2009. This instruction is for a hearing on a petition that an individual is incompetent. Other grounds for the appointment of a guardian are that the individual is a spendthrift (see JI-Civil 7056) or a minor. See Wis. Stat. § 54.44 and 54.46.

The middle burden of proof (clear, satisfactory, and convincing) applies to the determination of incompetency. Wis. Stat. § 54.44(2).

The terms "developmental disability," "degenerative brain disorder," "serious and persistent mental illness" and "other like incapacities" are defined in Wis. Stat. §§ 54.01(8), 54.01(6), 54.01(30), 54.01(22) respectively.

A petition for the appointment of a guardian may include an application for protective placement or protective services or both under ch. 55. Wis. Stat. § 54.34. See Wis JI-Civil 7060 and 7061.

A finding of incompetency and appointment of a guardian under Chapter 54 is not grounds for involuntary protective placement or the provision of protective services. Wis. Stat. § 54.48.

In jury trials under Chapter 54 and Chapter 55, the court or guardian ad litem may tell the jury that the guardian ad litem represents the best interests of the proposed ward or ward. Wis. Stat. § 54.40(5).