

## INSTRUCTIONS FOR ESTABLISHING AN ADULT GUARDIANSHIP

### IMPORTANT! READ BEFORE USING THESE FORMS AND INSTRUCTIONS

ND Legal Self Help Center staff and court employees cannot help you fill out the form(s).

If you are unsure how to proceed, or need legal advice or legal representation, consult a lawyer licensed to practice in North Dakota.

To protect your rights, carefully read this information and any instructions to which you are referred.

#### When you represent yourself, you must abide by the following:

- 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 [www.ndcourts.gov](http://www.ndcourts.gov).

**When you represent yourself, you are held to the same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures.** If you are unsure if these forms and instructions suit your circumstances, consult a lawyer.

A glossary with definitions of legal terms is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help).

*These instructions and forms **are not a complete statement of the law.** They cover basic procedure for petitioning a North Dakota District Court to establish a guardianship over an adult. There is no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center. The Center is not responsible for any consequences that may result from the forms or information provided. **Use at your own risk.***

***WARNING – Appointment of a guardian can have serious legal and financial consequences for both the ward and the guardian. It is 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 will need to do additional research to prepare.***

## **OVERVIEW OF THE PROCESS TO ESTABLISH AN ADULT GUARDIANSHIP**

- Step One. Gather the Information Needed to Complete the Forms**
- 1) Where to file the petition;
  - 2) Information about the proposed guardian, proposed ward, 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 Two. Prepare the Petition for Appointment of a Guardian of an Adult**  
Also prepare the Confidential Information Form.
- Step Three. Prepare Proposed Orders to Appoint a Guardian ad Litem, Visitor, and Expert Examiner**  
The proposed orders are not effective until signed by the court after completing Step Four.
- Step Four. File the Petition and Proposed Orders to Appoint; Obtain a Hearing Date**  
Pay the \$80.00 filing fee or file the completed petition to waive filing fees.
- Step Five. Prepare the Notice of Hearing and Statement of Rights**  
Make copies to serve in Step Six.
- Step Six. 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 Seven. File Proof of Service of Notice of Hearing and Statement of Rights, Petition and Signed Orders to Appoint**  
Affidavit(s) of service or Certificate(s) are proof of service.
- Step Eight. Complete the Guardian Qualification and Training Requirements**  
See Page 6 of these instructions for more detail.
- Step Nine. 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.

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

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 Chapters when filling out the forms.

The qualifications and training requirements for guardians of adults are found in **Rule 59 of the North Dakota Supreme Court Administrative Rules**. The requirements must be met before a court can finalize the appointment of a guardian.

**Rule 13 of the North Dakota Supreme Court Administrative Rules** allows a District Court Judicial Referee, rather than a District Court Judge, to hear and decide adult guardianship cases.

Laws constantly change through legislation, administrative rulings and court decisions. To determine how a law applies to your situation, review the applicable law or laws, administrative rulings and court decisions. Notes of court decisions related to North Dakota law can be found in the print editions of the North Dakota Century Code. Print editions of the North Dakota Century Code are found in many North Dakota public and academic libraries.

Only a lawyer licensed to practice in North Dakota who has agreed to represent you can give you legal advice. Legal advice includes interpreting how the laws apply to your situation.

## **BEFORE USING THIS PACKET**

The appointment of a guardian severely limits or completely removes the right of the person to make their own decisions. Consider other, less restrictive options before petitioning for a guardianship.

Less restrictive options to guardianship include, but are not limited to:

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

**The North Dakota Department of Human Services, Adults and Aging Services Division** operates an Aging and Disability Resource Link. [carechoice.nd.assistguide.net](http://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. The website gives information about services available, including supported decision making. [ndpanda.org](http://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 [www.ndcourts.gov](http://www.ndcourts.gov) by clicking on the “Self Help” link. Scroll to the “Guardians and Conservators” section and click on the “Guardianships of Adults” section. The training course is in the “Guardian Qualifications and Training Requirements” section.

## **DEFINITIONS**

*\*\*\*The following definitions are intended to be helpful, BUT they are NOT intended to constitute legal advice OR address every possible meaning of the terms in this section.\*\*\**

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

**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 and multipurpose senior citizen centers; home and community-based care, county social services, and developmental disability services; powers of attorney, 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 imposed on the ward must compensate for only those limitations necessary to provide the needed care and services, and that 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 North Dakota District Court 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 are not 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 District Court.

**Proposed Guardian:** A person or nonprofit corporation who the petitioner requests be appointed by a North Dakota District Court to make personal decisions for an alleged incapacitated person.

**Proposed Ward:** An individual, 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 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 in nursing or social work with no special interest in the guardianship proceedings.

**Ward:** An adult person for whom a North Dakota District Court appointed a guardian.

## **GUARDIAN QUALIFICATIONS AND TRAINING REQUIREMENTS**

For guardianships of adults that are established after March 1, 2018, the proposed guardian must meet the qualifications and training requirements of Rule 59 of the North Dakota Supreme Court Administrative Rules.

Review Rule 59 carefully!

The North Dakota Guardianship Training Course and affidavit forms for the proposed guardian are available at [www.ndcourts.gov](http://www.ndcourts.gov) by clicking on the “Self Help” link. Scroll to the “Guardians and Conservators” section and click on the “Guardianships of Adults” section.

The affidavit forms and the training course is in the “Guardian Qualifications and Training Requirements” 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.  
(<https://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 court cannot finalize the appointment until the guardian completes the requirements.**

*(This space left intentionally blank.)*

## **A JUDICIAL REFEREE MAY HEAR AND DECIDE THE GUARDIANSHIP**

Rule 13 of the North Dakota Supreme Court Administrative Rules allows adult guardianship cases to be heard and decided by a Judicial Referee, rather than a District Court Judge.

If a Judicial Referee is assigned to the adult 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.**

If the adult guardianship is heard and decided by a Judicial Referee, the Judicial Referee will issue findings of fact and an order. The Judicial Referee's findings of fact and order have the same 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 adult guardianship case wants a review of the Judicial Referee's findings of fact and order, **the party must file a written request for a review, stating the specific reasons for the review, with the Clerk of Court within seven days after service of 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.

## **FEES**

**A filing fee of \$80.00 is required**, unless the petition for guardianship is filed by a member of the individual treatment plan team for the proposed ward or by any state employee in the performance of official duties.

**A petitioner may petition the court to waive the \$80.00 filing fee**, based on an inability to pay. Forms and instructions to petition to waive the filing fee are available at [www.ndcourts.gov](http://www.ndcourts.gov) by clicking on the "Self Help" link. Scroll to the "Miscellaneous" section.

**Other fees may apply.** The fees include, but are not limited to:

- Service fees                      Varies
- Copy of Documents    \$.10 per page, \$1.00 minimum
- The court must appoint a guardian ad litem, an expert examiner, and a visitor.
  - The petitioner or the ward's estate may be required to pay the reasonable fees.

- The ward’s estate may pay reasonable fees only if payment will not unreasonably jeopardize the ward’s well-being.
- The proposed guardian(s) are required to obtain a criminal history record report. 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. (<https://attorneygeneral.nd.gov/public-safety/criminal-history-records>)

## **FORMS FOR ESTABLISHING AN ADULT GUARDIANSHIP**

### **Forms you will need:**

<b>Form Title</b>	<b>Purpose</b>
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. Gives important information about the guardianship process to the proposed ward.
Petition for Appointment of a Guardian	Formal request to the court for appointment of a guardian for an alleged incapacitated person.
Confidential Information Form	Lists the full confidential information that is not allowed to appear in other documents filed with the court. This form is a part of the court record that is not seen by the public.
Order for Appointment of Guardian ad Litem	Proposed order of the court appointing a Guardian ad Litem. The proposed order is not effective until it is signed by the court.
Order Appointing an Expert Examiner	Proposed order of the court appointing an expert examiner. The proposed order is not effective until it is signed by the court.
Order Appointing a Visitor	Proposed order of the court appointing a visitor. The proposed order is not effective until it is signed by the court.
Affidavit 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.



### Forms you may need:

The 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
Affidavit 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.
Affidavit 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.
Affidavit for Service by Publication	If unable to locate the address or identify a person required to be served, petitioner's sworn statement of 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 found to be true and the legal consequences of those facts. The proposed findings of fact and order are not effective until signed by the court.
Letters of Guardianship	Proposed letters of guardianship after the full hearing is held on the petition for appointment of a guardian. This document is not effective until it is signed by the court.

### Forms the Guardian ad Litem, Visitor, and Expert Examiner may use:

The Guardian ad Litem, Visitor, and Expert Examiner appointed by the 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 court.
Report of Visitor	A form a Visitor may use to submit the required report to the court. The report is closed to the public and not open to inspection except by the court, parties to the guardianship proceeding or their counsel, others by order of the court for good cause, and others authorized by court rule.

Form Title	Purpose
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 and not open to inspection except by the court, parties to the guardianship proceeding or their counsel, others by order of the court for good cause, and others authorized by court rule.

## **STEPS TO ESTABLISH AN ADULT GUARDIANSHIP**

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

**First**, review [N.D.C.C. § 30.1-28-02](#) to determine 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, 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 attorney, 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 none, 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, mental, and emotional limitations of the proposed ward, if any, from a physician, mental health services provider, or other health care provider.

**Third**, gather the names and contact information of the guardian ad litem, visitor and expert examiner whose appointment you will propose to the court in Step 4. Contact each to obtain 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\(4\)](#).
  - A Legal Guardian Ad Litem roster published by the North Dakota State Court Administrators Office is found at [www.ndcourts.gov/district-court/parenting-investigator-legal-guardian-ad-litem-roster](http://www.ndcourts.gov/district-court/parenting-investigator-legal-guardian-ad-litem-roster).
  - The Guardian Ad Litem roster is specifically for use in child custody proceedings, but 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 North Dakota court system does not publish a roster of visitors.
  - The names of visitors appointed in other North Dakota guardianship cases can be found by searching publically accessible North Dakota court records.
    - Go to the ND Supreme Court website ([www.ndcourts.gov](http://www.ndcourts.gov)) and click on the “Case Search & Pay Fines” link located in the “District Court” drop-down menu.
    - 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, 01/01/2018 and 12/31/2018.
    - 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. Please note that 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\(5\)](#).

**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;
- 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 does not 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 county in North Dakota where you will file the petition.
- Fill in the name of the Judicial District where you will file the petition. (The county is within the Judicial District.) County and Judicial District information and maps are available at [www.ndcourts.gov](http://www.ndcourts.gov).
- Fill in the full, legal name of the proposed ward.
- The case number will be assigned by the clerk of court when the petition is filed in Step 4.

Complete all applicable sections of the form.

- If you need additional space, do not 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.

- **DO NOT 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 of age)
  - 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 this form in the presence of a Notary Public or Clerk of Court. You will need to show a driver’s license or photo identification card so the Notary Public or Clerk of Court can verify your identity.

Attorney Signature:

- If you are representing yourself, cross out the attorney signature line.

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

- You will need a copy for each of the people to whom you will provide notice from Step 1.
- You will 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 cannot be included in the Petition.

- Full confidential information that cannot be included in the Petition:
  - Social Security Number
  - Taxpayer-Identification Number
  - Name of an individual known to be a minor (less than 18 years of age)
  - 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 is not 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 are not effective until signed by the court.

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.

- Do not fill in the date the petition is filed, the name of the judge or the date and time of the hearing.

Signature:

- DO NOT 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, the Order Appointing an Expert Examiner form, and the Order Appointing a Visitor form. Obtain 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 county where you plan to file the petition.

If the clerk of court accepts your petition for filing, you will be required to pay an \$80.00 filing fee, unless the court grants you a fee waiver. (See the Fees Section above.)

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

Upon filing the petition, the court will set a date for hearing on the petition, appoint an attorney to act as guardian ad litem, appoint an expert examiner to examine the proposed ward, and appoint a visitor to interview the proposed guardian and the proposed ward.

**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.
  - If you are representing yourself, cross out “Attorney for Petitioner(s)” beneath the signature line. Write “N/A” in the line next to “(ND Bar ID#).”
  - 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 will need a copy for each of the people to whom you will provide notice from Step 1.
- You will need an additional copy for your records.

**Step 6 – Serve the completed Notice of Hearing and Statement of Rights, along with a copy of the Petition for Appointment of a Guardian and copies of the signed orders appointing a 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](#).

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

The proposed ward must be personally served at least 14 days before the hearing.

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, **cannot personally serve the document 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 an Affidavit of Service by Personal Delivery and sign the affidavit in the presence of a notary public or clerk of court. This is your proof of service of the notice.
  - If the Sheriff personally serves the documents, the Sheriff will provide a completed certificate of service.



- Make a copy of each affidavit or certificate for your records.
- You will file the original affidavit(s) of service or certificate(s) of service with the court in Step 7.

Notice by Mail:

If the proposed ward's spouse or the proposed ward's parents cannot 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 an affidavit of service by mail and sign the affidavit in the presence of a notary public or clerk of court. This is your proof of service of the notice.
- Make a copy of each affidavit of service by mail for your records.
- You will file the original affidavit(s) of service with the court in Step 7.

Notice by Publication:

If, after a diligent search, you are 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 county where the hearing is to be held.

- 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 an affidavit for service by publication. The purpose of an affidavit for service by publication is to describe to the court the diligent efforts to locate the person(s).
  - The affidavit for service by publication must be signed in the presence of a notary public or clerk of court.
- Make a copy of the affidavit of publication you received from the newspaper and your affidavit for service by publication for your records.
- You will file the original affidavit for service by publication and the affidavit of publication with the court in Step 7.

Additional Notice Requirements for Appointed 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 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 affidavits of service and/or certificates of service with the clerk of court in the county where the hearing is to be held.
- If applicable, file the affidavit of publication and the affidavit for service by publication.

**Step 8 – Complete the guardian qualification and training requirements.**

See the Guardian Qualifications and Training Requirements section on Page 6 of these instructions for more information.

The criminal history record report must be filed with the court before the hearing.

## **Step 9 – Attend the hearing.**

You, the petitioner, should be prepared to present evidence showing why the guardianship is necessary, and 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 court 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 does not 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 judicial officer presiding over the hearing will issue a written order granting or denying the appointment of a guardian.

## **REQUIREMENTS AFTER THE COURT APPOINTMENT OF A GUARDIAN**

### **Letters of Guardianship:**

If the court appoints a guardian, the court will issue an order and letters of guardianship. To accept the duties of guardian, the guardian appointed by the court must sign the letters of guardianship.

You, the petitioner, must 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.

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.

See Step 6 for service and proof of service.

A form for the beginning inventory report is available [www.ndcourts.gov](http://www.ndcourts.gov) by clicking on the “Self Help” link. Scroll to the “Guardianships and Conservatorships” section and click on the “Adult Guardianships” link.

### **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 court 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.

See Step 6 for service and proof of service.

A form set for the annual report is available [www.ndcourts.gov](http://www.ndcourts.gov) by clicking on the “Self Help” link. Scroll to the “Guardianships and Conservatorships” section and click on the “Adult Guardianships” link.

### **Payment of Room and Board from Ward’s Funds Not Allowed in Certain Circumstances:**

Funds from the ward’s estate cannot 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 District Court to allow payment of room and board from the ward’s funds are available [www.ndcourts.gov](http://www.ndcourts.gov) by clicking on the “Self Help” link. Scroll to the “Guardianships and Conservatorships” section and click on the “Adult Guardianships” link.

**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.**