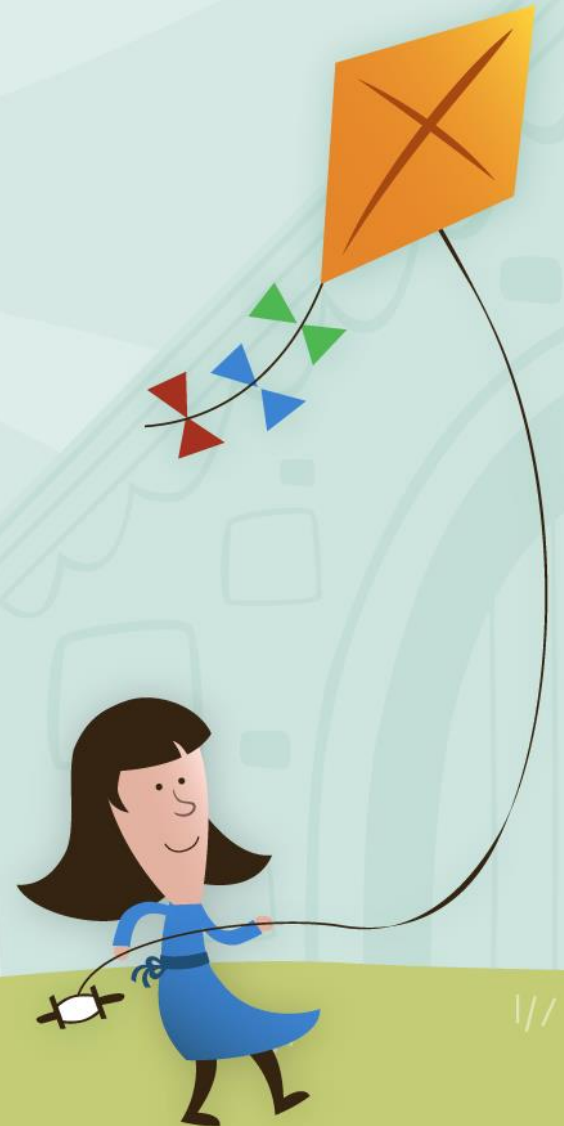


Minor Guardianships of the Person

What is...

What was...

And what is to come...



WHAT IS.....

Chips, Parental Power of Attorney, Chapter 54 and Case law.



What is...

- Child in need of protection of services (CHIPS) Guardianship: 48.977
- 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



What is...

- Child in need of protection of services (CHIPS) Guardianship: 48.977
- Can be filed by Child's GAL, Parent, Nominated Guardian as long as they have placement, DCFS, and 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)).



What is...

- Child in need of protection of services (CHIPS) Guardianship: 48.977
- 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 continues on



What is...

- Child in need of protection of services (CHIPS) Guardianship: 48.977
- 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.



What is...

- Standby Guardian of a Child 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 subsection (2) or by the Parent through a form under subsection (3)
 - Specific notice and findings are required and post judgement matters are clearly set forth in the statutes.



What is...

- Delegation of Parental Authority Wis. Stat. 48.979
- Parent may transfer their authority to another person.
- 1 year or shorter unless it's a relative or if approved by Court.
- Children in Juvenile Court (CHIPS or Delinquency) need Court approval
- Subject to the requirements of ICWA.
- Form found in the Statutes



WHAT WAS....



What was...

- Guardianship of the Person Chapter 54 et seq
- Allows for appointment of a guardian if the person is a minor.
- Anyone can seek guardianship
- Must be a parent unless parent is unsuitable or unwilling or not in Child's best interests.
- If parent is objecting, then need to apply the Barstad factors:



What was...

- Guardianship of the Person Chapter 54 et seq
- Barstad 118 Wis. 2d 549, 568-69 (1984):

We conclude that the rule to be followed in custody disputes between parents and third parties is that a parent is entitled to custody of his or her children unless the parent is either unfit or unable to care for the children or there are compelling reasons for awarding custody to a third party. Compelling reasons include abandonment, persistent neglect of parental responsibilities, extended disruption of parental custody, or other similar extraordinary circumstances that would drastically affect the welfare of the child. If the court finds such compelling reasons, it may award custody to a third party if the best interests of the children would be promoted thereby.



What was...

- Guardianship of the Person Chapter 54 et seq
- Powers and post dispositional matters same as adults.
- Guardian only has to file an annual report each year.
- Temporary guardianship is available but limited to 60 days, extendable for an additional 60 days but then no guardianship may be ordered for 90 days after the expiration
- Not written for children but for the elderly and disabled.



WHAT IS NOW....

Wisconsin Statute Section 48.9795



What is now....

- As of August 1, 2020, Minor Guardianships of the Person have moved from Chapter 54 to a new section in 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 Estates Guardianships remain in Chapter 54



Wisconsin Statute Section 48.9795

- 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 the CHIPS Guardianship or Standby Guardianships in Chapter 48



Wisconsin Statute Section 48.9795 Procedures

- Full, Limited, and Temporary Guardianships (Temp Limited to 360 days)
 - Petition by any person or child (12 or older)
 - Fact finding hearing within 45 days
 - Disposition within 30 days or immediately
- Emergency Guardianships (Limited to 60 days)
 - Petition by any person, hearing as soon as possible
 - Court may, without a hearing, issue an order that remains in effect until the emergency guardianship hearing



Wisconsin Statute Section 48.9795 Findings required:

- 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



Wisconsin Statute Section 48.9795 Findings required:

- 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



Wisconsin Statute Section 48.9795 Burdens and rules

- The burden is on the moving party by clear and convincing evidence.
- At fact finding hearings the rules of evidence apply **HOWEVER**
- At a termination hearing the rules of evidence do not apply except for privilege. Like many CHIPS hearings, the Court shall admit all testimony having reasonable probative value.



Wisconsin Statute Section 48.9795 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



Wisconsin Statute Section 48.9795 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



Wisconsin Statute Section 48.9795 Post Judgement matters:

- Provides for the Court to review the Guardian's conduct and provide for orders to remedy the problems. Hearings on review must be held within 30 days
- Successor Guardianship procedure in place.
- Court may modify the order if it finds that there has been a substantial change in circumstances since the last guardianship order and it's in the best interests of the child.



Wisconsin Statute Section 48.9795 Post Judgement matters:

- Termination:
 - Child turns 18 (Full and Limited) or termination date (Temporary and Emergency)
 - Child marries or dies or moves to another state and a new guardianship in that state is entered
 - Guardian dies or is removed and no successor appointed
 - Child is adopted.



Wisconsin Statute Section 48.9795 Post Judgement matters:

- Termination:
 - 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





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- Chapter 55
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Minor Guardianship Resources – www.wiccuptraining.com

- 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.
 - The powerpoint is available on the Resources page.
- Section 48.977 and 48.9795 e-learning activities will be released this Fall.

