

SERVICE INFORMATION FOR STARTING A CASE TO ESTABLISH GUARDIANSHIP OF AN ALLEGED INCAPACITATED ADULT

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota state courts. The information provided is not intended for legal advice but only as a general guide to a civil court process.

If you decide to represent yourself, you will need to do additional research to prepare.

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 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;
 - Any local court rules.

Links to the laws, case law, and court rules can be found 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.

***This information is not a complete statement of the law.** This covers basic information about the service requirements to start a guardianship of an alleged incapacitated adult in a North Dakota state district court. The Center is not responsible for any consequences that may result from the information provided. The information cannot replace the advice of competent legal counsel licensed in the state of North Dakota. Use at your own risk.*

WARNING – Appointment of a guardian can have serious legal and financial consequences for both the ward and the guardian. It is strongly recommended that you consult a lawyer and carefully consider all of your options before you represent yourself in a petition to appoint guardian for an incapacitated adult in a North Dakota state district court.

The notice of hearing and statement of rights and a copy of the guardianship petition MUST be served on ALL persons listed in [Section 30.1-28-09](#) 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 Appointment of a Guardian;
- Completed and signed Order for Appointment of Guardian ad Litem;
- Completed and signed Order Appointing an Expert Examiner; and
- Completed and signed Order Appointing a Visitor

on the following persons listed in [Section 30.1-28-09](#) of the North Dakota Century Code:

- The proposed ward;
- The proposed ward's spouse, parents, and adult children;
- Any person, corporation, or institution who is serving as the proposed ward's guardian, attorney in fact, representative payee for public benefits, or conservator, or who has the ward's care and custody;
- If the proposed ward **does not have** a spouse, parents, or adult children, then the adult siblings and any adult with whom the proposed ward resides in a private residence, or if none can be found, any known adult relative;
- The attorney for the proposed ward, if any; and
- The visitor, and the expert examiner.

The petitioner is responsible for ensuring the documents are served as required by [Section 30.1-03-01](#) and [Section 30.1-28-09](#) of the North Dakota Century Code.

(This space left intentionally blank.)

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

If proof of service is not filed, the court will not act on the guardianship petition.

Proof of service is an important step in the legal process. If proof of service is not filed, the court will not act on your documents.

The proof of service to start a guardianship of an alleged incapacitated adult tells the court when, how, and where the people listed at the top of Page 2 of 5 were served copies of the required documents.

- A certificate of service gives the court proof of service when a sheriff or other officer served the summons and a copy of the documents.
- An affidavit of service gives the court proof of service when a person other than a sheriff or other officer served the summons and a copy of the documents.

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 defendant/respondent left a forwarding address.
- Friends, family, employers.
- Online search engines.
- Government entities, such as Department of Motor Vehicles or 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.)

The documents may be served as follows:

1. Service on the Proposed Ward, Spouse, and Parents by Personal Service

The proposed ward must be personally served at least 14 days before the hearing.

If the proposed ward's spouse and the proposed ward's parents are found within North Dakota, they must also be personally served at least 14 days before the hearing.

You, the petitioner, cannot personally serve the document yourself. You arrange for personal service as follows:

- a. The person who personally serves 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 and not a party to the petition or an interested party.
- b. The person who serves the notice and accompanying documents must complete, sign and date an Affidavit of Service by Personal Delivery. This is your proof of service of the notice.
 - If the Sheriff or other officer personally serves the documents, the Sheriff or other officer will provide a completed certificate of service.
- c. Make a copy of each affidavit or certificate for your records.
- d. File the original of each Affidavit of Service by Personal Delivery with the clerk of court.

2. Service By Mail:

If the proposed ward's spouse or the proposed ward's parents cannot be found within North Dakota they may be served by mail.

All other persons listed in [N.D.C.C. § 30.1-28-09](#) may be served by mail. See [N.D.C.C. § 30.1-03-01](#).

Notice by mail must occur at least 14 days before the hearing.

You, the petitioner, arrange for service by mail as follows:

- a. 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.

- b. 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.
- c. The person who mails the notice and accompanying documents must complete, sign and date an affidavit of service by mail. This is your proof of service of the notice.
- d. Make a copy of each affidavit of service by mail for your records.
- e. File the original of each Affidavit of Service by Mail with the clerk of court.

3. Service by Publication:

If, after a diligent search, you are unable to determine the address or identity of any of the other persons listed in [N.D.C.C. § 30.1-28-09](#), **except the proposed ward**, you may give notice of the hearing by publication. See [N.D.C.C. § 30.1-03-01](#) and [Rule 4\(e\) of the North Dakota Rules of Civil Procedure](#).

The notice must be published at least once a week for three consecutive weeks. The last publication of the notice must occur at least 10 days before the hearing:

- a. Publish the Notice of Hearing and Statement of Rights in a newspaper having general circulation in the county where the hearing is to be held.
- b. You, the petitioner, must request an affidavit of publication from the newspaper after publishing is complete. This is your proof of publication of the notice.
- c. You, the petitioner, must prepare an Affidavit for Service by Publication. The purpose of an Affidavit for Service by Publication is to describe to the court the diligent efforts to locate the person(s).
- d. Make a copy of the affidavit of publication you received from the newspaper and your Affidavit for Service by Publication for your records.
- e. File the original of the affidavit of publication your original Affidavit for Service by Publication 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. _____

AFFIDAVIT OF SERVICE BY PERSONAL DELIVERY
(A separate affidavit is required for each person served.)

The person personally serving court documents swears:

1. My name is: _____ (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 Appointment of Guardian;
- Order for Appointment of Guardian ad Litem;
- Order Appointing a Visitor; and
- Order Appointing an Expert Examiner.

3. **Personal Service:**

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.

(Paragraph 3 continues on next page.)

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

AN ALLEGED INCAPACITATED INDIVIDUAL.

Case No. _____

AFFIDAVIT 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 swears:

1. My name is: _____ *(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 Appointment of Guardian;
- Order for Appointment of Guardian ad Litem;
- Order Appointing a Visitor; and
- Order Appointing an Expert Examiner.

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 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: _____

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 Affidavit of Service by Mail is true and correct.

STATE OF _____)

)

COUNTY OF _____) ss.

)

COUNTRY OF _____)

Signed this _____ day of _____, 20_____.

Signature

Printed Name

Address

City, State, Zip Code

Telephone Number

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

AN ALLEGED INCAPACITATED INDIVIDUAL.

Case No. _____

AFFIDAVIT FOR SERVICE BY PUBLICATION

I, _____, the undersigned,

state as follows:

1. I am the Petitioner in the above entitled action.
2. I make this Affidavit for Service by Publication in support of service of the Notice of Hearing and Statement of Rights upon the following person(s) _____

(list full name(s) of each person) by publication pursuant to Section 30.1-03-01 of the North Dakota Century Code and Rule 4(e) of the North Dakota Rules of Civil Procedure.

3. Pursuant to Section 30.1-03-01(1)(c) of the North Dakota Century Code, service of the Notice of Hearing and Statement of Rights by publication is permitted because the address or identity of the person(s) listed in Paragraph 2 of this Affidavit is not known and cannot be ascertained with reasonable diligence.

4. I made the following diligent efforts to identify and locate the person(s) listed in Paragraph 2 of this Affidavit in order to serve the Notice of Hearing and Statement of Rights *(list your diligent efforts for each person)*:

(Paragraph 4, continued.)

5. I made the following attempts to serve the person(s) listed in Paragraph 2 of this Affidavit *(list the attempts to serve for each person, be specific with details, including dates and results, if you have documentation, include when you file the affidavit):*

