



Minor Guardianships Juvenile Clerks Conference October 21st, 2020

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Statutory Authority – Chapter 54 & 48

- ▶ **Adult Guardianships of the Person and Estate** = Chapter 54
 - ▶ Nothing has changed.
- ▶ **Minor Guardianships** = Chapter 54 & 48
 - ▶ **Minor Guardianship of the Estate** → still governed under Chapter 54
 - ▶ **Minor Guardianships of the Person** → moved into Chapter 48 and created a new statute, Wis. Stat. § 48.9795
 - ▶ There are now 3 types of Chapter 48 Guardianships:
 - ▶ § 48.9795 – Minor Guardianships of the Person
 - ▶ Full, Limited, Temporary, and Emergency
 - ▶ § 48.977 – CHIPS Guardianships
 - ▶ § 48.831 – Appointment of Guardian for Child Without a Living Parent

Class Codes

- ▶ **New Class Codes**

- ▶ 50304 – Minor Guardianships of the Estate
- ▶ 50305 – Chapter 48 Guardianships - 48.831, 48.977, 48.9795

Guardianship Case Types

▶ **GN cases**

- ▶ Adult Guardianships of the Person and Estate
- ▶ Minor Guardianship of the Estate
- ▶ Existing Minor Guardianships of Person and/or Estate, if they were GN cases before August 1st

▶ **JG cases**

- ▶ 3 types of Chapter 48 Guardianships:
 - ▶ § 48.9795 – Minor Guardianships of the Person
 - ▶ § 48.977 – CHIPS Guardianships
 - ▶ § 48.831 – Appointment of Guardian for Child Without a Living Parent
- ▶ New Minor Guardianships of the Person and Estate, if consolidated by the Court
- ▶ Existing Minor Guardianships of Person and/or Estate, if they were JG cases before August 1st

Minor Person & Estate Cases

▶ #1 Keep the PERSON and ESTATE cases separate

- ▶ Two separate actions will be commenced with two separate petitions
- ▶ The PERSON case will be JG and the ESTATE case will be GN
- ▶ Collect the e-filing fee for both cases
- ▶ Could still assign both cases to the same judge and schedule together (based on local practice), but keep the two cases separate

▶ #2 Consolidate the cases

- ▶ Two separate actions will be commenced with two separate petitions
- ▶ The PERSON case will be JG and the ESTATE case will be GN
- ▶ Collect the e-filing fee for both cases
- ▶ Schedule the initial appearance for both the guardianship of the person and estate together (if appropriate)
- ▶ At the initial appearance, the Judge can order that the 2 cases be consolidated (note: there is no court form for consolidation at this time)
- ▶ The GN case would be consolidated into the JG case and under the jurisdiction of the juvenile court

Filings for Minor Guardianship of the Person Before and After August 1st

- ▶ **Pre-disposition filings** (cases pending as of August 1st where a guardian for a minor has not yet been appointed)
 - ▶ Up to the point of disposition, the case should be conducted under the old law of Chapter 54
 - ▶ The old forms are available on CourtNet under Forms (not available on wicourts), and the old codes are still available....until October 31st
- ▶ **Post-disposition filings** (cases in which a guardian has already been appointed)
 - ▶ Any pending motion or petition, whether filed before or after August 1st, should be conducted under Wis. Stat. § 48.9795
- ▶ **For Minor Guardianships of the Estate:**
 - ▶ Always governed under Wis. Ch. 54

48.9795 Timelines

- ▶ **Initial Hearing for Full, Limited, or Temporary Guardianship**
 - ▶ Within 45 days of the petition being filed
- ▶ **Emergency Guardianship Hearing**
 - ▶ As soon as possible
- ▶ **Fact-Finding Hearing OR Fact-Finding and Dispositional Hearing**
 - ▶ Within 30 days of the Initial Hearing
- ▶ **Can Hearings be Adjourned?**
 - ▶ Yes, for good cause. See Wis. Stat. § 48.315.

Can you file both an emergency and a full guardianship on same petition?

- ▶ No! The petitioner may only file one type of guardianship per petition/case.
 - ▶ For example, there would be one petition for the Emergency guardianship case.
 - ▶ A separate petition must be filed for the Full guardianship in a separate case.
- ▶ 48.9795 does not have any language where you can turn one type of guardianship into another.
 - ▶ This is different than a Chapter 54 guardianship where you can turn the temporary into a permanent guardianship.
- ▶ This will alleviate any confusion regarding timeframes and multiple dispositions in one case.

Can Co-Guardians be nominated or appointed in a 48.9795 Guardianship?

- ▶ 48.9795 allows co-guardians under 48.9795 (2)(b)4 – the court may appoint coguardians of the person for a child under this section.
- ▶ Both of the coguardians can be inserted on the nomination of guardian section of the petition.
- ▶ The court would include both names on the Letters of Guardianship and Dispositional Order.

What is the proper venue in 48.9795 guardianships?

- ▶ 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 s. 48.9795 (2)(a)

What are the notice requirements for alleged fathers in a minor person & estate case?

▶ Chapter 54 – Minor Estate:

- ▶ The alleged father is not an interested party under ch. 54, unless he falls into the category of “any other person required by the court” (Wis. Stat. 54.01(17)(a)10) or if he is “the individual who has exercised principal responsibility for the care and custody of the proposed ward during the period of 60 consecutive days immediately before the filing of the petition.” Wis. Stat. 54.01(17)(a)5.
- ▶ If he didn’t have care and custody of the child prior to the filing of the guardianship, the Court will ultimately need to make that decision.

▶ Chapter 48 – Minor Person

- ▶ The alleged father is an interested person and entitled to notice under s. 48.9795 (2)(a)1.c.

Is the Statement by Proposed Guardian required to be filed for an Emergency Guardianship case?

- ▶ JN-1514 Statement by the Proposed Guardian is required to be filed at least 96 hours before an initial hearing for a Full, Limited, or Temporary Guardianship under 48.9795.
- ▶ The statement by proposed guardian 48.9795 (4)(d) references 48.9795 (4)(e) the initial hearing on a petition for guardianship, other than a petition for emergency guardianship.
 - ▶ Those statutory references are ambiguous regarding whether a Statement by the Proposed Guardian for an Emergency Guardianship is required at some point.

When is the appointment of a GAL required under 48.9795?

- ▶ The appointment of a GAL is definitely required when a s. 48.9795 guardianship petition is filed through disposition.
- ▶ Interestingly, the statutes are a bit contradictory as to which subsequent proceedings under the guardianship case require a GAL:
 - ▶ s. 48.235(1)(c) states, "The court shall appoint a guardian ad litem for any child who is the subject of a proceeding...under s. 48.977, 48.978, or 48.9795."
 - ▶ s. 48.9795 states, "The court shall appoint a guardian ad litem when a petition is filed for appointment of a guardian or termination of a guardianship under this section. Except as provided under sub. (6) (b) 3., the court shall appoint the guardian ad litem as soon as possible and before the initial hearing. The court shall appoint a guardian ad litem when it determines that a hearing for modification is to be held under sub. (9) (b). In a case that is contested, the guardian ad litem may file a motion pursuant to s. 48.235 (8) (b)."

Is adversary counsel required for a child within 48.9795 Guardianships?

- ▶ There is no requirement for appointing adversary counsel for a child in a s. 48.9795 guardianship.
- ▶ The court has the discretion to appoint counsel for the child of any age pursuant to s. 48.23(3).
- ▶ "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."

Will SPD appoint adversary counsel in a 48.9795 guardianship?

- ▶ SPD would anticipate appointing adversary counsel for children over 12 in those situations in which a request was made by the child or the court.
- ▶ It is also possible that the SPD would initiate a minor guardianship or participate in a minor guardianship case in situations where the SPD already represents the child in a CHIPS, JIPS or delinquency case.

Can a court commissioner hear a guardianship hearing?

- ▶ A court commissioner is NOT allowed to hear s. 48.977 guardianship proceedings.
 - ▶ See s. 757.69(1m)(e).
- ▶ A court commissioner is allowed to hear uncontested s. 48.9795 proceedings.
 - ▶ See s. 757.69(1)(g).

Which Circuit Court form do you use?

- ▶ The Petitioner wants to dismiss the guardianship petition prior to guardian being appointed.
- ▶ JD-1748 - Order Dismissing Petition or petitioner can draft their own order.

Annual Report Packets

- ▶ CCIP and Court Ops asked CCAP for the following forms to be CCAP generated by mid-November in JG and GN case types:
 - ▶ JN-1554 - Notice to File Annual Report on the Condition of the Child (48.9795, Wis. Stats.)
 - ▶ JN-1550 - Annual Report on the Condition of the Child (48.9795, Wis. Stats.)
- ▶ These forms were made a priority when building CCAP3:
 - ▶ 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)
 - ▶ GN-3470 – Notice to File Annual Report on the Condition of the Ward (Adult Guardianship)
 - ▶ GN-3480 – Annual Report on the Condition of the Ward (Adult Guardianship)
 - ▶ GN-3490 – Notice to File Account of Guardian or Conservator (Adult Guardianship and Conservatorship)
 - ▶ GN-3500 – Account of Guardian or Conservator (Adult Guardianship and Conservatorship)

Does the clerk/RIP charge the petitioner if a paper petition is filed so the clerk/RIP has to build the s. 48.9795 guardianship case?

- ▶ No. The \$20 only applies to e-filed cases.

Are there filings fees for 48.9795 guardianships?

- ▶ There is no filing fee for the "regular" 48.9795 guardianship case.
 - ▶ Full, Limited, Temporary, or Emergency Guardianship
- ▶ There is a \$60 filing fee for a grandparent or stepparent visitation request under 48.9795(12).
 - ▶ This filing fee applies to a petition filed in a guardianship proceeding or in an independent action.
 - ▶ *Make sure it's clear which type of grandparent visitation is being filed since there are 3 types.

What are the 3 types of grandparent visitation?

- ▶ 48.9795 (12): Visitation by a child's grandparents or stepparents when one or both parents of the child are deceased.
 - ▶ \$60 filing fee
- ▶ 48.925: Visitation of certain persons
 - ▶ A relative who has maintained a relationship similar to a parent-child relationship with a child who has been adopted by a stepparent or relative
 - ▶ No filing fee
- ▶ 767.43: Visitation rights of certain persons
 - ▶ A family law action
 - ▶ \$184.50 filing fee (new action)
 - ▶ \$30 filing fee (post-judgment motion)
 - ▶ No filing fee for a motion filed in pending family action

Can the court order parents or guardian to pay GAL fees?

- ▶ For minor guardianship of the person cases filed under s. 48.9795, the provisions of Ch. 48 would apply to reimbursement of the GAL.
- ▶ Under s. 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.”
- ▶ There is one provision in the new legislation 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 s. 48.9795(10)(d)5.
 - ▶ 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).

Successor guardian

- ▶ 48.9795 does not have a standby guardian.
- ▶ If a standby guardian was named in a previous Chapter 54 case, a successor guardian will likely have to be appointed.
- ▶ We will be editing JN-1581 to add an Other line under the Court Orders.
 - ▶ Courts can explain a successor was appointed since there are no longer standby guardian procedures under 48.9795.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

IN THE INTEREST OF

Amended

**Order for Appointment
of Successor Guardian
(§48.9795, Wis. Stats.)**

Name _____

Date of Birth _____

Case No. _____

A Petition for Appointment of Successor Guardian (§48.9795, Wis. Stats.) was filed.

THE COURT FINDS:

1. A successor guardian

- was previously ordered on the Letters of Guardianship and Dispositional Order Appointing Guardian.
 was not previously ordered on the Letters of Guardianship and Dispositional Order Appointing Guardian.

2. The person nominated for appointment as successor guardian:

Name _____

Address _____

Phone Number _____

filed a sworn and notarized Statement by Proposed Guardian (§48.9795, Wis. Stats.) and is a competent and suitable person to serve as successor guardian of the child.

3. The current guardian [Name] _____ is no longer able to serve as guardian of the child due to
 death. unwillingness or inability to act. resignation accepted by the court. removal by the court.

THE COURT ORDERS:

1. The Court appoints [Name] _____ as successor guardian of the child.
2. See attached new Letters of Guardianship and Dispositional Order Appointing Guardian dated _____.
3. If a hearing did not occur, the successor guardian of the child shall provide notice to all interested persons of the appointment and the right to petition for reconsideration of appointment of the successor guardian. The notice shall be served personally or by mail not later than 7 days after the appointment.

THIS IS A FINAL ORDER FOR THE PURPOSE OF APPEAL IF SIGNED BY A CIRCUIT COURT JUDGE.

Juvenile Forms Update

- ▶ Updated §48.977 guardianship forms
 - ▶ Added nomination of successor guardian under subsidized guardianship section for JG-1606 - Dispositional Order Appointing Guardian (§48.977)
 - ▶ Created ICWA Petition and Dispositional Order – IW-1605 and IW-1606
 - ▶ Removed §48.831 findings and created forms for appointment of guardian for child without a living parent – JG-1705 and JG-1706
- ▶ JD-1825 – Affidavit of Service (Chapter 48 and 938)
 - ▶ Created a general affidavit of service form that can be used for any Chapter 48 or 938 cases
- ▶ Inspection of Juvenile Court Records forms
 - ▶ JD-1738A, JD-1738B, JD-1739A, and JD-1739B were updated to mirror the statutory language
- ▶ TPR Warnings were added to Out of Home orders
 - ▶ The form number includes a **T** to distinguish the order has TPR Notice. For example, JD-1611T
 - ▶ JD-1791 – Permanency Hearing Order was reinstated for cases when TPR warnings are not applicable such as post-TPR permanency hearings

Questions?

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