

Instructions for Establishing an Adult Guardianship

Important! Read Before Using These Forms & Instructions!

ND Legal Self Help Center staff and court employees **can't** help you fill out the form(s). If you're unsure if these forms and instructions suit your circumstances, [consult a lawyer](#).

ND Legal Self Help Center forms aren't official court forms and judges and courts aren't required to accept them. There's no guarantee Center forms will be accepted.

If need legal advice or legal representation, consult a lawyer licensed to practice in North Dakota. Go to ndcourts.gov/legal-self-help/finding-a-lawyer to learn more about finding a lawyer to represent you.

When you represent yourself, you're expected to know and follow the law, including:

- State or federal laws that apply to your case;
- Case law, also called court opinions, that applies to your case; and
- Court rules that apply to your case, which may include:
 - North Dakota Rules of Civil Procedure;
 - North Dakota Rules of Court;
 - North Dakota Rules of Evidence;
 - North Dakota Administrative Rules and Orders; and
 - Any local court rules.

Links to the state laws, case law, and court rules can be found at ndcourts.gov.

A glossary with definitions of legal terms is available at ndcourts.gov/legal-self-help.

When you represent yourself, you're held to the same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures.

These instructions and forms aren't a complete statement of the law. They cover basic procedure for petitioning a North Dakota state district court to establish a guardianship over an adult. There's no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center. The Center isn't responsible for any consequences that may result from the forms or information provided.

Use these forms and instructions at your own risk.

Warning! Appointment of a guardian can have serious legal and financial consequences for both the ward and the guardian. It's strongly recommended that you consult a lawyer and carefully consider all of your options before you represent yourself in a petition to appoint guardian in a North Dakota state district court. If you decide to represent yourself, you need to do additional research to prepare.

Overview of the Process to Establish an Adult Guardianship

Step 1 Gather the Information Needed to Complete the Forms

- 1) Where to file the petition;
- 2) Information about the proposed guardian, proposed ward (*also called the alleged incapacitated person*), and proposed ward's estate;
- 3) Names and contact information of Guardian Ad Litem, Visitor, and Expert Examiner;
- 4) Names and current addresses of people who are required to receive notice.

Step 2 Prepare the Petition for Appointment of a Guardian

Also prepare the Confidential Information Form.

Step 3 Prepare Proposed Orders to Appoint a Guardian ad Litem, Visitor, and Expert Examiner

The proposed orders aren't effective until signed by the judge or judicial referee after completing Step Four.

Step 4 File the Petition and Proposed Orders to Appoint; Get a Hearing Date

Pay the \$160.00 filing fee or file a completed petition to waive filing fees.

Step 5 Prepare the Notice of Hearing and Statement of Rights

Make copies to serve in Step Six.

Step 6 Serve the Notice of Hearing and Statement of Rights with a Copy of the Petition and Signed Orders to Appoint

Arrange to serve the people identified to receive notice in Step One.

Step 7 File Proof of Service of Notice of Hearing and Statement of Rights, Petition and Signed Orders to Appoint

Declaration(s) of service, Affidavit(s) of service, or Certificate(s) are proof of service.

Step 8 Complete the Guardian Qualification and Training Requirements

See Page 8 of these instructions for more details.

Step 9 Attend the Hearing

The petitioner is required to prove the allegations in their petition. The proposed ward has the right to present evidence and cross-examine witnesses.

What is an Adult Guardianship?

A guardianship of an adult is a court process where a North Dakota state district court judge or judicial referee decides that an adult (18 years or older) is incapacitated to the point they're unable to care for themselves responsibly or their incapacity endangers their health or safety.

At least one court hearing is required for all adult guardianships.

If the judge or judicial referee decides, based on the evidence presented, that the adult is incapacitated, a guardian is appointed to make medical, legal, residential, educational, vocational, and some financial decisions for the adult. After a guardian is appointed, the adult is referred to as the Ward.

Any person interested in the welfare of an alleged incapacitated person may petition for the appointment of a guardian. An emergency guardian may petition for appointment of a long-term guardian.

Who May Use This Packet of Forms?

You may use this packet of forms if:

- You, the Petitioner, are interested in the welfare of the alleged incapacitated person and want to be appointed their guardian; **and**
- The person for whom you want to be appointed guardian is at least 18 years old; **and**
- You, the Petitioner, have considered less restrictive alternatives to guardianship before deciding bring a guardianship case; **and**
- You, the Petitioner, have first-hand knowledge of the facts, or information and belief the facts are true, showing the person for whom you want to be appointed guardian meets the legal definition of an incapacitated person.

The requirements for adult guardianships are found in **North Dakota Century Code (N.D.C.C.) Chapter 30.1-01, Chapter 30.1-03, Chapter 30.1-26 and Chapter 30.1-28.**

Refer to these laws if you decide to use this packet of forms.

Before Using This Packet of Forms

The appointment of a guardian severely limits or completely removes the right of the person to make their own decisions.

When you petition for a guardianship, you're required to tell the judge or judicial referee the less restrictive alternatives to guardianship you've considered before starting a case to establish an adult guardianship for the alleged incapacitated person.

Less restrictive options to guardianship include, but aren't limited to:

- Supported decision making;
- Power of attorney;
- Health care directive;
- Representative payee; or
- Home health care.

The North Dakota Department of Health and Human Services, Adults and Aging Services Division operates an Aging and Disability Resource Link. carechoice.nd.assistguide.net

The North Dakota Protection & Advocacy Project, a North Dakota state agency, is the protection and advocacy system for people with disabilities in North Dakota. Their website gives information about services available, including supported decision making. ndpanda.org

To learn more about how to identify when a guardianship is necessary and the process of establishing a guardianship in North Dakota, complete the online North Dakota Guardianship Training Course.

The North Dakota Guardianship Training Course is free of charge and is available at ndcourts.gov/legal-self-help:

- Scroll to the "Guardians and Conservators" section.
- Click on the ["Guardianships of Adults"](#) link.
- The training course is in the "Rule 59 Guardian Qualifications and Training Requirements" section.
- Click on the ["ND Guardianship Training Course"](#) link.

Who Can Be Appointed the Guardian(s)?

North Dakota law lists, in order or priority, who can be appointed the guardian of an incapacitated person.

Top priority goes to the alleged incapacitated person's most recent nomination in their durable power of attorney.

The judge or judicial referee may find the most recent nomination in the person's durable power of attorney is unqualified, or there is other good cause not to appoint.

If you're not the most recent nomination in a durable power of attorney, you may still be appointed guardian if:

- You prove to the judge or judicial referee that there isn't a nomination in a durable power of attorney, the most recent nomination isn't qualified, or there's other good cause not to appoint the most recent nomination;

And

- You're one of the following (*listed in order of priority*):
 1. A person nominated by the alleged incapacitated person before they became incapacitated (*other than a nomination in a durable power of attorney*).
 2. The alleged incapacitated person's spouse.
 3. The alleged incapacitated person's adult child.
 4. The alleged incapacitated person's parent.
 5. Any relative of the alleged incapacitated person with whom the alleged incapacitated person has lived for more than 6 months before the petition is filed.
 6. Any relative or friend who maintained significant contacts with the alleged incapacitated person; or a designated person from a volunteer agency.
 7. A non-profit corporation established to provide direct guardianship services, as long as the corporation doesn't provide direct care to incapacitated persons.
 8. Any appropriate government agency, including human services zones.
 9. A person nominated by the person who is caring for or paying benefits to the alleged incapacitated person.

If there are proposed guardians with equal priority, the judge or judicial referee selects the proposed guardian they decide is best qualified to serve.

Definitions

*The following definitions are intended to be helpful, **but they aren't** intended as legal advice or to address every possible meaning of the terms in this section.*

(See [Chapter 30.1-01 of the North Dakota Century Code](#) for more definitions.)

Alleged Incapacitated Person (See Incapacitated Person and Proposed Ward): An adult for whom a guardianship is sought. Until the judge or judicial referee decides the Petitioner proves the adult meets the legal definition of incapacitated person, the adult is an alleged incapacitated person.

Alternative Resource Plan: A plan that provides an alternative to guardianship, using available support services and arrangements which are acceptable to the alleged incapacitated person. The plan may include the use of providers of service such as visiting nurses, homemakers, home health aides, personal care attendants, adult day care; home and community-based care, human service zones, and developmental disability services; powers of attorney, durable powers of attorney, health care directive and supportive decisionmaking; representative and protective payees; and licensed congregate care facilities.

Expert Examiner: A person appointed by a North Dakota District Court to examine the proposed ward and submit a written report to the court regarding the proposed ward's medical and/or psychological incapacity. An Expert Examiner is:

1. A licensed physician;
2. A psychiatrist;
3. A licensed psychologist trained in a clinical program;
4. An advanced practice registered nurse who is licensed under North Dakota Century Code [Chapter 43-12.1](#) within the role of a certified nurse practitioner or certified clinical nurse specialist, who has completed the requirements for a minimum of a master's degree from an accredited program, and who is functioning within the scope of practice in one of the population foci as approved by the state board of nursing; or
5. A physician assistant who is licensed under North Dakota Century Code [Chapter 43-17](#) and authorized by the state board of medical examiners to practice in this state.

Guardian: A person or nonprofit corporation appointed by a North Dakota District Court to make personal decisions for an incapacitated person.

Guardian ad Litem: A lawyer appointed by a North Dakota District Court to advocate for the best interests of the proposed ward.

Incapacitated Person: An adult person who is impaired by reason of mental illness or deficiency, physical illness or disability, or chemical dependency to the extent that the person lacks capacity to make or communicate responsible decisions concerning that person's matters of residence, education, medical treatment, legal affairs, vocation, finance, or other matters, or which incapacity endangers the person's health or safety.

Judicial Referee: A judicial officer, appointed by the presiding District Court Judge, who has the authority to preside in adult guardianship proceedings. The findings and order of the Judicial Referee have the effect of the findings and order of a District Court Judge until superseded by a written order of a District Court Judge.

Least Restrictive Form of Intervention: The guardianship must be structured to compensate only for those limitations necessary to provide needed care and services. The ward must enjoy the greatest amount of personal freedom and civil liberties consistent with the ward's mental and physical limitations.

Letters of Guardianship: A document signed by a District Court judge or judicial referee that identifies the authority and limitations of the guardian to make decisions on behalf of the ward; identifies any other powers or authority given to the guardian by the court; and identifies any limitations the court puts on the ward in matters where powers aren't granted to the guardian.

Limited Guardian: A person or nonprofit corporation, appointed by the court, to supervise certain specified aspects of the care of a person with limited capacity.

Petitioner: A person who presents an adult guardianship petition to a North Dakota state district court asking to establish a guardianship for an allegedly incapacitated person.

Proposed Guardian: A person or nonprofit corporation who the petitioner requests be appointed by a North Dakota state district court to make personal decisions for an allegedly incapacitated person.

Proposed Ward (See Alleged Incapacitated Person): An adult, who is alleged to be an incapacitated person, for whom an adult guardianship is sought.

Venue: The place where the guardianship petition is or will be filed. Generally, in adult guardianship proceedings, the venue is the North Dakota county where the proposed ward resides or is present and expected to remain for the duration of the guardianship proceedings.

Visitor: A person appointed by a North Dakota state district court to interview the proposed guardian and the proposed ward. The visitor gives a written report to the court, which includes recommendations on powers to be granted to the proposed guardian. The visitor is a person who is trained in nursing, social work, medical care, mental health care, or rehabilitation and is

an employee or special appointee of the District Court with no special interest in the guardianship proceedings.

Ward: An adult person for whom a North Dakota state district court appointed a guardian.

Guardian Qualifications & Training Requirements

The qualifications and training requirements for guardians of adults are found in [Rule 59 of the North Dakota Supreme Court Administrative Rules](#). The proposed guardian(s) must meet the requirements before a judge or judicial referee can finalize their appointment as guardian.

The North Dakota Guardianship Training Course and declaration forms for the proposed guardian are available at ndcourts.gov/legal-self-help/adult-guardianship:

- Scroll to the “Guardian Responsibilities, Qualifications and Training Requirements, and Payment Information” section.

For the cost and process of obtaining a North Dakota criminal history record report, contact the Bureau of Criminal Investigation Division of the North Dakota Attorney General.

(attorneygeneral.nd.gov/public-safety/criminal-history-records)

The proposed guardian(s) may complete the qualifications and training requirements at any point during the process to establish a guardian. However, the judge or judicial referee can’t finalize their appointment until the guardian completes the requirements.

Forms for Establishing an Adult Guardianship

Forms You Need (*list continues on next page*):

If you decide to use this set of forms, you’re required to complete all of the following forms.

Form Title	Purpose
Petition for Appointment of a Guardian	Formal request to the court for appointment of a guardian, or co-guardians, for the alleged incapacitated person.
Confidential Information Form	Lists the full confidential information that isn’t allowed to appear in other documents filed with the court. This form is a part of the court record that isn’t seen by the public.

Form Title	Purpose
Order for Appointment of Guardian ad Litem	Proposed order of the court appointing a Guardian ad Litem. The proposed order isn't effective until it's signed by the judge or judicial referee assigned to the case.
Order Appointing an Expert Examiner	Proposed order of the court appointing an expert examiner. The proposed order isn't effective until it's signed by the judge or judicial referee assigned to the case.
Order Appointing a Visitor	Proposed order of the court appointing a visitor. The proposed order isn't effective until it's signed by the judge or judicial referee assigned to the case.
Notice of Hearing and Statement of Rights	Gives the date and time of the guardianship hearing, name and address of the Guardian ad Litem, and the name of the proposed guardian(s). Gives important information about the guardianship process to the alleged incapacitated person.
Declaration of Proposed Guardian	Written statement given by the proposed guardian. States how the proposed guardian meets the qualifications and training requirements of Rule 59 of the North Dakota Supreme Court Administrative Rules. (ndcourts.gov/legal-self-help/adult-guardianship/guardian-of-adult-qualifications-and-affidavits)

Forms You May Need *(list continues on next page):*

The District Court where you plan to file your petition may require you to file one or more of the following forms. Check with the clerk of court for special requirements.

Form Title	Purpose
Declaration of Service by Personal Delivery	Proves copies of the Notice of Hearing and Statement of Rights, Petition for Appointment of Guardian, and signed orders of appointment were served in person.
Declaration of Service by Mail	Proves copies of the Notice of Hearing and Statement of Rights, Petition for Appointment of Guardian, and signed orders of appointment were served by mail.

Form Title	Purpose
Declaration for Service by Publication	If unable to locate the address or identify a person required to be served, petitioner's statement under penalty of perjury of their diligent efforts and attempts to serve before serving the Notice of Hearing and Statement of Rights by publication.
Findings of Fact and Order Appointing Guardian/Co-Guardians	After hearing all of the evidence, the proposed explanation of facts the judge or judicial referee found to be true and the legal consequences of those facts. The proposed findings of fact and order aren't effective until signed by the judge or judicial referee assigned to the case.
Letters of Guardianship	Proposed letters of guardianship after the full hearing is held on the petition for appointment of a guardian. This document isn't effective until signed by the judge or judicial referee assigned to the case.

Forms the Guardian ad Litem, Visitor, and Expert Examiner May Use:

The Guardian ad Litem, Visitor, and Expert Examiner appointed by the District Court may use the following forms to submit their reports.

Form Title	Purpose
Guardian ad Litem's Report	A form a Guardian ad Litem may use to submit the required report to the judge or judicial referee. The report is open to the public.
Report of Visitor	A form a Visitor may use to submit their required report to the judge or judicial referee. The report is closed to the public. Only the court, parties to the guardianship proceeding or their lawyers, others by court order for good cause, and others authorized by court rule are allowed to see the report.
Report of Expert Examiner	A form an expert examiner may use to submit the required report to the court. The report is closed to the public. Only the court, parties to the guardianship proceeding or their lawyers, others by court order for good cause, and others authorized by court rule are allowed to see the report.

Steps to Establish an Adult Guardianship

Proposed Guardian Qualification and Training Requirements

The proposed guardian(s) may complete the qualifications and training requirements at any point during the court process to establish a guardianship. However, the judge or judicial referee can't finalize the appointment until the proposed guardian completes the requirements.

See Page 8 for links to the qualification and training requirements.

Step 1 – Gather the information needed to complete the forms.

First, review [N.D.C.C. § 30.1-28-02](#) to decide where to file the petition.

Second, review [N.D.C.C. § 30.1-28-03](#) and the Petition for Appointment of a Guardian form for information that must be included in the petition.

At minimum, gather the following:

- Information about the proposed guardian;
- Information about the proposed ward (*alleged incapacitated person*), including the proposed ward's real property, personal property and income;
- Information about any person or institution with care or custody of the proposed ward;
- Information about the lawyer, if any, who most recently represented the proposed ward;
- Information about the conservator, if any, appointed for the proposed ward;
- Information about the person or persons, if any, designated in a power of attorney or health care directive;
- Information about the representative payee, if any, for the proposed ward;
- Names and addresses of proposed ward's spouse, parents and adult children;
 - If no spouse, parents or adult children, names and addresses of proposed ward's adult siblings and any adult with whom the proposed ward resides in a private residence;
 - If none, name and address of proposed ward's nearest adult relative;
- Recent written statements about the physical, neurological, and psychological limitations of the proposed ward, if any, from an expert examiner (*see the Definitions section above for the definition of "Expert Examiner"*).

Third, gather the names and contact information of the guardian ad litem, visitor and expert examiner whose appointment you'll propose to the court in Step 4.

Contact each to get their consent, fees and any other information you consider necessary.

Guardian ad litem:

- Duties of the guardian ad litem are found in [N.D.C.C. § 30.1-28-03\(4\)](#).
- The court system **doesn't publish** a guardian ad litem roster for adult guardianship proceedings.
- However, a Legal Guardian Ad Litem roster specifically for use in child custody proceedings is published by the North Dakota State Court Administrators Office is found at ndcourts.gov/district-court/parenting-investigator-legal-guardian-ad-litem-roster.
- This roster may be useful as a starting point for locating a guardian ad litem for adult guardianship proceedings.

Visitor:

- Duties of the visitor are found in [N.D.C.C. § 30.1-28-03\(6\)](#).
- The court system **doesn't publish** a roster of visitors.
- The names of visitors appointed in other North Dakota guardianship cases may be found by searching publically accessible North Dakota court records.
 - Go to the ND Supreme Court website (ndcourts.gov) and click on the "Case Search & Pay Fines" link.
 - Read the information, click "Click Here to Proceed."
 - Select a location from the pull down menu. Select a county or the State of North Dakota.
 - Click "Civil, Family & Probate Case Records."
 - Under "Search by:" click the button next to "Date Filed."
 - Enter a date range in the "Date Filed:" boxes. For example, 01/01/2023 and 6/30/2023.
 - Select "Guardianship of Incapacitated Person" in the "Case Types:" box.
 - Click the "Search" box.
 - The screen will list publically accessible court cases based on your search.
 - To view an individual case for the name of a Visitor, click on the case number. The name of the Visitor may not be listed in every case.

Expert Examiner:

- Duties of the expert examiner are found in [N.D.C.C. § 30.1-28-03\(5\)](#).
- The court system **doesn't publish** a roster of expert examiners.
- See the Definitions section above for the definition of "Expert Examiner" as a starting point for finding an expert examiner.

Fourth, review [N.D.C.C. § 30.1-28-09](#) to compile a list of people to whom you must provide notice of the guardianship proceedings.

Gather the names and current addresses of the following:

- The proposed ward (*alleged incapacitated person*);
- The proposed ward's spouse;
- The proposed ward's parents;
- The proposed ward's adult children;
- Any person, corporation, or institution who is serving as the proposed ward's guardian, attorney in fact, representative payee for public benefits, or conservator, or who has the proposed ward's care and custody;
- If the proposed ward **doesn't** have a spouse, parents or adult children, the adult siblings and any adult with whom the proposed ward resides in a private residence, or if none can be found, any known adult relative;
- The guardian ad litem;
- The visitor; and
- The expert examiner.

Step 2 – Prepare the Petition for Appointment of a Guardian form and the Confidential Information Form.

Petition for Appointment of a Guardian form:

Caption (*top of form*):

- Fill in the name of the North Dakota county where you'll file the petition.
- Fill in the name of the Judicial District where you'll file the petition. (*The county is within the Judicial District.*) County and Judicial District information and maps are available at ndcourts.gov/court-locations.
- Fill in the full, legal name of the proposed ward (*alleged incapacitated person*).
- The case number is assigned by the clerk of court when the petition is filed in Step 4.

Complete all paragraphs of the form.

- Don't leave any blank paragraphs. If a part of a paragraph doesn't apply to you or the proposed ward, type or write "not applicable," "doesn't apply," or other words that tell the judge or judicial referee why you're not answer a part of a paragraph.
- If you need additional space, **don't** write on the back of the form. Write on one side of a new sheet (*or sheets*) of paper and attach to the completed petition.
- **Don't Include** the following information in the Petition:
 - Social Security Number
 - Taxpayer-Identification Number
 - Name of an individual known to be a minor (*less than 18 years old*)
 - Financial Account Number
- When completing the Petition, if you need to refer to a social security number, taxpayer-identification number, name of a minor child, or a financial account number, use **only** the following:
 - Last 4 digits of Social Security Number
 - Last 4 digits of Taxpayer-Identification Number
 - Minor's Initials (Jane Doe = J.D.)
 - Last 4 digits of Financial Account Number

Date and Signature:

- Date and sign the form. Complete all lines below your signature.

Make copies of the completed petition and any recent written statements or other exhibits you're filing with the petition:

- You need a copy for each of the people to whom you'll provide notice from Step 1.
- You need an additional copy for your records.

Confidential Information Form:

Caption (*top of form*):

- Fill out the information exactly as you filled out the Caption of the Petition for Appointment of a Guardian form

Complete all applicable sections of the form.

- Review [Rule 3.4 of the North Dakota Rules of Court](#).
- Certain information is considered confidential and **can't** be included in the Petition.

- Full confidential information that **can't** be included in the Petition:
 - Social Security Number
 - Taxpayer-Identification Number
 - Name of an individual known to be a minor (*less than 18 years old*)
 - Financial Account Number
- Include **only** the following in the Petition:
 - Last 4 digits of Social Security Number
 - Last 4 digits of Taxpayer-Identification Number
 - Minor's Initials (Jane Doe = J.D.)
 - Last 4 digits of Financial Account Number

Date and Signature:

- Date and sign this form.

Make a copy of the Confidential Information Form for your records. The original will be filed with the Clerk of District Court in Step 4.

This form is filed as a confidential document. This form isn't be included in the court documents that are available to the public.

The Confidential Information Form is **only** provided to the Clerk of District Court.

Step 3 – Prepare the Order for Appointment of Guardian ad Litem form, the Order Appointing an Expert Examiner form, and the Order Appointing a Visitor form.

These are your **proposed** orders of the court appointing a guardian ad litem, a visitor and an expert examiner. The proposed orders aren't effective until signed by the judge or judicial referee assigned to the case.

Caption (**top of form**):

- Fill out the top of each proposed order exactly as you filled out the caption of the Petition for Appointment of a Guardian form.

Complete all applicable sections of the form.

- **Don't fill in** the date the petition is filed, the name of the judge or judicial referee, or the date and time of the hearing.
- **Don't** sign the proposed orders.

Step 4 – File the original, completed Petition for Appointment of a Guardian form, Confidential Information Form, Order for Appointment of Guardian ad Litem form, Order Appointing an Expert Examiner form, and Order Appointing a Visitor form. Get a hearing date and time.

Take your completed petition, completed Confidential Information Form, completed proposed orders and any recent written statements or other exhibits to the Clerk of District Court's office in the North Dakota county where you plan to file the petition.

If the clerk of court accepts your petition for filing, you're required to pay an \$160.00 filing fee, unless the court grants you a fee waiver.

You may petition the court to waive the \$160.00 filing fee, based on an inability to pay. Forms and instructions to petition to waive the filing fee are available at ndcourts.gov/legal-self-help. Scroll to the "Miscellaneous" section.

A case number will be assigned. Make sure the case number is written on your original, completed petition and all copies.

Upon filing the petition, the District Court:

- Assigns a judge or judicial referee; and
- Sets a date and time for the first hearing on the petition

The judge or judicial referee assigned to the case:

- Appoints the Guardian ad Litem, the expert examiner to examine the proposed ward, and the visitor to interview the proposed guardian and the proposed ward.

Requesting a District Court Judge

[Rule 13 of the North Dakota Supreme Court Administrative Rules](https://ndcourts.gov/legal-self-help) allows guardianship cases to be heard and decided by a Judicial Referee, instead of a District Court Judge.

If a Judicial Referee is assigned to the guardianship case, any party to the case may request that a District Court Judge hear and decide the case instead. **The party must file a written request with the Clerk of Court within seven days after service of the notice of hearing.**

Step 5 – Prepare the Notice of Hearing and Statement of Rights.

Caption (*top of form*):

- Fill in the top of the form exactly as it appears in the Petition for Appointment of a Guardian form.
- Write in the case number assigned in Step 4.

Complete all applicable sections of the form.

Date and Signature:

- Date the form.
- Sign on the signature line.
 - In the space beneath the signature line, clearly type or print your name, street address, city, state, zip code and telephone number.

Make copies of the completed notice:

- You need a copy for each of the people to whom you're required to provide notice from Step 1.
- You need an additional copy for your records.

Step 6 – Serve the completed Notice of Hearing and Statement of Rights, and a copy of the Petition for Appointment of a Guardian and copies of the signed orders appointing the guardian ad litem, expert examiner and visitor.

All persons listed in [N.D.C.C. § 30.1-28-09](#) must be given a copy of the following:

- Notice of Hearing and Statement of Rights;
- Petition for Appointment of a Guardian;
- Completed and signed Order for Appointment of Guardian ad Litem;
- Completed and signed Order Appointing an Expert Examiner; and
- Completed and signed Order Appointing a Visitor.

You, the petitioner, are responsible for ensuring notice is given as required by [N.D.C.C. § 30.1-28-09](#) and [N.D.C.C. § 30.1-03-01](#).

You're also responsible for paying all service fees.

Notice to the Proposed Ward, Spouse and Parents by Personal Service:

The proposed ward (*alleged incapacitated person*) must be personally served at least 14 days before the hearing. **The proposed ward can't waive notice and must be served.**

If the proposed ward's spouse and the proposed ward's parents are found within North Dakota, they must also be personally served at least 14 days before the hearing.

You, the petitioner, **can't personally serve the documents yourself**. You arrange for personal service as follows:

- The person who personally serves a copy of the Notice of Hearing and Statement of Rights and a copy of everything filed with the court must be at least 18 years old **and** not a party to the petition or an interested party.
- The person who serves the notice and accompanying documents must complete a Declaration of Service by Personal Delivery. This is your proof of service of the notice.
 - If the Sheriff personally serves the documents, the Sheriff provides a completed certificate of service.
- Make a copy of each declaration or certificate for your records.
- You file the original declaration(s) of service or certificate(s) of service with the clerk of court in Step 7.

Notice by Mail:

If the proposed ward's spouse or the proposed ward's parents can't be found within North Dakota they may be served by mail.

All other persons listed in [N.D.C.C. § 30.1-28-09](#) may be served by mail. See [N.D.C.C. § 30.1-03-01](#).

Notice by mail must occur at least 14 days before the hearing.

You, the petitioner, arrange for service by mail as follows:

- The person who mails a copy of the Notice of Hearing and Statement of Rights and a copy of everything filed with the court must be at least 18 years old.
- The copy of the Notice of Hearing and Statement of Rights and a copy of everything filed with the court must be sent by certified or ordinary first-class mail addressed to the person's office or place of residence.

- The person who mails the notice and accompanying documents must complete a Declaration of Service by Mail. This is your proof of service of the notice.
- Make a copy of each declaration of service by mail for your records.
- You file the original declaration(s) of service with the clerk of court in Step 7.

Notice by Publication:

If, after a diligent search, you're unable to determine the address or identity of any of the other persons listed in [N.D.C.C. § 30.1-28-09](#), **except the proposed ward**, you may give notice of the hearing by publication. See [N.D.C.C. § 30.1-03-01](#) and [Rule 4\(e\) of the North Dakota Rules of Civil Procedure](#).

The notice must be published at least once a week for three consecutive weeks.

The last publication of the notice must occur at least 10 days before the hearing:

- Publish the Notice of Hearing and Statement of Rights in a newspaper having general circulation in the North Dakota county where the hearing is scheduled to be held.
- The notice must be published at least once a week for three consecutive weeks.
- You, the petitioner, must request an affidavit of publication from the newspaper after publishing is complete. This is your proof of publication of the notice.
- You, the petitioner, must prepare a Declaration for Service by Publication. The purpose of an Declaration for Service by Publication is to describe to the court the diligent efforts to locate the person(s).
- Make a copy of the affidavit of publication you received from the newspaper and your Declaration for Service by Publication for your records.
- You file the original Declaration for Service by Publication and the affidavit of publication with the clerk of court in Step 7.

Additional Notice Requirements for Guardian ad Litem, Visitor and Expert Examiner:

A copy of the order of appointment must accompany the copy of the Notice of Hearing and Statement of Rights and a copy of everything filed with the court.

Step 7 – File the Notice of Hearing and Statement of Rights, affidavit(s) of service, and/or certificate(s) of service with the court.

File the Notice of Hearing and Statement of Rights with the clerk of court in the county where the hearing is scheduled to be held.

Proof of service of a copy of the notice and a copy of everything filed with the court must be filed with the clerk of court on or before the hearing date.

- File all declarations of service and/or certificates of service with the clerk of court in the county where the hearing is scheduled to be held.
- If applicable, file the affidavit of publication and the declaration for service by publication.

Step 8 – Complete the guardian qualification and training requirements.

See the Guardian Qualifications and Training Requirements section on Page 8 of these instructions for more information.

For the cost and process of getting a North Dakota criminal history record report, contact the Bureau of Criminal Investigation Division of the North Dakota Attorney General.

(attorneygeneral.nd.gov/public-safety/criminal-history-records)

Step 9 – Attend the hearing.

You, the petitioner, must be prepared to present evidence proving that the proposed ward (*alleged incapacitated person*) meets the legal definition of an incapacitated person and why the guardianship is necessary.

You must also be prepared to present evidence that notice of the hearing was given to all persons required to receive notice.

The proposed ward must attend the hearing in person. If you plan to ask the judge or judicial referee to find that there is good cause to excuse the proposed ward's attendance at the hearing, you, the petitioner, must provide evidence of good cause. (*Good cause can't consist only of the physical difficulty of the proposed ward to attend the hearing.*)

The proposed ward has the right to present evidence, and to cross-examine witnesses, including the court-appointed expert examiner and the visitor.

The judge or judicial referee issues a written order granting or denying the appointment of a guardian, or co-guardians.

You, the petitioner, may be required to serve a copy of the written order to all persons given notice under [N.D.C.C. § 30.1-28-09](#).

See Step 6 for service and proof of service.

Requesting Review of a Judicial Referee's Findings of Fact and Order

[Rule 13 of the North Dakota Supreme Court Administrative Rules](#) allows guardianship cases to be heard and decided by a Judicial Referee, instead of a District Court Judge.

If the guardianship case is heard and decided by a Judicial Referee, the Judicial Referee issues their written findings of fact and an order. The Judicial Referee's findings of fact and order have the same force and effect as the findings of fact and order of a District Court Judge until superseded by a written order of a District Court Judge.

If any party to the guardianship case wants a review of the Judicial Referee's findings of fact and order, **the party must file a written request for review, stating the specific reasons for the review, with the Clerk of Court within seven day after service of the notice of the right to review.**

The party requesting review must give notice of their request to all other parties. Any party who wishes to respond to the request for review must file their written response within fourteen days after service of the notice of the request for review.

Requirements After the Court Appointment of a Guardian

Letters of Guardianship:

If the judge or judicial referee appoints a guardian, they issue findings of fact and an order and letters of guardianship. To accept the duties of guardian, the guardian must sign the letters of guardianship.

You, the petitioner, may be required to serve a copy of the order to all persons given notice under [N.D.C.C. § 30.1-28-09](#).

You, the petitioner, must mail copies of the signed letters of guardianship to the ward and the ward's attorney, if any.

See Step 6 for service and proof of service.

Beginning Inventory Report:

Within 90 days of the court's order appointing a guardian, the guardian must provide a beginning inventory report of all assets owned by the ward or in which the ward has an interest.

The guardian must provide a copy of the beginning inventory report to the ward and any interested persons designated by the court in the order appointing the guardian.

A form for the beginning inventory report is available at ndcourts.gov/legal-self-help/adult-guardianship. Scroll to the "After Adult Guardianships are Established" section. Service information and forms are included.

Guardian's Annual Report:

The guardian must file an annual report with the court. The requirements of the report are found in [N.D.C.C. § 30.1-28-12](#).

The guardian must provide a copy of the report to the ward and any interested persons designated by the judge or judicial referee in the order appointing the guardian. The copy of the report provided to the ward must include a statement of the ward's right to seek alteration, limitation, or termination of the guardianship at any time.

A form set for the annual report is available at ndcourts.gov/legal-self-help/adult-guardianship. Scroll to the "After Adult Guardianships are Established" section.

Payment of Room and Board from Ward's Funds Not Allowed in Certain Circumstances:

Funds from the ward's estate can't be used to pay for the ward's room and board when room and board is being furnished by the guardian/co-guardian, or the guardian's/co-guardian's spouse, parent or child.

A court order is required to allow funds from the ward's estate to be used for room and board in these instances. (See [N.D.C.C. § 30.1-28-12\(7\)](#).)

Forms to make a request to the North Dakota State District Court to allow payment of room and board from the ward's funds are available on the webpage under "After Adult Guardianships are Established". Click on the following link: [Notice and Motion to Allow Payment of Room and Board](#).

[Payment for Guardianship Services](#)

Funds from the ward's estate may be used to pay guardian's/co-guardian's fees.

A court order is required to allow funds from the ward's estate to be used for payment of guardian's/co-guardian's fees. ([See N.D.C.C. 30.1-28-03\(14\)](#)). The judge or judicial referee assigned to the guardianship case decides what is a guardian service, and if your fee approval request won't unreasonably jeopardize the Ward's well-being and estate.

Forms are available on the webpage under "After Adult Guardianships are Established". Click on the following link: [Notice and Motion to Approve Payment of Guardian's Fees](#).

The responsibilities of the Guardian terminate upon the death of the Ward or upon order of the court. The court may terminate the Guardianship if the Ward no longer meets the standard for establishing the Guardianship.