

## Service Information Ex-Parte Emergency Guardianship of an Alleged Incapacitated Adult (18 Years Old or Older)

### **Important! Read Before Using These Forms & Instructions!**

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

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

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

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

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

Links to the state laws, case law, and court rules can be found at [ndcourts.gov](https://ndcourts.gov).

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

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

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

***Use these forms and instructions at your own risk.***

***Warning! Appointment of an ex-parte emergency guardian can have serious legal and financial consequences for both the alleged incapacitated person and the guardian(s). It's strongly recommended that you consult a lawyer and carefully consider all of your options before you represent yourself in a petition to appoint an ex-parte emergency guardian for an alleged incapacitated adult in a North Dakota state district court.***

**The notice of hearing and statement of rights and a copy of the ex-parte emergency guardianship petition must be served on all persons listed in [Section 30.1-28-10.1](#) of the North Dakota Century Code.**

The petitioner **must** arrange for service of copies of the following documents:

- Notice of Hearing and Statement of Rights;
- Petition for Ex-Parte Appointment of an Emergency Guardian – Pending Hearing;
- Completed and signed Order for Appointment of Guardian ad Litem;
- Completed and signed Order – Emergency Guardianship – Ex-Parte Appointment; and
- Completed and signed Letters of Emergency Guardianship Pending Hearing (Ex-Parte)

on the following persons listed in [Section 30.1-28-10.1](#) of the North Dakota Century Code:

- The alleged incapacitated person;
- The alleged incapacitated person's spouse, if any;
- Any person, corporation, or institution who has the alleged incapacitated person's care and custody;
- The guardian ad litem; and
- Any other interested person the court tells you to serve.

**The petitioner is responsible for ensuring the documents are served as required by [Section 30.1-03-01](#) and [Section 30.1-28-10.1](#) of the North Dakota Century Code.**

**Proof of service tells the North Dakota state district court how, when and where the documents were served.**

**If proof of service isn't filed, the court won't act on the guardianship petition.**

Proof of service is an important step in the legal process. If proof of service isn't filed, the court won't act on your documents.

Proof of service of a petition and order appointing an ex-parte emergency guardianship for an alleged incapacitated person tells the judge or judicial referee assigned to the case when, how, and where the people listed on Page 2 were served copies of the required documents.

- A Certificate of Service gives the judge or judicial referee proof of service when a sheriff or other officer served a copy of the documents listed on Page 2.
- A Declaration of Service gives the judge or judicial referee proof of service when a person other than a sheriff or other officer served copy of the documents listed on Page 2.

### **The Petitioner must locate the addresses or locations for service.**

**Following are examples of ways to find people for service:**

- Last known address.
  - Contact the U.S. Post Office for information on how to determine if the person left a forwarding address.
- Friends, family, employers.
- Online search engines.
- Government entities, such as the County Recorder.
- North Dakota business entity search, available at the ND Secretary of State website.
- Social Security Death Index.
- Utility companies.
- Social networking websites.
- Reverse directories.
  - A reverse directory allows someone to search by phone number to find an address. (Your local library may have access to reverse directories.)

### **There are two ways to serve the documents.**

#### **1. Serve the Alleged Incapacitated Person and Spouse by Personal Service:**

The alleged incapacitated person must be personally served at least 14 days before the hearing.

If the alleged incapacitated person's spouse is found within North Dakota, they must also be personally served at least 14 days before the hearing

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

- The person who personally serves a copy of the documents listed on Page 2 must be at least 18 years old **and** not a party to the petition or an interested party.
- The person who serves a copy of the documents listed on Page 2 must complete a Declaration of Service by Personal Delivery. This is your proof of service.
  - If the Sheriff personally serves the documents, the Sheriff provides a completed certificate of service.
- Make a copy of each declaration or certificate for your records.
- You file the original declaration(s) of service or certificate(s) of service with the clerk of court.

## **2. Serve by Mail:**

If the alleged incapacitated person's spouse can't be found within North Dakota they may be served by mail.

Any person, corporation, or institution who has the alleged incapacitated person's care and custody, the guardian ad litem, and any other person the court tells you to serve may be served by mail.

Notice by mail must occur within 48 hours of the ex-parte appointment.

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. This is your proof of service of the notice.
- Make a copy of each Declaration of Service by Mail for your records.
- You'll file the original Declaration(s) of Service with the clerk of court.

STATE OF NORTH DAKOTA  
COUNTY OF \_\_\_\_\_

IN DISTRICT COURT  
\_\_\_\_\_ JUDICIAL DISTRICT

**IN THE MATTER OF THE GUARDIANSHIP OF**

\_\_\_\_\_

**AN ALLEGED INCAPACITATED INDIVIDUAL.**

Case No. \_\_\_\_\_

**DECLARATION OF SERVICE BY PERSONAL DELIVERY**  
*(A separate declaration is required for each person served.)*

**The person personally serving court documents states:**

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

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

- Notice of Hearing and Statement of Rights;
- Petition for Ex-Parte Appointment of an Emergency Guardian – Pending Hearing;
- Order for Appointment of Guardian ad Litem;
- Order – Emergency Guardianship – Ex-Parte Appointment; and
- Letters of Emergency Guardianship Pending Hearing (Ex-Parte).

3. **Personal Service** *(Paragraph 3 continues on next page):*

I served a true and correct copy of each of the court documents listed in Paragraph 2 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*): \_\_\_\_\_

**4. Date, Time, and Address of Personal Service:**

Date: \_\_\_\_\_ Time: \_\_\_\_\_  a.m. (*or*)  p.m.

Address:

\_\_\_\_\_  
(*street address*) (city) (zip code)

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

Signed on \_\_\_\_\_ (*date*) in \_\_\_\_\_ (*city*),  
\_\_\_\_\_ County, \_\_\_\_\_ (*state*), \_\_\_\_\_ (*country*).

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Email Address

STATE OF NORTH DAKOTA  
COUNTY OF \_\_\_\_\_

IN DISTRICT COURT  
\_\_\_\_\_ JUDICIAL DISTRICT

**IN THE MATTER OF THE GUARDIANSHIP OF**

\_\_\_\_\_

**AN ALLEGED INCAPACITATED INDIVIDUAL.**

**Case No.** \_\_\_\_\_

**DECLARATION OF SERVICE BY MAIL**

*(May serve multiple persons ONLY IF envelopes are mailed the same day.)*

**The person serving court documents by mail states:**

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

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

- Notice of Hearing and Statement of Rights;
- Petition for Ex-Parte Appointment of an Emergency Guardian – Pending Hearing;
- Order for Appointment of Guardian ad Litem;
- Order – Emergency Guardianship – Ex-Parte Appointment; and
- Letters of Emergency Guardianship Pending Hearing (Ex-Parte).

**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  Certified Mail (OR)  First-Class mail, postage prepaid, and by depositing them in the United States Mail, directed to each person listed in Paragraph 5.

**4. Date of Service by Mail:**

Date Court Documents Were Served by Mail: \_\_\_\_\_

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: \_\_\_\_\_
4. 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 \_\_\_\_\_ (city),  
\_\_\_\_\_ County, \_\_\_\_\_ (state), \_\_\_\_\_ (country).

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Email Address