

WISCONSIN	Legal Authority
	GENERAL DUTIES AND ACTIVITIES OF THE CHILD'S LEGAL REPRESENTATIVE
<p><b>1. General Duties:</b>  <i>Timely appointment, mandatory or discretionary, attorney or lay person, represent child's interests, undertake basic obligations, address conflict situations, address special needs and disabilities, and accommodate client preferences.</i></p>	<p>- (1g) Definition. In this section, "counsel" means an attorney acting as adversary counsel who shall advance and protect the legal rights of the party represented, and who may not act as guardian ad litem or court-appointed special advocate for any party in the same proceeding.</p> <p>(1m) Right of children to legal representation. Children subject to proceedings under this chapter shall be afforded legal representation as follows:</p> <p>...</p> <p>(b) 1. If a child is alleged to be in need of protection or services under s. <a href="#">48.13</a>, the child may be represented by counsel at the discretion of the court. Except as provided in subd. <a href="#">2.</a>, a child 15 years of age or older may waive counsel if the court is satisfied such waiver is knowingly and voluntarily made and the court accepts the waiver.</p> <p>2. If the petition is contested, the court may not place the child outside his or her home unless the child is represented by counsel at the fact-finding hearing and subsequent proceedings. If the petition is not contested, the court may not place the child outside his or her home unless the child is represented by counsel at the hearing at which the placement is made. For a child under 12 years of age, the judge may appoint a guardian ad litem instead of counsel.</p> <p>...</p> <p>(3m) Guardians ad litem or counsel for abused or neglected children. The court shall appoint counsel for any child alleged to be in need of protection or services under s. <a href="#">48.13 (3)</a>, <a href="#">(3m)</a>, <a href="#">(10)</a>, <a href="#">(10m)</a> and <a href="#">(11)</a>, except that if the child is less than 12 years of age the court may appoint a guardian ad litem instead of counsel. The guardian ad litem or counsel for the child may not act as counsel for any other party or any governmental or social agency involved in the proceeding and may not act as court-appointed special advocate for the child in the proceeding.</p> <p>(4) Providing counsel. If a child has a right to be represented by counsel or is provided counsel at the discretion of the court under this section and counsel is not knowingly and voluntarily waived, the court shall refer the child to the state public defender and counsel shall be appointed by the state public defender under s. <a href="#">977.08</a> without a determination of indigency.</p> <p><a href="#">WI STAT § 48.23.</a></p> <p>- 48.235 Guardian ad litem.</p> <p>(1) Appointment.</p> <p>(a) The court may appoint a guardian ad litem in any appropriate matter under this chapter.</p> <p>(b) The court shall appoint a guardian ad litem for a minor parent petitioning for the voluntary termination of parental rights.</p> <p>(c) The court shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding and for a child who is the subject of a proceeding under s. <a href="#">48.977</a> or <a href="#">48.978</a>.</p>

	<p>(e) The court shall appoint a guardian ad litem, or extend the appointment of a guardian ad litem previously appointed under par. (a), for any child alleged or found to be in need of protection or services, if the court has ordered, or if a request or recommendation has been made that the court order, the child to be placed out of his or her home under s. <a href="#">48.345</a> or <a href="#">48.357</a>.</p> <p>(f) The court shall appoint a guardian ad litem, or extend the appointment of a guardian ad litem previously appointed under par. (a), for any unborn child alleged or found to be in need of protection or services. ...<a href="#">WISAT § 48.235</a>.</p>
<p><b>2. Out of Court - Actions to be Taken:</b> <i>Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements</i></p>	<p>- (3) Duties and responsibilities.</p> <p>(a) The guardian ad litem shall be an advocate for the best interests of the person or unborn child for whom the appointment is made. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of that person or the positions of others as to the best interests of that person or unborn child. 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. The guardian ad litem has none of the rights or duties of a general guardian.</p> <p>(b) In addition to any other duties and responsibilities required of a guardian ad litem, a guardian ad litem appointed for a child who is the subject of a proceeding under s. <a href="#">48.13</a> or for an unborn child who is the subject of a proceeding under s. <a href="#">48.133</a> shall do all of the following:</p> <ol style="list-style-type: none"> <li>1. Unless granted leave by the court not to do so, personally, or through a trained designee, meet with the child or expectant mother of the unborn child, assess the appropriateness and safety of the environment of the child or unborn child and, if the child is old enough to communicate, interview the child and determine the child's goals and concerns regarding his or her placement.</li> <li>....</li> </ol> <p>(4) Matters involving child in need of protection or services.</p> <p>(a) In any matter involving a child found to be in need of protection or services, the guardian ad litem may, if reappointed or if the appointment is continued under sub. (7), do any of the following:</p> <ol style="list-style-type: none"> <li>1. Participate in permanency planning under ss. <a href="#">48.38</a> and <a href="#">48.43 (5)</a>.</li> <li>2. Petition for a change in placement under s. <a href="#">48.357</a>.</li> <li>3. Petition for termination of parental rights or any other matter specified under s. <a href="#">48.14</a>.</li> <li>4. Petition for revision of dispositional orders under s. <a href="#">48.363</a>.</li> <li>5. Petition for extension of dispositional orders under s. <a href="#">48.365</a>.</li> <li>6. Petition for a temporary restraining order and injunction under s. <a href="#">813.122</a> or <a href="#">813.125</a>.</li> </ol>

	<p>7. Petition for relief from a judgment terminating parental rights under s. <a href="#">48.028</a> or <a href="#">48.46</a>.</p> <p>7g. Petition for the appointment of a guardian under s. <a href="#">48.977 (2)</a>, the revision of a guardianship order under s. <a href="#">48.977 (6)</a> or the removal of a guardian under s. <a href="#">48.977 (7)</a>.</p> <p>7m. Bring an action or motion for the determination of the child's paternity under s. <a href="#">767.80</a>.</p> <p>...</p> <p>(b) The court shall order the agency identified under s. <a href="#">48.33 (1) (c)</a> as primarily responsible for the provision of services to notify the guardian ad litem, if any, regarding actions to be taken under par. <a href="#">(a)</a>.</p> <p>...</p> <p>... <a href="#">WI STAT § 48.235</a>.</p>
<p><b>3. In Court - Active Participation in Hearings:</b> <i>Appear in court, explain proceedings to client, present evidence, ensure child is present, expand scope of representation into other needed areas, and undertake certain obligations post-disposition.</i></p>	<p>(b) In addition to any other duties and responsibilities required of a guardian ad litem, a guardian ad litem appointed for a child who is the subject of a proceeding under s. <a href="#">48.13</a> or for an unborn child who is the subject of a proceeding under s. <a href="#">48.133</a> shall do all of the following:</p> <p>...</p> <p>2. Make clear and specific recommendations to the court concerning the best interest of the child or unborn child at every stage of the proceeding. <a href="#">WI STAT § 48.235</a>.</p> <p>(6) Communication to a jury. In jury trials under this chapter, the guardian ad litem or the court may tell the jury that the guardian ad litem represents the interests of the person or unborn child for whom the guardian ad litem was appointed.</p> <p>...<a href="#">WI STAT § 48.236</a>.</p>
<p><b>4. Post-Hearing:</b> <i>Review courts order, communicate order to child, and monitor implementation of orders.</i></p>	<p><i>No explicit legal authority or requirement.</i></p>
<p><b>5. Appellate Advocacy:</b> <i>Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</i></p>	<p>- The guardian ad litem may appeal, may participate in an appeal or may do neither. If an appeal is taken by any party and the guardian ad litem chooses not to participate in that appeal, he or she shall file with the appellate court a statement of reasons for not participating. Irrespective of the guardian ad litem's decision not to participate in an appeal, the appellate court may order the guardian ad litem to participate in the appeal. <a href="#">WI STAT § 48.235</a>.</p>

<p><b>6. Cessation of Representation:</b>  <i>Contacts post representation, if any.</i></p>	<p>- (7) Termination and extension of appointment. The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates...At any time, the guardian ad litem, any party or the person for whom the appointment is made may request in writing or on the record that the court extend or terminate the appointment or reappointment. The court may extend that appointment, or reappoint a guardian ad litem appointed under this section, after the entry of the final order or after the termination of the appeal, but the court shall specifically state the scope of the responsibilities of the guardian ad litem during the period of that extension or reappointment. <a href="#">WI STAT § 48.235.</a></p>
	<p align="center"><b>Organizational and Administrative Supports for the Child Representative</b></p>
<p><b>7. General Representation Rules:</b>  <i>Administrative structure is clear for appointment, support and accountability of the CR. The child's representative is independent from the court</i></p>	<p>(4) Providing counsel. If a child has a right to be represented by counsel or is provided counsel at the discretion of the court under this section and counsel is not knowingly and voluntarily waived, the court shall refer the child to the state public defender and counsel shall be appointed by the state public defender under s. <a href="#">977.08</a> without a determination of indigency. <a href="#">WI STAT § 48.23.</a></p> <p>- Two-thirds of the representation in juvenile matters is handled by public defender staff; the rest is handled by private attorneys. <a href="#">WI STAT § 977.08(5)(c).</a> Of those cases handled by private attorneys, up to one third may be assigned pursuant to flat-rate contracts, with the balance paid to attorneys receiving an hourly rate. <a href="#">WI STAT § 977.08(3).</a></p>
<p><b>8. Lawyer Training:</b>  <i>Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</i></p>	<p>- (2) Qualifications. The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, who appears as counsel or court-appointed special advocate in a proceeding on behalf of any party or who is a relative or representative of an interested party in a proceeding may be appointed guardian ad litem in that proceeding. <a href="#">WI STAT § 48.235.</a></p> <p>- <b>Eligibility to accept an appointment.</b> Commencing on July 1, 1999, a lawyer may not accept an appointment by a court as a guardian ad litem for a minor in an action or proceeding under chapter 48 or 938 of the statutes unless one of the following conditions has been met:</p> <p align="center">(1) The lawyer has attended 30 hours of guardian ad litem education approved under SCR 35.03.</p> <p align="center">(2) The lawyer has attended 6 hours of guardian ad litem education approved under SCR 35.03 during the combined current reporting period specified in SCR 31.01(7) at the time he or she accepts an appointment and the</p>

immediately preceding reporting period.

(3) The appointing court has made a finding in writing or on the record that the action or proceeding presents exceptional or unusual circumstances for which the lawyer is otherwise qualified by experience or expertise to represent the best interests of the minor.

**35.015 Eligibility to accept an appointment.** Commencing on July 1, 2003, a lawyer may not accept an appointment by a court as a guardian ad litem for a minor in an action or proceeding under chapter 767 of the statutes unless one of the following conditions has been met:

(1) The lawyer has attended 6 hours of guardian ad litem education approved under SCR 35.03 during the combined current reporting period specified in SCR 31.01 (7) at the time he or she accepts an appointment and the immediately preceding reporting period. At least 3 of the 6 hours shall be family court guardian ad litem education approved under SCR 35.03 (1m).

(2) The appointing court has made a finding in writing or on the record that the action or proceeding presents exceptional or unusual circumstances for which the lawyer is otherwise qualified by experience or expertise to represent the best interests of the minor.

**SCR 35.02 Effect of acceptance.** A lawyer's acceptance of appointment as a guardian ad litem for a minor in an action or proceeding under chapter 48, 767, or 938 of the statutes constitutes the lawyer's representation to the appointing court that the lawyer is eligible to accept the appointment under SCR 35.01 or 25.015, whichever is applicable, and is governed by SCR 20:3.3.

**SCR 35.03 Approval of guardian ad litem education.**

(1) The board of bar examiners shall approve courses of instruction at a law school in this state and continuing legal education activities that the board determines to be on the subject of the role and responsibilities of a guardian ad litem for a minor or on the subject matter of proceedings under chapter 48, 767 or 938 of the statutes and that are designed to increase the attendee's professional competence to act as guardian ad litem for a minor in those proceedings.

(1m) (a) The board of bar examiners shall approve, as family court guardian ad litem education, courses of instruction at a law school in this state and continuing legal education activities that the board determines to be on

	<p>any of the following subject matters:</p> <ol style="list-style-type: none"> <li>1. Proceedings under chapter 767 of the statutes.</li> <li>2. Child development and the effects of conflict and divorce on children.</li> <li>3. Mental health issues in divorcing families.</li> <li>4. The dynamics and impact of family violence.</li> <li>5. Sensitivity to various religious backgrounds, racial and ethnic heritages, and issues of cultural and socioeconomic diversity.</li> </ol> <p>(b) The board of bar examiners may only approve courses of instruction or continuing legal education activities that are conducted after June 1, 2002.</p> <p>(2) The board of bar examiners shall designate, under SCR 31.05(3) and 31.07, the number of hours applicable to SCR 35.01(1) and (2) and 35.015 (1) for each approved course of instruction and continuing legal education activity.</p> <p>(3) Approval of a course of instruction or continuing legal education activity under subs. (1) and (1m) constitutes approval of that course or activity for purposes of continuing legal education under SCR chapter 31.</p> <p>(4) The procedure for obtaining approval of courses of instruction and continuing legal education activities is specified in SCR 31.08. <a href="#">WI. SUP. CT. R. 35.</a></p>
<p><b>9. <i>Lawyer Compensation:</i></b>  <i>Adequate and timely compensation, reimbursement provided expenses.</i></p>	<p>-Attorneys appointed as counsel to a child who are not on staff of the public defender are paid either pursuant to a flat-rate contract or an hourly rate of \$40 for case-related work and \$25 for travel outside their county or for distances greater than 30 miles. If paid by flat-rate contract, the total amount paid cannot be greater than would have been paid under the hourly rate. <a href="#">WI STAT § 977.08(4).</a></p> <p>- (8) Compensation.</p> <p>(a) A guardian ad litem appointed under this chapter shall be compensated at a rate that the court determines is reasonable, except that, if the court orders a county to pay the compensation of the guardian ad litem under par. <a href="#">(b)</a></p>

	<p>or <a href="#">(c) 2.</a>, the amount ordered may not exceed the compensation payable to a private attorney under s. <a href="#">977.08 (4m) (b)</a>.</p> <p>(b) Subject to par. <a href="#">(c)</a>, the court may order either or both of the parents of a child for whom a guardian ad litem is appointed under this chapter to pay all or any part of the compensation of the guardian ad litem. In addition, upon motion by the guardian ad litem, the court may order either or both of the parents of the child to pay the fee for an expert witness used by the guardian ad litem, if the guardian ad litem shows that the use of the expert is necessary to assist the guardian ad litem in performing his or her functions or duties under this chapter. If one or both parents are indigent or if the court determines that it would be unfair to a parent to require him or her to pay, the court may order the county of venue to pay the compensation and fees, in whole or in part. If the court orders the county of venue to pay because a parent is indigent, the court may also order either or both of the parents to reimburse the county, in whole or in part, for the payment.</p> <p>(c)</p> <p>1. In an uncontested termination of parental rights and adoption proceeding under s. <a href="#">48.833</a>, the court shall order the agency that placed the child for adoption to pay the compensation of the child's guardian ad litem.</p> <p>2. In an uncontested termination of parental rights and adoption proceeding under s. <a href="#">48.835</a> or <a href="#">48.837</a>, the court shall order the proposed adoptive parents to pay the compensation of the child's guardian ad litem. If the proposed adoptive parents are indigent, the court may order the county of venue to pay the compensation, in whole or in part, and may order the proposed adoptive parents to reimburse the county, in whole or in part, for the payment.</p> <p>(d) At any time before the final order in a proceeding in which a guardian ad litem is appointed for a child under this chapter, the court may order a parent, agency or proposed adoptive parent to place payments in an escrow account in an amount estimated to be sufficient to pay any compensation and fees payable under par. <a href="#">(b)</a> or <a href="#">(c)</a>.</p> <p>(e) If the court orders a parent or proposed adoptive parent to reimburse a county under par. <a href="#">(b)</a> or <a href="#">(c) 2.</a>, the court may order a separate judgment for the amount of the reimbursement in favor of the county and against the parent or proposed adoptive parent who is responsible for the reimbursement.</p> <p>(f) The court may enforce its orders under this subsection by means of its contempt powers. <a href="#">WI STAT § 48.235.</a></p>
<p><b>10. Caseload Levels:</b> Caseloads are of a manageable size.</p>	<p><i>No explicit legal authority or requirement.</i></p>