

Instructions for Making a Motion to Remove Visitation, Communication, or Interaction Restrictions with a Ward

IMPORTANT! READ BEFORE USING THESE FORMS AND INSTRUCTIONS

ND Legal Self Help Center staff and Court employees can't help you fill out the form(s).

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

Carefully read this information and any instructions to which you're referred.

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.

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. If you're unsure if these forms and instructions suit your circumstances, consult a lawyer.

- For more information about finding a lawyer, ndcourts.gov/legal-self-help/finding-a-lawyer.

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

These instructions and forms aren't a complete statement of the law. They cover the basic process for asking a North Dakota state district court to remove visitation, communication, or interaction restrictions put in place by the guardian(s) of a Ward. 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 at your own risk.

Don't include these instructions when you serve or file the completed forms.

CAUTION! Read BEFORE You Start!

Guardians are allowed to restrict visitation, communication, and interaction with the Ward, as long as the restrictions are in the best interests of the Ward.

There's NO guarantee that using these forms and following these instructions will result in the Court removing the restrictions. These forms give you the basic process and formatting for this type of motion. Ultimately, it's up to you to prove to the judge or judicial referee in writing and at the hearing that removing the restrictions is in the best interests of the Ward.

If the judge or judicial referee decides that your request is frivolous, you'll be court ordered to pay the Guardian's attorney fees. The North Dakota Supreme Court has defined "frivolous" to mean there's "such a complete absence of actual facts or law a reasonable person could not have expected a court would render a judgment in that person's favor." ([Rath v. Rath](#), 2016 ND 46.)

Who May Use this Packet of Forms?

These forms may be used by:

- **The Ward;**
- **A family member;**
- **A clergy member;**
- **A lawyer retained by the Ward;**
- **An agency charged with the protection of vulnerable adults; OR**
- **An interested person**

to ask the North Dakota State District Court with authority over the guardianship to remove visitation, communication, or interaction restrictions with the Ward that were put in place by the Guardian(s) appointed by the court.

What if I Don't Meet the Requirements to Use this Packet of Forms?

Forms for common and uncomplicated matters that may be come up throughout a guardianship of an adult are found at ndcourts.gov/legal-self-help/adult-guardianship. Forms aren't available for every situation or circumstance.

If you don't find a form that suits your circumstances at ndcourts.gov/legal-self-help/adult-guardianship, a form isn't available. You may wish to consult a lawyer to help you decide what to do next.

What Are the Steps to Ask a District Court to Remove Visitation, Communication, or Interaction Restrictions?

- Step One:** The Restricted Party Completes All 5 of the Forms
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- Step Two:** The Restricted Party Arranges Service of Copies of All 5 of the Completed Forms on the Guardian(s), Ward, Ward's Spouse, and All Interested Persons
The Guardian has 14 or 17 days to answer the motion in writing.
-
- Step Three:** The Restricted Party Files the Originals of All Forms with the Clerk of Court
-
- Step Four:** The Restricted Party Prepares Their Case
-
- Step Five:** A Hearing is Held Before the District Court Makes a Decision Based on the Documents Filed and the Evidence Presented at the Hearing
-
- Step Six:** Findings of Fact and Order is Issued by the District Court:
- The District Court may keep the restrictions in place without change;
 - The District Court may keep restrictions in place, but either increase or decrease the restrictions; OR
 - The District Court may remove the restrictions completely.
-

You May Request an Emergency Hearing to Remove Visitation, Communication, or Interaction Restrictions

A hearing to present evidence is required before the judge or judicial referee can make a decision on whether you've proven it's in the Ward's best interests that restrictions should be removed.

In general, these types of hearings are scheduled according to each District Court's regular calendaring process. Expect hearings to be scheduled a minimum of 3-6 months in the future. Depending on caseloads, your hearing may be scheduled more than 6 months in the future.

IMPORTANT: If the Ward's health is in significant decline, or if the Ward's death may be imminent you may request an emergency hearing.

The District Court isn't required to grant this request and will only schedule an emergency hearing if you include sufficient information in your affidavit in support of the motion showing the Ward's health is in significant decline, or the Ward is close to death.

What Laws and Rules Do I Need to Know to Use this Packet?

[Section 30.1-28-12.2](#) of the North Dakota Century Code governs motions for removing restrictions on visitation, communication, and interaction with a Ward.

[Rule 3.2 of the North Dakota Rules of Court](#) governs motions in North Dakota state district court cases.

[Rule 5 of the North Dakota Rules of Civil Procedure](#) governs service of motion documents filed in a District Court guardianship case.

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 and rules apply to your situation.

What Definitions Do I Need to Know to Use this Packet of Forms?

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

Guardian (or Co-Guardians) – An individual or nonprofit corporation appointed by a North Dakota state district court to make personal decisions for the Ward.

In-Camera Interview – Part of a hearing that's held in private before a judge or judicial referee. The judge or judicial referee decides who will be allowed to be part of in the in-camera interview.

Interested Person – Includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a Ward. Interested persons are usually listed in the findings and order appointing the Guardian(s).

Judicial Referee – A judicial officer, appointed by the presiding District Court judge, who has the authority to preside in Juvenile Court 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.

Motion – A written request to a North Dakota state district court to issue an order for a specific purpose. For example, a written request for an order removing visitation, communication, or interactions restrictions between the Restricted Party and the Ward.

Moving Party – (See also Restricted Party and Ward) The Restricted Party or Ward making the motion.

Opposing Party – (See also Guardian) The Guardian answering the motion in writing.

Restricted Party – (See also Moving Party) The person on whom the Ward’s Guardian placed visitation, communication, or interaction restrictions.

Ward – (See also Guardian) An adult individual for who a North Dakota state district court appointed a guardian.

A Judicial Referee May Hear and Decide Your Motion

[Rule 13 of the North Dakota Supreme Court Administrative Rules](#) allows adult guardianship cases in District Court to be heard and decided by a judicial referee, rather than 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.**

If the guardianship case 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 (replaced) 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 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 the 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.

Forms in the Packet

5 Forms you will need for your motion – ALL must be completed.

Form Title	Purpose
Notice of Motion to Remove Visitation, Communication, or Interaction Restrictions (MP Form 1)	This is a written notice that a request for an order will be made to the Court, and a notice of the date, time, and location of the hearing to present evidence. Completed and signed by the Moving Party (Restricted Party).
Motion to Remove Visitation, Communication, or Interaction Restrictions (MP Form 2)	This is a short, written request to the Court for an order removing visitation, communication, or interaction restrictions between the Moving Party and the Ward. Completed and signed by the Moving Party (Restricted Party).
Brief in Support of Motion to Remove Visitation, Communication, or Interaction Restrictions (MP Form 3)	The brief is where you, the Moving Party (Restricted Party), make your written argument to the Court for removing visitation, communication, or interaction restrictions between the Moving Party and the Ward. The brief takes the specific laws that support your request and explains how they apply to the facts of your situation. Completed and signed by the Moving Party (Restricted Party).
Affidavit in Support of Motion to Remove Visitation, Communication, or Interaction Restrictions (MP Form 4)	This is the factual support for all of your arguments in the Brief. Completed and signed by the Moving Party (Restricted Party).
Findings and Order on Motion to Remove Visitation, Communication, or Interaction Restrictions (Proposed) (MP Form 5)	This is your proposed order for the judge or judicial referee to sign, if the judge or judicial referee grants your request to remove the restrictions. The proposed order <u>isn't</u> effective until it's signed by the judge or judicial referee. Completed by the Moving Party (Restricted Party). DON'T sign.

Who Can Help Me Fill Out this Packet of Forms?

As a self-represented individual, you must make all decisions related to the forms, including:

- Whether you should use this packet of forms;
- What words to write; and
- Whether the words you've written are sufficient or correct.

ND Legal Self Help Center staff and Court employees:

- Can't assist you in any decision-making related to the forms;
- Can't fill out any forms for you or tell you what words to write; and
- Can't tell you if the words you've written, or are planning to write, are sufficient or correct.

Answers to these questions require Center staff and Court employees to take your situation, apply the law and tell you what you should do. This is legal advice and can't be provided by the ND Legal Self Help Center or any Court System employees under any circumstances.

If you'd like assistance filling out your forms, or deciding if these forms suit your situation, consult a lawyer licensed to practice in North Dakota.

Lawyer Resources

You aren't required to hire an attorney to access the state court system. When you represent yourself, you must follow all of the rules, laws and procedures a lawyer is required to follow.

If you'd like to learn more about finding an attorney to represent you, go to ndcourts.gov/legal-self-help/finding-a-lawyer. You may also find the following options of interest.

Legal Services of North Dakota is a non-profit organization, providing free legal assistance to North Dakota residents in a variety of matters based on income. The phone number is (800) 634-5263 and the website is legalassist.org.

The State Bar Association of North Dakota provides a lawyer referral service to match paying clients in need of legal services with lawyers. The phone number is (866) 450-9579 and the website is sband.org.

For a list of all lawyers who are licensed to practice in North Dakota, go to the North Dakota Supreme Court website at ndcourts.gov/lawyers.

STEPS IN THE PROCESS

You MUST complete ALL steps. Don't skip steps!

STEP ONE: Complete Forms 1 Through 5

TIPS FOR COMPLETING FORMS

- Complete every paragraph that requires you to type or write in a space, unless the instructions specifically tell you to leave a space blank.
 - If a space doesn't apply to you or your circumstances, type or write "Not Applicable," or "N/A."
- Write in your own words why you're asking the District Court to remove the restrictions placed on you by the Guardian, AND how removal is in the best interests of the Ward.
- Stick with the facts: who, what, when, where and how.
 - Avoid opinions.
- Remember, at the hearing you must prove what you type or write in your Forms 1 through 5.
- If you're unable to complete the fillable forms online, you may print and handwrite.
 - You must use blue or black ink. Don't use pencil.
 - Your handwriting MUST be readable.

MP Form 1: Notice of Motion to Remove Visitation, Communication, or Interaction Restrictions

The Moving Party (Restricted Party) completes this form.

- **Contact the Clerk of District Court to Schedule a Hearing**

Review Paragraph 3 of MP Form 1: Notice of Motion. This is the information you'll need to get from the Clerk of District Court's office to complete Paragraph 3.

Contact information for Clerks of District Court by North Dakota county is available at ndcourts.gov/court-locations.

- Give the clerk the case number for the guardianship.
- Tell the clerk you're making a motion to remove visitation restrictions and you need an evidentiary hearing.
- If you wish to request an emergency hearing, ask for an emergency hearing.

Be aware that the law allowing this type of motion has only been in effect since August 1, 2021. You may need to reference [Section 30.1-28-12.2](#) of the North Dakota Century Code when you contact the Clerk of District Court's office.

- **Top of Form (Caption)**

Refer to the District Court order appointing the Guardian(s), or refer to the most recent annual report of the guardianship.

- County – the North Dakota county where the case is currently filed.
- Judicial District – the name of the Judicial District where the case is currently filed. (The county is within the Judicial District.) County and Judicial District information and maps are available at ndcourts.gov/court-locations.
- In the Matter of the Guardianship of – the Ward's full name.
- Case Number – the case number of the current District Court guardianship.
- An Emergency Hearing Is/Is Not Requested – checkmark the appropriate box for the type of hearing currently scheduled.

- **To complete MP Form 1: Notice of Motion**

- Read each paragraph completely.
- Complete all paragraphs that require you to type or write information.

- **Date and Signature**

- The Moving Party (Restricted Party) signs and dates this form.
- Complete the lines following the signature line.

MP Form 2: Motion to Remove Visitation, Communication, or Interaction Restrictions

The Moving Party (Restricted Party) completes this form.

- **Top of Form (Caption)**

- Fill out exactly as you filled out the Caption of MP Form 1: Notice of Motion.

- **To complete MP Form 2: Motion**

- Read the paragraphs carefully.
- Complete all paragraphs that require you to type or write information.

- **Date and Signature**

- The Moving Party (Restricted Party) signs and dates this form.
- Complete the lines following the signature line.

MP Form 3: Brief in Support of Motion to Remove Visitation, Communication, or Interaction Restrictions

The Moving Party (Restricted Party) completes this form.

- **Top of Form (Caption)**

- Fill out exactly as you filled out the Caption of MP Form 1: Notice of Motion.

- **To complete MP Form 3: Brief in Support of Motion**

- Read the paragraphs carefully.
- Complete all paragraphs that require you to type or write information.

- **Date and Signature**

- The Moving Party (Restricted Party) signs and dates this form.
- Complete the lines following the signature line.

MP Form 4: Affidavit in Support of Motion to Remove Visitation, Communication, or Interaction Restrictions

The Moving Party (Restricted Party) completes this form.

- **Top of Form (Caption)**

- Fill out exactly as you filled out the Caption of MP Form 1: Notice of Motion.

- **To complete MP Form 4: Affidavit in Support of Motion**

- Read the paragraphs carefully.
- Complete all paragraphs that require you to type or write information.

- **Date and Signature**

- The Moving Party (Restricted Party) signs and dates this form.
- Complete the lines following the signature line.
 - When you date and sign this form, you're declaring, under penalty of perjury, that all the information on the form is accurate and true.
 - You're NOT required to sign this form in the presence of a notary public or a clerk of court.

MP Form 5: Findings of Fact and Order on Motion to Remove Visitation, Communication, or Interaction Restrictions (Proposed)

The Moving Party (Restricted Party) completes this form.

- **Top of Form (Caption)**

- Fill out exactly as you filled out the Caption of MP Form 1: Notice of Motion.

- **To complete MP Form 5: Findings of Fact and Order (Proposed)**

- Read the paragraphs carefully.
- Complete all paragraphs that require you to type or write information.

- **DON'T SIGN OR DATE THIS FORM!**

- After the hearing, the judge or judicial referee decides whether to remove the restrictions put in place by the Guardian(s), and the judge or judicial referee will issue an order with their decision.
- This is your proposed order for the judge or judicial referee to sign if they agree with the all of the information you wrote or typed in your proposed order.
- The proposed order isn't effective until it's signed by the judge or judicial referee.

IMPORTANT! Make at least 1 copy of each of the completed forms for your records.

(This space left intentionally blank.)

STEP TWO: Arrange to Serve Copies of Forms 1 Through 5

The Guardian(s), Ward, Ward's spouse (if any), and ALL interested persons must receive a copy of each of the following completed forms and any supporting documents you plan to file:

- MP Form 1: Notice of Motion to Remove Visitation, Communication, or Interaction Restrictions;
- MP Form 2: Motion to Remove Visitation, Communication, or Interaction Restrictions;
- MP Form 3: Brief in Support of Motion to Remove Visitation, Communication, or Interaction Restrictions;
- MP Form 4: Affidavit in Support of Motion to Remove Visitation, Communication, or Interaction Restrictions;
- MP Form 5: Findings of Fact and Order on Motion to Remove Visitation, Communication, or Interaction Restrictions (Proposed); and
- All supporting documents you plan to file (you may not have any supporting documents).

Gather the names and current addresses of the following:

- The Guardian(s);
- The Ward;
- The Ward's spouse (if any); and
- All interested persons.

Arrange to serve copies of the completed forms

You may arrange for service by first class mail, or by hand delivery.

The District Court will require proof that the persons listed above received a copy of the completed forms and any supporting documents. A Declaration of Service is your proof.

MP Form 6: Declaration of Service by Mail

The person serving copies of all of the documents must be at least 18 years of age.

Postage must be first class and pre-paid. The person who takes the documents to the post office and pays the postage must complete the Declaration of Service by Mail. Service is complete upon mailing.

- **Top of Form (Caption)**

- The person who took the documents to the post office and paid the postage fills in the Caption exactly as the Caption of MP Form 1: Notice of Motion is filled in.

- **Complete Paragraphs 1 through 6 of the Form**

- The person who took the documents to the post office and paid the postage completes paragraphs 1 through 6.

- **Date and Signature**

- The person who took the documents to the post office and paid the postage dates and signs the form and completes the lines following their signature.

MP Form 7: Declaration of Service by Hand Delivery

The person who hand delivers copies of all of the documents must be at least 18 years of age, and not a party or interested in the guardianship case.

- **Top of Form (Caption)**

- The person who hand delivered the documents fills in the Caption exactly as the Caption of MP Form 1: Notice of Motion is filled in.

- **Complete Paragraphs 1 through 5 of the Form**

- The person who hand delivered the documents completes paragraphs 1 through 5.

- **Date and Signature**

- The person who hand delivered the documents dates and signs the form and completes the lines following their signature.

The Guardian has 14 or 17 days to Answer the Motion in Writing:

If you arranged to serve the motion documents on the Guardian(s) by hand delivery, they have 14 calendar days from the day after they were served to serve and file their written answer brief.

- The date of service is the date the motion was hand delivered.

If you arranged to serve the motion documents by mail, they have 17 calendar days from the day after they were served to serve and file their written answer brief.

- The date of service is the date the motion was mailed.

If the Guardian doesn't serve and file a written answer brief, you'll still be required to prove it's in the best interest of the Ward to remove the restrictions.

STEP THREE: File Originals of ALL Forms with the Clerk of Court

File the following original, completed forms with the Clerk of Court:

- MP Form 1: Notice of Motion to Remove Visitation, Communication, or Interaction Restrictions;
- MP Form 2: Motion to Remove Visitation, Communication, or Interaction Restrictions;
- MP Form 3: Brief in Support of Motion to Remove Visitation, Communication, or Interaction Restrictions;
- MP Form 4: Affidavit in Support of Motion to Remove Visitation, Communication, or Interaction Restrictions;
- MP Form 5: Findings of Fact and Order on Motion to Remove Visitation, Communication, or Interaction Restrictions (Proposed);
- MP Form 6: Declaration of Service by Mail (for all persons served by mail); and
- MP Form 7: Declaration of Service by Hand Delivery (for all persons served by hand delivery).

File the supporting documentation with the Clerk of Court, if applicable:

If you have supporting documentation for your Motion, file copies with the Clerk of Court. You may not have any supporting documentation.

You won't be charged a filing fee. Contact information for Clerks of Court by North Dakota county is available at ndcourts.gov/court-locations.

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STEP FOUR: Prepare Your Case

Prepare your case for the evidentiary hearing.

You, the Moving Party (Restricted Party), must prove what you typed or wrote in your motion documents.

Caution! Preparing for a hearing is often a complex and confusing process. You're held to the same requirements and responsibilities as a lawyer, even if don't understand the rules or procedures.

You'll need to conduct additional research to prepare for the hearing.

Subpoenas: Review [Rule 45 of the North Dakota Rules of Civil Procedure](#) carefully! If you require a witness to appear at the hearing or require production of documents, electronically stored information or other tangible things, you may need the Clerk of District Court to issue a subpoena. Only a Clerk of District Court or a lawyer for a party may issue a subpoena.

More information about subpoenas is available at ndcourts.gov/legal-self-help/subpoenas.

Evidence: You're required to follow the North Dakota Rules of Evidence when presenting your own evidence and when objecting to the evidence presented by other parties.

An [Evidence Research Guide](#) is available at ndcourts.gov/legal-self-help.

You may also wish to review the guides for self-represented individuals for gathering and presenting evidence at rcdvcpc.org/resources/self-represented-litigants-series.html.

Review pre-trial and trial guidebooks for self-represented litigants and lawyers. Your local public or academic library may have resources available.

ODIN is a shared library database of many North Dakota academic, public, state agency, and special libraries. Search ODIN for resources that may be available in a North Dakota library near you. (polaris.odinlibrary.org)

If the book is available for interlibrary loan through ODIN, ask the librarian or library staff of your local North Dakota library how to request the book.

Following are a selection of library resources on ODIN that may be of interest to you:

- [A Short & Happy Guide to Evidence](#), Sydney Beckman, West Academic Publishing, 2018.
- [Courtroom Evidence Handbook: 2018-2019 Student Edition](#), Steven Goode, Olin Wellborn III, West Academic Publishing, 2018.

- Essential Evidence Outlines, Daniel Ryan, iUniverse, 2011.
- North Dakota Century Code Annotated, Lexis Nexis, Creation Date c1959-present.
- North Dakota Rules Annotated, Lexis Nexis, Creation Date c1990-present.
- Objections at Trial, Ronald Carlson, Edward Imwinkelried, Myron Bright, National Institute for Trial Advocacy, c2015.
- Represent Yourself in Court: How to Prepare & Try a Winning Case, Paul Bergman, Sara Berman, NOLO, 2016.

STEP FIVE: A Hearing is Held Before the District Court Makes a Decision

If the Hearing will be Held in Person, Attend the Hearing in Person:

If you need to request to appear at the hearing some other way, a request form is available at ndcourts.gov/legal-self-help.

Be prepared to prove everything you typed or wrote in your motion documents.

Organize the information, documents, etc. that you think you'll need for the hearing. At minimum, prepare an outline of your remarks and arguments.

Review pre-trial and trial guidebooks for self-represented litigants and lawyers. See Step 4 for more information.

Arrive Early to the Courthouse on the Date of the Hearing:

If your hearing is in-person at the courthouse, arrive early so you don't miss your hearing date and time. If you have a serious, unavoidable reason you can't get to court on the date and time scheduled for trial, call the District Court as soon as you can.

If the Hearing will be Held by Zoom, Make Sure You Can Connect to the Zoom Hearing:

If your hearing is held electronically by Zoom, well before the hearing begins, make sure you can connect and understand how to function in Zoom.

Don't be late to the Zoom hearing. If you have a serious, unavoidable reason you can't attend the hearing on the date and time scheduled for trial, call the District Court as soon as you can.

Conduct of the Hearing:

The judge, or judicial referee, hears both sides and then issues the findings of fact and order. Sometimes, the findings of fact and order is issued at the end of the hearing. Often, the findings of fact and order is issued at a later date.

In general, a hearing proceeds in the following order:

- Opening Statements
 - Each party gives an opening statement. Usually, the Moving Party (Restricted Party) goes first.
- Moving Party Presents Witnesses and Evidence
 - The Moving Party presents their case first. The Guardian(s) may cross-examine witnesses and object to the Moving Party's evidence.
- Guardian(s) Presents Witnesses and Evidence
 - The Guardian(s) presents their case after the Moving Party. The Moving Party may cross-examine witnesses and object to the Guardian's evidence.
- Closing Arguments
 - Each party gives a closing statement. Usually the Guardian(s) goes first.

Before You Leave the Courthouse:

Make sure you understand what happens next. Ask if you aren't sure what, if anything, you need to do next.

STEP SIX: Findings of Fact and Order

Until the judge or judicial referee signs an order deciding what to do with the restrictions put in place by the Guardian(s), the restrictions remain in place.

After the judge or judicial referee reviews all documents filed and following the evidentiary hearing, the judge or judicial referee will make a decision and issue findings of fact and an order.

You'll receive a copy of the Findings of Fact and Order signed and dated by the judge or judicial referee by mail or email.

Based on all documents filed and the evidence presented at the hearing, the judge or judicial referee may order any of the following:

- Keep the restrictions in place without change;
- Keep restrictions in place, but either increase or decrease the restrictions; **OR**
- Remove the restrictions completely.

Don't include these instructions when you serve or file the completed forms.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

_____.

Case No. _____

**NOTICE OF MOTION TO REMOVE VISITATION, COMMUNICATION, OR INTERACTION
RESTRICTIONS**

An Emergency Hearing ☐ Is ☐ Is Not (choose one) Requested

1. The following Motion to Remove Visitation, Communication, or Interaction Restrictions is brought in accordance with Rule 3.2, North Dakota Rules of Court. The court will decide whether the visitation, communication, or other interaction restrictions with the Ward that the guardian(s) put in place should be removed or changed.

2. A Motion, Brief in Support of Motion, and Affidavit in Support of Motion are attached that explain why this request to remove visitation, communication or interaction restrictions with the Ward is being made to the court.

3. A hearing will be held before the Honorable _____,
District Court ☐ Judge/ ☐ Judicial Referee at the date and time listed below. The hearing is to present evidence to determine whether the visitation, communication, or other interaction restrictions with the Ward that the guardian(s) put in place should be removed or changed. If it is in the Ward's best interests, the hearing may be held some place other than the courthouse.

Date: _____ Time: _____

(Paragraph 3 continues on Page 2 of 3 with location of the hearing.)

☐ The hearing will be held by **Zoom Video Conference**, not at the courthouse. To attend the hearing: _____

☐ The hearing will be held in-person **at the** _____ **County Courthouse**
at _____

4. **The moving party, the Ward, and the guardian(s) MUST attend the hearing unless excused by the court.**

5. The Ward, the Ward's spouse, the guardian(s), and all interested persons have 14 days after service of this Motion upon them within which to serve and file a written response or objection to the Court. Upon the filing of an answer, or upon expiration of the time for filing, the Motion is deemed submitted to the Court.

6. The Ward, the Ward's spouse, the guardian(s), and all interested persons may hire an attorney to represent them and present their point of view about whether the visitation, communication, or other interaction restrictions with the Ward that the guardian(s) put in place should be removed or changed.

7. The moving party, the Ward, the Ward's spouse, the guardian(s), and all interested persons have the right to present evidence and to call and ask questions of witnesses.

8. A Judge or Judicial Referee may decide whether the visitation, communication, or other interaction restrictions with the Ward that the guardian(s) put in place should be removed or changed. If a Judicial Referee is assigned, any party to the motion has the right to have the motion decided by a Judge of the District Court, instead of a Referee. The written request must be filed with the Clerk of this Court within 7 days after receiving this Notice of Motion.

Dated _____.

Signature of Moving Party

Printed Name

Address City, State, Zip Code

Telephone Number

Email Address

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

_____.

Case No. _____

**MOTION TO REMOVE VISITATION, COMMUNICATION, OR INTERACTION
RESTRICTIONS**

An Emergency Hearing ☐ Is ☐ Is Not (choose one) Requested

1. _____ (name of Moving Party), the
_____ (Moving Party's relationship to Ward) of the above-
named Ward, makes this motion to Remove Visitation, Communication, or Interaction
Restrictions in accordance with Section 30.1-28-12.2 of the North Dakota Century Code
(N.D.C.C.) and Rule 3.2 of the North Dakota Rules of Court.

2. The Moving Party respectfully requests that the Court enter an order removing or
changing the visitation, communication, or interaction restrictions with the Ward that were put
in place by the Guardian(s).

3. The Moving Party (choose one):

☐ Respectfully requests that the Court conduct an emergency hearing on the motion because
the Ward's health is in significant decline or the Ward's death may be imminent.

☐ Does **not** request that the Court conduct an emergency hearing on the motion. The Ward's
health **is not** in significant decline and the Ward's death **is not** imminent.

4. This motion is based on the brief and affidavit in support of this motion, which are served and filed with the motion.

Dated _____.

Signature of Moving Party

Printed Name

Address City, State, Zip Code

Telephone Number Email Address

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

_____.

Case No. _____

**BRIEF IN SUPPORT OF MOTION TO REMOVE VISITATION, COMMUNICATION, OR
INTERACTION RESTRICTIONS**

An Emergency Hearing ☐ Is ☐ Is Not (choose one) Requested

1. As required by Rule 3.2 of the North Dakota Rules of Court, _____

_____ (name of Moving Party), submits this Brief in Support of Motion

to Remove Visitation, Communication, or Interaction Restrictions.

2. The Moving Party's relationship to the above-named Ward is (choose and complete one of the following):

☐ Me, the Ward.

☐ Family member, specifically _____ (mother, father, sibling, etc.).

☐ Clergy member, specifically _____ (Name of affiliation).

☐ Attorney retained by the Ward.

☐ _____ (Name of agency charged with protection of vulnerable adults).

☐ Interested person, specifically _____ (state relationship).

3. (Choose the same option that you chose for Paragraph 3 of the Motion. Paragraph 3 continues on Page 2 of 3):

☐ An emergency hearing on the motion is required because the Ward's health is in significant decline or the Ward's death may be imminent. This is supported by the facts stated in the Affidavit in Support of Motion to Remove Visitation, Communication, or Interaction Restrictions.

- ☐ An emergency hearing on the motion **is not** required. The Ward's health **is not** in significant decline and the Ward's death **is not** imminent.

FACTS

4. The facts are stated in the Affidavit in Support of Motion to Remove Visitation, Communication, or Interaction Restrictions, which is filed with the Motion and incorporated by reference.

LAW AND ARGUMENT

5. When a Guardian restricts visitation, communication, or interaction between a restricted party and a Ward, Section 30.1-28-12.2 of the North Dakota Century Code (N.D.C.C.) allows the District Court to remove unreasonable or arbitrary restrictions on visitation, communication or interaction.

6. The Guardian is unreasonably or arbitrarily **denying** or **restricting** visitation, communication, or interaction between the Moving Party and the Ward. The Guardian's restrictions on visitation, communication or interaction between the Moving Party and the Ward are not in the best interests of the Ward. This is supported by the facts stated in the Affidavit in Support of Motion to Remove Visitation, Communication, or Interaction Restrictions.

7. The Moving party requests that the court grant the Moving Party reasonable visitation, communication, or interaction with the Ward.

8. Based on the above, the Moving Party respectfully requests that the court enter an Order granting the visitation, communication, or interaction with the Ward, awarding costs and reasonable attorney's fees, and for such other and further relief as the court may deem just and proper.

Dated _____.

Signature of Moving Party

Printed Name

Address City, State, Zip Code

Telephone Number

Email Address

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

_____.

Case No. _____

**AFFIDAVIT IN SUPPORT OF MOTION TO REMOVE VISITATION, COMMUNICATION, OR
INTERACTION RESTRICTIONS**

An Emergency Hearing ☐ Is ☐ Is Not (choose one) Requested

1. My name is _____.

2. My relationship to the above-named Ward is (choose and complete the same option you chose for Paragraph 2 of the Brief):

☐ Me, the Ward.

☐ Family member, specifically _____ (mother, father, sibling, etc.).

☐ Clergy member, specifically _____ (Name of affiliation).

☐ Attorney retained by the Ward.

☐ _____ (Name of agency charged with protection of vulnerable adults).

☐ Interested person, specifically _____ (state relationship).

3. (Choose and complete the same option you chose for Paragraph 3 of the Motion)

☐ Based on the following facts, an emergency hearing on the motion is required because the Ward's health is in significant decline or the Ward's death may be imminent:

☐ The Ward's health **is not** in significant decline and the Ward's death **is not** imminent.

4. On or about _____ (*date*), the Guardian of the Ward,

(*name of guardian*) (*describe the circumstances leading to the denial or restriction of visitation, communication, or interaction*):

5. Based on the following facts the Guardian is unreasonably or arbitrarily **denying or restricting** visitation, communication, or interaction between me and the Ward (*explain the unreasonable or arbitrary denial or restriction of visitation, communication, or interaction*):

6. Based on the following facts, the Guardian's restrictions on visitation, communication or interaction between me and the Ward are not in the best interests of the Ward (*explain in detail*):

7. I request that the court grant visitation, communication, or interaction with the Ward as follows (*describe in detail the visitation schedule, communication, or interaction you would like to have with the Ward*):

8. I declare, under penalty of perjury under the law of North Dakota, that everything I stated in this Affidavit is true and correct.

Signed on _____ (date) in _____ (County),
_____ (State), _____ (Country).

Signature of Moving Party

Printed Name

Address

City, State, Zip Code

Telephone Number: _____

Email Address: _____

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

_____.

Case No. _____

**FINDINGS OF FACT AND ORDER ON MOTION TO REMOVE VISITATION,
COMMUNICATION, OR INTERACTION RESTRICTIONS**

1. _____, the Moving Party, filed a Section 30.1-28-12.2 of the North Dakota Century Code (N.D.C.C.) motion to remove visitation, communication, or interaction restrictions with the above-named Ward that were put in place by the Guardian(s).

2. The following individuals were present at the hearing:

_____, current Guardian of the above-named Ward

_____, current Co-Guardian of the Ward

_____, Ward

_____, Moving Party

_____, Ward's Spouse

_____, Interested Party

_____, Interested Party

3. Following the hearing, the Court makes the following findings of fact:

FINDINGS OF FACT

4. Notice has been provided as required by law.

5. The current Guardian(s) is/are restricting the Moving Party's visitation, communication, or interaction with the Ward. The restrictions are as follows:

6. The Guardian's restrictions ☐ are ☐ are **not** in the best interests of the Ward based on the following findings:

7. The Court considered the Ward's wishes for visitation, communication, or interaction with the Moving Party.

8. The Court finds the Guardian's restrictions to visitation, communication, or interaction between _____ and the Ward:

☐ **Remain in place.**

☐ **Are removed** based on the following findings:

☐ **Are removed with conditions** imposed based on the following findings:

☐ **Are amended to prohibit visitation, communication, and interaction** with the Ward,
based on the following findings:

9. The Guardian ☐ is ☐ is **not** unreasonably or arbitrarily restricting or denying visitation, communication, or interaction between the Moving Party and the Ward and this motion ☐ was ☐ was **not** frivolous, based on the following findings:

ORDER

IT IS ORDERED, ADJUDGED, AND DECREED that:

10. The Guardian's restrictions to visitation, communication, or interaction between _____ and the Ward:

- ☐ **Remain in place.**
- ☐ **Are removed.**
- ☐ **Are removed with the following conditions** on visitation, communication, or interaction between the Moving Party and the Ward:
- ☐ **Are amended to prohibit visitation, communication, or interaction** between the Moving Party and the Ward.

11. Reasonable costs and attorney's fees:

☐ **Are not awarded** to either the Moving Party or the Guardian(s).

☐ **Are awarded to** _____. Submit an affidavit outlining the Costs and attorney's fees within _____ days.

NOTICE:

IF THE FINDINGS AND ORDER WERE MADE BY A JUDICIAL REFEREE, YOU ARE HEREBY GIVEN NOTICE OF YOUR RIGHT TO REVIEW OF A JUDICIAL REFEREE'S FINDINGS AND ORDER BY A DISTRICT COURT JUDGE. TO REQUEST A REVIEW, YOU MUST FILE A WRITTEN REQUEST STATING THE REASONS FOR THE REVIEW WITHIN SEVEN (7) DAYS AFTER SERVICE OF THIS FINDINGS AND ORDER.

BY THE COURT:

Judge of the District Court
Judicial Referee of the District Court

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

_____.

Case No. _____

DECLARATION OF SERVICE BY MAIL

(May serve multiple persons ONLY IF envelopes are mailed same day from same Post Office.)

The person serving court documents by mail states:

1. My name is _____ *(person who mailed documents)*. I am at least 18 years of age.

2. List of Court Documents Served:

- Notice of Motion to Remove Visitation, Communication, or Interaction Restrictions;
- Motion to Remove Visitation, Communication, or Interaction Restrictions;
- Brief in Support of Motion to Remove Visitation, Communication, or Interaction Restrictions;
- Affidavit in Support of Motion to Remove Visitation, Communication, or Interaction Restrictions; and
- Findings of Fact and Order (Proposed).

3. Service by Mail:

I served a true and correct copy of each of the court documents listed in Paragraph 2 by mailing them, enclosed in an envelope, by First-Class mail, postage prepaid, and by depositing them in the United States Mail, directed to each person listed in Paragraph 5.

4. Date and Post Office Location of Service by Mail:

Date Court Documents Were Served by Mail: _____

United States Post Office Location:

(city)

(county)

(state)

5. **Person or Persons Served by Mail:**

1. Name of Person Served: _____

Mailing Address: _____

City, State, Zip Code: _____

2. Name of Person Served: _____

Mailing Address: _____

City, State, Zip Code: _____

3. Name of Person Served: _____

Mailing Address: _____

City, State, Zip Code: _____

6. I declare, under penalty of perjury under the law of North Dakota, that everything I stated in this Declaration of Service by Mail is true and correct.

Signed on _____ (Date) in _____ (County),
_____ (State), _____ (Country).

Signature

Printed Name

Address

City, State, Zip Code

Telephone Number: _____

Email Address: _____

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

Case No. _____

DECLARATION OF SERVICE BY HAND DELIVERY

(A separate affidavit is required for each person served.)

The person serving court documents by hand delivery states:

1. My name is _____ *(person who served documents by hand delivery)*. I am at least 18 years of age. **I am not a party or interested in the above named matter.**

2. **Service by Hand Delivery:**

I served a true and correct copy of each of the court documents listed in Paragraph 4 to _____ *(name of person served)* by *(choose one)*:

☐ Giving the court documents directly to him/her.

☐ Leaving the court documents with: _____
(name), a person of suitable age and discretion who lives at the same address.

I know the person I served is the person intended to be served because *(explain how you identified the person)*: _____

3. **Date, Time, and Address of Service by Hand Delivery:**

Date: _____ Time: _____ ☐ a.m. (or) ☐ p.m.

Address:

(street address)

(city)

(zip code)

4. **List of Court Documents Served:**

- Notice of Motion to Remove Visitation, Communication, or Interaction Restrictions;
- Motion to Remove Visitation, Communication, or Interaction Restrictions;
- Brief in Support of Motion to Remove Visitation, Communication, or Interaction Restrictions;
- Affidavit in Support of Motion to Remove Visitation, Communication, or Interaction Restrictions; and
- Findings of Fact and Order (Proposed).

5. I declare, under penalty of perjury under the law of North Dakota, that everything I stated in this Declaration of Service by Hand Delivery is true and correct.

Signed on _____ (Date) in _____ (County),
_____ (State), _____ (Country).

Signature

Printed Name

Address

City, State, Zip Code

Telephone Number: _____

Email Address: _____