

Instructions for Motion for Order to:

1) Appear at Review Hearing by Other Electronic Means; *OR*

2) Hold Review Hearing at an Alternate Location; *OR*

3) Allow Non-Attendance at Review Hearing.

IMPORTANT! READ BEFORE USING THESE FORMS AND INSTRUCTIONS

ND Legal Self Help Center staff and court employees cannot help you fill out forms.

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

These instructions and forms are not a complete statement of the law. They cover the basic procedure for asking a North Dakota State District Court for an order allowing one of the following:

- 1) To appear at the review hearing by other reliable electronic means; *OR*
- 2) To hold the review hearing at an alternate location; *OR*
- 3) To allow the ward or protected person not to attend the review hearing.

There is no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center. **Use at your own risk.**

When you represent yourself, you must abide by the following:

- State or federal laws that apply to your case;
- Case law, also called court opinions, that apply 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 Order; and
 - Any local Court Rules.

Links to the laws, case law, and court rules are available at www.ndcourts.gov.

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

When you represent yourself, you are held to same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures. If you are unsure if this information suits your circumstances, consult a lawyer.

↻ DO NOT DELAY! ↻

You have a limited amount of time to make your written request!

You must serve copies of the completed motion forms at least 21 calendar days before the scheduled date of the guardianship/conservatorship review hearing.

YOU MAY USE THIS PACKET OF FORMS IF:

A North Dakota state district court appointed you the guardian of an adult, or the conservator of an adult or minor child.

AND

You have been notified by the district court that a review hearing will be held to decide whether:

- The guardianship/conservatorship should continue;
- You should be reappointed as guardian/conservator; or
- A new guardian/conservator should be appointed.

AND

You want to ask the district court to do one of the following:

1. Allow you and/or the ward or the protected person to appear at the review hearing by other reliable electronic means, rather than attend the hearing in person; ***OR***
2. Hold the review hearing at an alternate location (i.e. nursing home) with the ward or the protected person, rather than hold the hearing at the courthouse; ***OR***
3. Allow the ward or protected person not to attend the review hearing at all.

FEES MAY APPLY:

Fees include, but are not limited to:

- Service fees Varies, depending on method of service.
- Copy of documents Typically, \$.10 per page, \$1.00 minimum. May vary by county.

OVERVIEW OF THE MOTION PROCESS:

- Step One:** Guardian/Conservator Reviews Forms Packet, Rules and Laws
- Step Two:** Guardian/Conservator Completes Forms 1-5 and Makes Copies
- Step Three:** Guardian/Conservator Arranges to Serve Copies of Forms 1-5
Arrange for service of a copy on each Non-moving party.
- Step Four:** Guardian/Conservator Files Originals of Forms 1-5 & Affidavit(s) of Service
Originals are filed with the District Court.
- Step Five:** Non-Moving Parties Have 14 or 17 Days to Answer
Written answer required within 14-17 days of service.
- Step Six:** District Court Decides Whether to Grant the Motion

THE PARTIES IN A MOTION:

Moving party: The guardian or conservator making the motion, or request. In other words, the guardian or conservator who completes and sign Forms 1-5 in this packet.

Non-moving parties: The individuals to who the moving party mails or hand-delivers copies of the completed motion forms. (Also called the Opposing parties.)

- In general, non-moving parties are:
 - The ward or protected person.
 - Living parents of the ward or protected person.
 - Spouse of the ward or protected person, if any.
 - Other interested parties named in the guardianship or conservatorship appointment order.

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FORMS IN THE MOTION PACKET:

The forms in this Motion packet include:

Form 1: Notice of Motion for an Order to Appear by Other Electronic Means, Hold Hearing at an Alternate Location, or Allow Non-Attendance at Hearing

(This is a written notice that tells all parties that a request for an order will be made to the District Court. This tells the Non-moving parties they have 14 days to answer your motion in writing.)

Form 2: Motion for an Order to Appear by Other Electronic Means, Hold Hearing at an Alternate Location, or Allow Non-Attendance at Hearing

(This is a short, written request to the District Court for an order.)

Form 3: Brief in Support of Motion for an Order to Appear by Other Electronic Means, Hold Hearing at an Alternate Location, or Allow Non-Attendance at Hearing

(This takes the specific rules and/or laws that apply to your request and explains how they apply to the facts of your situation.)

Form 4: Affidavit in Support of Motion for an Order to Appear by Other Electronic Means, Hold Hearing at an Alternate Location, or Allow Non-Attendance at Hearing

(This gives the facts of your situation that show the District Court why you believe your request should be granted. Any facts included in your brief are also included in the affidavit.)

Form 5: (Proposed) Order on Motion for Order to Appear by Other Electronic Means, Hold Hearing at an Alternate Location, or Allow Non-Attendance at Hearing

(This is a proposed order for the District Court to sign, after reviewing the Moving party's motion documents and any written answers from Non-moving parties.)

Form 6: Affidavit of Service by Mail

(This gives the District Court proof that you arranged for service of copies of completed Forms 1 through 5 on Non-moving parties by first-class mail.)

Form 7: Affidavit of Service by Hand Delivery

(This gives the District Court proof that you arranged for service of copies of completed Forms 1 through 5 on Non-moving parties by hand delivery.)

Step One:

Review the Forms and Instructions; Review Rules and Laws; Make Decisions.

Review the forms and instructions:

Read these instructions carefully. Review the individual forms. Determine if the forms apply to your situation. If you do not know if you should use this packet of forms, consult a lawyer who is licensed to practice in North Dakota.

ND Legal Self Help Center staff and court employees cannot help you with making decisions about using this packet of forms.

Review the following rules and laws:

(The North Dakota rules of court are available online at www.ndcourts.gov/legal-resources/rules. The North Dakota Century Code is available online at www.legis.nd.gov/general-information/north-dakota-century-code.)

Review the following rules and laws. You will need to explain in your motion documents how the rules or laws related to your request apply to your situation.

- [Rule 52, Section 2\(A\) of the North Dakota Supreme Court Administrative Rules](#) permits a court to allow individuals to appear at a hearing by other reliable electronic means, rather than in person.
- [North Dakota Century Code Section 30.1-28-03\(9\)](#) and [North Dakota Century Code Section 30.1-29-07\(4\)](#) permit a court to hold a hearing at an alternate location (i.e. nursing home) other than a courthouse if it is in the best interests of the ward or protected person.
- [North Dakota Century Code Section 30.1-28-03\(8\)](#) and [North Dakota Century Code Section 30.1-29-07\(4\)](#) permit a court to allow a ward or protected person not to attend the hearing, if good cause is shown. (Good cause may include the physical difficulty of the ward or protected person to attend in person, but physical difficulty cannot be the only reason.)
- [North Dakota Century Code Section 30.1-28-04\(5\)](#) requires guardianship review hearings.
- [North Dakota Century Code Section 30.1-29-08\(3\)](#) requires conservatorship review hearings.

Decide Which Request You will Make:

This packet of forms includes three different request options.

However, the packet allows you to choose only one request option.

1. Allow you and/or the ward or the protected person to appear at the review hearing by other reliable electronic means, rather than attend the hearing in person; ***OR***
2. Hold the review hearing at an alternate location (i.e. nursing home) with the ward or the protected person, rather than hold the hearing at a courthouse; ***OR***
3. Allow the ward or protected person not to attend the review hearing at all.

Step Two:

Complete Forms 1 Through 5 in the Motion Packet; Make Copies.

Form 1. Notice of Motion for Order:

The guardian or conservator completes the notice of motion form.

This is a written notice that tells all parties that a request for an order will be made to the District Court. This tells the Non-moving parties they have 14 days to answer your motion in writing.

- **Top of Form (Caption)**
 - Refer to the review hearing notice or order you received from the District Court.
 - Enter the county and district court names.
 - Checkmark (✓):
 - “Guardianship” if the case is a guardianship of an adult.
 - “Conservatorship” if the case is a conservatorship of an adult or a minor child.
 - Both “Guardianship” and “Conservatorship” if the case is a guardianship and conservatorship of an adult.
 - Fill in legal name of the ward/protected person.
 - Enter the case number from your review hearing notice or order.
 - Checkmark (✓) **ONE** of the motion options. **DO NOT** checkmark more than one.

- **Paragraphs 1 and 2**
 - Review the paragraphs. You do not need to fill anything out.
- **Date and Signature**
 - Sign and date the form.
 - Complete the lines following the signature.

Form 2. Motion for Order:

The guardian or conservator completes the motion form.

This is a short, written request to the District Court for an order.

- **Top of Form (Caption)**
 - Fill out **EXACTLY** the same as the Notice of Motion caption.
 - Checkmark (✓) **THE SAME** motion option. **DO NOT** checkmark more than one.
- **Paragraph 1**
 - Fill in the date of the scheduled review hearing.
 - Checkmark (✓) guardianship/conservatorship exactly as you filled out the caption.
- **Paragraph 2**
 - Checkmark (✓) if you are the guardian or conservator, or both.
 - Checkmark (✓) **THE SAME** motion option as you check marked in the caption. **DO NOT** checkmark more than one.
 - If you are requesting to appear at the hearing by other reliable electronic means, remember to checkmark (✓) next to the individual(s) you are requesting appear by other reliable electronic means. You may choose both options.
- **Date and Signature**
 - Sign and date the form.
 - Complete the lines following the signature.

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Form 3. Brief in Support of Motion for Order:

The guardian or conservator completes the brief in support of motion form.

This takes the specific rules and/or laws that apply to your request and explains how they apply to the facts of your situation.

- **Top of Form (Caption)**
 - Fill out **EXACTLY** the same as the Notice of Motion caption.
 - Checkmark (✓) **THE SAME** motion option. **DO NOT** checkmark more than one.
- **First Sentence**
 - Checkmark (✓) if you are the guardian or conservator, or both.
 - Fill in your full name.
- **Paragraph 1 (Facts)**
 - Tells the District Court and Non-moving parties that the facts related to your request are in a separate affidavit. You do not need to fill anything out.
- **Paragraph 2 (Law and Argument)**
 - Fill in the date of the scheduled review hearing.
 - Checkmark (✓) guardianship/conservatorship exactly as you filled out the caption.
- **Paragraph 3**
 - Checkmark (✓) **THE SAME** motion option as you check marked in the caption. **DO NOT** checkmark more than one.
 - First checkbox:
 - If you are requesting to appear at the review hearing by other reliable electronic means, checkmark (✓) next to the individual(s) you are requesting appear by other reliable electronic means.
 - On Page 2 of 4, checkmark (✓) the other reliable electronic means you will use to appear at the review hearing and fill in the details.
 - Second checkbox:
 - If you are requesting an alternate location (i.e. nursing home) other than a courthouse with the ward/protected person for the review hearing, fill in the location.

- Third checkbox:
 - If you are requesting that the ward/protected person not appear at the review hearing at all, you do not need to fill in any additional information for Paragraph 3.
- **Paragraph 4**
 - Follow the instructions on the form for Paragraph 4.
- **Date and Signature**
 - Sign and date the form.
 - Complete the lines following the signature.

Form 4. Affidavit in Support of Motion for Order:

The guardian or conservator completes the affidavit in support of motion form.

This gives the facts of your situation that show the District Court why you believe your request should be granted. Any facts included in your brief are also included in the affidavit.

- **Top of Form (Caption)**
 - Fill out **EXACTLY** the same as the Notice of Motion caption.
 - Checkmark (✓) **THE SAME** motion option. **DO NOT** checkmark more than one.
- **Paragraph 1**
 - Checkmark (✓) if you are the guardian or conservator, or both.
- **Paragraphs 2 and 3**
 - Fill in the required information.
- **Paragraph 4**
 - Fill in the date of the scheduled review hearing.
 - Checkmark (✓) guardianship/conservatorship exactly as you filled out the caption.
- **Paragraph 5**
 - Checkmark (✓) **THE SAME** motion option as you check marked in the caption. **DO NOT** checkmark more than one.
 - Fill in your statement of the facts.

- **Paragraph 6**
 - If you have documents that support your statement of the facts, list the name and a description of each document.
- **Paragraph 7**
 - List any additional, factual information.
- **Paragraph 8**
 - Review this statement carefully. You do not need to fill anything out.
- **Date and Signature**
 - Date and sign only if the statement in Paragraph 8 is accurate.
 - Complete the lines following the signature.

Form 5. (Proposed) Order on Motion for Order:

The guardian or conservator completes the proposed order form.

This is a proposed order for the District Court to sign, after reviewing the Moving party's motion documents and any written answers from Non-moving parties.

- **Top of Form (Caption)**
 - Fill out **EXACTLY** the same as the Notice of Motion caption.
 - Checkmark (✓) **THE SAME** motion option. **DO NOT** checkmark more than one.
- **Leave the Rest of the Form Blank**
 - If the judicial officer assigned to the motion decides to use this proposed order, the judicial officer will complete and sign the rest of the form.

Make Copies of Completed Forms 1-5 and Any Additional Documents:

Determine the Non-moving parties you need to serve and their addresses.

- In general, non-moving parties are:
 - The ward or protected person.
 - Living parents of the ward or protected person.
 - Spouse of the ward or protected person, if any.
 - Other interested parties named in the guardianship or conservatorship appointment order.

You will need a copy of the following completed forms and other documents for each Non-moving party:

- Form 1: Notice of Motion for Order
- Form 2: Motion for Order
- Form 3: Brief in Support of Motion for Order
- Form 4: Affidavit in Support of Motion for Order
 - Any additional documents listed in Paragraph 6 of the Affidavit.
- Form 5: (Proposed) Order on Motion for Order

Make one copy of the completed forms for your records.

Step Three:

Arrange for Service of Copies of Forms 1 Through 5.

Service is providing copies to each Non-moving party of your completed Forms 1 through 5 and any additional documents listed in Paragraph 6 of the Form 4: Affidavit.

The District Court will not act on your motion unless you file proof of service with the court. An affidavit of service gives the District Court proof of service.

Copies may be mailed first class, postage prepaid, **or** hand-delivered.

Form 6. Affidavit of Service by Mail:

You may arrange for service of the copies of the motion documents by mail.

- **For each Non-moving party you serve 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.
- **A person who is at least 18 years old takes the envelope(s) to a United States Post Office and mails the envelope.**
 - Postage must be first class and prepaid.
 - Service is complete upon mailing.

- **The person who took the envelope(s) to the Post Office fills out the affidavit of service by mail form.**
 - Complete the Caption exactly as the Caption of the Notice of Motion form is filled out.
 - Follow the directions on the form.
 - The person who took the envelope to the Post Office dates and signs the form.
 - If the person mailed envelopes for more than one Non-moving party, the affidavit(s) of service must be completed for each envelope.
- **Make ONE COPY of each completed Affidavit of Service by Mail form for your records.**
 - You will file the original with the Clerk of District Court in Step Four.

Form 7. Affidavit of Service by Hand Delivery:

You may arrange for service of the copies of the motion documents by hand delivery.

- **For each Non-moving party you arrange to serve by hand delivery:**
 - Give copies of the motion documents and the location of the Non-moving party to a person who is at least 18 years old, not a party to or interested in the guardianship/conservatorship.
- **A person who is at least 18 years old, NOT a party to or interested in the guardianship/conservatorship hands the copies of the motion documents to the Non-moving party.**
 - Service is complete upon handing the copies of the motion documents to the Non-moving party.
- **The person who handed the copies of motion documents to the Non-moving party fills out the affidavit of service by hand delivery form.**
 - Complete the Caption exactly as the Caption of the Notice of Motion form is filled out.
 - Follow the directions on the form.
 - The person who handed the copies of motion documents to the Non-moving party dates and signs the form.
 - If the person handed copies of motion documents to more than one Non-moving party, an affidavit of service must be completed for each Non-moving party.

- **Make ONE COPY of each completed Affidavit of Service by Hand Delivery form for your records.**
 - You will file the original(s) with the Clerk of District Court in Step Four.

Step Four:

File Completed, Original Forms 1 Through 5 and Affidavit(s) of Service.

For information on how the Clerk of Court accepts documents for filing, contact the Clerk of Court in the County where you will file. Contact information for Clerks of Court by County is available online at www.ndcourts.gov/district-court.

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

- Form 1: Notice of Motion for Order
- Form 2: Motion for Order
- Form 3: Brief in Support of Motion for Order
- Form 4: Affidavit in Support of Motion for Order
- Form 5: (Proposed) Order on Motion for Order
- Affidavit(s) of Service for each Non-moving party
 - May be Form 6, Form 7 or both, depending on how you arranged for service.

File copies of the following with the Clerk of Court:

- All additional documents listed in Paragraph 6 of Form 4: Affidavit in Support of Motion for Order
 - You may not have any additional documents.

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Step Five:

Non-Moving Parties Have Either 14 or 17 Days to Answer.

After the Non-moving party is served your motion documents, the Non-moving party has either 14 or 17 days to answer the motion in writing, depending on how you arranged for service.

If you arranged for service by mail:

If you arranged for service of your motion documents by mail or third-party commercial carrier, the Non-moving party has 17 calendar days to answer your motion.

- The date of service is the date the motion documents were mailed.

If you arranged for service by hand delivery:

If you arranged for service of your motion documents by hand delivery, the Non-moving party has 14 calendar days to answer your motion.

- The date of service is the date the motion documents were handed to the Non-moving party.

Calculating service days:

- Do not include the date of service 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 is not a Saturday, Sunday, or legal holiday.

If a Non-moving party serves and files a written answer within the deadline:

The District Court will consider the written answer when deciding whether to approve or deny your motion.

If a Non-moving party DOES NOT serve and file a written answer within the deadline:

The District Court may consider the lack of a written answer to be an admission by the Non-moving party that your motion has merit. The Court will decide the motion based on the motion documents you served and filed.

Step Six:

District Court Decides Whether to Grant the Motion.

After the deadline for serving and filing the written answer has passed, the motion is considered to be submitted to the District Court.

The Judicial Officer assigned to the case reviews the motion documents submitted by you, the Moving party, and any Non-moving party to determine if you meet the requirements for granting your motion.

You will receive the decision in writing.

If your motion is granted:

If the District Court grants your motion, follow the instructions, if any.

If your motion is denied:

If the District Court DOES NOT grant your motion, you and the ward or protected person must attend the review hearing in person.