

MAKING A MOTION IN A GUARDIANSHIP CASE CHECKLIST

This is a basic checklist for making 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 act as your lawyer, or give you legal advice 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.

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

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

A written motion in a guardianship case is made up of the following set of documents:

1. Notice of Motion;
2. Motion;
3. Brief in Support of Motion;
4. Declaration in Support of Motion; and
5. Other Supporting Documents (*you may not have supporting documents*).

Other documents may be required, depending on the court rule and/or law that apply to the type of motion you make.

Has a Petition to appoint a guardian for an adult been accepted for filing by the Clerk of District Court AND a hearing date scheduled?

- Yes.** The guardianship case number is _____.
- No. DON'T CONTINUE.** Motions can't be made until AFTER a petition to appoint a guardian for an adult is accepted for filing by the Clerk of District Court and a hearing date is scheduled. See the resources for emergency guardianship and establishing guardianship on the "[Guardianship of Adults](#)" webpage to determine how to proceed.

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.

A motion to the court must include the legal authority that supports the motion request. The moving party must explain how and why the law, case law, and/or court rule supports the request.

- Do any laws enacted by the North Dakota State Legislature support the motion request?

The [North Dakota Century Code](#) contains laws enacted by the Legislature. List any specific laws that support the request: _____

_____.

- Does [North Dakota Supreme Court case law](#) support the motion request?

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. List the specific case law that supports the request:

_____.

- Do any court rules support the motion request?

[North Dakota Court rules](#) govern how a dispute makes its way to court and how the dispute is conducted. List the specific court rules that support the request:

_____.

(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 Make a Motion in a Guardianship Case:

Notice of Motion

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

Motion

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

Brief in Support of Motion

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

Declaration in Support of Motion

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

Gather Other Supporting Documents:

A motion may include other supporting documents, such as declarations, affidavits or exhibits.

- Make a copy of each supporting document, if any, for each opposing party, plus one copy to keep as a record.

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

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

Service of Motion Documents:

The moving party must serve copies of their motion documents on the other parties in the guardianship case, including the Ward. 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 each opposing party and the Ward. If an opposing 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 each opposing party and the Ward. If an opposing party or the Ward is represented by a lawyer, arrange for service on the lawyer.
 - Notice of Motion;
 - Motion;
 - Brief in Support of Motion;
 - Declaration in Support of Motion; and
 - Other supporting documents, if any.

- For each opposing 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 motion documents.

File the Original Motion Documents with the North Dakota State District Court:

The original of each of the 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 you will file the motion documents for the following information:
 - Amount of the filing fee \$_____, if any, and how to pay.
 - Options for submitting 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):
 - Notice of Motion;
 - Motion;
 - Brief in Support of Motion;
 - Declaration in Support of Motion;
 - Other supporting documents, if any; and
 - Affidavit(s) of Service, Declaration(s) of Service, and/or Certificate(s) of Service showing service of copies of the motion documents on each opposing party.

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

Opposing Party's Answer to Motion:

If you arranged to serve the motion documents an 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 you arranged 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.

To calculate the deadline for each opposing party or the Ward to serve and file their answer to the motion:

- Don't include the day the opposing party or the Ward was served.
- Starting the next calendar day after the opposing party or the Ward was served, count the number of calendar days.
 - If you arranged for service by handing the documents or leaving the documents, count 14 calendar days.
 - If you arranged for service 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.

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****