

Minor Guardianships

Hon. Jason A. Rossell

Kenosha County Circuit Court
Kenosha

Minor Guardianships

- **Minor Guardianship of the Person → Chapter 48**
 - ▶ There are 3 types of Chapter 48 Guardianships:
 - § 48.977 – CHIPS Guardianships
 - § 48.9795 – Minor Guardianships of the Person
 - Full, Limited, Temporary and Emergency
 - § 48.831 – Appointment of Guardian for Child Without a Living Parent
 - For the purpose of an adoptability finding
- **Minor Guardianship of the Estate → Chapter 54**

Minor Guardianship Comparison Chart

Differences	§ 48.977	§ 48.9795
Underlying CHIPS case for the child.	✓	
Child must live with guardian.	✓	
Subsidized guardianship payments permissible.	✓	
Procedure for appointing a successor guardian.	Subsidized only.	✓
Annual report from guardian required.		Full only.
Court commissioner may conduct hearings.		✓
Emergency guardianship available.		✓

§ 48.9795 Guardianships

§ 48.9795 Guardianship – 2019 WI Act 109

- On August 1st, 2020, Minor Guardianships of the Person moved from Chapter 54 to Chapter 48
 - ▶ Any post-disposition actions on prior Ch. 54 minor guardianship cases would follow § 48.9795 procedures
- Did not change:
 - ▶ Minor Guardianships of the Estate
 - ▶ § 48.977 CHIPS guardianships

§ 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, JIPS or Delinquency)

§ 48.9795 Guardianship – Petitions

- Petition options:
 - ▶ Petition for Appointment of Guardian - Full/Limited/Temporary Guardianship (JN-1501 / IW-1501)
 - ▶ Petition for Appointment of Emergency Guardian (JN-1504)
- Each type of guardianship requested should have a separate petition and own case number
 - ▶ Only one Disposition can be entered into CCAP for each juvenile case
 - ▶ §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 – 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 – Court Commissioners

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

§ 48.9795 Guardianship – Procedures

- Full, Limited and Temporary Guardianships
 - ▶ Initial Hearing within 45 days
 - ▶ Fact-Finding or Fact-Finding and Disposition within 30 days of Initial Hearing or immediately
- Emergency Guardianships
 - ▶ Hearing as soon as possible
- Hearings can be adjourned for good cause under § 48.315

§ 48.9795 Guardianship – Procedures

- Emergency Guardianships
 - ▶ Court may, without a hearing, issue a Temporary Order Appointing Emergency Guardian (JN-1520)
 - ▶ Order remains in effect until the emergency guardianship hearing

STATE OF WISCONSIN, CIRCUIT COURT, _____		COUNTY _____
IN THE INTEREST OF _____		☐ Amended
Name _____	Temporary Order Appointing an Emergency Guardian (§48.9795, Wis. Stats.)	
Date of Birth _____	Case No. _____	
THE COURT FINDS: 1. A Petition for an Emergency Guardianship has been filed in this case by (Name) _____ on (Date) _____. 2. A hearing on the Petition is scheduled for (Date) _____. 3. The Petition for Emergency Guardianship requests a temporary order appointing an emergency guardian without a hearing until a hearing on the emergency guardianship petition is held. 4. Good cause ☐ has ☐ has <u>not</u> been shown that a temporary order appointing an emergency guardian is required until a hearing is held on the emergency guardianship petition. 5. This order does not change the placement of a child under the supervision of a court pursuant to §§48.13, 48.133, or §48.14 (1) to (10) or (12), Wis. Stats., or ch. 938.		
THE COURT ORDERS: The Request to issue a Temporary Order Appointing an Emergency Guardian is: ☐ 1. GRANTED. A. (Name) _____ is appointed as a Temporary Emergency Guardian of the child. B. This Order expires on the date of the hearing on the Petition for Emergency Guardianship (Date) _____. C. The Emergency Guardian has the following duties and authority: _____ ☐ See attached ☐ 2. DENIED for the following reason(s): _____ ☐ 3. Other: _____		

§ 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 – 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 – 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 – Full Guardianship

The Petitioner must allege 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

B. The Court orders the following type of guardianship:

☐ **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.

§ 48.9795 Guardianship – Limited Guardianship

- The Petitioner must allege the child's parents need assistance in providing for the care, custody and control of the child
- The court must specify the guardian's duties and authorities that are limited from a full guardianship
- Requires an expiration date
 - Can be extended

☐ Limited Guardianship

- The following duties and authority shall apply to the guardian.

(Please select the duties or authority of the guardian under this limited guardianship.)

- ☐ 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.
- ☐ Other: _____

- The guardian's authority is limited in the following manner: (Please select any limitations that apply.)

- ☐ The parent (Name) _____ retains power to make the following decisions within the parent's ability to exercise effectively: _____.
- ☐ The physical custody of a guardian is limited to allow shared physical custody between the guardian and parent (Name) _____ since it is in the best interests of the child.

☐ Other: _____

- The Limited Guardianship expires on: [Date] _____.

§ 48.9795 Guardianship – Temporary Guardianship

- The Petitioner must allege 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
- The court must specify the guardian's duties and authorities

☐ Temporary Guardianship

- The 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.

(Please list the duties and authority of the temporary guardian below.)

☐ _____
☐ _____
☐ _____
☐ _____

☐ See attached

- The Temporary Guardianship expires on (not to exceed 180 days): _____.

- Requires an expiration date that cannot exceed 180 days
 - A one-time extension is available up to an additional 180 days

§ 48.9795 Guardianship – Emergency Guardianship

- The Petitioner must allege that the welfare of the child requires the immediate appointment of an emergency guardian
- The court must specify the guardian's duties and authorities

B. The Court orders an Emergency Guardianship.

- The emergency guardian's authority shall be limited to the following acts, which are reasonably related to the reasons for the appointment. (Please list the duties and authority of the emergency guardian below.)

☐ _____

☐ _____

☐ _____

☐ _____

- The Emergency Guardianship expires on [Date] _____, [Not to Exceed 60 days]

- Requires an expiration date that cannot exceed 60 days
 - ▶ Cannot be extended
 - ▶ A new petition must be filed if additional time is needed

§ 48.9795 Guardianship – Additional orders

The court can order:

- Successor guardian
- Reasonable rules of parental visitation and/or
 - ▶ Cannot delegate decision to 3rd Party (e.g., counselor)

In Re RMZ, 2023 WI App 16 (per curiam)
- Amount of support to be paid by the child's parent(s)

☐ C. The person named as the successor guardian of the child is _____ and subject to the court's approval, will be appointed as guardian of the child upon the guardian's death, unwillingness or inability to act, resignation, or removal by the court.

☐ D. Reasonable rules of parental visitation for:

☐ Parent 1 (Name) _____ Rules: _____ ☐ See attached

☐ Parent 2 (Name) _____ Rules: _____ ☐ See attached

☐ E. The amount of support to be paid by the child's parent(s):

☐ Parent 1 (Name) _____

☐ \$ _____ per month commencing on [Date] _____

Payable by ☐ wage assignment ☐ directly between parties.

☐ Parent 2 (Name) _____

☐ \$ _____ per month commencing on [Date] _____

Payable by ☐ wage assignment ☐ directly between parties.

- Child support obligations that are ordered in a Chapter 48 minor guardianship case are not enforceable by a county child support agency since child support is not a party in guardianship cases
- If a guardian applies for services at the child support agency, then child support can enforce the order

§ 48.9795 Guardianship – ICWA

ICWA is incorporated into §48.9795

- IW-1530 for a Full, Limited or Temporary guardianship requires findings of:
 - ▶ Serious damage with QEW testimony
 - ▶ Active efforts
 - ▶ Placement preferences
- JN-1504 for an Emergency guardianship requires an imminent harm finding

Full, Limited, or Temporary guardianship

6. Continued custody of the child by the parent or Indian custodian ☐ is ☐ is not likely to result in serious emotional or physical damage to the child, based on the testimony of one or more qualified expert witnesses.
7. Active efforts ☐ were ☐ were not made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family. ☐ See attached Statement of Active Efforts (IW-1609)
8. ☐ Placement has been made in accordance with the order of preference set forth §48.028, Wis. Stats.
OR
☐ There is good cause to depart from the order of placement preference under §48.028, Wis. Stats.

Emergency guardianship

4. The child ☐ is subject to §48.028, Wis. Stats., or the federal Indian Child Welfare Act (25 USC 1901 to 1963).
Tribe's name and address: _____
An emergency guardianship ☐ is ☐ is not necessary to prevent imminent physical damage or harm to the Indian child.
☐ may be subject to §48.028, Wis. Stats., or the federal Indian Child Welfare Act (25 USC 1901 to 1963).
Tribe's name and address: _____
☐ is not subject to §48.028, Wis. Stats., or the federal Indian Child Welfare Act (25 USC 1901 to 1963).

§ 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 has no waiting period for refileing like Chapter 54 and a full/limited/temporary can be filed before an emergency guardianship expires

§ 48.9795 Guardianship – Post-Disposition

- There are clear procedures and forms to:
 - ▶ Reconsider or Modify an Emergency Guardianship
 - ▶ Modify an order
 - ✓ There must be a substantial change in circumstances since the last guardianship order was entered and it is in the best interest of the child
 - ▶ Extend a Limited or Temporary Guardianship
 - ▶ Terminate the 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:
 - ▶ Child turns 18 (Full) or expiration 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; or
 - ▶ 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

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 names will be listed on the Dispositional Order
 - ▶ If both co-guardians are listed, both co-guardians must sign all paperwork
 - ▶ If co-guardians are listed as “and/or”, then one or the other co-guardian can sign paperwork

§ 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 – 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 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).

Grandparent Visitation

- Grandparent and step-parent visitation is allowed under §48.9795(12) if parent(s) deceased
 - ▶ Otherwise use procedures in § 767.43
- Can be filed in existing guardianship case or as a separate JG action

§ 48.977 CHIPS Guardianships

§ 48.977 Guardianship – Requirements

- Child adjudicated CHIPS or JIPS - uncontrollable behavior
- Child will live with proposed guardian
- Guardian willing and able to serve for an extended time or until child is 18
- TPR not in child's best interests
- Parent is neglecting, refusing or unable to fulfill the duties as guardian
- Agency has made reasonable efforts to prevent removal/return the child home

§ 48.977 Guardianship – Filing Procedures

Can be filed by:

- Child
- Parent
- Guardian
- Legal custodian or Indian custodian
- Guardian ad litem
- Proposed guardian
- Department of Children and Families
- Agency
- District Attorney/Corporation Counsel

§ 48.977 Guardianship – Filing Procedures

- A separate JG filing is required
- The JG petition should not be filed in the JC CHIPS case
- Any guardianship documents should only include the JG case number and not the JC case number

§ 48.977 Guardianship – Procedures

Initial / Plea Hearing

- Must be held no more than 30 days after filing the petition
- Petitioner must provide notice at least 7 days before the hearing
- ICWA cases – notice is at least received 10 days before the hearing for some parties and 15 days before the hearing if sending to U.S. Secretary of Interior

§ 48.977 Guardianship – Court Commissioners

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

§ 48.977 Guardianship – Guardian ad Litem

- A Guardian ad Litem must be appointed for the child
- § 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 – Procedures

- Fact-Finding or Fact-Finding and Dispositional Hearing
 - ▶ No more than 30 days after the Plea Hearing
- Dispositional Hearing
 - ▶ No more than 30 days after the Fact-Finding Hearing
- Hearings can be adjourned for good cause under §48.315

§ 48.977 Guardianship – Full or Limited

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)

10. It ☐ is ☐ is not in the child's best interests that the person be appointed guardian with
☐ full powers enumerated under §48.023, Wis. Stats.
☐ powers limited to: _____

THE COURT ORDERS:

The Petition is

☐ 1. **GRANTED** and (Name) _____ is appointed guardian with
☐ full powers enumerated under §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:

- o 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.
- o 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.
- o The right and duty of reasonable visitation of the child.
- o 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.

☐ powers limited to: _____

§ 48.977 Guardianship – Subsidized Payments

- The county agency will determine if the proposed guardians qualify for a guardianship subsidy prior to filing the §48.977 CHIPS guardianship petition
 - ▶ If proposed guardians qualify, the department eligibility paperwork will be attached to the petition
- The determinations made under §48.623(1), Wis. Stats., that the guardian is eligible to receive monthly subsidized guardianship payments, are confirmed on the Dispositional Order
 - ▶ If a subsidized guardianship is granted, the CHIPS case must be terminated. §48.977 (3r)(a)

§ 48.977 Guardianship – Successor Guardian

- Subsidized § 48.977 guardianships may name a successor guardian
- § 48.977 does not provide a procedure to name or order a successor guardian for an unsubsidized guardianship
 - ▶ 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 – Subsidized Payments to Successor Guardian

- Subsidized payments can only be transferred to a successor guardian if the individual was listed as the prospective successor guardian on the current subsidized guardianship agreement or amended agreement prior to the death or incapacitation of the original subsidized guardian(s)
- If subsidized payments cannot be transferred, some counties will seek to terminate the §48.977 guardianship and file a new §48.9795 guardianship so the new guardian can seek kinship payments

§ 48.977 Guardianship – Post-Disposition

- There are clear procedures and forms to:
 - ▶ Revise Guardianship Order
 - ▶ Remove Guardian for Cause
 - ▶ Appoint a Successor Guardian
 - ▶ Terminate
 - ✓ Child turns 18, a TPR involving the child occurred, court removes guardian for cause and a successor guardian was not appointed, or the guardian resigned, the resignation is accepted by the court, and a successor guardian is not appointed

§ 48.977 Guardianship – Termination by a Parent

- A parent can request to terminate if:
 - ▶ There has been a substantial change in circumstances since last guardianship order;
 - ▶ Parent is able to resume being guardian; and
 - ▶ Best interest of child
- A hearing is required unless written waivers of objection are filed
 - ▶ The county agency will receive notice; however, they won't be able to provide much information besides they haven't received any CPS reports that have risen to the level requiring CPS involvement

§ 48.979 Power of Attorney Delegating Parental Power

§ 48.979 Power of Attorney Delegating Parental Power

- Parent may transfer their authority to another person (agent)
- *New Circuit Court form GF-223
- One form should be used for each child/juvenile
- There are 3 circumstances requiring the form to be filed with the court

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY	
IN THE INTEREST OF	☐ Amended
Name _____	Power of Attorney Delegating Parental Power (§48.979, Wis. Stats.)
Date of Birth _____	Case No. _____

I STATE ON INFORMATION AND BELIEF:

This power of attorney is for the purpose of providing for the care and custody of:

1. Child's Name, Address _____ Child's Date of Birth _____

2. I, (Name and address of parent) _____ state that I have legal custody of the child named above. (Only a parent who has legal custody may use this form.)

3. I delegate my parental power to (Name of agent) _____
 Agent's Address: _____
 Agent's telephone number(s): _____
 Agent's email address: _____
 Relationship of agent to child: _____

4. The parental power I am delegating is as follows:

☐ Full parental power regarding the care and custody of the child named above.
☐ Partial parental power regarding the care and custody of the child named above.

☐ The power to consent to all health care.

☐ The power to consent to only the following health care:

- ☐ Ordinary or routine health care, excluding major surgical procedures, extraordinary procedures, and experimental treatment.
- ☐ Emergency blood transfusion.
- ☐ Dental care.

☐ Disclosure of health information about the child.

☐ The power to consent to educational and vocational services.

☐ The power to consent to the employment of the child.

☐ The power to consent to the disclosure of confidential information, other than health information, about the child.

☐ The power to provide for the care and custody of the child.

☐ The power to consent to the child obtaining a motor vehicle operator's license.

☐ The power to travel with the child outside the State of Wisconsin.

☐ The power to obtain substitute care, such as child care, for the child.

☐ Other specifically delegated powers or limits on delegated powers: _____

☐ See attached _____

5. This delegation of parental powers does not deprive a custodial or noncustodial parent of any of his or her powers regarding the care and custody of the child, whether granted by court order or force of law.

6. This document may not be used to delegate the power to consent to:

- the marriage or adoption of the child,
- the performance or inducement of an abortion on or for the child,
- the termination of parental rights to the child,
- enlistment of the child in the U.S. armed forces, or

§ 48.979 Power of Attorney Delegating Parental Power – GF-223

- GF-223 will be filed with the court:
 - ▶ If the child is under a CHIPS, JIPS or Delinquency case, this form will be filed with the Juvenile Court for approval with the court issuing GF-222
 - ▶ If the child is an Indian child, the form will be filed with the juvenile court, the juvenile court will schedule a hearing, and the parent will sign and file the consent form with the court at the hearing
 - ▶ If the proposed agent is not a relative and the delegation would remain in effect for longer than 1 year, then the form will be filed with the juvenile court, a hearing will be scheduled within 45 days, and the court will need to approve the delegation and issue GF-222

Order Approving Delegation of Powers – GF-222

If there is not an existing juvenile case, then a Group Juvenile (GJ) case will be opened.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY	
IN THE INTEREST OF Name _____ Date of Birth _____	Order Approving Delegation of Powers under §48.979, Wis. Stats. Case No. _____
THE COURT FINDS:	
1. The proposed Power of Attorney Delegating Parental Power is <u>attached</u> .	
2. A request was made to approve the delegation because: ☐ A. The child is subject to the jurisdiction of the court under §§48.13, 48.14, 938.12, 938.13, or 938.14, Wis. Stats. ☐ B. The proposed delegation of powers is to an agent who is not a relative of the child and would remain in effect for longer than one year.	
3. Other: _____	
THE COURT ORDERS:	
1. The proposed delegation of powers is ☐ approved. ☐ not approved.	
2. Other: _____	
THIS IS A FINAL ORDER FOR THE PURPOSE OF APPEAL.	

Resources

Minor Guardianship Resources

- Minor Guardianship Resources – 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.

*Also available in Spanish

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
 - 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
 - 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 item / advisory 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
 - 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
 - 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.

Questions or Comments?