

## Instructions to Make a Motion to Hold a Hearing by Reliable Electronic Means or Appear at the Hearing by Reliable Electronic Means

### Important! Read Before Using this Packet of Forms.

ND Legal Self Help 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.

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) for information 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 the basic procedure for asking a North Dakota district court in a guardianship case to hold a hearing by reliable electronic means, or to allow you, another party, or a witness to appear at a hearing by reliable electronic means. 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.***

[Rule 52 of the North Dakota Supreme Court Administrative Rules](#) gives the requirements for making a motion to ask a court to hold a hearing by reliable electronic means, or allow you or another party or witness to appear at the hearing by reliable electronic means, instead of in person.

- Review Rule 52 carefully! Effective December 1, 2022, Rule 52 **doesn't** require a notice of motion or a supporting brief.

## What is a Motion to Conduct a Hearing or Appear by Reliable Electronic Means?

Often, hearings in guardianship cases are held in a courthouse. This means that all of the people who are required to appear at the hearing must go to the courthouse in person.

However, when anyone required to appear at the hearing has a reason (or reasons) they can't go to the courthouse in person, they may ask the court for permission to:

1. Hold the hearing by reliable electronic means, instead of in person at the courthouse; or
2. Allow you, another party, or witness to appear at the hearing by reliable electronic means, instead of in person at the courthouse.

Examples of reliable electronic means include, but aren't limited to, Zoom, telephone, or Interactive Video Network (IVN).

The court decides whether to hold the hearing by reliable electronic means, or to allow the party or their witness(es) to appear by reliable electronic means.

## The Guardian (or Proposed Guardian) Makes this Motion

**The guardian, or proposed guardian, in a guardianship case may use this set of forms to ask the court for both options and explain their preference to the court.**

The guardian, or proposed guardian, is also called the **Moving Party**.

- The Moving Party may be either the Plaintiff or the Defendant in the civil action.

The other people who are required to appear at the hearing are called the **Non-moving Parties**. (Also called the **Opposing Parties**.) The Non-moving Parties may choose to respond in writing to this motion.

## **Before You Start, You Must Try to Contact the Non-moving Parties!**

**Before you serve or file the Motion to Conduct Hearing or Appear by Reliable Electronic Means, you must attempt to contact the Non-moving Parties to find out if they agree or object to your motion.**

**Carefully review Paragraph 4 of Form 1: Motion.** Paragraph 4 lists the people who are required to receive notice of hearing in a guardianship case. The people you need to attempt to contact will depend on the circumstances of the guardianship.

**You can still make your motion even if you're unable to contact all of the Non-moving Parties, or if any Non-moving Parties object to your motion.** You'll use Form 1: Motion to tell the court if you were able to contact each Non-moving Party and, if so, whether they agree or disagree.

## **What Are the Deadlines for this Motion?**

**The Moving Party, must serve the motion documents on all other parties at least seven (7) days before the hearing, trial, or other proceeding.**

- See Step 2 on Pages 6-7 for information on service.

**If a Non-moving Party chooses to respond, they must serve their written response to the motion at least four (4) days before the hearing, trial, or other proceeding.**

- Non-moving Parties may choose not to respond. The court will make a decision based on the documents filed by the Moving Party.

**These time requirements may be shortened by the court if you have a good reason.** This is also referred to as having good cause.

If a Moving Party wants to make a request to shorten the time requirements, Form 1: Motion includes the option to make this request.

*(This space left intentionally blank.)*

## Three Steps to Make a Motion to Conduct the Hearing or Appear by Reliable Electronic Means

### Step 1 – Complete Form 1 and Form 2.

Complete the following forms in the packet:

- Form 1: Motion to Conduct Hearing or Appear by Reliable Electronic Means; and
- Form 2: Order on Motion to Conduct Hearing or Appear by Reliable Electronic Means (Proposed).

#### Form 1: Motion to Conduct Hearing or Appear by Reliable Electronic Means

**Top of Form (Caption):** Fill in the caption as it appears in the petition for guardianship.

**Paragraph 1:** Tell the court if you're the proposed guardian (the court hasn't appointed you) or the guardian (the court appointed you in the guardianship order). Put a checkmark  in the appropriate box. Choose only one.

**Paragraph 2:** You have the option of asking the court to shorten the time requirement for making your motion. (See the Deadlines section on Page 3.) Put a checkmark  in the appropriate box. Choose only one.

If you're asking the court to shorten the time the requirement, state the reasons why.

**Paragraph 3:** This paragraph allows you to request to have the hearing held by reliable electronic means, or to request you, the person subject to guardianship, or someone else (i.e. a witness) to appear by reliable electronic means at an in-person hearing.

Put a checkmark  in one or both boxes. If you select both boxes, you'll use Paragraph 6 to tell the court which option you prefer.

Fill in all of the information for the option, or options, you select.

**Paragraph 4:** Tell the court who you attempted to contact before you filled out the forms for this motion. Read 4.a. through 4.e. carefully. Put a checkmark  in the appropriate boxes.

**Paragraph 5:** List the names of every person you check marked in Paragraph 4 and their relationship to the person subject to guardianship.

For each person, checkmark  the appropriate box to tell the court if that person agrees or objects to your motion, or if you were unable to contact that person.

**Paragraph 6:** State the reason(s) you're making this motion. If you selected both options in Paragraph 3, tell the court which option you prefer and why.

**Paragraphs 7 and 8:** Read carefully. If the court approves your motion, Paragraphs 7 and 8 list your responsibilities.

**Paragraph 9:** Read carefully. You're stating under penalty of perjury that everything you stated in the motion is true and correct.

**Date and Signature:** Complete the date and signature block.

- Fill in the date you signed this document.
- Fill in the city, county, state, and country where you signed this document.
- Sign the signature line.
- Print your name.
- Fill in the address lines. If you have a physical address and a mailing address, type or write both addresses using the lines provided, and the space below the address lines.
- Fill in the telephone number and email address.

## **Form 2: Order on Motion to Conduct Hearing or Appear by Reliable Electronic Means (Proposed)**

This is your proposed order. If the judge or judicial referee grants your motion, and uses your proposed order, the judge or judicial referee will complete and sign the order.

**Top of Form (Caption):** Fill in the caption exactly as you filled in the caption of Form 1: Motion.

**Paragraph 1:** Put a checkmark  in the same box you selected in Paragraph 1 of Form 1: Motion.

**Paragraph 2:** Fill in the date of the hearing for which you're making this motion.

- **DON'T** fill in any of the remaining information for Paragraph 2. If the judge or judicial referee uses your proposed order, the judge or judicial referee will fill in this information.

**Signature:** DON'T sign this form. If the judge or judicial referee uses your proposed order, the judge or judicial referee will date and sign the form.

## Step 2 – Serve Completed Form 1 and Form 2 on All Other Parties.

Service is providing copies of your completed motion documents on all Non-moving Parties. The court won't act on your motion documents until you file proof of service with the court. A declaration of service gives the court proof of service.

### Make at least two copies of the following completed forms:

- Form 1: Motion to Conduct Hearing or Appear by Reliable Electronic Means; and
- Form 2: Order on Motion to Conduct Hearing or Appear by Reliable Electronic Means (Proposed).

Keep one copy for your records. You'll arrange to serve the other copy or copies on Non-moving Parties. You'll file the original with the Clerk of Court in Step 3.

### Arrange to serve the copies on all other parties by mail:

- Put the copies in an envelope.
- Address the envelope with the Non-moving Party's last known address.
- If you know the Non-moving Party is currently represented by a lawyer, address the envelope with the lawyer's address.
- List your address as the return address on the envelope.
- Put the correct first class postage on the envelope.
  - Postage must be prepaid.
  - **It's very important to put the correct postage on the envelope.** If you don't, the envelope may be returned to you causing you to miss the service deadline.
- Service by mail is complete upon mailing.

### The person who mailed the envelope(s) completes the following form:

- Form 3: Declaration of Service by Mail.

The person who mailed the envelope must complete the Declaration of Service by Mail form. (If the envelope is mailed at a United States Post Office, the United States Post Office employee doesn't complete Declaration of Service by Mail form.)

Complete the Caption exactly as the Caption of the Motion form is filled out.

- Follow the directions on the form.
- Make ONE COPY of the completed, dated, and signed Declaration of Service by Mail form for your records.

You'll file the original Declaration of Service by Mail with the Clerk of District Court in Step 3.

**Service by mail is a common way to serve motion documents. However, there are other ways to serve your documents.**

To review other service options, go to [ndcourts.gov/legal-self-help/service-in-a-civil-action](https://ndcourts.gov/legal-self-help/service-in-a-civil-action). Scroll to the "Service After a District Court Civil Action Has Started" section of the webpage.

### **Step 3 – File the Original Forms with the Clerk of Court.**

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

- Form 1: Motion to Conduct Hearing or Appear by Reliable Electronic Means;
- Form 2: Order on Motion to Conduct Hearing or Appear by Reliable Electronic Means (Proposed); and
- Form 3: Declaration of Service for each Non-moving Party served.

If any Non-moving Parties choose to respond in writing, you'll be served a written response to your motion.

You'll be notified by the court if your motion is granted or denied.

If your motion is granted, you must work with the court to get everything arranged for you to appear by reliable electronic means.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

**IN THE MATTER OF THE GUARDIANSHIP OF**

\_\_\_\_\_

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

**MOTION TO CONDUCT HEARING OR APPEAR BY RELIABLE ELECTRONIC MEANS**

1. I am (*choose one*)  the proposed guardian /  the guardian in this case and I make this motion to the court for an Order in accordance with Rule 52 of the North Dakota Supreme Court Administrative Rules and Rule 3.2 of the North Dakota Rules of Court as follows:

2. (*Choose one*)

I am **not** asking the court to shorten the time requirements of Rule 52 of the North Dakota Supreme Court Administrative Rules.

I am asking the court to shorten the time requirements of Rule 52 of the North Dakota Supreme Court Administrative Rules because:

3. (*Select all that apply; Paragraph 3 continues on next page*)

I am asking the court to conduct the hearing scheduled on (*date and time*)

\_\_\_\_\_ by reliable electronic means.



I am asking the court to allow (*select all that apply*)  me /  the person subject to guardianship /  other (*name(s) of other person(s) you request to appear by reliable electronic means*) \_\_\_\_\_ to appear by reliable electronic means at the hearing scheduled on (*date and time*) \_\_\_\_\_ at the \_\_\_\_\_ County Courthouse in (*city*) \_\_\_\_\_, North Dakota.

4. Before I served or filed this Motion to Conduct Hearing/Appear by Reliable Electronic Means, I attempted to contact the following people to find out if they agree or object to this motion (*checkmark  all of the people required to receive notice in a guardianship case who you contacted and/or attempted to contact; Paragraph 4 continues on next page*):

- a. (*Select all that apply*)  The person subject to guardianship /  Their spouse (*if any*) /  Their parents (*if any*) /  Their adult children (*if any*).
- b. (*If you didn't checkmark  anyone in Paragraph 4.a. above, select all that apply*) The person subject to guardianship's  adult sibling(s) (*if any*) /  adult person with whom the person subject to guardianship lives in a private residence (*if any*) /  known adult relative (*if any*).
- c. (*Select all that apply **only if a guardian hasn't been appointed by the court***)  The attorney for the person subject to guardianship (*if any*) /  The court-appointed visitor /  The court-appointed expert examiner.
- d. (*Select **only if this applies to the person subject the guardianship***)  Any person, corporation, or institution serving as the person subject to guardianship's guardian, attorney in fact, representative payee for public benefits, conservator, or person who has the care and custody of the person subject to guardianship.

e. (Select **only if** the court's order appointing a guardian lists interested persons)

Interested persons designated by the court in its order appointing a guardian.

5. Following is the list of people I check marked in Paragraph 4 and their response to whether they agree or object to this request (list the name and relationship of every person you check marked in Paragraph 4 and checkmark  the appropriate box next to their name):

Name:	Relationship to Person Subject to Guardianship:	Agree/Object/Unable to Contact:
		<input type="checkbox"/> Agree <input type="checkbox"/> Object <input type="checkbox"/> Unable to Contact
		<input type="checkbox"/> Agree <input type="checkbox"/> Object <input type="checkbox"/> Unable to Contact
		<input type="checkbox"/> Agree <input type="checkbox"/> Object <input type="checkbox"/> Unable to Contact
		<input type="checkbox"/> Agree <input type="checkbox"/> Object <input type="checkbox"/> Unable to Contact
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		<input type="checkbox"/> Agree <input type="checkbox"/> Object <input type="checkbox"/> Unable to Contact
		<input type="checkbox"/> Agree <input type="checkbox"/> Object <input type="checkbox"/> Unable to Contact
		<input type="checkbox"/> Agree <input type="checkbox"/> Object <input type="checkbox"/> Unable to Contact

**6.** I am making this motion because (*state the reasons you're making this request. If you selected both options in Paragraph 3, explain your preference*):

**7.** I understand that, if my motion is approved, the parties must coordinate with the court to facilitate scheduling and managing the technical aspects of the hearing, including arranging for confidential attorney-client communication.

**8.** I agree to be responsible for the costs and arrangements of conducting the hearing/ appearing by reliable electronic means as required.

9. I declare, under penalty of perjury under the law of North Dakota, that everything I stated in this Motion to Conduct Hearing or Appear by Reliable Electronic Means is true and correct.

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

\_\_\_\_\_  
(Signature of Moving Party)

\_\_\_\_\_  
(Printed Name of Moving Party)

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

**ORDER ON MOTION TO CONDUCT HEARING OR APPEAR BY RELIABLE ELECTRONIC MEANS**

1. The  proposed guardian /  guardian filed a Motion to Conduct the Hearing or Appear by Reliable Electronic Means. The Court having considered the Motion **HEREBY ORDERS:**

2. The motion to conduct the hearing or to appear by reliable electronic means at the hearing set for \_\_\_\_\_ is:

DENIED.

GRANTED as follows:

BY THE COURT:

\_\_\_\_\_  
(District Judge or Judicial Referee Signature)

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**

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

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

1. My name is \_\_\_\_\_ *(Name of person who mailed documents).*

2. I am at least 18 years of age.

3. **List of Court Documents Served** *(checkmark  next to each document served. Use "Other" to write the title of each document served that is not already listed):*

Motion to Conduct Hearing or Appear by Reliable Electronic Means

Order on Motion to Conduct Hearing or Appear by Reliable Electronic Means *(Proposed)*

Other: \_\_\_\_\_

Other: \_\_\_\_\_

4. **Service by Mail:**

As required by Rule 5(b)(3) of the North Dakota Rules of Civil Procedure, I served a true and correct copy of each of the court documents listed in Paragraph 3 by mailing them, enclosed in an envelope, by First-Class mail, postage prepaid, and by depositing them in the United States Mail, directed to the person listed in Paragraph 6.

5. **Service by Mail:**

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

6. **Person Served by Mail:**

Name of Person Served: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

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

7. 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)