

2011 DRAFTING REQUEST

Bill

Received: **03/25/2011**

Received By: **gmalaise**

Wanted: **Today**

Companion to LRB:

For: **Fred Risser (608) 266-1627**

By/Representing: **Terry Tuschen**

May Contact:

Drafter: **gmalaise**

Subject: **Children - out-of-home placement**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Risser@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Guardianships of children

Instructions:

See attached--redraft 2009 SB 706 with attached changes

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 03/30/2011	csicilia 04/15/2011		_____			S&L
/P1			mduchek 04/15/2011	_____	ggodwin 04/15/2011		S&L
/P2	gmalaise 09/21/2011	csicilia 10/04/2011	rschluet 10/04/2011	_____	sbasford 10/04/2011		S&L
/1	gmalaise 03/09/2012	csicilia 03/09/2012	jmurphy 03/09/2012	_____	mbarman 03/09/2012	sbasford 03/09/2012	

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↳ At
Intro

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Handwritten notes: 1 gms 3/9, 12, 3/9, 3/9, km 3/9

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Received: 03/25/2011

Received By: gmalaise

Wanted: Soon

Companion to LRB:

For: Legislative Reference Bureau 6-9738

By/Representing: Gordon M. Malaise

May Contact:

Drafter: gmalaise

Subject: Children - out-of-home placement

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: gordon.malaise@legis.wisconsin.gov

Carbon copy (CC:) to: htplum@aol.com
slonergan@wisbar.org
mjasmer@waukeshacounty.gov
hafner@co.dane.wi.us
troetter@annenroetter.com
mvruno@milwcnty.com
rothrow@execpc.com

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slonergan@wisbar.org
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hafner@co.dane.wi.us
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/?	gmalaise	PI g, 4/15 11	MD 4/15	AS PH			

FE Sent For:

<END>

Malaise, Gordon

From: HJPLUM@aol.com
Sent: Tuesday, November 30, 2010 10:42 AM
To: Malaise, Gordon
Subject: Re: NEXT CLS guardianship meeting - SUMMARY OF DISCUSSION & NOTES
Attachments: meeting 11-5-2010 recommendations.docx

Dear Gordon,

The first memo did not include it but I followed up with a second. I will send it again, sorry.

Henry

In a message dated 11/30/2010 10:19:57 A.M. Central Standard Time, Gordon.Malaise@legis.wisconsin.gov writes:

Henry:

I didn't get the attachment.

Gordon

From: HJPLUM@aol.com [mailto:HJPLUM@aol.com]
Sent: Monday, November 29, 2010 5:32 PM
To: slonergan@wisbar.org; MJasmer@waukeshacounty.gov; hafner@co.dane.wi.us; troetter@annenroetter.com; mvruno@milwcnty.com; rothrow@execpc.com
Cc: Malaise, Gordon; Malaise, Gordon
Subject: Re: NEXT CLS guardianship meeting - SUMMARY OF DISCUSSION & NOTES

Dear Working Group,

Enclosed as an attachment are my notes from the meeting on November 5th. Please review. Hopefully this will jog your memory regarding the discussion as well as a start toward developing possible solutions. I am also sending this notice to Gordon, to provide a heads up on the issues to him. He also will have some suggestions....Right Gordon?

Additionally, after our presentation at the 'eyes of the child', different suggestions were made. I assume Theresa will bring those comments along as well. If anyone else has time for proposed suggestions, don't hesitate to forward to the group so that we can assemble all of the suggestions for Gordon.

See you on Thursday.

Henry

In a message dated 11/5/2010 3:35:07 P.M. Central Standard Time, slonergan@wisbar.org writes:

I was able to reserve a room at the Bar Center for the next meeting of the juvenile guardianship workgroup on Dec 2nd starting at 2:00pm.

Molly – we hope you are able to make it in person. If you need to call in,

please let me know.

Thanks – Sandy

Sandy Lonergan
Government Relations Coordinator
State Bar of Wisconsin
www.wisbar.org
(608) 250-6045
(800) 444-9404, ext. 6045

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Send	To Theresa, Henry, Mike, Molly, Diane Hafner, Gordon M. and Randi	
1.	Suggested change to the court ordering an investigation: <i>If the court specifically determines that such investigation is determined to be necessary and that the welfare of the child demands such investigation.</i>	P 23 lines 18-24
2.	Suggested change to Guardian Ad Litem authority to assist in responding to the court's inquiry. <i>GALs shall have access to records under 48.981(7), 48.78, 48.396, 938.78, (cross reference to those other sections as well)</i>	P 11 lines 2-19
3.	Suggested change to language: <i>"to be the guardian of the person of"</i>	P 9, section 2. Line 7
4.	Suggested language to give the juvenile court the authority to consolidate guardianship for minor and estate: <i>Put in "the juvenile court may consolidate an action of the guardianship of person of the minor" with the guardianship of the estate of the minor. Upon such consolidation all records concerning the guardianship of the estate of a minor shall be transferred and maintained with the juvenile court through the child's minority.</i>	P 17 section 2 Line 23-24
5.	An inquiry for Gordon? <i>Why do the references to 48.976 need to be in 55.10(4) and 55.10(4)?</i>	See page 42, lines 5-11 and line 25
6.	Please Insert: <i>Add...guardian, standby guardian, successor</i>	See page 18, lines 7 - 8
7.	Please Insert... <i>Insert...regarding the...concurrent ...care and custody</i>	See page 37, line 12
8.	An additional definition needs to be added or the term clarified: <i>Define the term " properly executed power of attorney" (make reference to state sanctioned form or who should be responsible for creating the form")</i>	See page 37, line 10

9.	<p>There were several ideas and recommended changes that need to be developed:</p> <ul style="list-style-type: none"> • Standby guardianship under (6) and 48.978 appear to be in conflict. • One suggestion was that (6) standby can only be brought as part of or after a petition under 48.976 was brought. – • Suggestion take out section (6)(a) and (b) and go to page 20, lines 13-14 add successor, standby guardianship • In 48.978(2)(a) 1....delete last sentence... Subject to subs. 2. And 3. If a petition is filed.... By each parent of the child. • There is a need to define “standby guardianship” in the definition section on 48.02(standby guardianship) use language from (6) (b) – page 28 lines 19 – 25. • Note this has to be resolved with 48.978... the definition must include parent or court appoint guardian.... • (NOTE THERESA WILL DISTRIBUTE HER PROPOSED LANGUAGE TO 48.978. – WE WILL ASK • GORDON NEEDS TO LOOK AT SUB (6) FOR HIS TAKE ON THE INCONSISTENCY WITH 48.978.) 	See page 28, line 13 -
10.	<p>One of the judges raised this as an issue:</p> <ul style="list-style-type: none"> • Where two actions are brought in the same court with similar issues, the court shall determine the priority of the cases by balancing the following factors:[identify which factors to consider] • (stay one vs. other), court can consolidate (see 48.14 fine print • (looking at UCCJEA), suggestion is that UCCJEA information goes into petition of any pending custody actions. 	48.14 Henry propose suggested language.
11.	<p>This is an issue that needs to be resolved:</p> <ul style="list-style-type: none"> • Use “interested person” (48.976) see p 17 line 10 and... Any other “interested person” that the court deems to have a - How do we screen or provide judge with intake function under guardianship to screen out. 	

Malaise, Gordon

From: Malaise, Gordon**Sent:** Wednesday, December 01, 2010 3:19 PM**To:** 'HJPLUM@aol.com'; slonergan@wisbar.org; MJasmer@waukeshacounty.gov; hafner@co.dane.wi.us; troetter@annenroetter.com; mvruno@milwcnty.com; rothrow@execpc.com**Subject:** RE: NEXT CLS guardianship meeting - SUMMARY OF DISCUSSION & NOTES

Workgroup Members:

I don't think that I'll be attending the meeting tomorrow as the Gov-elect is already keeping me plenty busy and it sounds like you still have a few things to work out before the bill will be ready for redrafting.

I do, however, have comments on the 11 items identified by the workgroup at the November meeting:

1. *Investigation*. The thought is fine, but the language is a little wordy. I would delete "specifically" and "determined to be" so that it would read, "If the court determines that such an investigation is necessary . . .".

2. *GAL access to records*. The GAL already has access to juvenile court records under ss. 48.396 (2) (g) and 938.396 (2) (gm). Sections 48.78, 48.981 (7), and 938.78 would have to be amended to grant access to those records to a GAL in a guardianship proceeding. If you wanted to clarify that GAL's have access to records in all ch. 48 and 938 proceedings, then something similar to s. 48.236 (4) (a) for CASA's would tie it all together neatly.

3. OK.

4. OK.

5. *Protective placement cross references*. Under s. 55.08 (1) (b) and (2) (a) a petitioner must petition for a guardianship when petitioning for a protective placement of a minor, so just as ch. 54 is cross referenced under current law, s. 48.976 should be cross referenced for protective placements of minors because the accompanying guardianship proceeding will be under s. 48.976.

6. OK, but see item nine below.

7. *Power of attorney*. "Concurrent care and custody" is a little ambiguous. It may imply that both the parent and the POA can exercise care and custody concurrently or it may imply that the POA may exercise both care and custody concurrently, which I think would go without saying. Assuming the former, what if the parent and POA disagree? I would assume that the parent's wishes would override so long as the parent is competent, but the language doesn't say so. Or, could a court construe "concurrent" to mean that both the parent and POA have to agree? Also, would "concurrent" preclude delegating *exclusive* temporary care and custody, for example if the parent is out of the country and can't be reached? None of the other states that have this provision say "concurrent." So I think you need to spell out in a sentence or two what you really mean by "concurrent."

8. *Power of attorney, continued*. You are correct that "properly executed power of attorney" in itself isn't especially helpful. Nobody has any idea what it has to say to be legally acceptable. Power of attorney forms are set forth in the statutes for health care powers of attorney under s. 155.30 and for powers of attorney for finances and property under s.244.61. Also, there is a statutory form for standby guardianships under s. 48.978 (3), so the best way of doing it would be to set forth the form in the statutes, but once you start going down that road the next thing you know is you have a whole new chapter like ch. 155 or 244. So maybe the answer would be to punt, er, delegate to DCF or the State Courts the job of coming up with a form.

9. *Standby guardianships*. Here I think the confusion is arising because the same term is being used to describe two different scenarios. In s. 48.976 (6) a standby guardianship arises upon the death, incapacity, etc., of the *guardian*, whereas in s. 48.978, a standby guardianship arises upon the death, incapacity, etc., of the *parent*. So, really a standby guardianship under s. 48.976 (6) is more akin to a

successor guardianship under s. 48.976 (7) except that a standby guardian is designated in advance and a successor guardian is appointed after the fact. So maybe the simple answer would be to eliminate the term "standby guardian" in s. 48.976 and simply permit a parent to designate a successor guardian in advance.

10. *Conflicting jurisdiction.* It sounds like you are still working this one out. All I can say is that under current law, the first court retains jurisdiction and the second court is out of order. *Tiffany W.*, 192 Wis. 2d 407 (Ct. App. 1995). If the two actions are brought in the same court, the court can stay one or consolidate, but this doesn't solve the problem of actions brought in different courts.

11. *Interested persons that the court may require.* I don't see what the problem is. This language is taken directly from s. 54.01 (17) (a) 10. and (b) 5. The court would exercise its discretion like it always does. The statutes can't micromanage everything.

I'll be in tomorrow afternoon. If you have any questions, give me a call at 266-9738. Good luck with your deliberations.

Gordon

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Sent: Monday, November 29, 2010 5:32 PM
To: slonergan@wisbar.org; MJasmer@waukeshacounty.gov; hafner@co.dane.wi.us; troetter@annenroetter.com; mvruno@milwcnty.com; rothrow@execpc.com
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Thanks – Sandy

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Sent: Wednesday, December 01, 2010 11:00 PM
To: HJPLUM@aol.com
Cc: Malaise, Gordon; Malaise, Gordon; hafner@co.dane.wi.us; MJasmer@waukeshacounty.gov; mvruno@milwcnty.com; rothrow@execpc.com; slonergan@wisbar.org; troetter@annenroetter.com
Subject: Re: NEXT CLS guardianship meeting - SUMMARY OF DISCUSSION & NOTES

Dear Working Group:

I've been giving a lot of thought to a couple issues that our office and our judges here have been concerned about here: the ability of "any person" to file, specifically in regard to cases in which a Chips Order is already in place, and the more general issue of 48.976 filings when there is already a Chips Order governing placement and possibly legal custody and guardianship. I think I have a good solution to this problem, but before I get to that, let me address one of Gordon's responses to Henry's email.

Gordon, you noted that the GAL already has access to court records under 48.396, but I think Henry's notes referred to GAL access to BMCW or county CPS records (I didn't get Henry's attachment). The context of this was to provide an alternative to a court order for a court study by the county agency or BMCW, which was put in the proposal to get at those situations in which there is/was a CPS investigation and "informal" placement of kids with relatives, with the agency suggesting to the relatives to go out to Court to file for guardianship to protect the kids, in lieu of a Chips petition (a common occurrence in Milwaukee County).

Back to the problem of 48.976 filings when there is already a Chips Order in effect. I think the first problem our proposal doesn't address as it stands is that 48.396(3)(a), which lays out what must be alleged in the petition, assumes that the respondent parent has custody/placement of the child, whereas that is not necessarily true in a Chips case. This leads to some absurd results. If I'm a foster parent who has been denied an adoption license for a child, or who has had a child removed from their care pursuant to a change of placement, why not piggy-back onto a Chips finding or a TPR grounds finding for that child, to satisfy the requirement of 48.396(3)(a)4: "... that the parents are unfit, unwilling, unable ... or other compelling facts and circumstances" In other words, our proposal for the full guardianship petition is applying the Barstad standard, which was meant for situations in which a third party is attempting to deprive a parent of custody of a child, to a situation in which that parent no longer has custody of the child.

Our Chips Orders govern placement of the child and sometimes legal custody, and guardianship. A petition for guardianship of the child, especially full guardianship, should be treated as a petition for change of placement and/or revision, because that's what it might well be. I guess I can live with the "any person" language, because I can think of plenty of situations in which the child has benefitted by that Chapter 880 and 54 language. But I really think we need to add language to 48.976(3)(a), a para. 13, that provides that when a child is subject to an order under 48.345, 48.357, 48.363, 48.365, etc (see sec. 48.977(2)(a) for language, maybe even add children alleged to be Chips), and the guardianship petition seeks to change placement/physical custody of the child, or revise th order in any other way, the petitioner must comply with the provisions of 48.357 and/or 48.363 (with the exception of "standing to file" requirements under those subsections). Among other things, that would require notice to foster parents and involved agencies, which isn't necessarily required now under our proposal. More importantly, it would require that the petitioner show how the guardianship order "affects the advisability of the current dispositional order," i.e., why the guardian should be appointed and made party to a Chips case, or why the dispositional order isn't already satisfying the kids' needs without adding more litigants and more time-consuming, and permanency delaying, litigation.

It's getting late; more about this tomorrow afternoon.

Thanks for hearing me out on this!

3/25/2011

mike Vruno

From: HJPLUM@aol.com
To: slonergan@wisbar.org, MJasmer@waukeshacounty.gov, hafner@co.dane.wi.us, troetter@annenroetter.com, mvruno@milwcnty.com, rothrow@execpc.com
Cc: Gordon.Malaise@legis.state.wi.us, gordon.malaise@legis.wisconsin.gov
Date: 11/29/2010 05:32 PM
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Malaise, Gordon

From: Hafner, Dyann [Hafner@countyofdane.com]
Sent: Thursday, December 09, 2010 2:48 PM
To: 'Theresa Roetter'; Sandy Lonergan
Cc: Malaise, Gordon; HJPLUM@aol.com; MJasmer@waukeshacounty.gov; mvruno@milwcnty.com; rothrow@execpc.com; Margaret Porco
Subject: RE: NEXT juvenile guardianship mtg - 12/17/10

I have another issue I'd like to bring up next week for cleanness of the language of 2009 SB 706 involving who may participate in actions for guardianship for children. I am trying to figure out if I would be prohibited from intervening or prosecuting a guardianship where my department of human services is involved. Section 48.976(1)(a) defines "interested person" for preadjudication purposes and (1)(b) for post adjudication purposes. (Is a foster parent considered an interested person as a 'physical custodian'?) Any person may file for guardianship, however, all interested persons must be served, unless service is waived. At the initial hearing the Court must determine whether "any party" contests the petition. Is a "party" the same as an "interested person"? Is a "party" an "interested person" who wishes to participate? Those persons who are able to participate in fact finding and disposition are those "interested persons" who the court determines are "necessary parties" under section 803.03. Can a person be an "interested person" but not a "necessary party"? Can the petitioner, who is not an "interested person" be determined not to be a "necessary party"? One would first think, well someone needs to prosecute the petition. But if the petitioner is not either an "interested person" or a "necessary party," could the petition be dismissed?

Dyann Hafner
 Assistant Corporation Counsel for Dane County
 (608) 242-6483

-----Original Message-----

From: Theresa Roetter [mailto:troetter@annenroetter.com]
Sent: Friday, December 03, 2010 8:53 AM
To: Sandy Lonergan
Cc: Malaise, Gordon; HJPLUM@aol.com; MJasmer@waukeshacounty.gov; Hafner, Dyann; mvruno@milwcnty.com; rothrow@execpc.com; Margaret Porco
Subject: Re: NEXT juvenile guardianship mtg - 12/17/10

I can make that date & time! Thanks.

Sent from my iPhone

On Dec 3, 2010, at 8:32 AM, Sandy Lonergan <slonergan@wisbar.org> wrote:

Good morning Juvenile Guardianship group,

Henry, Mike, Dyann and I met yesterday – made some good progress but concluded we need another meeting to iron out a few more things. We are looking at Friday, December 17th from 9:00 to 1:00 for our next meeting here at the Bar Center. Would you please respond to this email indicating your availability? I can also make a available a conference call for anyone who needs it – just please let me know. Thanks again for all of your help!

I have included Margaret Porco (Government Relations Assistant) on this email as she is going to be helping me with scheduling, etc throughout the legislative session.

Sandy

Sandy Lonergan
Government Relations Coordinator
State Bar of Wisconsin
www.wisbar.org
(608) 250-6045
(800) 444-9404, ext. 6045

Your Practice. Our Purpose.™

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Malaise, Gordon

From: Mike.Vruno@milwcnty.com
Sent: Thursday, December 16, 2010 5:21 PM
To: Sandy Lonergan
Cc: Malaise, Gordon; hafner@co.dane.wi.us; HJPLUM@aol.com; MJasmer@waukeshacounty.gov; Margaret Porco; mvruno@milwcnty.com; rothrow@execpc.com; 'Theresa Roetter'
Subject: Re: guardianship mtg - 12/17/10 - Summary

Group:

For tomorrow's meeting, I was to come up with some sample scenarios to illustrate why it may be advisable to stick with the "any person" language under who may file, even though this idea goes against the grain when there is a Chips Order in place. I say that it goes against the grain because of the confidentiality of Children's Court proceedings, and it carries the danger of allowing anyone to intrude themselves as a party into a Chips case, when that is clearly not the legislature's intent.

Nonetheless, I have come across numerous situations in which the best interests of a kid was served by virtue of a guardianship filing by a person not a party to the Chips case, usually in the context of that person providing a permanent home to the kid that might not have been available had the normal Chips procedures been followed. Often these cases involved situations where the proposed guardian could not be licensed to foster or adopt due to non-safety or dubious licensing reasons.

Examples of the types of proposed guardians I'm thinking of:

- Biological relatives of an adopted child who is back in the system with a failed or troubled adoption
- Relatives too distant to qualify as relatives under 48.02(15)
- Placements, relatives or not, of half-siblings of a child, who are not related to that child, and want to keep the siblings together
 - Here's one for you ICWA fans: Indian custodians, however a tribe might define them, when the tribe wants the child placed with the I.C. but doesn't want jurisdiction of the case
 - Godparents, neighbors, former foster parents to a child, long-time family friends (e.g., the former foster parents of a child's parent, transforming their role from de facto parent to de facto grandparent)

The common thread is people who have a long-standing relationship with the child or the child's family, important information related to the long-term best interests of the child, and the willingness and ability to provide a long-term placement for the child.

Last time I emailed you all, it had just occurred to me that our 48.976 is essentially an end-run around the requirements of 48.357 and 48.363, the change of placement and revision provisions, when there is already a Chips Order in effect, and I hope we can resolve that at our meeting.

This time, it just occurred to me that we need to address the venue issue, to avoid a Tiffany W type problem, when there's a Chips Order in effect in one county, and someone tries to file a 48.976 in a different county. I think that this could be resolved by adding to the second sentence of 48.185(2), so that it reads:

"Venue for any proceeding under s. 48.363, 48.365, 48.976 or 48.977, or any proceeding under subch.VIII when the child has been placed outside the home pursuant to a dispositional order .. shall be in the county where the dispositional order was issued, etc.

I think we should also add 48.976 to 48.185(1), but add the qualifier, "except as provided by subs, (2)

3/25/2011

below", or whatever fancy language Gordon would use.

I'm still thinking about alternative ways of dealing with the problem of using a 48.976 to change the child's placement, without having to comply with the requirements of 48.357.

See you tomorrow

mike Vruno

This message is intended for the sole use of the individual and entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended addressee, nor authorized to receive for the intended addressee, you are hereby notified that you may not use, copy, disclose or distribute to anyone the message or any information contained in the message. If you have received this message in error, please immediately advise the sender by reply email and delete the message.

Malaise, Gordon

From: Hafner, Dyann [Hafner@countyofdane.com]
Sent: Monday, December 06, 2010 9:07 AM
To: 'Theresa Roetter'; Sandy Lonergan
Cc: Malaise, Gordon; HJPLUM@aol.com; MJasmer@waukeshacounty.gov; mvruno@milwcnty.com; rothrow@execpc.com; Margaret Porco
Subject: RE: NEXT juvenile guardianship mtg - 12/17/10
Attachments: Procedures for Establishing Guardianship of the Person of a Child.doc

Here is my assignment one. It may have typos. I've laid out procedures for the different types of guardianships in Chapter 48. The total time from filing to finish for guardianship under section 48.976 is 60 days. For guardianship under section 48.977 the total is 90 days. For guardianship under section 48.978, the total is 60 days. The total time for adult guardianships and guardianships of the estate of minors under Chapter 54 is 90 days. The total time for adult and minor protective placement under Chapter 55 is 95 days.

I tend to agree with Gretchen Viney that perhaps the time period from filing to fact-finding/disposition is too small. I tell my workers for adult guardianships that when we file we need to be fully prepared to go to trial at that time. The bulk of the work for section 48.976 guardianships will fall the the guardian ad litem. While I can be prepared for a contested hearing at the time I file, the guardian ad litem will not know the case before filing and may need more time to work with dysfunctional or secretive families. If the time between initial hearing and fact-finding hearing were 60 days instead of 30, it would give the GAL more time to investigate and prepare and would be in line with adult guardianships.

Dyann Hafner
 Assistant Corporation Counsel for Dane County
 (608) 242-6483

-----Original Message-----

From: Theresa Roetter [mailto:troetter@annenroetter.com]
Sent: Friday, December 03, 2010 8:53 AM
To: Sandy Lonergan
Cc: Malaise, Gordon; HJPLUM@aol.com; MJasmer@waukeshacounty.gov; Hafner, Dyann; mvruno@milwcnty.com; rothrow@execpc.com; Margaret Porco
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Sandy

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Procedures for Establishing Guardianship of the Person of a Child
Under Proposed Section 48.976 (2009 SB 706), and Sections 48.977, 48.978 and
48.831

§48.976 (2009 SB 706)	§48.977	§48.978	§48.831
<p>Purpose: Appointment of Full guardian, limited guardian, temporary guardian or emergency guardian</p>	<p>Purpose: Guardianship as permanency plans for children adjudged CHIPS, JIPS (uncontrollable) or delinquent where TPR is not in the child's best interest.</p>	<p>Purpose: Appointment/Designation of standby and alternative standby guardian when custodial parent is at significant risk of becoming incapacitated or debilitated or risks death within 2 years.</p>	<p>Purpose: To appoint a guardian of a child who does not have a living parent if a finding as to adoptability is sought.</p>
<p>Petition: Any person may file</p>	<p>Petition: The following may file: * Child, child's guardian, legal custodian or Indian custodian. * Child's parent. * Nominated guardian. * the Department or county department. * a licensed child welfare agency. * corp. counsel or DA</p>	<p>Petition: Parents must join in filing unless one parent is unavailable, unable or unwilling to act as parent.</p>	<p>Petition may be filed by: * Department or a county department * A child welfare agency licensed to accept guardianship * a relative or family member of the child, or a person with whom the child has resided who has acted as a parent of the child * a guardian appointed under ch. 54 or 880 who has submitted a resignation to the court.</p>
<p>Appointment of GAL s. 48.235(1)(c) Duties of GAL: * personally meet with the child * assess the appropriateness and safety of the child's environment * determine the child's</p>	<p>Appointment of GAL s. 48.235(1)(c) Duties are the same.</p>	<p>Appointment of GAL s. 48.235(1)(c)</p>	<p>Appointment of GAL s. 48.235(1)(c)</p>

<p>goals regarding the guardianship</p> <ul style="list-style-type: none"> * advise child 12 or older of right to counsel * interview the proposed guardian and visit guardian's home * report to the court regarding the appropriateness of the proposed guardian * attend hearing and represent the child's best interests 			
<p>Notice by 1st class mail, or registered mail for Indian child</p>	<p>Notice by 1st class mail or in person</p>	<p>By certified mail or personal service 7 days before the hearing or by publication class 1</p>	<p>In manner specified by the court</p>
<p>Service of the petition upon interested persons: At least 10 days before the hearing (15 for notice served on US secretary of interior for Indian child) <i>(See also s. 801.15: * The 10-day rule: exclude Sat., Sun and holidays. * When notice is served by mail add 3 days to the prescribed period.)</i></p> <hr/> <p>(Emergency Guardianship is served by most practical means as soon as possible after filing.)</p>	<p>Upon the child if 12 or old, the guardian and legal custodian, GAL, counsel, parents, alleged fathers, person with whom the child is placed or placement is recommended, person representing the interests of the public, agency primarily responsible for providing services, Indian custodian and tribe, if any.</p> <p>At least 7 days prior to the hearing, 10 days for Indian child and 15 days for receipt by U.S. secretary of the interior. <i>(See also s. 801.15: * The 10-day rule: exclude Sat., Sun and holidays.</i></p>	<p>Service on child, if 12 or older, the child's guardian and legal custodian, GAL, counsel and other parent not joining the petition, to person's required under 48.27 and to the nominated standby guardian and alternate standby guardian..</p>	<p>On all interested persons defined under 48.27(6) in 10 days for an Indian child, but 15 days for notice to secretary of the interior</p>

	<i>* When notice is served by mail add 3 days to the prescribed period.)</i>		
<p>Initial Hearing Within 30 days of filing: if uncontested proceed to disposition</p> <hr/> <p>(Emergency Guardianship may be reheard within 30 days if contested.)</p> <p>Motion to substitute judge must be filed on or before "plea hearing." s. 48.29.</p>	<p>Plea hearing within 30 days of filing.</p> <hr/> <p>If uncontested, the court must engage in colloquy to determine if plea is knowing and voluntary and that there is a factual basis.</p> <p>Motion to substitute judge must be filed on or before plea hearing. s. 48.29.</p>	<p>Plea hearing within 30 days of filing.</p> <hr/> <p>If uncontested proceed to dispositional hearing.</p>	
Continuance of Initial hearing by request of Indian child's parent, custodian or tribe – 20 days	Continuance of Initial hearing by request of Indian child's parent, custodian or tribe – 20 days		Continuance of Initial hearing by request of Indian child's parent, custodian or tribe – 20 days
Statement of Guardian due 96 hours before final hearing	No statement of guardian required.		
Fact finding/ dispositional hearing set within 30 days of initial hearing (Adult guardianship ch. 54 is 90 days total from filing. Protective placement is 60 days from filing plus one 45 day extension if requested.)	Fact finding hearing within 30 days of plea hearing	Fact finding hearing within 30 days of plea hearing	Fact-finding and dispositional hearing held immediately.
Continuances Subject to s. 48.315 granted upon good cause finding by the court	Continuances Subject to s. 48.315 granted upon good cause finding by the court		

for only so long as necessary.	for only so long as necessary.		
Discovery under s. 48.293(4) Request for physical, psychological, mental or developmental examination under s. 48.295.	Discovery under s. 48.293(4) Request for physical, psychological, mental or developmental examination under s. 48.295.		
Court report may be ordered if sufficient findings made. If ordered report must be filed at least 96 hours before fact finding hearing.	Dispositional hearing held within 30 days. If child is placed outside home 6 months or longer, court report is ordered. Report must be filed at least 48 hours before dispositional hearing.		If the department, county department of child welfare agency files the petition, the court shall order a report. Otherwise, the court may order a report from the department of child welfare agency if it consents, or from the county department.
Who must be present at fact-finding/dispositional hearing unless excused by court: * Proposed Guardian * Proposed Standby Guardian * Guardian ad litem * Interested persons permitted to participate.			
Court Findings: Whether Petitioner has proved the petition by clear and convincing evidence; whether appointment of guardian is in	Court Findings: Whether conditions under s. 48.978(2) are proved by clear and convincing evidence;	Court Findings: * Whether there is a significant risk that petitioner will become incapacitated, debilitated or die within 2 years * Whether the child has no parent other than petitioner	Court Findings: * Whether the child has a living parent. * Whether adoption is in the child's best

<p>child's best interests; whether the court should appoint a standby guardian; and whether child support should be ordered</p>	<p>suitability of proposed guardian; wishes of child; best interest of child.</p>	<p>who is willing and able to exercise guardianship. * Whether there was a diligent effort to locate a missing parent. * Whether the other parent's refusal to join the petition was unreasonable. * Whether the person nominated as standby guardian or alternative standby is willing and able to act.</p>	<p>interest.</p>
<p>Court Order: *Temporary Guardianship may not exceed 180 days + 180 extension. * Emergency Guardianship may not exceed 60 days. * Full and Limited Guardianship may continue to age of majority, until child's marriage or death, until ne guardian is appointed in another state, or guardian is removed without successor being appointed.</p>	<p>Court Order: Court may order a full or limited guardianship.</p>	<p>Court Order To state whether guardianship granted is full or limited. To state when the guardianship will go into effect.</p>	<p>Court Order That the child be placed in the guardianship of the department and placed in the custody of a county department, with the department of a contract agency of the department.</p>
<p>Post Adjudication Matters (no time limit for setting hearing)</p>	<p>Post Adjudication Matters (no time limit for setting hearing)</p>	<p>Post Adjudication Matters (no time limits)</p>	
<p>Appointment of a Successor Guardian <i>(Generally without hearing. The court may require the</i></p>	<p>Revision of Guardianship Order May be filed by any person</p>		

<p><i>same procedure above.)</i> Notice of appointment made within 10 days includes right to request reconsideration.</p>	<p>authorized to file guardianship under this section.</p>		
<p>Modification of Guardianship Order Standard: Substantial change in circumstances and best interest of the child. Notice is by the Court with at least 7 days advanced notice.</p>	<p>Standard: Substantial change in circumstances and best interests of child. Notice is by the Court with at least 7 days advanced notice.</p>	<p>Suspension or Recession of Standby Guardianship. Standard: The findings no longer apply.</p>	
<p>Review of Conduct of Guardian for: * abuse/neglect * failure to disclose significant information * failure to perform duties. Notice is by the Court with at least 7 days advanced notice. Court remedies: * Remove guardian. * Remove guardian and appoint successor. * Compel the guardian to act/ set rules. * Modify duties of guardian. * Require guardian to pay cost of the proceeding is conduct is</p>	<p>Removal of Guardian for Cause for failure to "discharge the guardian's trust." Notice is by the Court with at least 7 days advanced notice.</p>		

egregious.			
<p>Petition to Terminate at Request of Parent Standard: Substantial change in circumstances, parent is fit, willing and able, and termination is in child's best interests. Notice is by the Court with at least 7 days advanced notice.</p>	<p>Petition to Terminate at Request of Parent Standard: Substantial change in circumstances, parent is fit, willing and able, and termination is in child's best interests. Notice is by the Court with at least 7 days advanced notice.</p>		

Malaise, Gordon

From: Hafner, Dyann [Hafner@countyofdane.com]
Sent: Tuesday, December 07, 2010 2:58 PM
To: 'Theresa Roetter'; Sandy Lonergan
Cc: Malaise, Gordon; HJPLUM@aol.com; MJasmer@waukeshacounty.gov; mvruno@milwcnty.com; rothrow@execpc.com; Margaret Porco
Subject: RE: NEXT juvenile guardianship mtg - 12/17/10
 Assignment 2

The group thought that the court appointed guardian ad litem should have access to all pertinent records of the child, including school, medical and treatment records, when preparing for a guardianship case. The question was then raised if HIPAA would permit access to health records and if so, under what conditions.

The group proposed that the Order Appointing Guardian Ad Litem would also order that the Guardian Ad Litem have access to health records.

Section 45 C.F.R. §164.512(e)(i) permits a covered entity to disclose protected health information in the course of any judicial or administrative proceeding in response to an order of a court as expressly authorized by the order.

There may be an issue regarding the ex parte nature of the order. I think the Privacy Rule assumes opportunity of the parties to argue, but does not require it. Otherwise, without a court order, non judicially issued process must be accompanied by a qualified protective order (§164.512(e)(v)) that prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation and requires the return or destruction of the records at the end of litigation.

In addition, if the guardian ad litem would be considered in an 'in loco parentis' role regarding receipt of health records, 45 C.F.R. §164.502(g) permits access of protected health information of a minor to the GAL as a personal representative.

Dyann Hafner
 Assistant Corporation Counsel for Dane County
 (608) 242-6483

-----Original Message-----

From: Theresa Roetter [mailto:troetter@annenroetter.com]
Sent: Friday, December 03, 2010 8:53 AM
To: Sandy Lonergan
Cc: Malaise, Gordon; HJPLUM@aol.com; MJasmer@waukeshacounty.gov; Hafner, Dyann; mvruno@milwcnty.com; rothrow@execpc.com; Margaret Porco
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I can make that date & time! Thanks.

Sent from my iPhone

On Dec 3, 2010, at 8:32 AM, Sandy Lonergan <slonergan@wisbar.org> wrote:

Good morning Juvenile Guardianship group,

Malaise, Gordon

From: Hafner, Dyann [Hafner@countyofdane.com]
Sent: Wednesday, December 08, 2010 2:51 PM
To: 'Theresa Roetter'; Sandy Lonergan
Cc: Malaise, Gordon; HJPLUM@aol.com; MJasmer@waukeshacounty.gov; mvruno@milwcnty.com; rothrow@execpc.com; Margaret Porco
Subject: RE: NEXT juvenile guardianship mtg - 12/17/10

Here is my Assignment #3 relating to why there are references in Chapter 55 protective placement to guardianship for developmentally disabled children. I spoke to Roy Froemming who informed me that he has been working the the elder law section of the bar to 'fix' these provisions because he believes it was a drafting error to include the requirement of guardianship for developmentally disabled children needing protective placement. It would presumably not be controversial to change chapter 55 to not require the parent of a developmentally disabled child to file for guardianship in order to obtain a protective placement. Here is Roy's suggestion:

Dyann—

The language below is from an LRB draft of Ch. 55 changes that has not yet been introduced.

55.08 (1) (b) The individual is a minor over age 14 who is ~~not~~ alleged to have a developmental disability ~~and on whose behalf a petition for guardianship has been submitted~~, or is an adult who has been determined to be incompetent by a circuit court.

55.08 (2) (a) The individual has been determined to be incompetent by a circuit court or is a minor over age 14 who is alleged to have a developmental disability ~~and on whose behalf a petition for a guardianship has been submitted~~.

Roy

Roy Froemming

Froemming Law Office

354 W. Main St.

Madison, WI 53703

Phone (608) 663-2747

FAX (608) 442-9494

12/8/2010

Malaise, Gordon

From: Hafner, Dyann [Hafner@countyofdane.com]
Sent: Friday, December 10, 2010 3:53 PM
To: ""Rändi L. Othrow""
Cc: 'Theresa Roetter'; Sandy Lonergan; Malaise, Gordon; HJPLUM@aol.com; MJasmer@waukeshacounty.gov; mvruno@milwcnty.com; Margaret Porco
Subject: RE: NEXT juvenile guardianship mtg - 12/17/10

Attachments: POWER OF ATTORNEY draft 1.doc

This is my last assignment. I was to draft a Parental POA template. This is something like I would draft for a client. Please kick it around - I kept the Word format.

Dyann Hafner
 Assistant Corporation Counsel for Dane County
 (608) 242-6483

-----Original Message-----

From: "Rändi L. Othrow" [mailto:rothrow@execpc.com]
Sent: Thursday, December 09, 2010 4:58 PM
To: Hafner, Dyann
Cc: 'Theresa Roetter'; Sandy Lonergan; Malaise, Gordon; HJPLUM@aol.com; MJasmer@waukeshacounty.gov; mvruno@milwcnty.com; Margaret Porco
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FYI, there has been a continuing discussion on the family law list serve in light of the recent published court of appeals decision. I once again, forwarded to those family law attorney types the SB 706 draft, and asked for comment. I received the following from Gretchen Viney (who I guess probably won't be happy with the revisions, either):

Rändi,

Here are my primary comments regarding the minor guardianship proposal:

- 1) Hooray! We definitely need something and I appreciate all the work that went into this.
- 2) Please don't load down the guardian ad litem with "shalls." The GAL should be able to exercise discretion and not go through a laundry-list of duties just because they are listed in the statute. Visits may not be necessary. Interviews may not be necessary. [And, I don't make home visits in dangerous situations!] Everytime there's an area of law in which the GAL is potentially the only attorney, the legislature assumes that the GAL should do everything for everyone. This is not realistic. Please, especially, do not require home visits. And no "reports."
- 3) If the court will have the authority to order a visitation schedule, then the statute must include factors for making that decision so that there's transparency and fairness. A contested guardianship is even uglier than a contested custody/placement case, and it isn't fair to the court or to the GAL to leave the standards for placement unwritten. Personally, I would prefer to leave visitation up to the guardian, but I understand that this makes parents less apt to voluntarily agree to guardianships.

I need to look over my notes from Eyes of a Child to see if I had other comments, but I thought I would get this to you now since there seems to be some time pressure.
Thanks for listening,
Gretchen V.

On 12/9/2010 2:47 PM, Hafner, Dyann wrote:

I have another issue I'd like to bring up next week for cleanness of the language of 2009 SB 706 involving who may participate in actions for guardianship for children. I am trying to figure out if I would be prohibited from intervening or prosecuting a guardianship where my department of human services is involved. Section 48.976(1)(a) defines "interested person" for preadjudication purposes and (1)(b) for post adjudication purposes. (Is a foster parent considered an interested person as a 'physical custodian'?) Any person may file for guardianship, however, all interested persons must be served, unless service is waived. At the initial hearing the Court must determine whether "any party" contests the petition. Is a "party" the same as an "interested person"? Is a "party" an "interested person" who wishes to participate? Those persons who are able to participate in fact finding and disposition are those "interested persons" who the court determines are "necessary parties" under section 803.03. Can a person be an "interested person" but not a "necessary party"? Can the petitioner, who is not an "interested person" be determined not to be a "necessary party"? One would first think, well someone needs to prosecute the petition. But if the petitioner is not either an "interested person" or a "necessary party," could the petition be dismissed?

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POWER OF ATTORNEY
DELEGATING PARENTAL AUTHORITY
Authorized by section 48.979 of the Wisconsin Statutes

NAME OF CHILD(REN).

This power of attorney is for the purpose of providing for the care and protection of

_____, born _____
_____, born _____
_____, born _____

DELEGATION OF POWER TO A RELATIVE.

I state that I have legal custody of my child(ren) named above. *Only a parent with legal custody may use this form. Parental power may only be delegated to an adult relative.*

I delegate my parental authority to

Name

Address

Telephone number(s)

E-mail address

Relationship to child(ren)

The parental power I am delegating is as follows: FULL

Full parental power and authority, including care and custody; or

PARTIAL
Select Delegated Power(s)

- The ability to consent to all medical care, or select from the following:
- The ability to consent only to ordinary or routine medical care, excluding major surgical procedures, extraordinary procedures and experimental treatment.
 - The ability to consent to emergency blood transfusion.
 - The ability to consent to dental care.
 - The ability to consent to mental health treatment.
 - The ability to consent to the disclosure of health information about the child(ren).
- The ability to consent to educational and vocational services.
- the ability to consent to the disclosure of nonmedical, but otherwise confidential information about the child(ren).
- The ability to provide care and custody.
- The ability to consent to enlistment in the U.S. armed forces.
- The ability to consent to the child's obtaining a vehicle operator's license.
- The ability to travel outside the United States with the child(ren).
- The ability to obtain substitute care such as daycare.

Other specifically delegated powers or limits on delegated power: Or see Attached.)

* Relative is defined in section 48.02(15), Wis. Stats., and means a parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, aunt, step uncle, step aunt, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person named herein, even if the marriage is terminated by death or divorce.

The delegation of parental power does not replace the authority of any parent with legal custody or the authority of a non-custodial parent authorized by court order or by law. **This document may not be used to delegate the power to consent to the marriage or adoption of the child(ren).**

TERM OF THIS DELEGATION.

This Power of Attorney will remain in effect until _____ (not to exceed one year.) If no termination date is given, or if the date given exceeds one year from the effective date of this document, then this Power of Attorney will remain in effect for a period of one year. This Power of Attorney may be revoked in writing at any time by a parent with legal custody, except to the extent that it has already been relied on with regard to a particular act.

EXECUTION:

This document takes effect _____. (If there is no effective date given, then this document takes effect immediately.)

Executed before a Notary Public:

Name

Signed before me this

Notary Public in the State of Wisconsin
My commission expires: _____.

Ways I can be located:

Address(es)

Telephone number(s)

E-mail address(es)

Or, by contacting:

Name

Address

Telephone number

E-mail address

Or, I cannot be located.

Name

Signed before me this

Notary Public in the State of Wisconsin
My commission expires: _____.

Ways I can be located:

Address(es)

Telephone number(s)

E-mail address(es)

Or, by contacting:

Name

Address

Telephone number

E-mail address

Or, I cannot be located.

Malaise, Gordon

From: HJPLUM@aol.com
Sent: Thursday, December 16, 2010 9:50 AM
To: slonergan@wisbar.org; Malaise, Gordon; MJasmer@waukeshacounty.gov; hafner@co.dane.wi.us; troetter@annenroetter.com; mvruno@milwcnty.com; rothrow@execpc.com
Cc: mporco@wisbar.org
Subject: Re:guardianship mtg - 12/17/10 - Summary
Attachments: Summary Chart of Meetings & Issues.docx

Dear Juvenile Guardianship Group,

Attached is a chart summary of the issues discussed and to be decided for Friday's meeting. See you in the Morning.

Henry

In a message dated 12/3/2010 8:32:35 A.M. Central Standard Time, slonergan@wisbar.org writes:

Good morning Juvenile Guardianship group,

Henry, Mike, Dyann and I met yesterday – made some good progress but concluded we need another meeting to iron out a few more things. We are looking at Friday, December 17th from 9:00 to 1:00 for our next meeting here at the Bar Center. Would you please respond to this email indicating your availability? I can also make a available a conference call for anyone who needs it – just please let me know. Thanks again for all of your help!

I have included Margaret Porco (Government Relations Assistant) on this email as she is going to be helping me with scheduling, etc throughout the legislative session.

Sandy

Sandy Lonergan
Government Relations Coordinator
State Bar of Wisconsin
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Send	To Theresa, Henry, Mike, Molly, Diane Hafner, Gordon M. and Randi	
1.	Suggested change to the court ordering an investigation: <i>If the court specifically determines that such investigation is determined to be necessary and that the welfare of the child demands such investigation.</i>	P 23 lines 18-24
2.	Suggested change to Guardian Ad Litem authority to assist in responding to the court's inquiry. <i>GALs shall have access to records under 48.981(7), 48.78, 48.396, 938.78, (cross reference to those other sections as well)</i>	P 11 lines 2-19
3.	Suggested change to language: <i>"to be the guardian of the person of"</i>	P 9, section 2. Line 7
4.	Suggested language to give the juvenile court the authority to consolidate guardianship for minor and estate: <i>Put in "the juvenile court may consolidate an action of the guardianship of person of the minor" with the guardianship of the estate of the minor. Upon such consolidation all records concerning the guardianship of the estate of a minor shall be transferred and maintained with the juvenile court through the child's minority.</i>	P 17 section 2 Line 23-24
5.	An inquiry for Gordon? <i>Why do the references to 48.976 need to be in 55.10(4) and 55.10(4)?</i>	See page 42, lines 5-11 and line 25
6.	Please Insert: <i>Add...guardian, standby guardian, successor</i>	See page 18, lines 7 - 8
7.	Please Insert... <i>Insert...regarding the...concurrent ...care and custody</i>	See page 37, line 12
8.	An additional definition needs to be added or the term clarified: <i>Define the term " properly executed power of attorney" (make reference to state sanctioned form or who should be responsible for creating the form")</i>	See page 37, line 10

9.	<p>There were several ideas and recommended changes that need to be developed:</p> <ul style="list-style-type: none"> • Standby guardianship under (6) and 48.978 appear to be in conflict. • One suggestion was that (6) standby can only be brought as part of or after a petition under 48.976 was brought. – • Suggestion take out section (6)(a) and (b) and go to page 20, lines 13-14 add successor, standby guardianship • In 48.978(2)(a) 1....delete last sentence... Subject to subs. 2. And 3. If a petition is filed.... By each parent of the child. • There is a need to define “standby guardianship” in the definition section on 48.02(standby guardianship) use language from (6) (b) – page 28 lines 19 – 25. • Note this has to be resolved with 48.978... the definition must include parent or court appoint guardian.... • (NOTE THERESA WILL DISTRIBUTE HER PROPOSED LANGUAGE TO 48.978. – WE WILL ASK • GORDON NEEDS TO LOOK AT SUB (6) FOR HIS TAKE ON THE INCONSISTENCY WITH 48.978.) 	See page 28, line 13 -
10.	<p>One of the judges raised this as an issue:</p> <ul style="list-style-type: none"> • Where two actions are brought in the same court with similar issues, the court shall determine the priority of the cases by balancing the following factors:[identify which factors to consider] • (stay one vs. other), court can consolidate (see 48.14 fine print • (looking at UCCJEA), suggestion is that UCCJEA information goes into petition of any pending custody actions. 	48.14 Henry propose suggested language.
11.	<p>This is an issue that needs to be resolved:</p> <ul style="list-style-type: none"> • Use “interested person” (48.976) see p 17 line 10 and... Any other “interested person” that the court deems to have a - How do we screen or provide judge with intake function under guardianship to screen out. 	

Malaise, Gordon

From: Theresa Roetter [troetter@annenroetter.com]
Sent: Thursday, December 16, 2010 8:30 PM
To: Mike.Vruno@milwcnty.com; 'Sandy Lonergan'
Cc: Malaise, Gordon; hafner@co.dane.wi.us; HJPLUM@aol.com; MJasmer@waukeshacounty.gov; 'Margaret Porco'; mvruno@milwcnty.com; rothrow@execpc.com
Subject: RE: guardianship mtg - 12/17/10 - STANDBY ISSUE
Attachments: Guardianship.pdf

Hi, Everyone –

Sorry for the delay – both family and work demanded more of my attention in the last few weeks.

Attached is a summary of the standby guardianship concerns and two revision options to consider to address the issue of conflicting Chapter 48 standby statutes. I realize you may not have time to review this before the meeting tomorrow but I wanted to get this to you, anyway.

See you in the morning.

- Theresa

Atty. Theresa L. Roetter
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From: Mike.Vruno@milwcnty.com [mailto:Mike.Vruno@milwcnty.com]
Sent: Thursday, December 16, 2010 5:21 PM
To: Sandy Lonergan
Cc: Gordon.Malaise@legis.wisconsin.gov; hafner@co.dane.wi.us; HJPLUM@aol.com; MJasmer@waukeshacounty.gov; Margaret Porco; mvruno@milwcnty.com; rothrow@execpc.com; 'Theresa Roetter'
Subject: Re: guardianship mtg - 12/17/10 - Summary

Group:

For tomorrow's meeting, I was to come up with some sample scenarios to illustrate why it may be advisable to stick with the "any person" language under who may file, even though this idea goes against the grain when there is a Chips Order in place. I say that it goes against the grain because of the confidentiality of Children's Court proceedings, and it carries the danger of allowing anyone to intrude themselves as a party into a Chips case, when that is clearly not the legislature's intent.

Nonetheless, I have come across numerous situations in which the best interests of a kid was served by virtue of a guardianship filing by a person not a party to the Chips case, usually in the context of that person providing a permanent home to the kid that might not have been available had the normal Chips procedures been followed. Often these cases involved situations where the proposed guardian could not be licensed to foster or adopt due to non-safety or dubious licensing reasons.

Examples of the types of proposed guardians I'm thinking of:

- Biological relatives of an adopted child who is back in the system with a failed or troubled adoption
- Relatives too distant to qualify as relatives under 48.02(15)
- Placements, relatives or not, of half-siblings of a child, who are not related to that child, and want to keep the siblings together
 - Here's one for you ICWA fans: Indian custodians, however a tribe might define them, when the tribe wants the child placed with the I.C. but doesn't want jurisdiction of the case
 - Godparents, neighbors, former foster parents to a child, long-time family friends (e.g., the former foster parents of a child's parent, transforming their role from de facto parent to de facto grandparent)

The common thread is people who have a long-standing relationship with the child or the child's family, important information related to the long-term best interests of the child, and the willingness and ability to provide a long-term placement for the child.

Last time I emailed you all, it had just occurred to me that our 48.976 is essentially an end-run around the requirements of 48.357 and 48.363, the change of placement and revision provisions, when there is already a Chips Order in effect, and I hope we can resolve that at our meeting.

This time, it just occurred to me that we need to address the venue issue, to avoid a Tiffany W type problem, when there's a Chips Order in effect in one county, and someone tries to file a 48.976 in a different county. I think that this could be resolved by adding to the second sentence of 48.185(2), so that it reads:

"Venue for any proceeding under s. 48.363, 48.365, 48.976 or 48.977, or any proceeding under subch.VIII when the child has been placed outside the home pursuant to a dispositional order .. shall be in the county where the dispositional order was issued, etc.

I think we should also add 48.976 to 48.185(1), but add the qualifier, "except as provided by subs, (2) below", or whatever fancy language Gordon would use.

I'm still thinking about alternative ways of dealing with the problem of using a 48.976 to change the child's placement, without having to comply with the requirements of 48.357.

See you tomorrow

mike Vruno

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My assignment from the November 5, 2010 meeting was to talk with Gordon Malaise about the potential conflict between § 48.978 (current Ch. 48 minor Standby Guardianship statute) and the provisions for appointment of a standby guardian in SB 706 (what, if passed, would be § 48.976(6)).

SB 706 lifted the language of Ch. 54 re: standby guardian without change. The issue presented is the fact that, if passed, Chapter 48 will have two separate procedures for appointing a standby guardian for a minor. In addition, the current procedure under § 48.978 is so onerous as to be unused. It is not an effective means of providing a standby guardian for a minor.

Gordon reported that 48.978 was drafted 14 years ago based on a similar law from Delaware. He shared that it is also his impression that this is an unused statute.

Our options to deal with this conflict are to either edit 48.978 or revise the current language of SB 706.

Some suggested edits to make 48.978 a more functional standby GN statute:

1. Edit the proposed language in SB 706 to make standby guardianship under 48.978 the only option for a standby. That would require amending subsection 48.976(6) to remove “or estate” [lines 15-16, page 28, SB 706], and changing the word “may” to “shall” [line 17, page 28, SB 706].

2. Edit § 48.978(2)(a)1: At the end of the paragraph add the words, “...who has legal custody.”

3. Edit § 48.978(2)(a)8: At the second line add the words, “...does not have legal custody, ...” before the phrase “refuses to join in . . .” And in the seventh line, add the same phrase.

4. Edit § 48.978(2)(a)8: At the fifth line add the word, “...fit, ...” before the phrase “willing and able . . .”.

5. Edit § 48.978(2)(f)2: At the fifth line add the word, “...fit, ...” before the phrase “willing and able . . .”.

In the alternative:

1. § 48.978 could be repealed and SB 706's proposed 48.976(6) could be amended.
2. The notice and hearing provisions already laid out in SB 706 would apply and be consistent.

3. Amendments could include:

- (6) Standby Guardianship. (a) Petition. A person may at any time bring a petition for the appointment of a standby guardianship of a child *either as part of a petition for a full, limited or temporary guardianship or as a separate action.* (Deleting the remainder of the proposed language borrowed from Ch. 54). *If the petition for standby guardianship is to be considered as part of a full, limited or temporary guardianship petition, the procedures for the primary type of guardianship shall be followed. If the petition is one for standby guardianship only, the petition shall contain the following...*
 - (b) *Notice. As per section...*
 - (c) *Procedure...*
 - (d) Appointment. At any hearing conducted under this subsection the court may designate one or more standby guardians whose appointment shall become effective immediately upon the death, unwillingness or inability to act, resignation, or removal by the court of the ... parent or legal guardian. (Deleting much of the remainder of the proposed language borrowed from Ch. 54).
Upon assuming office, the standby guardian shall so notify the court. Upon notification, the court shall issue new letters of guardianship that specify that the standby *guardianship is either permanent, limited or*

Malaise, Gordon

From: Mike.Vruno@milwcnty.com
Sent: Thursday, March 24, 2011 11:19 AM
To: Malaise, Gordon
Cc: hafner@co.dane.wi.us; HJPLUM@aol.com; MJasmer@waukeshacounty.gov; mvruno@milwcnty.com; rothrow@execpc.com; slonergan@wisbar.org; troetter@annenroetter.com
Subject: RE: NEXT CLS guardianship meeting - SUMMARY OF DISCUSSION & NOTES
Attachments: g'ship revisions.doc

I hope this email finds you all well, especially Gordon! They must be running you ragged with all the changes going on.

I'd love give my thoughts on the changes wrought in our beloved State Capitol, but I'd better not in this format.

I'm attaching a refinement of the additions I'd proposed to apply to situations in which there is already a Chips Dispositional Order in effect. It's a short, simple addition to Sec. 48.976(3)(a) (Petition Procedures), that takes into account the fact that when there is a Chips Order that already provides for the placement, and possibly legal custody, of the child, a guardianship petition may be in actuality a request to change placement and/or revise the Chips Order. We encounter a fair number of cases now with Ch. 54 filings on pending Chips cases, and the judges would like our new statute to provide some guidance on how to deal with this situation.

Notice that my proposal would incorporate the COP or revision standard of "what new information is available that affects the advisability of" the current placement or dispositional order. The vagueness and flexibility of this standard has always served the vagaries of changes of placement and revisions well and should fit guardianship petitions just as well.

Please also note that I incorporated only two parts of sec. 48,357(2m), the applicable change of placement subsection. I think that subparagraph (2m)(a) is a necessary reference because it includes ASFA language for a situation where the Chips Order places the child with a parent (placement in the contrary to the welfare, etc.). Of course, none of this is necessary where there is no Chips Order.

I also included reference to (2r), which covers the rights of foster parents to be heard in change of placement requests. I don't see why a guardianship petition should exclude this provision.

I don't think that the rest of 48.357(2m) needs to be referenced, because our proposed 48,976 already addresses everything there. ⁷ICWA (48.235(2m)(am)(br) is already covered in our proposal; as are provisions for a hearing (48.235(2m)(b), ¹Sec. 48.235(2m)(bm) comes from the new federal law related to finding relative placements, but I don't think that should be in our new statute, and 48.235(2m)(c) covers what should be in a change of placement order, so I don't think that needs to be in our statute. If a trial court thinks that it needs to include any of these provisions in an order after granting a guardianship order, so be it. I'm only trying to make sure that our statute is fashioned in such a way that it does not conflict with a Chips Order or the existing COP and Revision statutes and gives the courts some guidance as to what to do. I'd also like to prevent the possibility of a court denying a guardianship petition as an end-run around 48.235.

I added a phrase to my proposed 13b, "but shall not affect standing to file a guardianship petition as established in this subsection." I did that because 48.235(2m)(a) states who may file a COP request, and I would want a court to limit a guardianship petition filing to the list provided in the COP statute.

Already covered
Physical Custody
are "parties"

Finally, at the last meeting in December, I brought up the venue issue, but upon further reflection, I don't think it's necessary for us to do anything. Sec. 48.185(1) provides: "... venue for any proceeding under ss. ... 48.14(1) to (9) ...," and 48.976 will be a proceeding under 48.14, so venue will already be covered.

Sorry this was so long in coming. I have to admit that when I heard about what Gordon was facing, it appeared obvious he wasn't going to be able to get to us for a while, so I put this on a back burner. Please let me know if what I'm proposing doesn't make sense, or whatever. Thanks!

Mike Vruno

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Sec. 48.976(3) PROCEDURES. (a) Petition.

...

13. If the child has been adjudged to be in need of protection or services under s. 48.13(1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (11), or (11m) or 938.13(4), and is subject to a court order under 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365, and the petition filed under this subsection requests a change in the placement, legal custody, of guardianship of the child, or requests revision of any of the terms of such order, all of the following apply:
 - a. The petition shall state what new information is available that affects the advisability of the current placement or dispositional order.
 - b. If the proposed guardianship would change the placement of the child placed in the home of a parent to a placement outside the home of the parent, the provisions of ss. 48.357(2m)(a) and (2r) shall apply, but shall not affect standing to file a guardianship petition as established in this subsection.