



POST GUARDIANSHIP

Questions & Court Proceedings

**Part of 3 of 3: Resources for
Guardianship of a Minor in Wisconsin**

developed for you by

KIDS MATTER INC.



My daughter Elsie was a single mom and recently passed away. I have been caring for my grandchildren since Elsie's death. The father visits sporadically but they have never lived with him. He's not able to take care of them full-time. I am now the legal guardian of my grandchildren. Is there anything else I need to do or pay attention to?

Do I need to file anything with the court after I am appointed guardian?

As guardian, you must immediately notify the court of any change in address (Form JN-1552). Some counties also require that you complete an Annual Report on the Condition of the Child (Form JN-1550). The report shall include the location of the child, the health condition of the child and any recommendations regarding the child. Check with your county clerk's office to see if an Annual Report is required.

I know that the parent is entitled to reasonable visitation but what is considered "reasonable" visitation?

It's important that the child knows the parent. Factors to consider regarding what's "reasonable" include safety, distance, age of the child, parent's consistency with visits and whether the parent knows how to handle any special needs of the child. You should balance these factors when setting up visits. It is okay to set boundaries related to safety such as requiring the visit be supervised or occur in a public place if you have safety concerns.

The Judge can order a specific visitation schedule. If there is a visitation schedule outlined in the guardianship order and circumstances have changed so that you are uncomfortable with the visitation ordered, you can file a petition to modify the guardianship (Form JN-1540) requesting that the visitation order is changed.

I have guardianship of my 5-year-old grandson. I have concerns that his mother might still be using drugs and am not sure of her living situation. Do I need to let my grandson go on unsupervised visits with her?

As the guardian, it's important to make sure visits happen in a safe manner. You may require the visits be supervised or follow other guidelines to ensure your grandson's safety.

My granddaughter's mom is always an hour late or sometimes doesn't show up at all. The inconsistency is frustrating but even worse is how disappointed my granddaughter is. Do I need to keep getting her hopes up?

Inconsistency is frustrating but is not a reason to deny visitation. You still need to offer visits, but you can provide structure by working out a regular schedule with the parent and set a maximum amount of time you'll wait. You don't need to provide spontaneous visits on short notice.



What if a parent does not agree with my decision regarding visits or other ways that I am raising the child? Can I end up back in court?

The parent can file a Petition for Review of Conduct of Guardian (Form JN-1560). You may be removed as guardian if you:

- ▶ Abuse or neglect the child or knowingly permit others to do so.
- ▶ Fail to disclose information that would have prevented your appointment (e.g. you did not disclose past criminal or child protective services history or were not forthcoming about your financial situation and other information required in the Statement by Proposed Guardian).
- ▶ Fail to follow or comply with the court's order (e.g. if the Judge ordered specific visitation and you are not honoring the visitation schedule ordered).
- ▶ Fail to perform any of your duties as a guardian (e.g. you are not ensuring the child's medical and educational needs are met, not permitting reasonable visits).

What happens if the parent files a Petition for Review of Conduct of Guardian?

The person petitioning the court to review your conduct has the burden of proof to show these allegations. If the dispute revolves around visitation, it must be shown that your decision regarding visitation is not in the child's best interest. The court may do any of the following:

- ▶ Remove you as guardian.
- ▶ Remove you as guardian and appoint a successor guardian (a new guardian).
- ▶ Enter any other order that may be necessary or appropriate to compel you to carry out your duties, including an order setting reasonable rules of visitation for the child.
- ▶ Modify your duties and authorities as guardian.
- ▶ Nothing, if the court finds the parent has not met the burden of proof.

What if I was granted temporary or limited guardianship and the length of the guardianship or duties ordered are not enough?

You may file a Request to Modify, Extend Limited/Temporary, Reconsider/Modify Emergency or Terminate Guardianship (Form JN-1540). In order for the court to grant a petition to modify or extend the guardianship, you must show a substantial change in circumstances and that the extension or modification is in the child's best interest.

I have health issues and am no longer able to act as guardian. Can I resign? What is the process?

You can file a resignation with the court (Form JN-1570). However, the court may not accept the resignation if there is not a proposed successor guardian and the child still needs a guardian. Best practice is to identify a successor guardian before you file a resignation.

I want another relative to be able to act as guardian if something happens to me. What do I need to do to ensure this happens?

A successor guardian may be appointed at the time of the original appointment or any time thereafter, including when a guardian has died, resigned (with court approval) or been removed. If a successor guardian was not appointed at the time the guardianship was initially put in place, a Petition for Appointment of Successor Guardian can be filed (Form JN-1580). The successor guardian would assume responsibilities upon your death, unwillingness or inability to act, resignation or removal.

How does the guardianship end?

The guardianship ends when any of the following occur:

- ▶ The child reaches age 18, marries, is adopted or dies.
- ▶ The court sets an expiration date and that time has expired.
- ▶ The child's residence changes to another state and the guardian is appointed in the new state.
- ▶ The guardian dies, resigns (with court approval) or is removed for cause and a successor guardian is not appointed.
- ▶ The parent or child petitions the court to end the guardianship.

Can the parent or child petition to end the guardianship? What does he or she need to show?

The parent or child 12 years of age and over can petition to end the guardianship. The parent or child 12 years and over has the burden of proof and must show:

- ▶ That there has been a substantial change in circumstances since the entry of the last order affecting the guardianship. For example, the parent now has stable housing, is no longer incarcerated, is in recovery or has resolved the circumstances creating the need for the guardianship.
- ▶ The parent is fit, willing and able to carry out the duties of the guardian or that no compelling circumstances exist demonstrating a guardianship is necessary.
- ▶ That termination of the guardianship is in the child's best interest.

This is general information about Wisconsin law and/or procedure, and is not intended to serve as legal advice. Every situation is unique. General information is not a substitute for legal counsel. Individuals needing legal advice or legal assistance should consult an attorney.

Find additional information in parts 1 and 2 of the Kids Matter Inc. series *Resources for Guardianship of a Minor in Wisconsin*.

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