

ANSWERING A MOTION IN A GUARDIANSHIP CASE CHECKLIST

This is a basic checklist for answering a motion in a guardianship case in North Dakota State District Court. There may be additional documents and procedures for your type of motion. If you're unsure how to proceed, consult a lawyer licensed to practice in North Dakota. The ND Legal Self Help Center can provide basic process information. The Center can't give you legal advice or act as your lawyer under any circumstances.

THE "MOTIONS" SECTION OF THE [GUIDE TO A CIVIL ACTION](#) on the [ND Legal Self Help Center website](#) has additional information and resources.

A motion is a written request to the court for an order in an existing case. Motions may be made after the guardianship case is started. A motion doesn't start a guardianship case.

- Guardianship cases are started when a written petition to appoint a guardian for an adult is accepted for filing by the Clerk of District Court and a hearing date is scheduled.

An answer to motion is a written response to the motion.

The party making the motion is called the "Moving Party." The party answering the motion is called the "Opposing Party."

The moving party notifies the opposing party of the motion by serving copies of the motion documents on the opposing party.

If the moving party arranges to serve the motion documents on opposing party or the Ward by handing the documents to the opposing party or the Ward, or by leaving the documents at the opposing party's or Ward's office or residence, the opposing party or the Ward has fourteen (14) days after service of the motion documents to answer the motion in writing.

If the moving party arranges to serve an opposing party or the Ward by mail or third party commercial carrier, the opposing party or the Ward has seventeen (17) days after service of the motion documents to answer the motion in writing.

An answer to a motion in a guardianship case is made up of the following set of documents:

1. Answer Brief to Motion;
2. Declaration in Support of Answer Brief;
3. Other Supporting Documents; and
4. Notice of Hearing on Motion (*if the opposing party requests a hearing*).

Carefully Review the Motion Documents:

Carefully review the notice of motion, motion, brief in support of motion, declaration in support of motion and any other supporting documents you were served by the moving party.

The notice of motion will provide information about who to serve and the deadline to serve your written answer to the motion.

The other documents will list the legal authority that the moving party believes supports their motion request, and explain how and why the moving party believes the law, case law or court rules support their request.

Calculate the Deadline to Answer the Motion:

If you were served the motion documents by handing the documents to you, or by leaving the documents at your office or residence, you have fourteen (14) days after the date you were served to answer the motion in writing.

If you were served by mail or third party commercial carrier, you have seventeen (17) days after the date you were served to answer the motion in writing.

Review the laws and rules from the motion documents to determine if the timeframe to answer the motion is different than the deadlines in the two paragraphs above.

To calculate your deadline to serve and file your written answer to the motion:

- Don't include the day you were served.
- Starting the next calendar day after you were served, count the number of calendar days.
 - If you were served by handing the documents or leaving the documents, count 14 calendar days.
 - If you were served by mail or third party commercial, count 17 calendar days.
- If the last day falls on a Saturday, Sunday, or legal holiday, the deadline continues to run until the next calendar day that isn't a Saturday, Sunday, or legal holiday.

Date the motion documents were served on you, the opposing party: _____
(Review [Rule 5 of the North Dakota Rules of Civil Procedure](#) for service of motions.)

Using calendar days, calculate the date your written answer to motion must be served on the moving party and any other opposing parties: _____

Make a Copy of the Brief in Support of Motion to Mark Up:

Make at least one copy of the moving party’s brief in support of motion. Using the checklists on pages 3 and 4 go through your working copy of the brief in support of motion with a pencil and make notes.

Make note of any points you want to make in your answer to the motion. Use your marked-up copy of the brief in support of motion, and pages 3 and 4 to help you organize and prepare your written answer to the motion.

Research North Dakota Laws and Court Rules:

Information and resources for legal research are available through the North Dakota Legal Self Help Center. Go to ndcourts.gov/legal-self-help. Scroll to the “Legal Research” section.

Review the motion and brief in support of the motion carefully!

A motion must include the legal authority that supports the motion request. Any motions to the court must refer to the laws, North Dakota Supreme Court case law, and court rules, or a combination of all three, upon which the motion is filed. The Brief in support of the motion explains how and why the law, case law, or court rule supports the moving party’s request.

Research the laws, North Dakota Supreme Court case law, and court rules the moving party used to make their arguments. Try to determine if the laws and rules stand for what the moving party says they do.

Conduct your own research to determine if there are other laws, North Dakota Supreme Court case law, and court rules that support your argument.

The [North Dakota Century Code](#) contains laws enacted by the Legislature.

- Does the brief in support of motion include any laws enacted by the North Dakota State Legislature? List the specific laws from the brief in support of the motion:

- Do any laws enacted by the Legislature support your argument for your answer to the motion? List the specific laws that support your answer:

[North Dakota Supreme Court 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 case the way they did. The opinions are case law and are followed by North Dakota courts deciding later cases with similar facts and issues.

- Does the brief in support of motion include any North Dakota Supreme Court case law? List the specific case law from the brief in support of the motion:

- Does any case law support your argument for your answer to the motion? List any case law that supports your answer:

[North Dakota Court rules](#) govern how a dispute makes its way to court and how the dispute is conducted.

- Does the brief in support of motion include any court rules? List the specific court rules from the brief in support of the motion:

- Do any court rules support your argument for your answer to the motion? List the specific court rules that supports your answer:

(The North Dakota Century Code, and North Dakota Supreme Court case law, and North Dakota court rules are also found in print in many North Dakota public and academic libraries.)

Create the Documents to Answer a Motion in a Guardianship Case:

Answer Brief to Motion

(A General-Use Answer Brief to Motion form is available on the "[Guardianship of Adults](#)" webpage.)

Declaration in Support of Answer Brief

(A General-Use Declaration form is available on the "[Guardianship of Adults](#)" webpage.)

Notice of Hearing on Motion *(Required only if the opposing party requests an oral argument or an evidentiary hearing on the motion. A General-Use Notice of Hearing on Motion form is available on the "[Guardianship of Adults](#)" webpage.)*

Gather Other Supporting Documents:

An answer to a motion may include other supporting documents, such as declarations, affidavits or exhibits.

- Make a copy of each supporting document, if any, for every other party in the guardianship case, plus one copy to keep as a record.

Your answer to motion, or your situation, may not require additional supporting documents.

If you don't know if your answer to motion or situation requires additional supporting documents, consult a lawyer. The ND Legal Self Help Center can't advise you.

Service of Answer to Motion Documents:

The opposing party must serve copies of their answer to motion documents on every other party, including the Ward, in the guardianship case. A completed and signed affidavit of service, declaration of service, or certificate of service is proof that service occurred.

Review service requirements for motions in [Rule 5 of the North Dakota Rules of Civil Procedure](#). For more information about service requirements after a civil action has started, go to the [Service](#) link on the ND Legal Self Help Center website.

Obtain the address for service for every other party and the Ward. If a party or the Ward is represented by a lawyer, obtain the address for service for the lawyer.

- Arrange for service of copies of the following documents on every other party and the Ward. If any party or the Ward is represented by a lawyer, arrange for service on the lawyer.
 - Answer Brief to Motion;
 - Declaration in Support of Answer Brief;
 - Other supporting documents, if any; and
 - Notice of Hearing on Motion, if applicable.

- For each party and the Ward, get the completed and signed affidavit of service, declaration of service, or certificate of service from the person who served the answer to motion documents.

If you, the opposing party, fails to serve a written answer fourteen (14) days or seventeen (17) days after service of the motion documents, the court will decide the motion on the documents filed, unless a hearing was requested within the deadlines to request a hearing.

File the Original Answer to Motion Documents with the North Dakota District Court:

The original of each of the answer to motion documents and the document(s) showing proof of service must be filed with the Clerk of District Court.

*** Filing doesn't meet the requirements for service.***

- Contact the Clerk of District Court's office in the County where the moving party filed their motion documents for the following information:
 - Amount of the filing fee \$_____, if any, and how to pay.
 - Options for submitting answer to motion documents to the Clerk of District Court if you can't file the documents in person.

- Gather the originals of the following documents (make copies for your records):
 - Answer Brief to Motion;
 - Declaration in Support of Answer Brief;
 - Other supporting documents, if any;
 - Notice of Hearing on Motion, if applicable; and
 - Affidavit(s) of Service, Declaration(s) of Service, and/or Certificate(s) of Service showing service of copies of the motion documents on every other party and the Ward.

- File the original documents with the clerk of court and pay the filing fee, if any.

The Court Decides the Motion:

If either the moving party or an opposing party appropriately requested a hearing on the motion within the deadlines to request a hearing, the court decides the motion following the hearing.

If neither the moving party nor an opposing party appropriately requested a hearing on the motion within the deadlines to request a hearing, the court decides the motion based only on the documents filed with the court.

You'll be notified in writing of the court's decision on the motion.

****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 by the Center isn't intended for legal advice but only a general guide to the civil court process. The Center isn't responsible for any consequences that may result from the information provided. The information can't replace the advice of competent legal counsel licensed in the state.*

*Use at your own risk****