

## Instructions for Answering 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). Carefully read this information and any instructions to which you're referred.

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

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](http://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](http://ndcourts.gov/legal-self-help/finding-a-lawyer).

*These instructions and forms aren't a complete statement of the law. They cover the basic process for answering a motion to 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 DELAY!**

**You have a limited amount of time to answer a written motion to remove visitation, communication, or interaction restrictions with a Ward!**

- You have 14 days to answer if served by hand delivery or at your office.
- You have 17 days to answer if served by mail or third-party commercial carrier.

*(See Page 8 for more information about calculating these deadlines.)*

## **CAUTION! Read BEFORE You Start!**

**You, the Guardian, are allowed to restrict visitation, communication, and interaction with the Ward,** as long as the restrictions are in the best interests of the Ward. Certain people are allowed to make a motion to the Court to ask to remove the restrictions you put in place. They must prove that removal is in the best interests of the Ward.

**There's NO guarantee that using these forms and following these instructions will result in the Court keeping the restrictions in place.** These forms give you the basic process and formatting for answering 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 your restrictions are in the best interests of the Ward and removing the restrictions wouldn't be in the best interests of the Ward.

**If you believe the motion to remove restrictions is frivolous, you can ask the judge or judicial referee to force the person who made the motion to pay your attorney fees.** You'll need to show the judge or judicial referee in writing and at the hearing how the motion is frivolous. 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 Guardian(s) appointed for an adult Ward by a North Dakota state district court who has been served a motion to remove visitation, communication, or interaction restrictions.

These forms allow the Guardian(s) to answer the motion and explain why the restrictions were put in place and how the restrictions are in the best interests of the Ward.

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

Forms for common and uncomplicated matters that may come up throughout a guardianship of an adult are found at [ndcourts.gov/legal-self-help/adult-guardianship](https://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](https://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 Answer a Motion to Remove Visitation, Communication, or Interaction Restrictions?

- Step One:**     **The Guardian Calculates Their Deadline to Answer the Motion**  
The Guardian has 14 or 17 days to answer the motion in writing.  
\*\*\*If the Court grants an emergency hearing, the Guardian has less time.
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- Step Two:**     **The Guardian Completes the 2 Answer to Motion Forms in the Packet**
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- Step Three:**   **The Guardian Arranges Service of Copies of the 2 Completed Forms on the Moving Party, Ward, Ward's Spouse, and All Interested Persons**
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- Step Four:**    **The Guardian Files the Original Completed Forms with the Clerk of Court**
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- Step Five:**     **The Guardian Prepares Their Case**
- 
- Step Six:**      **A Hearing is Held Before the District Court Makes a Decision Based on the Documents Filed and the Evidence Presented at the Hearing**
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- Step Seven:**    **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.
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### \*\*\*If the Court Grants an Emergency Hearing, You Have Less than 14 Days to Answer the Motion

A hearing to present evidence is required before the judge or judicial referee can make a decision on whether 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, the Moving Party may request an emergency hearing. If the Court granted an emergency hearing, you, the Guardian(s), have less than 14 days to answer the motion.**

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

If the Court granted the emergency hearing, the emergency hearing must be held as soon as possible, but not later than 14 days after the Moving Party filed their motion.

## 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

### 2 Forms you will need for your answer to motion – BOTH must be completed.

Form Title	Purpose
Answer Brief to Motion to Remove Visitation, Communication, or Interaction Restrictions (OP Form 1)	The brief is where you, the Opposing Party (Guardian), make your written argument to the Court for keeping the visitation, communication, or interaction restrictions in place.  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 Opposing Party (Guardian).
Affidavit in Support of Answer Brief to Motion to Remove Visitation, Communication, or Interaction Restrictions (OP Form 2)	This is the factual support for all of your arguments in the Answer Brief.  Completed and signed by the Opposing Party (Guardian).

### 1 Form you MAY need for your answer to motion (See Step Seven)

Findings and Order on Motion to Remove Visitation, Communication, or Interaction Restrictions (Proposed) (MP Form 5)	You may be required to file a proposed order for the judge or judicial referee to sign, if the judge or judicial referee decides to keep the restrictions in place.  The proposed order <u>isn't</u> effective until it's signed by the judge or judicial referee.  Completed by the Opposing Party (Guardian). DON'T sign.
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## 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

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](https://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](https://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](https://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](https://ndcourts.gov/lawyers).**

## STEPS IN THE PROCESS

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

### **STEP ONE: Calculate the Deadline to Answer the Motion**

**You, the Opposing Party (Guardian), have 14 days to answer** if you were served the motion by hand delivery or at your office.

- The date of service is the date the motion was hand delivered or left at your office.

**You, the Opposing Party (Guardian), have 17 days to answer** if you were served the motion by mail or third party commercial carrier.

- The date of service is the date the motion was mailed.
- Keep the envelope with the postmarked date for reference.

**IMPORTANT: If an emergency hearing was granted, you have less than 14 days to answer the motion.**

- Carefully review the date of the hearing listed in the Notice of Motion.
- If you plan to serve your answer to motion documents by hand delivery, serve and file your documents at least 2 days before the hearing date.
- If you plan to serve your answer to motion documents by Mail, serve and file your documents at least 5 days before the hearing date.

**When calculating days:**

- Don't include the day of the event that triggers the start of the period;
- Count by calendar days, including Saturdays, Sundays, and legal holidays; and
- Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that isn't a Saturday, Sunday, or legal holiday.

If you, the Opposing Party (Guardian), **don't** serve and file a written answer to the motion, the judge or judicial referee may consider this an admission by you that the motion to remove restrictions has merit.



## STEP TWO: Complete Forms 1 and 2

### 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 and 2.
- 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.

### OP Form 1: Answer Brief to Motion to Remove Visitation, Communication, or Interaction Restrictions

The Opposing Party (Guardian) completes this form.

- **Top of Form (Caption)**

Refer to the Notice of Motion served by the Moving Party, or to the District Court order appointing the Guardian(s).

- 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](http://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 OP Form 1: Answer Brief**

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

- **Date and Signature**

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

**OP Form 2: Affidavit in Support of Answer Brief to Motion to Remove Visitation, Communication, or Interaction Restrictions**

The Opposing Party (Guardian) completes this form.

- **Top of Form (Caption)**

- Fill out exactly as you filled out the Caption of OP Form 1: Answer Brief.

- **To complete OP Form 2: Affidavit in Support of Answer Brief**

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

- **Date and Signature**

- The Opposing Party (Guardian) 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.

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

*(This space left intentionally blank.)*

### **STEP THREE: Arrange to Serve Copies of Forms 1 and 2**

The Moving Party, Co-Guardian(s) (if any), 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:

- OP Form 1: Answer Brief to Motion to Remove Visitation, Communication, or Interaction Restrictions;
- OP Form 2: Affidavit in Support of Answer Brief to Motion to Remove Visitation, Communication, or Interaction Restrictions; 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 Moving Party;
- The Co-Guardian(s) (if any);
- 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.

#### **OP Form 3: 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 OP Form 1: Answer Brief 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.

#### **OP Form 4: 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 OP Form 1: Answer Brief 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.

#### **STEP FOUR: File Originals of ALL Forms with the Clerk of Court**

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

- OP Form 1: Answer Brief to Motion to Remove Visitation, Communication, or Interaction Restrictions;
- OP Form 2: Affidavit in Support of Answer Brief to Motion to Remove Visitation, Communication, or Interaction Restrictions;
- OP Form 3: Declaration of Service by Mail (for all persons served by mail); and
- OP Form 4: 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](https://ndcourts.gov/court-locations).

**STEP FIVE: Prepare Your Case**

**Prepare your case for the evidentiary hearing.**

You, the Opposing Party (Guardian), must prove what you typed or wrote in your answer to 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](https://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](https://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](https://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](https://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 SIX: 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](http://ndcourts.gov/legal-self-help).

Be prepared to prove everything you typed or wrote in your answer to 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 5 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 Opposing Party (Guardian) may cross-examine witnesses and object to the Moving Party's evidence.
- Opposing Party Presents Witnesses and Evidence
  - The Opposing Party presents their case after the Moving Party. The Moving Party may cross-examine witnesses and object to the Opposing Party's evidence.
- Closing Arguments
  - Each party gives a closing statement. Usually the Opposing Party 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 SEVEN: 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.

**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.

**IF THE JUDGE OR JUDICIAL REFEREE DECIDES TO KEEP THE RESTRICTIONS IN PLACE,** you may be required to file a proposed order for the judge or judicial referee to sign.

You may use MP Form 5: Findings of Fact and Order to prepare your proposed findings and order.

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

The Opposing Party (Guardian) completes this form.

- **Top of Form (Caption)**
  - Fill out exactly as you filled out the Caption of OP Form 1: Answer Brief.
- **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!**
  - 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.

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.

**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. \_\_\_\_\_

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

1. As required by Rule 3.2 of the North Dakota Rules of Court, \_\_\_\_\_  
\_\_\_\_\_ (*name of Guardian*), submits this Answer Brief to Motion to  
Remove Visitation, Communication, or Interaction Restrictions.

**FACTS**

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

**LAW AND ARGUMENT**

3. 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.

4. The Guardian is **not** unreasonably or arbitrarily **denying** or **restricting** visitation,  
communication, or interaction between \_\_\_\_\_ and the Ward. The  
Guardian's restrictions on visitation, communication, or interaction between the Moving Party  
and the Ward are in the best interests of the Ward. This is supported by the facts stated in the

Affidavit in Support of Answer Brief to Motion to Remove Visitation, Communication, or Interaction Restrictions.

5. The Moving Party's motion ☐is ☐is **not** (*choose one*) frivolous. This is supported by the facts stated in the Affidavit in Support of Answer Brief to Motion to Remove Visitation, Communication, or Interaction Restrictions.

6. Based on the above, the Guardian respectfully requests that the court enter an Order denying 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 Guardian

\_\_\_\_\_  
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 ANSWER BRIEF TO MOTION TO REMOVE VISITATION,  
COMMUNICATION, OR INTERACTION RESTRICTIONS**

1. My name is \_\_\_\_\_.
2. I am the current Guardian of the above-named Ward.
3. On or about \_\_\_\_\_ (*date*), I (*describe the circumstances leading to the denial or restriction of visitation, communication, or interaction between the Ward and the Moving Party*):

4. I placed the following restrictions on visitation, communication or interaction between \_\_\_\_\_ and the Ward, and based on the following facts, the restrictions are reasonable and in the best interests of the Ward (*describe the restrictions, and explain in detail why the restrictions are the most reasonable and in the best interests of the Ward*):

5. Based on the following facts, the Moving Party's motion ☐is ☐is **not** (*choose one*)  
frivolous (*explain why in detail*):

6. 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*).

\_\_\_\_\_  
Guardian's 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 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:**

- Answer Brief to Motion to Remove Visitation, Communication, or Interaction Restrictions; and
- Affidavit in Support of Answer Brief to Motion to Remove Visitation, Communication, or Interaction Restrictions.

**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:**

- Answer Brief to Motion to Remove Visitation, Communication, or Interaction Restrictions; and
- Affidavit in Support of Answer Brief to Motion to Remove Visitation, Communication, or Interaction Restrictions.

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: \_\_\_\_\_