



# Minor Guardianships

**Hon. Jason A. Rossell**

Kenosha County Circuit Court  
Kenosha

## § 48.9795 Guardianships

## **§ 48.9795 Guardianship – 2019 WI Act 109**

- As of August 1, 2020, Minor Guardianships of the Person moved from Chapter 54 to Chapter 48
  - ▶ 2019 Wisconsin Act 109 signed on February 28, 2020 by Governor Evers was due to the leadership Children and Law Section of the State Bar, collaborating with judges, attorneys and the Legislative Joint Study Committee on Minor Guardianships
- Minor Guardianships of the Estate remain in Chapter 54 and have not changed

## **§ 48.9795 Guardianship – Procedures**

- Four types of guardianship: Full, Limited, Temporary and Emergency
- ICWA is fully incorporated into the new statutes and must be complied with
- May not supersede or be used to change the placement of a child under juvenile court jurisdiction (CHIPS or Delinquency)
- Does not change § 48.977 CHIPS guardianships

## § 48.9795 Guardianship – Procedures

- Full, Limited, and Temporary Guardianships (Temporary cannot exceed 180 days)
  - ▶ Petition by any person or child (12 or older)
  - ▶ Initial Hearing within 45 days
  - ▶ Fact-Finding or Fact-Finding and Disposition within 30 days of Initial Hearing or immediately
    - ✓ Standard: Clear and Convincing evidence/Rules of Evidence Apply
    - ✓ Extensions are possible

## § 48.9795 Guardianship – Procedures

- Emergency Guardianships (Up to 60 days)
  - ▶ Petition by any person, hearing as soon as possible
  - ▶ Court may, without a hearing, issue a Temporary Order Appointing Emergency Guardian that remains in effect until the emergency guardianship hearing
  - ▶ Cannot be extended
- Hearings can be adjourned for good cause under § 48.315

## § 48.9795 Guardianship – Petitions

- JN-1501 / IW-1501 - Petition for Appointment of Guardian - Full/Limited/Temporary Guardianship
  - ▶ JN-1504 - Petition for Appointment of Emergency Guardian
- Each petition requires a separate filing and own case number.
  - ▶ Clerks can only enter one Disposition into CCAP.
- §48.9795 does not have any language or a procedure to turn an Emergency Guardianship into a Full, Limited, or Temporary Guardianship.

## § 48.9795 Guardianship – Key Provisions

- Nomination of Guardian by Parent or Child (JN-1510)
  - ▶ A parent can nominate a proposed guardian of the child and/or a successor guardian
  - ▶ A child 12 or older can nominate a proposed guardian
  - ▶ The court may dispense with child's nomination if the child is out of state or good reason exists
- Statement by Proposed Guardian (JN-1514) must be filed at least 96 hours prior to the initial hearing on the petition (This is similar to the Statement of Acts)

## **§ 48.9795 Guardianship – Court Commissioners**

- A court commissioner is allowed to hear uncontested § 48.9795 proceedings
  - ▶ See § 757.69(1)(g)

## **§ 48.9795 Guardianship – Venue**

- In the child’s county of residence; or
- In the county in which the child is physically present; or
- If the child is a nonresident, the county in which the petitioner proposes that the child resides
- The court may, upon a motion and for good cause shown, transfer the case to the county in which a dispositional order has been issued under Chapter 48
  - ▶ See § 48.9795(2)(a)

## § 48.9795 Guardianship – Consolidation with Minor Estate

- The minor guardianship of the person and the minor estate case can be consolidated
  - ▶ If consolidated, the estate case is consolidated into the person case and is under the jurisdiction of the juvenile court with the JG case number
- A request to consolidate can be made on the Petition (JN-1501)
- If the court orders consolidation, use Order to Consolidate Minor Guardianships (JN-1516)

## § 48.9795 Guardianship – Stay

- The §48.9795 Full, Limited, or Temporary guardianship case must be stayed until the pending Chapter 48 or 938 case reaches Disposition
  - ▶ It is possible to schedule the CHIPS/JIPS/Delinquency Dispositional Hearing at the same time as the Guardianship Hearing
- CCAP has a maintenance code to enter the stay and stop the Guardianship case from aging

## § 48.9795 Guardianship – GAL Requirements

- A Guardian ad Litem must be appointed for the child
- GAL Duties:
  - ▶ Conduct a diligent investigation, which may include:
    - ✓ Meeting with the child, proposed guardian, and/or other interested persons
    - ✓ Visiting the home of child and/or guardian
  - ▶ Inspect reports and records relating to the child's family and proposed guardian
    - ✓ See Order Appointing GAL or Attorney (JD-1798)

## § 48.9795 Guardianship – GAL Requirements

- Report of the Guardian ad Litem (JN-1512) is available to provide information on GAL duties, wishes of the child, and recommendations
  - ▶ "If the guardian ad litem determines that the best interests of the person are substantially inconsistent with the wishes of that person, the guardian ad litem shall so inform the court and the court may appoint counsel to represent that person."

## § 48.9795 Guardianship – Adversary Counsel

- There is no requirement for appointing adversary counsel for a child
- The court has the discretion to appoint counsel for the child of any age pursuant to § 48.23 (3)
  - ▶ SPD anticipates appointing adversary counsel for children over 12 when:
    - ✓ a request is made by the child or court or
    - ✓ SPD already represents the child in a Chapter 48 or 938 case

## § 48.9795 Guardianship – Authority Granted

### Full Guardianship

- Authority granted to other guardians under Ch. 48 and visitation, move out of state with child, duty to report change in address to court immediately and report status update to court annually

### Limited Guardianship

- Court must specify the duties; may allow parent to retain certain decision-making powers and allow shared physical custody, if in the child's best interest



## § 48.9795 Guardianship – Authority Granted

### Temporary Guardianship

- Court must limit the authority to those acts reasonably related to the need for a guardianship

### Emergency Guardianship

- Court must limit authority to those acts related to the reasons for the appointment

## § 48.9795 Guardianship – Required Findings

### Full Guardianship

- The child's parents are unfit, unwilling, or unable to provide for the care, custody and control of the child or other compelling facts and circumstances that demonstrate a full guardianship is necessary

### AND

- Dispositional Factors: Nominations, opinions, fitness of proposed guardian, placement preferences for an Indian child, best interests of the child

### Limited Guardianship

- The parents need assistance in providing for the care, custody and control of the child. Parent may retain certain decision-making powers and may share placement with guardian

### AND

- Dispositional Factors: Nominations, opinions, fitness of proposed guardian, placement preferences for an Indian child, best interests of the child

## § 48.9795 Guardianship – Required Findings

### Temporary Guardianship

- The child's particular situation, including the inability of the child's parents to provide for the care, custody and control of the child for a temporary period of time, requires appointment of a temporary guardian

### AND

- Dispositional Factors:  
Nominations, opinions, fitness of proposed guardian, placement preferences for an Indian child, best interests of the child

### Emergency Guardianship

- The child's welfare requires immediate appointment of an emergency guardian

## § 48.9795 Guardianship – Key Provisions

- The Letters of Guardianship and Dispositional Order Appointing Guardian are combined for § 48.9795 guardianships
  - ▶ The court can order:
    - ✓ Reasonable rules of parental visitation;
      - Can not delegate decision to 3<sup>rd</sup> Party (e.g., counselor)  
*In Re RMZ*, 22 App 492 (per curium)
    - ✓ Amount of support to be paid by the child's parent(s); and/or
      - The amount of support is not child support
    - ✓ Successor guardian

## **§ 48.9795 Guardianship – Key Provisions**

- § 48.9795 guardianships orders cannot change the placement of a child under the supervision of the court pursuant to Chapters 48 or 938

## **§ 48.9795 Guardianship – ICWA**

- ICWA is incorporated into § 48.9795
  - ▶ Registered mail notice must be sent to the parents, Indian custodian, and tribe
  - ▶ Findings related to serious damage (QEW Testimony), active efforts, and placement preferences are required
  - ▶ An Emergency guardianship only requires an imminent harm finding
- IW § 48.9795 guardianship forms include the required ICWA findings

## § 48.9795 Guardianship – Post-Disposition

- There are clear procedures and forms to:
  - ▶ Modify an order if there has been a substantial change in circumstances since the last guardianship order and it's in the best interest of the child
  - ▶ Extend a Limited or Temporary Guardianship
    - ✓ The extension for a Temporary Guardianship cannot exceed an additional 180 days.
  - ▶ Reconsider or Modify an Emergency Guardianship

## § 48.9795 Guardianship – Post-Disposition

- Terminate the Guardianship
  - ▶ Parent or child requests termination then:
    - ✓ Moving party must show by a preponderance of the evidence that:
      - a substantial change in circumstances since the last order affecting the guardianship was entered; AND
      - that the parent is fit, willing, and able to carry out the duties of a guardian OR
      - that no compelling facts or circumstances exist demonstrating that a guardianship is necessary; AND
      - that termination of the guardianship would be in the best interests of the child

## § 48.9795 Guardianship – Post-Disposition

- Termination occurs when:
  - ▶ The term of the guardianship order expired
    - ✓ Child turns 18 (Full) or termination date (Limited, Temporary, and Emergency);
  - ▶ Child marries, dies, or is adopted;
  - ▶ Child moves to another state and a new guardianship in that state is entered;
  - ▶ Guardian dies, resigns and the resignation was accepted by the court, or is removed for cause and no successor appointed

## § 48.9795 Guardianship – Post-Disposition

- Review Conduct of the Guardian
  - ▶ A hearing is required within 30 days
  - ▶ Provides five options to remedy the problems
- Annual Reports
  - ▶ Full Guardianship – required to be filed annually
  - ▶ Limited – may be required to be filed at the discretion of the court
  - ▶ Temporary and Emergency – not required by statute

## § 48.9795 Guardianship – Post-Disposition

- Successor Guardian
  - ▶ Procedures to appoint a successor guardian when the successor was or was not ordered on the Letters of Guardianship and Dispositional Order Appointing Guardian
  - ▶ § 48.9795 does not have a standby guardian procedure
    - ✓ If a standby was named in a previous Chapter 54 guardianship, a § 48.9795 successor guardian will likely have to be appointed
    - ✓ Courts can use the “Other” line to explain a successor was appointed since there are no longer standby guardian procedures

## § 48.9795 Guardianship – Substitution

- § 48.29 - Substitution of Judge does not exclude guardianship proceedings and § 48.9795 guardianships are within Chapter 48, so it likely applies.
- The judge ultimately makes the decision since it is not specifically mentioned within § 48.9795.

## **§ 48.9795 Guardianship – Amount of Support**

- Modification of visitation or an amount of support that was ordered in a § 48.9795 guardianship must occur within the § 48.9795 JG case
  - ▶ A new case should not be opened.

## **§ 48.9795 Guardianship – Corporate Guardians**

- § 48.9795 does not prohibit corporate guardians.
- 2019 WI Act 109 did not amend § 54.15 (7) regarding corporate guardians. This implies the section would apply to both minors and adults.

## § 48.9795 Guardianship – Permanency

- Once the CHIPS case has reached Disposition, either a § 48.977 CHIPS Guardianship or a § 48.9795 Guardianship can be entered.
- If the proposed guardian qualifies for a § 48.977 subsidized guardianships, the agency must pursue a § 48.977 guardianship.

## § 48.9795 Guardianship – Publication

- The § 48.9795 statute does not mention publication
  - ▶ The petitioner should attempt certified mail at the last known address to obtain some form of proof
  - ▶ If the last known address is unknown, the petitioner should let the court know that at the initial guardianship hearing to assist the court in determining whether to order publication or not
  - ▶ The court may also find good cause to waive notice to a parent
- If publication is ordered, the clerk will have to draft an Order for Publication
  - ▶ There is not a Circuit Court form
- When ordering publication, please note if the petitioner is ordered to publish and what they have to do since most of these petitioners are pro se



## Can co-guardians be nominated or appointed in a § 48.9795 guardianship?

- Yes, the court may appoint co-guardians of the person for a child under § 48.9795(2)(b)4.
- Both of the co-guardians can be inserted on the nomination of guardian section of the petition
- Include both names on the Letters of Guardianship and Dispositional Order

## Can the parents be ordered to pay the GAL Fees under § 48.9795?

- Yes, the provisions of Ch. 48 would apply to reimbursement of the GAL.
- Under § 48.235(8), the court may order the parents to provide reimbursement for the GAL fees, but it is not required
  - ▶ “.the court may order either or both of the parents of a child for whom a guardian ad litem is appointed under this chapter [Ch. 48] to pay all or part of the compensation of the guardian ad litem.”
- Under § 48.9795(10)(d)5., the court may order the guardian to pay attorney fees if there is a motion to review the conduct of the guardian and the guardian's conduct is found to be egregious
  - ▶ This is the only section within s. 48.9795 that addresses GAL or attorney fees
  - ▶ Case law holds that it would fall on county to pay unless statutes specify how GAL fee is paid. See *Romasko v. Milwaukee*, 108 Wis. 2d 32 (1982).

## **§ 48.977 CHIPS Guardianships**

### **§ 48.977 Guardianship – Requirements**

- Child adjudicated CHIPS
- Nominated guardian has placement and will serve for an extended time or until child is 18
- TPR not in best interest
- Parent neglecting, refusing, or unable to be the guardian
- Reasonable efforts made

## § 48.977 Guardianship – Procedures

- Can be filed by child’s GAL, parent, nominated guardian (as long as they have placement), agency, or DA/Corp Counsel
- Best interests is prevailing factor, but court should consider:
  - ▶ Suitability of guardian, ability to serve until age 18, child’s wishes and ICWA placement preferences, if applicable
    - ✓ §48.977(4)(g)

## § 48.977 Guardianship – Procedures

- Court can grant full powers to guardian to make important decisions listed in § 48.023 or can limit the powers and specifically designate the powers § 48.977(5)(b)
- Guardianship can be subsidized or unsubsidized
  - ▶ If subsidized, the court must close the CHIPS case
  - ▶ If unsubsidized, CHIPS case may continue to be open but Permanency Plan Hearings are required

## § 48.977 Guardianship – Procedures

- Post-judgement matters include revision of orders, appointment of successor guardian, and termination
- Termination: Child turns 18, guardian resigns, or court removes for cause.
- Parent can move to terminate if:
  - ▶ A substantial change in circumstances since last guardianship order;
  - ▶ Parent is able to resume being guardian; and
  - ▶ Best interest of child

## § 48.977 Guardianship – Successor Guardian

- Subsidized § 48.977 guardianships may name a successor guardian.
  - ▶ The § 48.977 statute doesn't provide a procedure to name or order a successor guardian for unsubsidized § 48.977 guardianships
- It is unclear if the court would be able to make all of the required findings on the Dispositional Order to appoint a successor guardian in an unsubsidized § 48.977 guardianship such as the agency providing services and reasonable efforts.
  - ▶ It is up to the judge to decide since there is not a clear procedure to do this.

## **§ 48.977 Guardianship – Statement by Guardian ad Litem**

- § 48.977 does not have specific requirements for the Guardian ad Litem like there is in §48.9795.
  - ▶ JN-1512 can be e-filed in a § 48.977 guardianship case; however, some of the sections would not apply.
  - ▶ Some counties create their own Guardian ad Litem form.
  - ▶ Some Guardians ad Litem submit a letter to the court with their recommendations in a § 48.977 guardianship case.

## **§ 48.977 Guardianship – Statement by Proposed Guardian**

- The statute does not require it so that is why we do not have a § 48.977 Statement by the Proposed Guardian Circuit Court form.
- A judge may be interested in additional information about the proposed guardian.
  - ▶ Some judges have instructed parties to use the § 48.9795 form or counties have created their own form.

## **§ 48.977 Guardianship – Court Commissioners**

- A court commissioner is NOT allowed to hear § 48.977 guardianship proceedings
  - ▶ See § 757.69(1m)(e)

## **Delegation of Parental Powers § 48.979**

## **Delegation of Parental Authority § 48.979**

- Parent may transfer their authority to another person
- One year or shorter unless it's a relative or approved by the court
- Children in juvenile court (CHIPS, JIPS, guardianship, or Delinquency) need court approval (GF-222)
- Subject to the requirements of ICWA (IW-1783A/B)

## **Standby Guardian § 48.978**

## Standby Guardian – § 48.978

- Designed for single parents who are facing medical issues which may result in their incapacitation, debilitation, or death within 2 years
  - ▶ Allows for appointment of standby guardian if no other parent, or if other parent can not be found or is unwilling to be guardian
- Can done by the Court under sub. (2) or by the parent through a form under sub. (3)
- Specific notice and findings are required and post judgement matters are clearly set forth in the statutes

## Resources



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#### Guardianships (Chapter 48) - Minor Guardianships of the Person

- > [48.831 - Guardian for a Child Without a Living Parent for Adoptability Finding](#)
- > [48.977 - Guardian for Certain Children in Need of Protection or Services](#)
- > [48.9795 - Guardian of the Person for a Child](#)

#### Guardianships (Chapter 48) - Minor Guardianships of the Person - Indian Child Welfare Act (ICWA)

- > [48.831 - Guardian for a Child Without a Living Parent for Adoptability Finding \(ICWA\)](#)
- > [48.977 - Guardian for Certain Children in Need of Protection or Services \(ICWA\)](#)
- > [48.9795 - Guardian of the Person for a Child \(ICWA\)](#)

### Guardianships (Chapter 54)

- > [Conservator](#)
- > [Due to Incompetency](#)
- > [Minor Estate](#)
- > [Temporary](#)

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### Chapter 55

- > [Protective Placement/Protective Services](#)

## Minor Guardianship Resources

- Minor Guardianship Resources – [www.wiccuptraining.com](http://www.wiccuptraining.com)
- E-Learning Activities
  - ▶ Includes both § 48.977 and § 48.9795 Guardianship modules
- Minor Guardianship Webinar
  - ▶ The on-demand link is available on the Training Calendar page
  - ▶ This training has been approved for 1 CLE on-demand credit

# FILING A MINOR GUARDIANSHIP OF THE PERSON CASE

This document provides general information about  
Minor Guardianships of the Person and is not legal advice.

## 1 Which type of guardianship are you requesting?

### FULL GUARDIANSHIP

- A full guardianship requires the Petitioner to prove facts and circumstances establishing that the child's parents are unfit, unwilling, or unable to provide for the care, custody, and control of the child or other compelling facts and circumstances demonstrating that a full guardianship is necessary.
- A full guardian's duties and authority include:
  - 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.
  - 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 or a county department.
  - The right to change the residence of the child from Wisconsin to another state.
  - The guardian must immediately notify the court of any change in the address of the guardian or child.
  - The guardian must 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.
- A full guardianship remains until the child is 18 years old unless terminated earlier.

### TEMPORARY GUARDIANSHIP

- A temporary guardianship requires the Petitioner to prove facts and circumstances establishing that the child's particular situation, including the inability of the child's parents to provide for the care, custody, and control of the child for a temporary period of time, requires the appointment of a temporary guardian; the reasons for the appointment of a temporary guardian, and the powers requested for the temporary guardian.
- A temporary guardian's authority shall be limited to those acts that are reasonably related to the reasons for the appointment that are specified in the petition for temporary guardianship.
- A temporary guardianship can be ordered up to 180 days.
  - A temporary guardianship can be extended once for up to an additional 180 days.

### EMERGENCY GUARDIANSHIP

- An emergency guardianship requires the Petitioner to prove facts and circumstances establishing that the welfare of the child requires the immediate appointment of an emergency guardian.
- An emergency guardian's authority shall be limited to the acts, which are reasonably related to the reasons for the appointment.
- An emergency guardianship can be ordered up to 60 days.
  - An emergency guardianship cannot be extended.
- A Temporary Order Appointing an Emergency Guardian may be requested on the Petition (JN-1504) until the hearing on the Emergency Guardianship petition is held.

### Complete a Petition for Appointment of Guardian

- JN-1501 - Full, Limited, and Temporary Guardianships
  - For an Indian child, use the Indian Child Welfare Act version - IW-1501.
- JN-1504 - Emergency Guardianships
- All forms are available on [www.wicourts.gov](http://www.wicourts.gov)
  - Click on Forms, Circuit Court, Guardianship, 48.9795 - Guardian of the Person for a Child

## 3 Complete the UCCJEA Form - GF-150

- All forms are available on [www.wicourts.gov](http://www.wicourts.gov)
  - Click on Forms, Circuit Court, Guardianship, 48.9795 - Guardian of the Person for a Child

## 4 Provide Notice to Parties

- It is the petitioner's responsibility to provide notice of the hearing and a copy of the petition to all parties once you receive the hearing date from the court.
- Full, Limited, and Temporary Guardianships:
  - The child (if 12 years of age or older), his or her parents, the guardian, the legal custodian, and any other interested persons at least 7 days before the date of the hearing.
    - Proof of personal service, certified mail, or written admission of service of the person served is required.
  - For an Indian child:
    - The Indian child, Indian child's parents, Indian custodian, and Indian tribe at least 10 days before the date of the hearing. If the identity or location of the Indian child's parent, Indian custodian, or tribe cannot be determined, notice shall be provided at least 15 days before the date of the hearing to the U.S. Secretary of the Interior.
      - Proof of registered mail is required.
    - The child's guardian, legal custodian, and guardian ad litem / adversary counsel, and any other interested parties at least 7 days before the date of the hearing.
      - Service shall be made by first class mail or by personal service.
  - Emergency Guardianships:
    - The child (if 12 years of age or older), his or her parents, the guardian, the legal custodian, and any other interested persons as soon as possible after filing the petition.
    - Notice shall be served by the most practical means possible, including personal service or service by electronic mail or telephone.

## 5 Complete a Statement by Proposed Guardian

- The proposed guardian must complete JN-1514 - Statement by Proposed Guardian
  - All forms are available on [www.wicourts.gov](http://www.wicourts.gov)
    - Click on Forms, Circuit Court, Guardianship, 48.9795 - Guardian of the Person for a Child
- This statement must be submitted to the court at least 96 hours before the hearing on the Full, Limited, or Temporary Guardianship petition.

## 6 Optional Requests

- If you are also requesting a Minor Guardianship of the Estate, you must complete GN-3290 - Petition for Guardianship of the Estate (Minor Guardianship).
  - This form is located on [www.wicourts.gov](http://www.wicourts.gov)
    - Click on Forms, Circuit Court, Guardianship, Minor Estate
- If you are requesting an Emergency Guardianship, a Temporary Order Appointing an Emergency Guardian may be requested on the Petition (JN-1504) until the hearing on the Emergency Guardianship petition is held.

## 7 Court Staff Cannot Provide Legal Advice

- Court staff cannot provide legal advice or recommend which type of guardianship to file.
- If you have legal questions, please speak to an attorney.