

**GUARDIAN AD LITEM RESOURCES**  
**Child Welfare Law Orientation**

- I. Sample Judge's Colloquy with Guardians ad Litem**
- II. Sample Memorandum of Understanding**
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**Sample Judge's Colloquy with Guardians ad Litem  
(Chapters 48 and 938)**

- What is your recommendation (e.g., placement, conditions, services, family interaction, and treatment)?
- What is the basis of your recommendation?
- With whom did you consult (e.g., parents, caregiver, foster parent, social worker, school personnel, and medical or mental health professionals)?
- What documents or exhibits, if any, did you review?
- Did you meet personally with the child and interview the child, if the child is able to communicate? When and where did you meet with the child?
- Did you conduct a home visit?
- Is the child's environment safe and appropriate?
- Is your recommendation consistent with the child's wishes?
- If the child is subject to the Indian Child Welfare Act, did you consult the child's tribe regarding placement options and tribal services?

**GUARDIAN AD LITEM  
SAMPLE MEMORANDUM OF UNDERSTANDING**

**A. Preamble**

All guardians ad litem are to adhere to the following standards approved by the Juvenile Judge(s) in \_\_\_\_\_ County. At a minimum, the below listed statutory expectations shall be performed by all guardians ad litem performing work in \_\_\_\_\_ County.

The guardian ad litem is to function independently in the same manner as an attorney for a party to the action, be a spokesperson for those whose voices would otherwise go unheard, and provide the court with an objective recommendation in advocating for the best interests of a child or ward that takes into account factors such as age, sense of time, level of maturity, culture and ethnicity, degree of attachment to family members and attachment to family members.

**B. Minimum Statutory Expectations**

Current statutes define the duties and responsibilities of a guardian ad litem. The following is a summary of those requirements:

**CHIPS & JIPS**

1. Be an attorney admitted to practice in this state and qualified to accept guardian ad litem appointments by meeting the qualifications of SCR 35.01. §48.235(2) and §938.235(2)
2. Advocate for the best interests of the person or child for whom the appointment is made. §48.235(3) and §938.235(3)
3. Function independently, in the same manner as an attorney for a party to the action. §48.235(3)(a) and §938.235(3)(a)
4. If the best interests of the person or child are substantially inconsistent with the wishes of that person or child, the guardian ad litem shall so inform the court. §48.235(3)(a) and §938.235(3)(a)
5. Make clear and specific recommendations to the court concerning the best interests of the child at every stage of the proceeding. §48.235(3)(b)2. and §938.235(3)(b)2.
6. Personally meet with the child unless granted leave by the court not to do so. §48.235(3)(b)1. and §938.235(3)(b)1.

7. Assess the appropriateness and safety of the environment of the child unless granted leave by the court not to do so. §48.235(3)(b)1. and §938.235(3)(b)1.
8. If the child is old enough to communicate, interview the child and determine the child's goals and concerns regarding his or her placement unless granted leave by the court not to do so. §48.235(3)(b)1. and §938.235(3)(b)1.
9. If reappointed or the appointment is continued, the guardian ad litem may do any of the following:
  - a. Participate in permanency planning under §48.38 or §938.38 and §48.43(5).
  - b. Petition for change in placement under §48.357 or §938.357.
  - c. Petition for termination of parental rights or any other matter specified under §48.14 or §938.14.
  - d. Petition for revision of dispositional orders under §48.363 or §938.363.
  - e. Petition for extension of dispositional orders under §48.365 or §938.365.
  - f. Petition for temporary restraining order and injunction under §813.122 or §813.125.
  - g. Petition for relief from a judgment terminating parental rights under §48.46.
  - h. Petition for the appointment of a guardian, the revision of a guardianship order, or the removal of a guardian under §§ 48.977 or 48.9795.
  - i. To bring an action or motion for the determination of the child's paternity under §767.80.
  - j. Perform any other duties consistent with Chapter 48 as directed by the court.  
§48.235(4)(a)8. and §938.235(4)(a)8.

### **TPR**

In matters involving a minor parent complete the following:

1. If the guardian ad litem represents a minor parent whose parental rights

are  
subject to voluntary termination the guardian ad litem shall interview the  
minor  
parent, investigate the reason for the termination of parental rights and  
assess the voluntariness of the consent. §48.235(5)

2. The guardian ad litem for a minor parent whose parental rights are the subject of a voluntary termination proceeding shall inform the minor parent of the effect of termination of parental rights. §48.235(5)

If a guardian ad litem has been appointed in a termination of parental rights proceeding to represent an incompetent parent to assist his or her adversary counsel or the court in protecting the parent's rights in the proceeding, the GAL shall provide information to the court relating to the parent's competency to participate and shall also provide assistance to the court and the parent's adversary counsel in protecting the parent's rights in the proceeding. §48.235(1)(g) and §48.235(5m)

However, the guardian ad litem of an incompetent parent may not participate in the proceeding as a party, and may not call witnesses, provide opening statements or closing arguments, or participate in any activity at trial that is required to be performed by the parent's adversary counsel. §48.235(5m)

### **APPEAL**

If an appeal is taken by any party the guardian ad litem shall do the following:

1. If the guardian ad litem chooses not to participate in that appeal he or she shall file with the appellate court a statement of reasons for not participating. §48.235(7) and §938.235(7)
2. If the appellate court orders the guardian ad litem to participate in the appeal the guardian ad litem shall participate in that appeal. §48.235(7) and §938.235(7)

### **EXTENSION OF APPOINTMENT**

The guardian ad litem or any party or the person for whom the appointment is made may, at any time, request in writing or on the record that the court extend or terminate the appointment or reappointment of the guardian ad litem. §48.235(7)

### **C. Additional Requirements**

*This section should include local policies and practices, including billing and compensation requirements. See examples.*

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GAL's Signature

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Date

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Judge's Signature

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Date

## **SAMPLE Additional Guardian ad Litem Requirements**

- a. Contact the child and the child's caregiver in advance of any court hearing or judicial review to ascertain what information, witnesses, or other evidence should be produced by the guardian ad litem at such hearing.
- b. Consult with the child, in a developmentally appropriate manner, with regard to the type of litigation, the child's rights, the function of the court system, the purpose of the various court proceedings, the role and function of the guardian ad litem, the role and function of the attorneys/ parties and whether the child may or may not participate in the legal process.
  1. The guardian ad litem shall accomplish this goal by meeting personally with the child at the child's residence, at a neutral place, at the child's school, at a social services agency, or pre-arranged meeting room.
  2. The guardian ad litem shall provide information to the child to allow the child to access the guardian ad litem by telephone, e-mail, and/or other reasonable means.
- c. The guardian ad litem shall gather and review information and obtain the necessary authority through releases or court orders to obtain the following information:
  1. Contact collaterals to obtain and read pertinent records which would include medical, school, daycare, police, therapy, psychological, psychiatric and other records relevant to the matter including placement records as available.
  2. Review court files of the child and family.
  3. Review case related records of the social service agency or other service providers who have provided services to the family.
  4. Contact lawyers for other parties or the parties themselves if unrepresented as well as any CASA who have had contact with the child or family.
  5. Review of evidentiary photographs, videos, or audio tapes and other evidence related to the child or family.
- d. The guardian ad litem shall personally observe every residence at which the child is placed promptly after the child is placed at that residence.
  1. The guardian ad litem shall personally observe the child's interaction with the caregiver.
  2. The guardian ad litem shall make an inspection of the home to assure the adequacy and safety of the child's living environment.
  3. The guardian ad litem shall ascertain whether other individuals are residing at the child's residence, including names, and dates of birth if possible.

4. In assessing safety, the guardian ad litem shall perform CCAP checks with regard to all individuals residing with the child.
- e. The guardian ad litem shall meaningfully participate in court hearings concerning the child.
    1. The guardian ad litem shall report to the court when, where, and for how long the guardian ad litem has met with the child unless providing such information would jeopardize the health and safety of the child.
    2. The guardian ad litem shall report to the court the appropriateness and safety of the child's current living environment.
    3. The guardian ad litem shall inform the court of the child's wishes regarding the matter.
  - f. The guardian ad litem shall report to the court concerning the child's adjustment to placement, the family's compliance with prior court orders and treatment plans, the department's compliance with prior court orders and treatment plans, and the contact the child has had with either parent.
  - g. The guardian ad litem shall inform the court of what temporary or final orders should be made concerning the child and what services the child or family requires that have not yet been court ordered.
  - h. The guardian ad litem shall file petitions, motions, responses, participate in depositions, and participate as any attorney for a party would participate in a court proceeding.
  - i. The guardian ad litem shall request orders from the court that are clear, specific, and if appropriate include a time line for assessment, evaluation, services, placement, treatment, evaluation, and return of the child to the family.
  - j. The guardian ad litem shall review all written orders to insure that such orders conform with the court's verbal rendition including statutorily required findings and notices.
  - k. If the appointment of the guardian ad litem is continued pursuant to §48.235(7), the guardian ad litem shall monitor the implementation of the court order and report non-compliance.
  - l. If the child is required to testify, the guardian ad litem shall familiarize the child with the courtroom, court procedures, and what to expect during direct and cross-examination in an effort to insure that testifying will cause minimum harm to the child.
  - m. The guardian ad litem shall attend significant staffings and meetings on a regular basis.

IN THE INTEREST OF

Statement of Guardian ad Litem  
(Chapters 48 and 938)

Name \_\_\_\_\_

Case No. \_\_\_\_\_

Date of Birth \_\_\_\_\_

I am the court appointed guardian ad litem for the above named child/juvenile and state to the court that I have completed the following duties:

1. MET WITH THE CHILD/JUVENILE

- I personally, or through a trained designee [Name] \_\_\_\_\_, met with the child/juvenile. The date last met with the child/juvenile was [Date] \_\_\_\_\_.
- I was granted leave by the court not to meet with the child/juvenile.
- I am requesting leave by the court not to meet with the child/juvenile for the following reason(s):  
\_\_\_\_\_

2. ASSESSED CHILD'S/JUVENILE'S ENVIRONMENT

- I personally, or through a trained designee [Name] \_\_\_\_\_, assessed the appropriateness and safety of the child's/juvenile's environment.
- I was granted leave by the court not to assess the appropriateness and safety of the child's/juvenile's environment.
- I am requesting leave by the court not to assess the child's/juvenile's environment for the following reason(s):  
\_\_\_\_\_

3. INTERVIEWED THE CHILD/JUVENILE

- The child/juvenile is not old enough to communicate.
- I personally, or through a trained designee [Name] \_\_\_\_\_, interviewed the child/juvenile to determine the child's/juvenile's goals and concerns regarding his or her placement.
- I was granted leave by the court not to interview the child/juvenile.
- I am requesting leave by the court not to interview the child/juvenile for the following reason(s):  
\_\_\_\_\_

4. CHILD'S/JUVENILE'S WISHES

The best interests of the child/juvenile  are  are not substantially inconsistent with the wishes of the child/juvenile.

5. Additional comments: \_\_\_\_\_

\_\_\_\_\_  
Guardian ad Litem

\_\_\_\_\_  
Name Printed or Typed

\_\_\_\_\_  
Address

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date

\_\_\_\_\_  
State Bar No. (if any)

DISTRIBUTION:

- 1. Court
- 2. Guardian ad Litem/Attorney
- 3. Parties

IN THE INTEREST OF

Amended

Name \_\_\_\_\_

**Report of Guardian ad Litem for  
Guardianship of a Child  
(\$48.9795, Wis. Stats.)**

Date of Birth \_\_\_\_\_

Case No. \_\_\_\_\_

I am the court appointed Guardian ad Litem for the above-named child and report to the court that I have completed the following duties and make the following report and recommendations:

**GENERAL DUTIES**

1. I conducted a diligent investigation sufficient to represent the best interests of the child in court, which included the following activities: (Select all that apply)

I personally met with or observed the child. The date last met with or observed the child was [Date] \_\_\_\_\_.

I personally met with or spoke to the proposed guardian.

I personally met with or spoke to other interested persons, including: \_\_\_\_\_.

I personally visited the home of the  child and/or  guardian.

A trained designee [Name] \_\_\_\_\_ performed the following: \_\_\_\_\_.

Additional activities: \_\_\_\_\_  See attached

2. I inspected the following reports and records relating to the child and, upon presentation of necessary releases, records relating to the child's family and the proposed guardian: \_\_\_\_\_

**CHILD'S WISHES**

3. The best interests of the child  are  are not substantially inconsistent with the wishes of the child.

Adversary counsel  is  is not requested by the minor.

Adversary counsel  is  is not recommended.

**RECOMMENDATION**

4. Based on my investigation, I recommend that the court find that:

It is in the best interest of the child to appoint the proposed guardian [Name] \_\_\_\_\_ as the child's guardian.

It is in the best interest of the child to appoint another person [Name] \_\_\_\_\_ as the child's guardian.

It is not in the best interest of the child to grant the proposed guardianship.

5. It is my opinion that the proposed guardian [Name] \_\_\_\_\_  is  is not fit, willing, and able to serve as guardian of the child based on the following information: \_\_\_\_\_

See attached

6. It is my opinion that the proposed successor guardian [Name] \_\_\_\_\_  is  is not fit, willing, and able to serve as guardian of the child based on the following information: \_\_\_\_\_

See attached

7. It is my opinion that the standard for the following type of guardianship and conditions have been met:

**Full Guardianship**

- All of the duties and authority specified in §48.023, Wis. Stats., the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child's general welfare, including but not limited to:
  - The authority to consent to marriage, enlistment in the U.S. armed forces, major medical,

- psychiatric and surgical treatment, and obtaining a motor vehicle operator's license.
- The authority to represent the child in legal actions and make other decisions of substantial legal significance concerning the child but not the authority to deny the child the assistance of counsel as required by Chapter 48.
- The right and duty of reasonable visitation of the child.
- The rights and responsibilities of legal custody except when legal custody has been vested in another person or when the child is under the supervision of the department of corrections under §§938.183, 938.34 (4h), (4m), or (4n), or §938.357 (3) or (4), Wis. Stats., or the supervision of a county department under §938.34 (4d), (4m), or (4n), Wis. Stats.
- Subject to an order of a court of competent jurisdiction, the authority to determine reasonable visitation with the child.
- The right to change the residence of the child from this state to another state.
- The duty to immediately notify the court that appointed the guardian of any change in the address of the guardian or child and to make an annual report to that court on the condition of the child. The report shall include the location of the child, the health condition of the child, and any recommendations regarding the child.

**Limited Guardianship**

- The following duties and authority should apply to the guardian:
  - The authority to represent the child in legal actions and make other decisions of substantial legal significant concerning the child but not the authority to deny the child the assistance of counsel as required by Chapter 48.
  - The right and duty of reasonable visitation of the child.
  - The rights and responsibilities of legal custody except when legal custody has been vested in another person or when the child is under the supervision of the department of corrections under §§938.183, 938.34 (4h), (4m), or (4n), or §938.357 (3) or (4), Wis. Stats., or the supervision of a county department under §938.34 (4d), (4m), or (4n), Wis. Stats.
  - Subject to an order of a court of competent jurisdiction, the authority to determine reasonable visitation with the child.
  - The right to change the residence of the child from this state to another state.
  - The duty to immediately notify the court that appointed the guardian of any change in the address of the guardian or child and to make an annual report to that court on the condition of the child. The report shall include the location of the child, the health condition of the child, and any recommendations regarding the child.
  - Other: \_\_\_\_\_
- It is my opinion that the guardian's authority should be limited in the following manner:
  - The parent [Name] \_\_\_\_\_ retains power to make the following decisions within the parent's ability to exercise effectively: \_\_\_\_\_
  - Other: \_\_\_\_\_
- The Limited Guardianship should expire on: \_\_\_\_\_

**Temporary Guardianship**

- The duties and authority of the temporary guardian should include:
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
- The Temporary Guardianship should expire on [Date] \_\_\_\_\_. **[Not to Exceed 180 days]**

**Emergency Guardianship**

- The duties and authority of the emergency guardian should include:
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
- The Emergency Guardianship should expire on [Date] \_\_\_\_\_. **[Not to Exceed 60 days]**

8. I recommend that the court establish reasonable rules of parental visitation for:
- Parent 1 [Name] \_\_\_\_\_. These rules include: \_\_\_\_\_  
 \_\_\_\_\_  See attached
- Parent 2 [Name] \_\_\_\_\_. These rules include: \_\_\_\_\_  
 \_\_\_\_\_  See attached

9. **PROTECTIVE PLACEMENT, PROTECTIVE SERVICES (if requested)**  
 It is my opinion that the court
- should  should not approve protective placement.  
 should  should not approve protective services.
- should find the least restrictive placement consistent with the minor's needs is a:
- group home.  foster home.  community based residential facility.  nursing home.  
 intermediate care facility.  Other: \_\_\_\_\_  
 in an unlocked unit.  
 in a locked unit because: \_\_\_\_\_  See attached
- should find that protective placement in the intermediate facility or nursing facility is the most integrated setting appropriate to the needs of the minor with a developmental disability.

10. **ADDITIONAL EVALUATIONS (if requested)**  
 Additional medical, psychological or other evaluation  is not requested  is requested. Specify evaluation requested and reason: \_\_\_\_\_  
 I advised the minor of the right to an independent medical or psychological examination (if requested).

11. Additional comments: \_\_\_\_\_

▶ \_\_\_\_\_  
 Guardian ad Litem Signature

\_\_\_\_\_  
 Name Printed or Typed

\_\_\_\_\_  
 Address

Email Address \_\_\_\_\_ Telephone Number \_\_\_\_\_

Date \_\_\_\_\_ State Bar No. \_\_\_\_\_

**DISTRIBUTION:**

1. Court
2. Child
3. Child's Parents
4. Child's Guardian/Legal Custodian
5. Tribe (if any)
6. Indian Custodian (if any)
7. Additional Interested Persons (if any)