

Guardianship Standards Workgroup

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Honorable Cynthia Feland, Chair
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July 30, 2025

Honorable Jon J. Jensen
Chief Justice
North Dakota Supreme Court
Judicial Wing, 1st Floor
600 E. Boulevard Ave.
Bismarck, ND 58505-0530

RE: Guardianship Standards Workgroup – Final Report

Dear Chief Justice Jensen:

In 2013, I was asked to chair the newly created Guardianship Standards Workgroup by then Chief Justice Gerald VandeWalle. At the time of the Workgroup's initial review of existing procedures, guardianship and conservatorship cases were not assigned to a specific judge and were routinely handled as minor civil matters on the master calendar. Once appointed, a guardian's or conservator's authority was self-perpetuating without any further review absent a request by the guardian, conservator, or the ward.

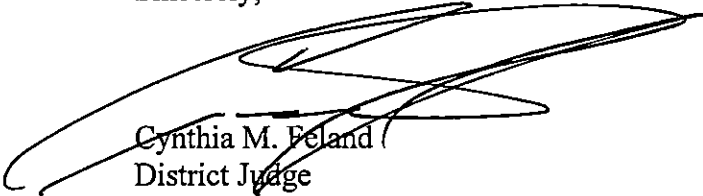
Over the past 12 years, the Workgroup has worked tirelessly to improve court processes, strengthen the protection of wards, and to increase accountability for those who would take advantage of a ward's vulnerability. With the recent passage of SB 2029 and the creation of the Office of Guardianship and Conservatorship, now tasked with the responsibility of addressing guardianship accountability, investigating suspected guardian mismanagement or illegal behavior, managing the guardianship monitoring program and addressing the availability of guardians for new and existing guardianships, the Workgroup has completed its final goal. Thus, I am submitting a final report and request that the Workgroup be dissolved to allow for the transfer of the responsibilities to the Office of Guardianship and Conservatorship.

I am grateful to Justice VandeWalle for providing me with the opportunity to lead the Workgroup, to you for your continued support of the Workgroup, to all the dedicated professionals who contributed their time and expertise to the Workgroup, the staff of the North Dakota Legal Self-Help Center, and the staff attorneys from the State Court Administrator's

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Office who provided invaluable assistance to the Workgroup. It is only with the efforts of these dedicated individuals that the Workgroup was able to achieve each of the goals set.

Sincerely,



Cynthia M. Feland

District Judge

Chair, Guardianship Standards Workgroup

CMF/cf

GUARDIANSHIP STANDARDS WORKGROUP
FINAL REPORT
July 25, 2025

TO THE NORTH DAKOTA SUPREME COURT:

The Guardianship Standards Workgroup was established by Chief Justice VandeWalle in May of 2013, and he appointed South Central Judicial District Judge Cynthia M Feland to serve as the chair. The purpose of the Workgroup was to review North Dakota's statutes, rules and court processes governing guardianship and conservatorship proceedings following the November 2012 update to National Probate Court Standards by the National College of Probate Judges and the Windsor Schmidt report to the North Dakota Human Services Committee on the Study of Guardianship Services for Vulnerable Adults in North Dakota to identify and recommend areas for improvement.

The Workgroup held its first meeting on November 18, 2013, initially meeting quarterly and later as frequently as monthly, to further the goal of improving the operation of the judicial system with respect to guardianship cases. Attached is a list of the official Workgroup members and a full list of the projects completed by the Workgroup.

Throughout its existence, the Workgroup has focused on an interdisciplinary model that included the voices and viewpoints of the judiciary, the legislature, human services, providers of guardianship and conservatorship services, state entities responsible for providing protective services, and legal practitioners. To allow for the greatest input of information, the Chair of the Workgroup had latitude to invite non-members to participate in Workgroup discussions and to establish subcommittees as needed. In addition, Workgroup meetings were frequently attended by individuals interested in guardianship and conservatorship. Temporary members and individuals in attendance were allowed by the Chair to offer comment and fully participate in Workgroup discussions. The names of those individuals who were temporary members or guests at Workgroup meetings can be found in the Workgroup minutes and materials.

During the first two meetings, the Workgroup identified the following as priority issues:

- Training for family guardians;
- Certification of professional guardians;
- Requiring background checks for proposed guardians.
- Establishing training and a statewide roster for court visitors and guardians ad litem;
- Simplifying the process for interested persons to report concerns about a guardian;
- Simplifying the process for a guardian to ask to have duties modified or to be relieved of duties altogether; and
- Effective monitoring of annual accounts.

Through discussions with district court judges, and judicial referees, and concerns expressed by members of the Workgroup, it also quickly became readily apparent that three additional issues needed to be addressed:

- Inability to find successor guardians;
- Inaction on complaints referred to prosecutors or state and federal agencies; and
- Inability to shut down bad actors through administrative action.

The Workgroup was able to address all of the identified issues through a combination of legislative changes, rule changes, administrative orders, changes to district court and juvenile court processes, the establishment of the Guardianship Monitoring Program, annual training for guardians, social workers and other professions, and the creation of forms with instructional packets and videos.

Establishing an Office of Guardianship and Conservatorship was the final task pursued by the Workgroup. With the passage of SB 2029, creating the Office of Guardianship and Conservatorship, the final task of the Workgroup is complete and the Workgroup respectfully concludes its work. A summary of the accomplishments of the Workgroup follows.

The Workgroup has been supported by current and former State Court Administration Staff Attorneys Jim Ganje, Lindsey Nieuwsma and Sara Behrens and by the Director of the Law Library and Legal Self-Help Center Catie Palsgraaf. Meeting materials from October 2023 through October 2024 can be found on the court's website at:

<https://www.ndcourts.gov/supreme-court/committees>. Access to earlier material may be obtained by contacting the Office of the State Court Administrator. Court rules and Administrative Orders can be found on the court's website at: <https://www.ndcourts.gov/legal-resources/rules>. Bills may be found in the research section of the legislature's website at: <https://ndlegis.gov/library-and-research/session-laws>.

Guardianship Standards Workgroup – Summary of Activities (2013 – 2025)

2013 – Guardianship Standards Workgroup formed

2014 – Completed comparison of all North Dakota statutes and policies related to guardianship and conservatorship to National Probate Standards

2015 – Hosted 2-day interdisciplinary symposium on Guardianship and Elder Justice

2015 Legislative Session (SB 2168)

- Added additional information that must be provided in the petition for guardianship including information about the ward's current physical and mental health.
- Clarified the role of the guardian ad litem and added a requirement that a written report must be filed prior to the hearing.
- Included a provision requiring the court to consider reports from the guardian ad litem, visitor, and doctor and made the reports of the visitor and doctor confidential.
- Required that the beginning inventory must be filed within 90 days after appointment.
- Put in place the 5-year review of all new guardianships for the purpose of determining if any changes need to be made to the guardianship.
- Required additional information be contained in the annual report filed by the guardian and that it be served on interested persons.

2016

- Administrative Order 22 adopted to establish the 5-year period and the process for the review of all guardianships in existence prior to August 1, 2015.
- Developed an online training program for guardians appointed in adult guardianship cases.

2017

- Administrative Order 23 adopted to establish the 5-year period and the process for the review of all conservatorships in existence prior to August 1, 2017.

2017 Legislative Session (HB 1095)

- The major changes for guardianships were:
 - Requiring petition for guardianship to state if the proposed guardian wants to restrict rights of the ward.
 - Adding additional duties for the guardian ad litem and visitor and requiring them to provide an explanation of the purpose of the petition and court process to the ward and more information to the court about the proposed ward and the proposed guardian.
 - Expanding the group of medical professionals authorized to provide a report regarding the incapacity of the ward.

- The major changes for conservatorships were:
 - Requiring more information in the petition.
 - Making the statutes more similar to the guardianship statutes, including additional duties for the guardian ad litem and visitor.
 - Requiring the conservator to file annual reports and requiring 5-year reviews of conservatorships by the court.

2018

- Administrative Order 24 created the Guardianship Monitoring Program authorizing judges to refer cases to the program when they have concerns about the ward's finances or well-being. The program manager is required to annually perform a review of a randomly selected case from each professional guardian and is authorized to perform random reviews of other cases as time allows. Reports from the program manager and court visitor are filed with the court to determine any action to be taken.
- Administrative Rule 59 created the requirement for completion of the online guardianship training program for each individual serving as a guardian and the qualifications required for nonprofessional and professional guardians.
- Developed a manual for guardians with authority to make mental health decisions for the ward.
- Developed an online training program for new guardians.

2019 Legislative Session (SB 2070; SB 2072; SB 2073)

- Guardianships of minors/juveniles overhauled. Only uncontested guardianships of minors appointed in a Will remain in probate court. All other guardianships must begin in or be sent to juvenile court.
- Created a new statutory chapter detailing court process for the filing, disposition, modification and monitoring of guardianship of minors.
- Added the requirement for reviewing minor guardianships at least every three years.

2020

- Developed an online training for alternatives to guardianship.

2021

- Administrative Order 34 adopted the 3-year process for the review of existing minor guardianships established before August 1, 2019.
- Administrative Rule 59 amended to require individuals working as guardians for a guardianship business to provide the same criminal background information as nonprofessional guardians have to provide. Addition criminal offense types were added to the list that would prevent someone from being a guardian.
- Rule of Court 11.8 adopted to allow professional guardians to file certain uncontested legal documents without an attorney such as annual reports, requests for venue change, termination documents. If one of the proceedings becomes contested, an attorney is required.
- Developed an online training for guardianship of minors.

- Developed an online training for guardians with authority to make mental health decisions.
- Developed an online training regarding the responsibilities and requirements for guardians within the first 90 days of appointment.

2021 Legislative Session (HB 1048; HB 1049; SB 2057)

- Clarified that a judge may require a guardian to get a bond to protect the ward's assets if the judge thinks it's needed.
- Added a section to the guardianship chapter allowing a guardian to restrict others from contacting the ward if it's in the ward's best interests and providing a procedure for challenging restrictions placed on contact with the ward by the guardian.
- Added a section requiring a guardian to get the court approval before selling the ward's personal possessions (if value is over \$2500) or any of the ward's real property.

2023 Legislative Session (SB 2222; SB 2224; SB 2225)

- Required a conservator to obtain a court order to sell real property
- Created a procedure to appoint an emergency conservator
- Provided a procedure for minors becoming incapacitated adults.
- Expanded the list of who may serve as a visitor.
- Required a guardian to obtain a court order to collect compensation and includes factors for the court to utilize in determining appropriate compensation.
- Clarified the circumstances in which a guardianship may be terminated or modified.
- Clarified that only one extension of an emergency guardianship is permitted.
- Removed the general allowance for a guardian to consent to involuntary treatment and provided that involuntary treatment with prescribed mood stabilizers and antipsychotic medications must be approved by the court.
- Created a process for the guardian to request authorization to consent to the involuntary treatment with mood stabilizers and antipsychotic medications.

2024

- Rule of Court 11.8 amended to clarify when a motion is required.
- Worked with Interim Finance Committee to introduce SB 2029 as a Legislative Management bill.

2025 Legislative Session (SB 2029; SB 2297)

- Expanded the list of individuals authorized to determine if an individual is incapacitated for purposes of giving informed consent for health care.
- Authorized a court to extend an initial order appointing an emergency guardian for up to 90 days or an initial review hearing, for good cause shown; requires a new order and letters if the guardianship is extended.
- Defined "alternative resource plan".
- Expanded definitions of "incapacitated person", "protected person", "protective proceeding", "and "ward".

- Clarified the “interested persons” section and expanded it to include a subset of interested persons specific to guardianship and conservatorship.
- Added a definition for “least restrictive form of intervention”.
- Added a definition of “refusal” specific to medication.
- Defined which reports are confidential to include reports written by the guardian ad litem, visitor, and examiner, and the annual, final and financial accounting prepared by the guardian.
- Expanded the list of individuals who must be served with a motion and the beginning inventory.
- Required discharge of the visitor and expert examiner after the court has ruled on the petition.
- Amended the removal or resignation of guardian section to separate procedures for a request for restoration to capacity from other actions and required the clerk of court to send a copy of an informal request for restoration to capacity to all interested parties.
- Created a new section related to procedures for removal, resignation or death of a guardian.
- Created two new sections outlining notice requirements in an emergency proceeding or in a subsequent appointment of conservator.
- Added a new section limiting liability of the guardian.
- Added a new section on confidentiality and personal information in conservatorship cases.
- Established the 10-day time frame to hold a hearing on a petition for emergency conservatorship.
- Created an Office of Guardianship and Conservatorship as an independent state agency with responsibilities for licensing professional guardians and conservators, receiving and responding to complaints, and training and recruitment of guardians and conservators.

Original Membership – 2013

Cynthia M Feland, Chair, North Dakota District Court Judge, South Central Judicial District

Aaron Birst, Legal Counsel, North Dakota Association of Counties

Donna Byzewski, Program Manager, Catholic Charities of North Dakota, Guardianship Services Division

Jim Fitzsimmons, Director, Legal Services of North Dakota

Michelle Gayette, Program Manager, Dept. of Human Services Aging Services Division

Sally Holewa, North Dakota State Court Administrator

Leo Ryan, Attorney, Dalstad & Ryan, Jamestown, North Dakota

Judy Vetter, President of Guardianship Association of North Dakota, (Director, Guardianship and Protective Services, Bismarck, North Dakota)

Melvin Webster, Attorney, Mel Webster Law, Bismarck, North Dakota

Rodger Wetzell, Director, Eldercare, Community Health & Foundation, St Alexius Medical Center, Bismarck, North Dakota

Donna Wunderlich, Unit 3 Trial Court Administrator, Bismarck, North Dakota

Additional Members During Juvenile Revisions 2017-2019

Stephen Astrup, Attorney, Vogel Law Firm, Fargo, North Dakota

Rich LeMay, North Dakota Legal Services, Minot, North Dakota

Rachel (Thomason) Sinness, Attorney, Thomason and Thomason, Bismarck, North Dakota

Allyson Hicks, Attorney, Solem Law Office, Hazen, North Dakota

Pamela Nesvig, South Central Judicial District Judicial Referee

Lauren Bosch, Guardian Ad Litem, Bismarck North Dakota

David Boeck, Attorney, Protection and Advocacy

Karen Kringlie, Juvenile Court Director, Unit 2, Fargo, North Dakota

Catherine Palsgraff, Citizen Access Coordinator, North Dakota Supreme Court

Cathy Ferderer, Family Law Mediation Program Administrator, North Dakota Supreme Court

Storm Olson, Attorney, North Dakota Department of Human Services

Rose Nichols, Guardian Monitoring Program, North Dakota State Court System

Norma O'Halloran, Grand Forks County Clerk of Court's Office.

Ending Membership – 2025

Cynthia M Feland, Chair, North Dakota District Court Judge, South Central Judicial District

Jonathan Alm, Attorney, North Dakota Department of Health and Human Services

Aaron Birst, Executive Director, North Dakota Association of Counties

Cheryl Bergian, Attorney, Bergian Law Office, Fargo, North Dakota

Donna Byzewski, Program Manager, Catholic Charities of North Dakota, Guardianship Services Division

Margo Haut, President of Guardianship Association of North Dakota, (Principal Officer, Guardian Angels, Jamestown, North Dakota)

Sally Holewa, North Dakota State Court Administrator

Tracy Laaveg, Attorney, Park River, North Dakota

Jen Lee, Director, Legal Services of North Dakota

Donna Wunderlich, Unit 3 Trial Court Administrator, Bismarck, North Dakota