

\$48.9795 Minor Guardianships & Delegation of Parental Powers

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Continuing Education

Judicial Officers - .5 credits

- CCIP will send the attendance list to Office of Judicial Education
- Must attend entire webinar for credit

Attorneys - 1.5 credits

- Approved for CLE, GAL minor, & GAL family credits
- Search under "Live Webcast" for location

Social Workers - 1.5 hours

- Attendee will enter the webinar as an external training in PDS Online to earn Continuing Education Hours



Please note this information is not meant
to be construed as legal advice.

Any guidance provided should not override
a judge's decision and authority.

Please do not include any confidential case
specific information in the chat.

Thank you!



48.9795

MINOR GUARDIANSHIPS OF THE PERSON



2019 WI Act 109 ~ §48.9795

- 2019 WI Act 109 created §48.9795 to move guardianship of the minor child from Chapter 54 to Chapter 48 effective August 1, 2020
- §48.9795 has 4 types of guardianship:
 - Full, Limited, Temporary, or Emergency
- The non-statutory provisions of 2019 Wisconsin Act 109 directed that all existing minor guardianship of the person cases under Ch. 54 be “considered guardianships under §48.9795”
 - Any post-disposition activities in an existing Ch. 54 minor guardianship of the person case would follow the procedures set forth in §48.9795



§48.9795 - Venue

- In the child's county of residence; 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



Filing a \$48.9795 Guardianship Case

- JG case type - Juvenile Guardianship
- Each petition requires a separate filing and own case number because juvenile cases in CCAP can only have 1 disposition
 - **JN-1501** - Full, Limited, Temporary Guardianship
 - **JN-1504** - Emergency Guardianship
 - **IW-1501** - Full, Limited, Temporary Guardianship – ICWA
- The JN-1501 & JN-1504 petitions are also available in Spanish!



Length of \$48.9795 Guardianships

- **Full** – until the child's 18th birthday
- **Limited** – an expiration date is required without limitations and can be extended
- **Temporary** – up to 180 days with a one-time possible extension
- **Emergency** – up to 60 days without the possibility of an extension



Proposed Guardians

- The Proposed Guardian (PG) party type for JG cases is utilized when the Proposed Guardian is not the Petitioner
 - For example, when the DA's Office or Corporation Counsel files the guardianship case
- The guardian party type is only be used for someone who has been appointed as the guardian



Alleged Fathers

- An alleged father is considered an interested person for purposes of a petition for guardianship under §48.9795 (1)(a)1(c)
 - However, §48.9795 (1)(b) states an alleged father would not be considered a party
- Parent is not defined in §48.9795; however, parent is defined in §48.02 (13) and does not include alleged fathers
- It is recommended to add an alleged father as a Notice Recipient unless your judge says otherwise



Filing Status

- Beginning in January 2024, Juvenile Clerks are now required on newly filed JG and TP cases to select whether the filing type is publicly or privately filed within eFiling review
 - This distinction helps to separate the data for counties to see only JG and TP data for cases they are involved in
 - CCIP can pull county specific data that does not include private cases
- **Public** – filed by the District Attorney, Corporation Counsel, county child welfare agency, or an attorney contracted by District Attorney, Corporation Counsel, or county child welfare agency
- **Private** – filed by an individual, attorney, or agency other than the District Attorney, Corporation Counsel, or county child welfare agency

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Additional Filing Documents

The following documents may be submitted with the petition or prior to the hearing:

- **GF-150** - *Uniform Child Custody Jurisdiction and Enforcement Act Declaration*
- **JN-1514** - *Statement by Proposed Guardian*
 - *Must be filed at least 96 hours prior to Full, Limited, or Temporary guardianship hearing
- **JN-1510** - *Nomination of Guardian by Parent or Child*
 - *This form is not required to be filed

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Appoint a Guardian ad Litem (GAL)

- A Guardian ad Litem must be appointed for the child regardless of the child/juvenile's age
 - **JD-1798A** - *Order Appointing Guardian ad Litem or Attorney*
- There is no requirement for appointing adversary counsel in §48.9795 guardianships
 - The court may appoint counsel for the child under §48.23 (3-4)
 - SPD anticipates appointing counsel when a request is made by the child or the court



Scheduling an Initial Hearing

- **Emergency** - as soon as possible
- **Full, Limited, or Temporary** - within 45 days of the petition being filed
- Hearings can be adjourned for good cause under §48.315
- A Court Commissioner can only hear uncontested §48.9795 guardianship proceedings §757.69 (1)(g)



Poll Questions - #1

- Who hears the initial hearing for §48.9795 guardianships?
 - Judge
 - Court Commissioner
 - Judge or Court Commissioner
 - Unsure
- How quickly do you schedule an Emergency §48.9795 guardianship hearing?
 - Within 48 hours - same as CHIPS TPC
 - Within 3 days
 - Within a week
 - Other
 - Unsure

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Temporary Order Appointing Emergency Guardian

- The court may issue a Temporary Order Appointing an Emergency Guardian until a hearing on the Emergency guardianship petition is held, which must be scheduled as soon as possible
- The petitioner must request the temporary order on the Petition for Appointment of Emergency Guardian - **JN-1504**
- The court will issue **JN-1520** - Temporary Order Appointing an Emergency Guardian

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Notice

- **Full, Limited, or Temporary** - the petitioner must provide notice of the hearing and a copy of the petition at least 7 business days before the date of the hearing to:
 - The child, his or her parents, the guardian, the legal custodian, and any other interested person
 - Proof of personal service, certified mail, or written admission of service of the person served is required
 - *This information is included on the petition



Notice

- **Emergency** - the petitioner must provide notice of the hearing and a copy of the petition as soon as possible after filing the petition to:
 - The child, his or her parents, the guardian, the legal custodian, and any other interested person
 - Notice shall be served by the most practical means possible, including personal service or service by electronic mail or telephone
 - *This information is included on the petition



Notice - ICWA

- The petitioner must provide notice of the hearing and a copy of the guardianship petition at least 10 business days before the date of the hearing to the Indian child's parents, Indian custodian, and Indian tribe
 - Proof of registered mail is required
 - 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
- The petitioner must also provide notice of the hearing and a copy of the guardianship petition to the child's guardian, legal custodian, and guardian ad litem, at least 7 business days before the date of the hearing. Service shall be made by first class mail or by personal service



Notice

- The petitioner or clerk may use these forms to provide notice:
 - **JD-1724** - *Notice of Hearing*
 - **IW-1724** - *Notice of Hearing - ICWA*
- Petitioner may use **JD-1825** - *Declaration of Service* to document service



Poll Questions - #2

- Who provides notice to parties for §48.9795 guardianship hearings?
 - Petitioner
 - Court
 - DA / Corp Counsel, if there is an underlying CHIPS case
 - Unsure
- How have you provided notice to a parent whose location is out of state, out of the country, or unknown?
 - Personal Service
 - Published notice in newspaper
 - Stated efforts to the court and asked to waive notice
 - Other
 - Unsure



Poll Question - #3

- When there is a CHIPS, JIPS, or Delinquency case and legal custody is requested by the county agency, how is it requested?
 - Through a Request for Revision
 - Filing a §48.9795 Emergency Guardianship Petition
 - Other – please enter in chat
 - Unsure



What must be proven?

Full guardianship

The 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 are: ☐ See attached

Limited guardianship

The facts and circumstances establishing that the child's parents need assistance in providing for the care, custody, and control of the child and a statement of the specific duties and authority under §48.9795 (2) (d), Wis. Stats., sought by the petitioner for the proposed guardian and the specific parental rights and duties that the petitioner seeks to have transferred are: ☐ See attached

Burden of proof is

Clear and Convincing evidence

Temporary guardianship

The 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 are: ☐ See attached

I am requesting an emergency guardianship.

The facts and circumstances establishing that the welfare of the child requires the immediate appointment of an emergency guardian are: ☐ See attached



Additional Documents

This document *must* be filed at least 96 hours prior to the Full, Limited, or Temporary guardianship hearing:

- **JN-1514** - *Statement by Proposed Guardian*

The following documents *may* be submitted prior to the hearing:

- **JN-1510** - *Nomination of Guardian by Parent or Child*
 - A child 12 or older or a parent can nominate a proposed guardian
 - *This form is not required to be filed
- **JN-1512** - *Report of Guardian ad Litem for Guardianship of a Child*
 - Provides information on the GAL duties, wishes of the child, and provide the court with recommendations
 - *This form is not required to be filed



At Initial Hearing - Stay

- If there is a pending Chapter 48 or 938 case that has not yet reached Disposition, the §48.9795 Full, Limited, or Temporary guardianship must be stayed at the initial hearing
 - The Juvenile Clerk will enter a code once the case is stayed, so it will stop aging
 - Once the underlying Chapter 48 or 938 case reaches Disposition, the Juvenile Clerk will enter a code to remove the stay and allow the case to age/proceed
- It is possible to schedule the CHIPS/JIPS/Delinquency Dispositional Hearing at the same time as the Guardianship Hearing
 - Once the Chapter 48/938 reaches Disposition, then the court can enter a Guardianship Order

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At Initial Hearing - Stay

- An Emergency guardianship can move forward when there is a Chapter 48 or 938 case pending
- The guardianship stay is not required for an Emergency guardianship
- An Order Appointing a Guardian may 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) or ch. 938

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At Initial Hearing - Consolidation

- A Minor Guardianship of the Estate (GN) case can be consolidated into a Minor Guardianship of the Person (JG) case
 - Consolidation is optional
- The court will issue **JN-1516** - *Order to Consolidate Minor Guardianship of the Child and Estate Cases*
- If the minor estate and person cases are consolidated, the GN minor estate case is consolidated into the JG minor person case and the consolidated case is under the jurisdiction of the juvenile court
 - There will be separate orders for the minor person case and the minor estate case



Additional Hearings

- If the guardianship petition is not contested, the court shall immediately proceed to a Fact-Finding and Dispositional Hearing, unless an adjournment is requested
 - If adjourned, the court shall schedule the hearing within 30 days after the Initial Hearing
- If the guardianship petition is contested, the court shall schedule a Fact-Finding and Dispositional Hearing within 30 days after the Initial Hearing
 - If all parties consent, the court may proceed immediately to the Fact-Finding and Dispositional Hearing
- Hearings may be adjourned for good cause under §48.315



Poll Questions - #4

- What percentage of §48.9795 guardianship cases are contested?
 - 0 - 25%
 - 26% - 50%
 - 51% - 75%
 - 76% - 100%
 - Unsure
- On average, how many hearings occur for a §48.9795 guardianship?
 - 1
 - 2
 - 3
 - 4 or more
 - Unsure



Petition Dismissed before Disposition

- If the case is dismissed prior to appointing a guardian,
- **JD-1748** - *Order Dismissing Petition* will be filed

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY	
IN THE INTEREST OF _____	
Name _____	Order Dismissing Petition
Case of Year _____	Case No. _____
THE COURT FINDS: ☐ 1. A motion has been made to dismiss the Petition by the ☐ prosecutor. ☐ child/juvenile. ☐ parent. ☐ Other: _____ ☐ 2. This matter should be dismissed because ☐ the child/juvenile is not within the jurisdiction of the court. ☐ statutory time limits were not met. ☐ the petition is insufficient. ☐ the facts in the petition were not proven. ☐ dismissal is in the best interest of the child/juvenile and public. ☐ Other: _____	
THE COURT ORDERS: ☐ 1. The Petition is dismissed. ☐ 2. Because the best interests of the public and the child/juvenile will be served, the Petition is dismissed and referred to the intake worker for ☐ informal disposition [§48.21(7), Wis. Stats.] ☐ referred prosecution [§48.21(7), Wis. Stats.] ☐ Other: _____	
THIS IS A FINAL ORDER FOR THE PURPOSE OF APPEAL. DISTRIBUTION: 1. Child 2. State 3. Juvenile Guardian ad Litem/Advisory Counsel 4. Parents 5. Attorney 6. Child's Guardian/Legal Custodian 7. County Attorney/Children's Counsel 8. Court 9. Court Appointed Special Advocate (CASA) 10. Other	



Letters of Guardianship & Dispositional Orders 1 Combined Form

- **JN-1521** - *Emergency Guardianship*
- **JN-1530** - *Full, Limited, or Temporary Guardianship*
- **IW-1530** - *Full, Limited, or Temporary Guardianship – ICWA*
- Guardian is provided with specific duties and authorities. Parent only retains specific rights that are not ordered to guardian or rights specifically ordered to remain with parent
- An amount of support, parental visitation, and/or a successor guardian can be ordered

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Full & Limited Guardianship

Full

- Guardian is provided with all of the listed duties and authorities
- Guardian must file an Annual Report

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.

Limited

- The court will select the guardian's duties and authorities and enter an expiration date that 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.

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Temporary & Emergency Guardianship

Temporary

- The court will list the guardian's duties and authorities
- A temporary guardianship cannot exceed 180 days but can be extended once

☐ **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.)

☐ _____

☐ _____

☐ _____

☐ _____

• The Temporary Guardianship expires on [not to exceed 180 days]: _____ ☐ See attached

Emergency

- The court will list the guardian's duties and authorities
- An emergency guardianship cannot exceed 60 days cannot be extended

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]



Co-guardians

- §48.9795 (2)(b)4 - The court may appoint coguardians of the person for a child, subject to any conditions that the court imposes
 - Unless the court orders otherwise, any decision concerning the child must be concurred in by all coguardians or is void
- It is important to note whether both co-guardians have to sign or if only 1 of the co-guardians can sign paperwork. Some courts will order the co-guardians as grandma and/or grandpa
- If co-guardians are no longer living together or divorcing, a revision could be filed for the court to name only one guardian



Amount of Support

- An amount of support ordered through a §48.9795 guardianship case is not considered child support
- The child support agency does not have the ability to enforce the order since the child support agency is not a party in Chapter 48 minor guardianship cases
- If an amount of support is ordered in a minor guardianship case, it is up to the guardian themselves to enforce the order and keep track of payments



Amount of Support

- Instead, counties have recommended that the guardian takes the guardianship order to the child support agency to apply for services
- The child support agency can then see if there is an existing family or paternity case where they can file a motion to establish an order for the parents to pay the guardian or if a new family or paternity case needs to be filed to obtain a child support order
- This way, the child support agency handles obtaining the order, enforcing the order, and keeping track of payments through the KIDS system



Amount of Support - Modification

- If the amount of support was ordered within the §48.9795 guardianship case, **JN-1540** - *Request to Modify* should be filed within the §48.9795 JG case that ordered the amount of support
 - A new case should not be opened
- If the family took the guardianship order to the child support agency to request services, a modification would be handled through the child support agency in the paternity or family case



Guardian ad Litem Fees

- §48.235(8) - the court may order the parents to provide reimbursement for the GAL fees, but it is not required
 - The statute reads, “..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.”
- §48.235(8)(d) – “the court may order a parent, agency or proposed adoptive parent to place payments in an escrow account in an amount estimated to be sufficient to pay any compensation and fees payable”
 - This allows the court to require the parents to pay a deposit for GAL fees
- There is nothing in statute requiring or authorizing the proposed guardian to pay the GAL fees



Guardian ad Litem Fees

- There is one provision in §48.9795 where the court can 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. See §48.9795(10)(d)5.
 - This is the only section within §48.9795 that specifically 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).



Annual Reports

Full

Required to
be filed
annually

Limited

May be
required to be
filed at the
discretion of
the court

Temporary

Not required
by statute

Emergency

Not required
by statute

Each county determines when packets are sent and due



Notice to File Annual Report

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY	
IN THE INTEREST OF _____	☐ Amended
Notice to File Annual Report on the Condition of the Child (\$48.9795, Wis. Stats.)	
Name _____	Case No. _____
Date of Birth _____	
To: [] Address: []	
GUARDIAN OF THE CHILD:	
Please complete the enclosed Annual Report on the Condition of the Child (\$48.9795, Wis. Stats.) and file with the court by: [Due date] _____.	
Send completed form to: [Clerk address phone number] _____	
Note: JN-1550, Annual Report on the Condition of the Child (\$48.9795, Wis. Stats.) is also available in computer fillable format from the court website at https://www.wicourts.gov/forms1/circuit/ .	
DISTRIBUTION: 1. Guardian	

- The court will send the guardian **JN-1554 - Notice to File Annual Report on the Condition of the Child**
- This form is not available on wicourts.gov



Annual Report

- The guardian will complete **JN-1550 - Annual Report on the Condition of the Child**
- The court will provide the guardian this form but it is also available on wicourts.gov

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY	
IN THE INTEREST OF _____	☐ Amended
Annual Report on the Condition of the Child (\$48.9795, Wis. Stats.)	
Name _____	Case No. _____
Date of Birth _____	
1. LOCATION AND ADDRESS OF THE CHILD A. The child lives at (Street, City, County, State, Zip) _____ ☐ B. The child's or guardian's address has changed within the last year. A Notice of Change of Address (JN-1552) ☐ was previously filed with the court. ☐ is attached.	
2. HEALTH AND LIVING CONDITIONS OF THE CHILD A. ☐ The child lives with me. ☐ The child does <u>not</u> live with me. I personally observe the living conditions and care of the child ☐ daily ☐ weekly ☐ monthly ☐ Other: _____ B. Has the child's health changed in the last year? ☐ No change ☐ Improved ☐ Worsened Please explain the child's health condition: _____	
3. RECOMMENDATIONS REGARDING THE CHILD ☐ See attached _____ ☐ Guardian's Signature _____ Name Printed or Typed _____ Guardian's Address _____ Email Address _____ Guardian's Telephone Number _____ Date _____	



Notice of Overdue Annual Report

- If the guardian does not file the Annual Report, the court will send the guardian **JN-1555 - Notice of Overdue Annual Report - 48.9795**
- This form is not available on wicourts.gov
- Failure to file the Annual Report may result in the court scheduling a hearing to review the guardian's conduct

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY	
IN THE INTEREST OF	
Name _____	Notice of Overdue Annual Report (§48.9795, Wis. Stats.)
Date of Birth _____	Case No. _____
To: _____	
Address: _____	
You were appointed Guardian of the Person and were required to file an Annual Report on the Condition of the Child as one of your duties as guardian.	
The deadline for filing this document has passed. You must file this document with the court at: _____	
Please contact the court if you are unable to file the Annual Report on the Condition of the Child within the next 10 days .	
Failure to file the Annual Report may result in the court scheduling a hearing to review your conduct as the guardian.	
_____ County Circuit Court	
Phone Number _____	Date _____
DISTRIBUTION: 1. Court 2. Guardian of the Person	



Annual Report for Estate if Consolidated

If the Minor Guardianship of the Estate case is consolidated into the JG case, the court will also send:

- **GN-3495 - Notice to File Account of Guardian (Minor Guardianship of the Estate)**
- **GN-3505 - Account of Guardian - Annual/Interim/Final (Minor Guardianship of the Estate)**
- These forms are not available on wicourts.gov



Poll Question - #5

- What does your county do if the Annual Report is not filed after mailing the Notice of Overdue Annual Report?
 - Schedule a Hearing to Review Conduct of the Guardian
 - Nothing
 - Other – please enter in chat
 - Unsure



Successor Guardians

JN-1580 – Petition for Successor Guardian

- If a successor guardian was named on the Dispositional Order and the guardian died, resigned and the resignation was accepted by the court, or was removed by order of the court – a hearing is not required and the court can appoint the previously named successor
 - any party may request or the court on its own motion may appoint a successor guardian
 - a hearing would only be held if requested by a party or scheduled by the court
- If a successor guardian has not been named in the Dispositional Order and Letters of Guardianship, the procedures for appointing a successor guardian would be the same as appointing the original guardian



Successor Guardians

- If a party requests a hearing or the judge determines a hearing should be held, the court will schedule the hearing and provide notice to the case participants
 - The statute doesn't provide a timeframe
- In addition to the court issuing **JN-1581** – Order for Appointment of Successor Guardian - the court can also issue new Letters of Guardianship and Dispositional Order for the successor guardian
 - It is not required by statute but might be helpful for providers to clearly see the guardian's duties and authorities
- If a party is only requesting to name a successor but not appoint the successor guardian, a revision can be utilized

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Standby Guardian from Chapter 54?

- The non-statutory provisions of 2019 Wisconsin Act 109 directed that all existing minor guardianship of the person cases under Ch. 54 be "considered guardianships under §48.9795"
- §48.9795 does not include a procedure to appoint a standby guardian
 - If a standby guardian was named in an existing Chapter 54 case, a successor guardian will likely have to be appointed
 - An "other" line was added to **JN-1581** under the Court Orders, where the court can explain that a successor was appointed since there are no longer standby guardian procedures in §48.9795
- It is ultimately the judge's decision on how to proceed

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Modification – JN-1540

- **JN-1540** *Request to Modify* may be made by any interested person or any other person approved by the court
- The Request to Modify is limited to the Full, Limited or Temporary Guardianship
 - Emergency has a separate section - Request to Reconsider/Modify
- The request must include facts and circumstances to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and the proposed modification is in the best interests of the child
 - There is no waiting period in Chapter 48
- The modification may 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) or Ch. 938



Modification – JN-1540

- The court will schedule a hearing as soon as practicable
 - A hearing must be held unless all required written waivers of objections to the modification are signed, filed with the court, and the court approves the waivers
- The person requesting the modification shall provide notice of the hearing and a copy of the request to all interested persons at least 7 days before the date of the modification hearing
 - Unless local practice is for the court to send notice



Reconsider / Modify an Emergency Guardianship Order

- After an Emergency Guardianship is granted, the following parties may petition for reconsideration or modification:
 - Child (if 12 or over),
 - Child's guardian ad litem - *if appointed after the hearing on the petition where exigent circumstances existed to hold the hearing prior to appointing a guardian ad litem,*
 - Child's counsel,
 - Child's parents, guardian, or legal custodian, or
 - Person nominated as emergency guardian
- The court will schedule a hearing within 30 days



Extend a Limited or Temporary – JN-1540

- **JN-1540** *Request to Extend* only applies to Limited or Temporary guardianships
 - A Temporary guardianship can only be extended once for up to an additional 180 days (360 days total)
- A hearing is not required
- The court must determine whether good cause exists or does not exist to extend the appointment of a guardian
 - If the judge determines a hearing should be held, schedule the hearing and provide notice to the parties



Reviewing Conduct of Guardian

- **JN-1560** – *Petition for Review of Conduct of Guardian* can be filed when the guardian is not fulfilling their duties or authorities
- The court will schedule a hearing within 30 days
- Additional steps are required depending on which remedy the court orders
 - If the guardian is removed and a successor is not appointed, the court should enter **JN-1548** – *Order on Request to Terminate Guardianship*
 - If the guardian is removed and the successor guardian is appointed, the court should enter **JN-1581** – *Order for Appointment of Successor Guardian*



Resignation of Guardian - JN-1570

- A guardian may file **JN-1570** *Resignation of Guardian* but the guardian is not discharged until the court accepts the resignation and issues an order to discharge
- A hearing is not required for the court to accept the resignation
- If the court accepts the resignation, the court will enter **JN-1571** – *Order to Discharge Guardian*
- The court may want to consider whether to accept the resignation and issue the discharge order until a successor guardian is appointed or a new guardianship petition is filed so the child is not without a guardian



Termination

There are different ways that a §48.9795 guardianship order may terminate:

1. A hearing is not required under specific circumstances when **JN-1540** - *Request to Terminate the Guardianship* is filed with the court
2. The guardianship may also terminate as a result of the Review of the Conduct of the Guardian, removing guardian, and not appointing a successor
3. A hearing is required if the child or child's parent requests to terminate the guardianship



Termination - Hearing Not Required

- A hearing is not required under specific circumstances when **JN-1540** - *Request to Terminate the Guardianship* is filed with the court
 - The term of the guardianship order expired
 - The child married
 - The child died
 - The child's residence changes from this state to another state and a guardian is appointed in the new state of residence
 - The guardian died, or resigned and the resignation is accepted by the court, and a successor guardian was not appointed
 - The child was adopted
- The guardianship will terminate when above circumstances occur; however, some courts prefer to have **JN-1540** - *Request to Terminate* and **JN-1548** - *Order on Request to Terminate* filed



Termination Request by Parent/Child

- The court will schedule a hearing on this request unless written waivers of objection are signed and filed with the court
 - There is no specific timeframe to schedule the hearing
- The child or child's parent requesting the termination shall provide notice of the hearing and a copy of the request to all interested persons at least 7 business days before the hearing



Termination Request by Parent/Child

- Once a guardianship is ordered and the underlying CHIPS case is closed, the county agency is no longer involved with the family
- The county agency does not have any authority or ability within their safety standards to meet with the family or assess for safety once a termination request is filed
- If the court wants the county agency to investigate or assess the parent's home for safety, the court must issue an order
 - *Example language* – County Human Services is ordered to meet with all parties and assess for safety in the parent and guardian's home and submit a written recommendation before the termination hearing.



Notice of Change of Address

- Under a Full guardianship, the guardian has the duty to immediately notify the court that appointed the guardian of any change in the address of the guardian or child
- **JN-1552** can be used - *Notice of Change of Address* - 48.9795



Transferring a Minor Guardianship

- Wisconsin does not have a transfer statute for minor guardianships
- Here are two options:
 1. Guardian files a new §48.9795 guardianship here in Wisconsin. The original/current guardianship order from another state is also filed in Wisconsin
 2. Wisconsin judge talks to originating state judge that the plan will be for Wisconsin to issue a new guardianship order and then the guardian will file the Wisconsin order in the originating state along with a request to terminate originating state's order. Judges talk so there aren't two competing orders and follow process under Chapter 822 - UCCJEA



Registering a Minor Guardianship

1. Registering an out-of-state guardianship in Wisconsin is for enforcement purposes only
 - File as a Foreign Judgment case (FJ)
 - Annual reports are still filed in originating state
 - No order provided to guardian – only file stamped copy of registration form
2. Registration an out-of-state guardianship in Wisconsin for enforcement and modification
 - This requires the judges to talk under Chapter 822 - UCCJEA since Wisconsin cannot modify another jurisdiction's order
 - If modified in Wisconsin, then annual reports will be filed in Wisconsin



Retention Period

- For minor guardianships of the person under Chapter 48 or Chapter 54, the court will retain the file for seven years past the child's 18th birthday
 - SCR 72.01(32)(b)



\$48.9795 Grandparent Visitation

- If one or both parents of a child are deceased and the child is in the custody of the surviving parent or any other person, a grandparent or stepparent of the child may petition for visitation privileges with respect to the child, whether or not the person with custody is married
 - If one of both parents are not deceased, there are two types of grandparent visitation under §767.43
- A request can be filed in an existing guardianship or as a new JG case
 - There is no Circuit Court form
- There is a \$72 filing fee for a petition under §48.9795 (12)
 - Fee increased from \$60 to \$72 on November 1, 2025

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Resources

www.wiccuptraining.com

Module 3: Specialty Topics

Child Safety Decision Making Duration: 28:30 	§ 48.977 Guardianship Duration: 17:30 	§ 48.9795 Guardianship Duration: 29:00
Wisconsin Indian Child Welfare Act Duration: 38:00 	Interstate Compact on the Placement of Children Duration: 14:30 	Qualified Residential Treatment Program Duration: 15:00

\$48.9795 filing guide is also available in Spanish!

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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.

Power of Attorney Delegating Parental Power



Power of Attorney Delegating Parental Power

- Parents with legal custody may delegate their parental power to an agent under §48.979
- New Circuit Court form **GF-223** is available in English, Spanish, & Hmong
- One form should be used per child/juvenile
- The form does not require a witness or unsworn declaration
- Delegation must be done by all parents with legal custody

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:

☐ 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
- to place the child in a foster home, group home, shelter care facility, or inpatient treatment facility.



Power of Attorney Delegating Parental Power

- A delegation of parental power does not deprive the parent of their own parental powers
- Any or all powers may be delegated i.e. medical, educational, employment, driver's license, out-of-state travel, or substitute care
- May not be used to delegate the right to consent to marriage, TPR, adoption, abortion, join the military or place the child in a foster home, group home, shelter care facility, or inpatient treatment
- The delegation will remain in effect up to 1 year unless there is an earlier termination date. The delegation may last longer than 1 year if the agent is a relative or the delegation is approved by the court

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Power of Attorney Delegating Parental Power

The delegation **GF-223** must be filed with the court when:

1. The child is subject to a CHIPS, JIPS, or Delinquency case
 - Court must approve the delegation using **GF-222**
2. The proposed agent is not a relative and the delegation would remain in effect for longer than 1 year
 - A hearing must be held to approve the delegation within 45 days and the court will issue **GF-222** - *Order Approving Delegation of Powers*
 - If there is not an existing juvenile case, a Group Juvenile (GJ) case will be opened

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Power of Attorney Delegating Parental Power

The delegation **GF-223** must be filed with the court when:

3. The child is an Indian child
 - o Additionally, the parent(s) with legal custody of the child must file **IW-1783A - Consent to Delegation of Powers of an Indian Child**
 - o A hearing must be held to certify the delegation
 - If there is not an existing juvenile case, a Group Juvenile (GJ) case will be opened
 - o The Court will issue **IW-1783B - Certificate to Delegation of Powers of an Indian Child**



Delegation Order / Certificate

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: _____	

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY	
IN THE INTEREST OF Name _____ Date of Birth _____	Certificate to Delegation of Powers under §48.979, Wis. Stats., of an Indian Child Case No. _____
A Consent to Delegation of Powers of an Indian Child was filed by (Parent Name) _____ on (Date) _____.	
I certify that I am the judge of the circuit court of _____ County, State of Wisconsin, a court of record. The above named parent appeared before me on this date. The terms and consequences of the delegation of powers, including the limitation on withdrawing the consent, have been fully explained in detail and were fully understood by the parent, and I found this consent to be informed and voluntary before I accepted it.	
DISTRIBUTION LIST: 1. Court 2. Parent	

**GF-222 - Order Approving
Delegation of Powers**

**IW-1783B - Certificate to
Delegation of Powers**



Power of Attorney Delegating Parental Power Discussion

1. Have you encountered any issues with law enforcement, school, medical providers, etc. accepting a Power of Attorney Delegating Parental Power?
2. Are county agencies providing families with these forms instead of filing a Minor Guardianship?
3. Have courts received any of these filings yet?

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