



ESTABLISHING GUARDIANSHIP OF A MINOR CHILD

A Research Guide for two North Dakota Court Processes

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota courts.

The information provided in this research guide is not a complete statement of the law.

This research guide is intended as a starting point for your research into the two North Dakota state court processes for establishing guardianship of a minor child. The information provided in this research guide is not intended for legal advice and cannot replace the advice of competent legal counsel licensed in the state.

The self-represented individual must make all decisions about how to proceed.

References to non-ND Legal Self Help Center resources are included for your convenience only. Including these references does not mean the ND Legal Self Help Center endorses, warrants, or accepts responsibility for the content or uses of the resource. Use at your own risk.

THIS RESEARCH GUIDE IS MADE UP OF THREE SECTIONS:

- One. Overview of North Dakota Guardianships of Minor Children (Pages 1-4)**
- Two. Research Guide for the *State District Court* Minor Guardianship Process (Pages 5-8)**
- Three. Research Guide for the *Juvenile Court* Minor Guardianship Process (Pages 9-13)**

SECTION ONE:

OVERVIEW OF NORTH DAKOTA GUARDIANSHIPS OF MINOR CHILDREN

NO FORMS FOR ESTABLISHING GUARDIANSHIP OF A MINOR CHILD:

Forms are not available through the ND Legal Self Help Center for establishing guardianship of a minor. If you decide to represent yourself, you will need to create all of your own legal documents.

A variety of General-Use template forms are available at www.ndcourts.gov/legal-self-help in the "District Court Civil" section and "Juvenile Court" section of the website. You may use the General-Use template forms as a starting point for creating your own legal documents.

For assistance creating your legal documents, consult a lawyer licensed to practice in North Dakota. Ask the lawyer about Limited Legal Representation. The lawyer may agree to help you with preparing legal documents, while you handle the rest of the action.

Power of Attorney Forms

A power of attorney allows a parent to delegate any of their authority regarding care, custody, or property of the minor child to another person; except the power to consent to the minor child's marriage or adoption.

Power of attorney does not require a court order. However, a power of attorney cannot last more than six (6) months and may not be accepted by medical providers, insurance companies, government agencies, etc.

Power of attorney forms are available at www.ndcourts.gov/legal-self-help by clicking on the "Power of Attorney" link under "Guardianships and Conservatorships".

OVERVIEW OF ESTABLISHING GUARDIANSHIP OF A MINOR CHILD:

Two State Court Processes for Establishing Guardianship of a Minor Child

In North Dakota there are two different state court processes to petition a court to establish a guardianship for a minor child:

- North Dakota State District Court as part of a probate proceeding; or
- North Dakota Juvenile Court as part of a deprivation proceeding.

This research guide points you to resources to help you determine which state court process applies to your situation.

This research guide is intended as a starting point for your research into determining which state court process is appropriate for your circumstances. Neither the ND Legal Self Help Center nor court staff can advise you on which process suits your situation.

Who is a Minor Child?

A minor child is an individual who is under eighteen (18) years of age.

Once an individual turns eighteen (18) years of age, they are an adult and are no longer under the authority of a parent or guardian.

What is a Guardianship of a Minor Child?

A guardianship of a minor child is a state court process where a judge appoints a guardian to act in the place of a parent of the minor child. A legal relationship is created between the guardian and the minor child, allowing the guardian to care for and make decisions on behalf of the minor child.

A guardianship does not terminate or sever the parent's parental rights.

Who may be Appointed the Guardian of a Minor Child?

Any person whose appointment is in the best interests of the minor child may be appointed guardian.

A criminal history record check may be required of the person and adults living with the person.

State District Court Guardianship Process:

One process to petition for guardianship takes place in North Dakota State District Court as part of a probate proceeding.

A person may ask a North Dakota state district court to establish a guardianship for a minor when:

- A guardian was appointed in a will;
- All parental rights of custody have been terminated;
- All parental rights of custody have been suspended by circumstances; or
- All parental rights of custody have been suspended by prior court order.

The Uniform Probate Code requirements apply in minor guardianship proceedings in North Dakota State District Court.

Juvenile Court Guardianship Process:

The other process to petition for guardianship of a minor child takes place in North Dakota Juvenile Court as part of a deprivation proceeding.

When a person asks a juvenile court to establish guardianship, the Uniform Juvenile Court Act requirements apply.

A North Dakota juvenile court can appoint a guardian of a minor only if the juvenile court finds by clear and convincing evidence that the child is deprived.

Deprivation is partially defined by the Uniform Juvenile Court Act as “a child who is without the proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian.”

Please be aware that guardianship is only one of the options available to the juvenile court when the court finds that the minor child is deprived.

ATTORNEY RESOURCES AND LIMITED LEGAL REPRESENTATION:

You are not required to hire an attorney to access the state court system. If you decide to represent yourself, you must follow all of the rules, laws and procedures that an attorney is required to follow.

Attorney Resources

- 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. Legal Services of North Dakota can also determine whether an applicant meets the income requirements for the Volunteer Lawyers program that offers low-cost legal assistance based on income. The phone number is (800) 634-5263 and the website is www.legalassist.org.
- The State Bar Association 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 www.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 www.ndcourts.gov/Lawyers. You can narrow your search by name or location.

Limited Legal Representation

Attorneys licensed to practice in North Dakota may provide Limited Legal Representation. Limited Legal Representation (sometimes called “unbundling”) is a way that an attorney can help you with part of your case while you do the rest of your case. You pay for the part of the case the attorney handled. For example:

- You may want an attorney to give you an expert opinion about your options, or your legal rights and responsibilities;
- You can consult with an attorney to prepare or review your paperwork, but attend hearings yourself;
- You can represent yourself through the whole case, and periodically consult with an attorney who can coach you on the law, procedures and strategy;
- You can do the preparation yourself and hire an attorney just to make the court appearances for you.

You and the attorney must agree in writing to Limited Legal Representation.

SECTION TWO: NORTH DAKOTA DISTRICT COURT MINOR GUARDIANSHIP PROCESS

A person may ask a North Dakota state district court to establish a guardianship for a minor when:

- A guardian was appointed in a will;
- All parental rights of custody have been terminated;
- All parental rights of custody have been suspended by circumstances; or
- All parental rights of custody have been suspended by prior court order.

Laws, Rules, Other Research Resources Pages 5-7
District Court Minor Guardianship Process . . . Pages 7-8

NORTH DAKOTA STATUTES:

(North Dakota statutes are found in the North Dakota Century Code (NDCC). The North Dakota Century Code contains the laws enacted by North Dakota Legislature. The NDCC is found online at www.legis.nd.gov/general-information/north-dakota-century-code.)

- Title 30.1** **Uniform Probate Code** www.legis.nd.gov/cencode/t30-1.html
North Dakota laws related to probate proceedings.
- Chapter 30.1-27** **Guardians of Minors** www.legis.nd.gov/cencode/t30-1c27.html
Requirements for establishing a guardianship of a minor child under the Uniform Probate Code.
- Chapter 14-09** **Parent and Child** www.legis.nd.gov/cencode/t14c09.html
See Section 14-09-06.2 for the best interests of the child factors.
- 25 U.S.C. §§ 1901-1963** **Indian Child Welfare Act**
www.law.cornell.edu/uscode/text/25/chapter-21
U.S. Federal law that applies to children who are **either**:
- 1) Members or citizens of a Native American tribe; **or**
 - 2) Eligible for membership or citizenship in a Native American tribe and the biological child of a member or citizen of the tribe.

NORTH DAKOTA CASE LAW:

(When the decision of a case is appealed from a North Dakota state district court to the North Dakota Supreme Court, the Supreme Court writes their opinion to explain how and why they interpreted the laws or rules to decide the appeal the way they did. The opinions are case law and are followed by North Dakota courts deciding later cases with similar facts and issues.)

Guardianship of Barros, 2005 ND 122, is a North Dakota Supreme Court opinion on some of the requirements for establishing a guardianship for a minor child under the Uniform Probate Code. www.ndcourts.gov/supreme-court/opinion/2005ND122

One way to research additional case law related to the District Court minor guardianship process, is to use the print version of the North Dakota Century Code to find the short summaries of case law after each Section of the Century Code. The case law summaries are located directly following the text of the Century Code Section. To view the full opinion, go to www.ndcourts.gov, click on the “Opinions” link and enter the case name or case citation.

Another way to research additional case law related to the District Court minor guardianship process, is to search by topic at www.ndcourts.gov. Click on the “Opinions” link and use the “Topic” menu to search opinions within the topics that correspond to guardianships of minors.

NORTH DAKOTA COURT RULES:

(Court rules govern how a dispute makes its way to state court and how the dispute is conducted. All of the court rules are found online at www.ndcourts.gov/legal-resources/rules.)

The North Dakota Rules of Civil Procedure apply in guardianship proceedings. If Title 30.1 includes procedure that is different from the Rules of Civil Procedure, Title 30.1 applies.

See also, the North Dakota Rules of Evidence.

LAWS CONSTANTLY CHANGE THROUGH LEGISLATION, ADMINISTRATIVE RULES AND RULINGS, AND COURT DECISIONS.

To determine how a law applies to your situation, review the applicable law or laws, administrative rules and 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 and North Dakota court rules 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.

LIBRARY RESOURCES: (Not all legal resources are available online.)

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. (www.odin.nodak.edu)

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:

North Dakota Century Code Annotated, Lexis Nexis, Creation Date c1959 – present.

North Dakota Court Rules Annotated, Lexis Nexis, Creation Date c1990 – present.

DISTRICT COURT PROCESS FOR ESTABLISHING GUARDIANSHIP OF A MINOR:

State District Court Minor Guardianship Documents

In general, the following documents are required to be filed with the North Dakota State District Court to start a Minor Guardianship action and schedule a hearing:

- Minor Guardianship Petition
- Verification (if petition needs to be verified)

You may find the ND Legal Self Help Center adult guardianship forms of interest as formatting examples. The adult guardianship forms are available at www.ndcourts.gov/legal-self-help by clicking on the "Guardianship of Adults" link under "Guardianships and Conservatorships".

Caution! The adult guardianship forms do not meet the requirements of petitioning a district court to establish guardianship of a minor. This reference to the adult guardianship forms is provided only for document formatting purposes.

Filing Original Minor Guardianship Petition with the State District Court and Requesting a Hearing

The original minor guardianship petition is filed with the clerk of state district court. If the guardianship petition is accepted by the clerk for filing, you may request a hearing date.

There is an \$80.00 filing fee.

Forms and instructions to ask the court to waive the filing fee are available at www.ndcourts.gov/legal-self-help in the "Miscellaneous" section. The completed fee waiver request forms are filed at the same time as the minor guardianship petition.

After a hearing date is scheduled by the clerk of state district court, the court may provide you with a Notice of Hearing document, or you may be required to create your own Notice of Hearing Document.

Serving Notice of Hearing and a Copy of the Minor Guardianship Petition

After a hearing date is scheduled by the clerk of state district court, you must arrange to have the following documents served as required by North Dakota Century Code Section 30.1-27-07:

- Notice of Hearing
- Copy of the Minor Guardianship Petition

The following people must be served the Notice of Hearing and a copy of the Minor Guardianship Petition:

- The minor child, if the minor child is fourteen (14) or more years of age;
- The person who has had the principal care and custody of the minor child during the sixty (60) days preceding the date of the petition; and
- Any living parent of the minor.

Service must be completed as required by North Dakota Century Code Section 30.1-03-01. This Section also gives the deadlines for service. Generally, service must be completed at least fourteen (14) days before the time set for the hearing.

You must file proof with the court that you served the following documents on the people listed above. The court will not act on the minor guardianship petition without proof of service.

- The notice of hearing; and
- A copy of the minor guardianship petition.

An affidavit of service gives the court proof of service.

Blank affidavit of service forms are available at www.ndcourts.gov/legal-self-help by clicking on the “General Use Checklists and Forms” link under “District Court Civil”.

Prepare for and Appear at the Hearing(s)

Prepare for and appear at the hearing(s). There may be more than one hearing, depending on the specific circumstances of your case.

You must prove the grounds (reasons) for guardianship of a minor.

SECTION THREE: NORTH DAKOTA JUVENILE COURT MINOR GUARDIANSHIP PROCESS

A North Dakota Juvenile Court can appoint a guardian of a minor only if the juvenile court finds by clear and convincing evidence that the child is deprived.

Laws, Rules, Other Research Resources Pages 9-11
Juvenile Court Minor Guardianship Process . . . Pages 11-13

NORTH DAKOTA STATUTES:

(North Dakota statutes are found in the North Dakota Century Code (NDCC). The North Dakota Century Code contains the laws enacted by North Dakota Legislature. The NDCC is found online at www.legis.nd.gov/general-information/north-dakota-century-code.)

Chapter 27-20 Uniform Juvenile Court Act www.legis.nd.gov/cencode/t27c20.html

North Dakota laws related to juvenile court proceedings, including deprivation and minor guardianships.

Indian Child Welfare Act (ICWA): 25 U.S.C. §§ 1901-1963

www.law.cornell.edu/uscode/text/25/chapter-21

Federal law that applies to children who are **either**:

- 1) Members or citizens of a Native American tribe; **or**
- 2) Eligible for membership or citizenship in a Native American tribe and the biological child of a member or citizen of the tribe.

NORTH DAKOTA CASE LAW:

(When the decision of a case is appealed from a North Dakota Juvenile Court to the North Dakota Supreme Court, the Supreme Court writes their opinion to explain how and why they interpreted the laws or rules to decide the appeal the way they did. The opinions are case law and are followed by North Dakota courts deciding later cases with similar facts and issues.)

Guardianship of J.S.L.F., 2013 ND 31, is a North Dakota Supreme Court opinion on establishing guardianship under the Uniform Probate Code versus the Uniform Juvenile Court Act.

www.ndcourts.gov/supreme-court/opinion/2013ND31

One way to research additional case law related to the Juvenile Court minor guardianship process, is to use the print version of the North Dakota Century Code to find the short summaries of case law after each Section of the Century Code. The case law summaries are located directly following the text of the Century Code Section. To view the full opinion, go to www.ndcourts.gov, click on the “Opinions” link and enter the case name or case citation.

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NORTH DAKOTA COURT RULES:

(Court rules govern how a dispute makes its way to state court and how the dispute is conducted. All of the court rules are found online at www.ndcourts.gov/legal-resources/rules.)

The North Dakota Rules of Juvenile Procedure apply to juvenile court minor guardianship proceedings.

The North Dakota Rules of Civil Procedure *may* apply in juvenile court minor guardianship proceedings. The Rules of Civil Procedure *may* be used to fill in gaps in the Juvenile Court process that Chapter 27-20 and the Rules of Juvenile Procedure do not cover.

See also, the North Dakota Rules of Evidence.

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North Dakota Court Rules Annotated, Lexis Nexis, Creation Date c1990 – present.

JUVENILE COURT PROCESS FOR ESTABLISHING GUARDIANSHIP OF A MINOR:

If you Decide that Juvenile Court is Appropriate for your Circumstances

If you decide that asking a juvenile court to appoint a guardian for a minor child is appropriate for your situation, contact the juvenile court in your North Dakota county for more information about the process.

Juvenile Court Minor Guardianship Documents

At minimum, the following document is required to start a juvenile court minor guardianship action:

- Verified Minor Guardianship Petition
 - See Rule 3 of the Rules of Juvenile Procedure for petition requirements.

All juvenile court records are confidential and cannot be viewed by the general public.

A variety of General-Use template forms are available at www.ndcourts.gov/legal-self-help in the “Juvenile Court” section of the website. You may use the General-Use template forms as a starting point for creating your own legal documents.

Filing the Original, Verified Minor Guardianship Petition with the Juvenile Court

The original of the verified guardianship petition must be presented to the clerk of juvenile court for filing.

You will not be required to pay a filing fee.

Approval by Juvenile Court to Accept Minor Guardianship Petition for Filing

Petitions prepared by persons other than a state's attorney may not be filed with the juvenile court unless a director of juvenile court, the juvenile court, or a person authorized by the juvenile court determines that filing the petition is in the best interest of the public and the child.

If the director of juvenile court, the juvenile court, or a person authorized by the juvenile court determines that filing the petition is in the best interest of the public and the child, the juvenile court will allow a summons to be issued.

Serving Copies of Juvenile Court Summons and Verified Minor Guardianship Petition

If the juvenile court allows a summons to be issued, you may be required to serve a copy of the juvenile court summons and a copy of the verified minor guardianship petition on all other parties.

If you are required to serve a copy of the juvenile court summons and a copy of the verified minor guardianship petition, review Chapter 27-20 and the North Dakota Rules of Juvenile Procedure to determine who must be served and what documents must be served. Words such as "notice" and "service" should indicate when service will be required.

Proof of service will be required. The other party or parties must be served with one copy of the juvenile court summons and a copy of the verified minor guardianship petition. The original document showing proof of service must be filed with the juvenile court.

The juvenile court will not act on your minor guardianship petition without proof of service.

Service information, including blank proof of service forms, is available at www.ndcourts.gov/legal-self-help by clicking on the "Service Instructions and Forms" link under "Juvenile Court".

Guardian ad Litem for Child; Appointed Attorney for Child's Parent(s)

A Guardian ad Litem provides the juvenile court judge or judicial referee with independent information and recommendations on the best interests of the child.

The juvenile court at any stage of a juvenile court proceeding, on application of a party or on the juvenile court's own motion, shall appoint a Guardian ad Litem for a child who is a party to the proceeding if:

- The child has no parent, guardian, or custodian appearing on the child's behalf; or
- The parent's, guardian's, or custodian's interests conflict with the child's; or
- In any other case in which the interests of the child require a guardian.

The court may, at any point in a deprivation proceeding, appoint a lawyer to represent a parent of the minor child. A parent cannot apply for an appointed lawyer until after a petition is filed.

Prepare for and Appear at the Hearing(s)

If the juvenile court allows a summons to be issued, a hearing will also be scheduled. There may be more than one hearing, depending on the specific circumstances of the case.

Prepare for and appear at the hearing(s). You must prove the grounds (reasons) for deprivation. Please be aware that if the juvenile court finds that the child is deprived, the court has a variety of options that include, but are not limited to, guardianship. See North Dakota Century Code Section 27-20-30 for the list of options.