

# Instructions for Termination of Minor Guardianship and Discharge of Guardian/Co-Guardians Because Parents Withdraw Consent; OR the Basis for the Guardianship No Longer Exists

## IMPORTANT! READ BEFORE USING THESE FORMS AND INSTRUCTIONS

ND Legal Self Help Center staff and Court employees can't help you fill out the form(s).

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

Carefully read this information and any instructions to which you're referred.

**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 Juvenile Procedure;
  - 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 [www.ndcourts.gov](http://www.ndcourts.gov).

**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.** If you're unsure if these forms and instructions suit your circumstances, consult a lawyer.

- For more information about finding a lawyer, [www.ndcourts.gov/legal-self-help/finding-a-lawyer](http://www.ndcourts.gov/legal-self-help/finding-a-lawyer).

A glossary with definitions of legal terms is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help).

***These instructions and forms aren't a complete statement of the law. They cover the basic process for asking a North Dakota Juvenile Court to terminate (end) a guardianship because the parent(s) no longer consent, OR the reason(s) for the guardianship no longer exist. There is 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 at your own risk.***

**Don't include these instructions when you file or serve the completed forms.**

## Who May Use this Packet of Forms?

These forms may be used by:

- **The child's parent** (if their parental rights **haven't** been terminated by court order);
- **The guardian (or co-guardians);**
- **The child**, if the child is 14 years old or older; **OR**
- **An interested person**

to ask the North Dakota Juvenile Court to terminate (end) the guardianship of the minor child and discharge the guardian (or co-guardians) because:

- **The parents consented to the guardianship, but now withdraw their consent; OR**
- **The basis (reason) for the guardianship no longer exists.**

## What if I Don't Meet the Requirements to Use this Packet of Forms?

**If you want to terminate (end) the guardianship for any other reason, you CAN'T use this packet of forms.**

However, you may still ask the Juvenile Court to terminate (end) the guardianship if:

- The child turned 18 years old;
- The child was adopted;
- The child got married (and is under 18 years old); **OR**
- The child died.

Forms for this process are available at [www.ndcourts.gov/legal-self-help/minor-guardianship](http://www.ndcourts.gov/legal-self-help/minor-guardianship).

## Who Can Help Me Fill Out this Packet of Forms?

ND Legal Self Help Center staff and Court employees **can't** help you fill out any forms.

**As a self-represented individual, you must make all decisions related to the forms, including:**

- Whether you should use this packet of forms;
- What words to write; and
- Whether the words you've written are sufficient or correct.

**If you'd like assistance filling out your forms, or deciding if these forms suit your situation, consult a lawyer licensed to practice in North Dakota.**

Ask the lawyer about Limited Legal Representation. Lawyers licensed to practice in North Dakota may agree to help you with part of your Juvenile Court guardianship case, such as preparing legal documents, while you handle the rest. You and the lawyer must agree in writing to Limited Legal Representation.

## What Are the Steps to Ask to Terminate (End) the Guardianship?

- |                    |   |
|--------------------|---|
| <b>Step One:</b>   | <b>The Petitioner/Co-Petitioners Complete the Petition and Affidavit Forms</b>  |
| <b>Step Two:</b>   | <b>The Petitioner/Co-Petitioners Files the Completed Forms with the Court</b>   |
| <b>Step Three:</b> | <b>The Juvenile Court Reviews the Petition and Affidavit to Decide if the Petition for Termination can Move Forward</b>   |
| <b>Step Four:</b>  | <b>If the Juvenile Court Approves the Petition, a Hearing Date is Scheduled</b><br>If the Juvenile Court <u>doesn't</u> approve the petition to move forward, the petition is dismissed.  |
| <b>Step Five:</b>  | <b>If the Juvenile Court Requires, the Petitioner/Co-Petitioners Serve the Notice of Hearing and Copies of the Petition and Affidavit</b>   |
| <b>Step Six:</b>   | <b>Prepare Your Case</b>  |
| <b>Step Seven:</b> | <b>A Hearing is Held Before the Juvenile Court Makes a Decision</b>   |
| <b>Step Eight:</b> | <b>Findings of Fact and Order is Issued by the Juvenile Court</b> <ul style="list-style-type: none"><li>• If the guardianship ends, the Guardian(s) is/are released</li><li>• If the guardianship is kept in place, the Guardian(s) continue their duties</li></ul> |

## What Laws and Rules Do I Need to Know to Use this Packet?

[Section 27-20.1-16](#) and [Section 27-20.1-17](#) of the North Dakota Century Code govern terminating a guardianship of a minor.

[Rule 7 of the North Dakota Rules of Juvenile Procedure](#) governs service of documents filed in a Juvenile Court guardianship case AFTER the summons has been served.

**Laws constantly change through legislation, administrative rulings and court decisions.** To determine how a law applies to your situation, review the applicable law or laws, administrative rulings and court decisions. Notes of court decisions related to North Dakota law can be found in the print editions of the North Dakota Century Code. Print editions of the North Dakota Century Code are found in many North Dakota public and academic libraries.

Only a lawyer licensed to practice in North Dakota who has agreed to represent you can give you legal advice. Legal advice includes interpreting how the laws and rules apply to your situation.

## **What Definitions Do I Need to Know to Use this Packet of Forms?**

**\*\*\*The following definitions are intended to be helpful, BUT they're NOT intended to constitute legal advice OR address every possible meaning of the terms in this section.\*\*\***

**Child (See Also: Minor)** – In North Dakota Juvenile Court proceedings, an individual who is under age eighteen and is not married.

**Guardian (or Co-Guardians)** – 1) An individual (or individuals) appointed by the North Dakota Juvenile Court to act in place of the child's parent(s); or 2) An individual (or individuals) originally appointed by the North Dakota District Court to act in place of the child's parent(s), and the case was transferred to North Dakota Juvenile Court.

**Judicial Referee** – A judicial officer, appointed by the presiding District Court judge, who has the authority to preside in Juvenile Court proceedings. The findings and order of the judicial referee have the effect of the findings and order of a District Court judge until superseded by a written order of a District Court judge.

**Minor (See Also: Child)** – An individual who is under age eighteen.

**Original Petitioner & Original Respondent** – The names of the person(s) listed as Petitioner and Respondent in the Caption (top of document) of the original petition for guardianship.

**Petitioner (or Co-Petitioners)** – The person(s) filing this petition to ask the Juvenile Court to terminate (end) the child's guardianship. The person filing this petition is either:

- The child's parent (if their parental rights haven't been terminated by court order);
- The guardian (or co-guardians);
- The child, if the child is 14 years old or older; OR
- An interested person.

## A Judicial Referee May Hear and Decide Your Petition for Termination

[Rule 13 of the North Dakota Supreme Court Administrative Rules](#) allows guardianship cases in Juvenile Court to be heard and decided by a Judicial Referee, rather than a District Court Judge.

If a Judicial Referee is assigned to the guardianship case, any party to the case may request that a District Court Judge hear and decide the case instead. **The party must file a written request with the Clerk of Court within seven days after service of the notice of hearing.**

If the guardianship case is heard and decided by a Judicial Referee, the Judicial Referee will issue findings of fact and an order. The Judicial Referee's findings of fact and order have the same effect as the findings of fact and order of a District Court Judge until superseded (replaced) by a written order of a District Court Judge.

If any party to the guardianship case wants a review of the Judicial Referee's findings of fact and order, **the party must file a written request for a review, stating the specific reasons for the review, with the Clerk of Court within seven days after service of notice of the right to review.**

The party requesting the review must give notice of their request to all other parties. Any party who wishes to respond to the request for review must file their written response within fourteen days after service of the notice of the request for review.

## Forms in the Packet

### Forms you will need for your petition

Form Title	Purpose
Petition for Termination of Guardianship and Discharge of Guardian/Co-Guardians (Form 1)	This is the request to the Juvenile Court to terminate the guardianship.  Completed by the petitioner (or co-petitioners) to terminate the guardianship.  (If co-petitioners are filing this petition, <b>both</b> co-petitioners <b>must</b> sign the petition.)
Affidavit for Termination of Guardianship and Discharge of Guardian/Co-Guardians (Form 2)	This affidavit supports the statements in the Petition.  Completed by the petitioner (or co-petitioners) to terminate the guardianship.  (If co-petitioners are filing this petition, each petitioner <b>must</b> complete their own, separate affidavit.)

**Forms you may need:**

Form Title	Purpose
Notice of Hearing on Petition for Termination of Guardianship and Discharge of Guardian/Co-Guardians (Form 3)	Gives notice of the date and time of the hearing to decide whether to terminate (end) the guardianship. Gives important information, including the right to counsel for parents.
Affidavit of Service by Mail (Form 5)	Proves copies of the Petition, Affidavit, and Notice of Hearing forms listed above were served by mail.

**Proposed Findings and Order form you may need:**

Form Title	Purpose
Findings and Order Terminating Guardianship and Discharging Guardian/Co-Guardians (Proposed) (Form 4)	Proposed order of the court terminating the guardianship and discharging the guardian or co-guardians. The proposed order <u>isn't</u> effective until it is signed by the court.

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## STEPS IN THE PROCESS

**You MUST complete ALL steps. Don't skip steps!**

### **STEP ONE: Complete the Petition (Form 1) and Affidavit (Form 2)**

#### **TIPS FOR COMPLETING FORMS**

- Complete every paragraph that requires you to type or write in a space, unless the instructions specifically tell you to leave a space blank.
  - If a space doesn't apply to you or your circumstances, type or write "Not Applicable," or "N/A."
- Write in your own words why you're asking the Juvenile Court to terminate the guardianship and discharge the guardian(s).
- Stick with the facts: who, what, when, where and how.
  - Avoid opinions.
- Remember, you must prove what you type or write in your petition.
- If you're unable to complete the fillable forms online, you may print and handwrite.
  - You must use blue or black ink. Don't use pencil.
  - Your handwriting MUST be readable.

#### **Form 1: Petition for Termination of Guardianship and Discharge of Guardian/Co-Guardian**

The petitioner or co-petitioner complete this form. If there are co-petitioners, **both** MUST sign the form.

- **Top of Form (Caption)**

Refer to the Juvenile Court order appointing the guardian or co-guardians.

- County – the North Dakota county where the case is filed.
- Judicial District – the name of the Judicial District where the case is filed. (The county is within the Judicial District.) County and Judicial District information and maps are available at [www.ndcourts.gov/court-locations](http://www.ndcourts.gov/court-locations).
- In the Interest of – the child's full name.
- DOB – the child's full birthdate.
- Case Number – the case number of the Juvenile Court guardianship.

- Petitioner(s) – the names of the Petitioners on the **original** Petition for Guardianship that started the case.
  - Respondent(s) – the full names of the child and each living parent on the **original** Petition for Guardianship that started the case. (If a living parent’s parental rights are terminated by court order, DON’T list that parent.)
- **To complete Form 1: Petition for Termination**
    - Read each paragraph completely.
    - Complete all paragraphs that require you to type or write information.
  - **Date and Signature**
    - The petitioner signs and dates this form. If there are co-petitioners, **both** co-petitioners **must** sign the petition.
      - When you date and sign this form, you’re declaring, under penalty of perjury, that all the information on the form is accurate and true.

## **Form 2: Affidavit for Termination of Guardianship and Discharge of Guardian/Co-Guardian**

Completed by the petitioner. If there are co-petitioners, each co-petitioner **must** complete their own, separate affidavit.

- **Top of Form (Caption)**
  - Fill out exactly as you filled out the Caption of Form 1: Petition for Termination.
- **To complete Form 2: Affidavit for Termination**
  - Read the paragraphs carefully.
  - Complete all paragraphs that require you to type or write information.
- **Date and Signature**
  - The guardian signs and dates this form. If there are co-petitioners, each co-petitioner **must** date and sign their own, separate affidavit.
    - When you date and sign this form, you’re declaring, under penalty of perjury, that all the information on the form is accurate and true.

**IMPORTANT!** Make at least 1 copy of each of the completed forms for your records.



## **STEP TWO: File Completed Petition and Affidavit with the Clerk of Court**

**SOME JUVENILE COURTS MAY REQUIRE YOU TO SERVE COPIES OF THE PETITION, AFFIDAVIT AND OTHER COMPLETED FORMS ON ALL PARTIES AND INTERESTED PERSONS **BEFORE** ALLOWING YOU TO COMPLETE STEP 2.**

If Clerk of Court or Juvenile Court staff require you to serve copies before allowing you to file, **go directly to Step 5 to arrange to have the copies served.**

Once you've completed Step 5, come back to Step 2 to file the forms.

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

- Form 1: Petition for Termination of Guardianship and Discharge of Guardian/Co-Guardian; and
- Form 2: Affidavit for Termination of Guardianship and Discharge of Guardian/Co-Guardian.

**File the supporting documentation with the Clerk of Court, if applicable:**

If you have supporting documentation for your Petition and Affidavit, file copies with the Clerk of Court. You may not have any supporting documentation.

**You won't be charged a filing fee.** Contact information for Clerks of Court by North Dakota county is available at [www.ndcourts.gov/court-locations](http://www.ndcourts.gov/court-locations).

## **STEP THREE: The Juvenile Court Decides if the Petition Can Move Forward**

Petitions for termination must be reviewed by the Juvenile Court before the case can move forward to Step Four.

The petition for termination and the affidavit for termination are reviewed to make sure you've included enough information to meet the requirements for the petition to move forward.

## **STEP FOUR: If the Juvenile Court Approves the Petition, a Hearing is Scheduled**

**If your petition is approved to move forward, a hearing date is scheduled.** You'll be provided a signed Notice of Hearing and can move to Step Five.

**If your petition isn't approved to move forward,** your petition will be dismissed. You can't move to Step Five.

## **STEP FIVE: Serve the Notice of Petition and Copies of ALL Forms**

**GENERALLY, THE JUVENILE COURT WILL REQUIRE YOU, THE PETITIONER, TO ARRANGE TO HAVE COPIES OF THE NOTICE OF HEARING, PETITION, AND AFFIDAVIT SERVED ON ALL PARTIES.**

**If the Juvenile Court requires you, the Petitioner, to arrange to serve the copies of forms, complete Step 5.**

**HOWEVER, SOME JUVENILE COURTS MAY SERVE THE COPIES OF THE NOTICE OF HEARING, PETITION, AND AFFIDAVIT FOR YOU.**

**If the Juvenile Court serves the forms, skip Step 5 and go to Step 6.**

If your petition is approved to move forward, you must arrange to serve copies of the notice of hearing, petition, and affidavit on all parties listed below.

**Gather the names and current addresses of the following:**

- The child's parents;
  - If a parent is deceased, you don't serve that parent.
  - If a parent is living, but their parental rights are terminated by court order, you don't serve that parent.
- The guardian or co-guardians;
- The child (if fourteen years or older); and
- Any interested persons designated by the Court in its guardianship order.

### **Form 3: Notice of Hearing on Petition for Termination of Guardianship and Discharge of Guardian/Co-Guardian**

The petitioner or co-petitioners complete this form.

- **Top of Form (Caption)**
  - Fill out exactly as you filled out the Caption of Form 1: Petition for Termination.

- **To complete Form 3: Notice of Petition**

- Read the paragraphs carefully.
- Complete all paragraphs that require you to type or write information.
  - **TO** – List the names of:
    - The child's parents, if living and their parental rights haven't been terminated;
    - The guardian or co-guardian;
    - The child, if 14 years old or older; and
    - All interested persons listed in the Juvenile Court's order appointing the guardian(s).

- **Date and Signature**

- **DON'T sign or date this form!**
  - If the Juvenile Court allows your petition to move forward in Step Four, the Judge or Judicial Referee will sign this form.

**Make copies of the following completed forms.**

Make one copy for each of the people you will serve.

Make sure you have one copy of each for your records.

- Form 1: Petition for Termination of Guardianship and Discharge of Guardian/Co-Guardian;
- Form 2: Affidavit for Termination of Guardianship and Discharge of Guardian/Co-Guardian;
- Form 3: Notice of Hearing on Petition for Termination of Guardianship and Discharge of Guardian/Co-Guardian; and
- Any additional documents you filed with the court along with your petition documents. *(You may not have any additional documents.)*

**Arrange to serve copies of the completed forms**

You must serve a copy of the completed forms on:

- The child's parents;
  - If a parent is deceased, you don't serve that parent.
  - If a parent is living, but their parental rights are terminated by court order, you don't serve that parent.
- The guardian or co-guardians;

- The child (if fourteen years or older); and
- Any interested persons designated by the Court in its guardianship order.

The Juvenile Court will require proof that the person listed above received a copy of the completed forms. An Affidavit of Service is your proof.

#### **Form 5: Affidavit of Service by Mail**

The person serving copies of all of the documents must be at least 18 years of age.

Postage must be first class and pre-paid. The person mailing the documents must complete the Affidavit of Service by Mail. Service is complete upon mailing.

- **Top of Form (Caption)**
  - The person who mailed the documents fills in the Caption exactly as the Caption of Form 1: Petition for Termination is filled in.
- **Complete Paragraphs 1 through 6 of the Form**
  - The person who mailed the documents completes paragraphs 1 through 6.
- **Date and Signature**
  - The person who mailed the documents dates and signs the form and completes the lines following their signature.

If more than one party was served, you will need a Form 5: Affidavit of Service completed and signed for each party.

**File each completed, signed Form 5 with the Clerk of Court.**

**IF YOU WERE REQUIRED TO COMPLETE STEP 5 BEFORE YOU CAN FILE YOUR PETITION, AFFIDAVIT AND OTHER COMPLETED FORMS, go back to Step 2 to file your documents and proof of service with the Court.**

## STEP SIX: Prepare Your Case

### Prepare your case for the evidentiary hearing.

You, the petitioner (or co-petitioners), must prove what you typed or wrote in your petition for termination.

**Caution!** Preparing for a hearing is often a complex and confusing process. You're held to the same requirements and responsibilities as a lawyer, even if don't understand the rules or procedures.

You'll need to conduct additional research to prepare for the hearing.

**Subpoenas:** Review Rule 13 of the North Dakota Rules of Juvenile Procedure carefully! If you require a witness to appear at a hearing or require production of documents, electronically stored information or other tangible things, you may need the Clerk of Court to issue a subpoena. Only a Clerk of Court or a lawyer for a party may issue a subpoena.

**Evidence:** You're required to follow the North Dakota Rules of Evidence when presenting your own evidence and when objecting to the evidence presented by other parties.

An [Evidence Research Guide](http://www.ndcourts.gov/legal-self-help) is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help).

You may also wish to review the guides for self-represented individuals for gathering and presenting evidence at [rcdvcpc.org/resources/self-represented-litigants-series.html](http://rcdvcpc.org/resources/self-represented-litigants-series.html).

**Review pre-trial and trial guidebooks for self-represented litigants and lawyers.** Your local public or academic library may have resources available.

ODIN is a shared library database of many North Dakota academic, public, state agency, and special libraries. Search ODIN for resources that may be available in a North Dakota library near you. ([www.odin.nodak.edu/](http://www.odin.nodak.edu/))

If the book is available for interlibrary loan through ODIN, ask the librarian or library staff of your local North Dakota library how to request the book.

Following are a selection of library resources on ODIN that may be of interest to you:

- [A Short & Happy Guide to Evidence](#), Sydney Beckman, West Academic Publishing, 2018.
- [Courtroom Evidence Handbook: 2018-2019 Student Edition](#), Steven Goode, Olin Wellborn III, West Academic Publishing, 2018.
- [Essential Evidence Outlines](#), Daniel Ryan, iUniverse, 2011.
- [North Dakota Century Code Annotated](#), Lexis Nexis, Creation Date c1959-present.

- North Dakota Rules Annotated, Lexis Nexis, Creation Date c1990-present.
- Objections at Trial, Ronald Carlson, Edward Imwinkelried, Myron Bright, National Institute for Trial Advocacy, c2015.
- Represent Yourself in Court: How to Prepare & Try a Winning Case, Paul Bergman, Sara Berman, NOLO, 2016.

## **STEP SEVEN: A Hearing is Held Before the Juvenile Court Makes a Decision**

### **Attend the Hearing in Person:**

If you need to request to appear at the hearing some other way, a request form is available at [www.ndcourts.gov/other-courts/juvenile-court](http://www.ndcourts.gov/other-courts/juvenile-court).

There may be more than one hearing, depending on the specific circumstances of the case.

Be prepared to prove your case at every hearing.

Organize the information, documents, etc. that you think you'll need for the hearing. At minimum, prepare an outline of your remarks and arguments.

Review pre-trial and trial guidebooks for self-represented litigants and lawyers. See Step 6 for more information.

### **Arrive Early to the Courthouse on the Date of the Hearing:**

Don't miss your hearing date and time. If you have a serious, unavoidable reason you can't get to court on the date and time scheduled for trial, call the Juvenile Court as soon as you can.

### **Conduct of the Hearing:**

The Judge, or Judicial Referee, hears both sides and then issues a final order. Sometimes, the final order is issued at the end of the hearing. Often, the final order is issued at a later date.

In general, a hearing proceeds in the following order:

- Opening Statements
  - Each party gives an opening statement. Usually, the petitioner goes first.
- Petitioner Presents Witnesses and Evidence
  - The petitioner presents their case first. The respondent may cross-examine witnesses and object to the petitioner's evidence.

- Respondent Presents Witnesses and Evidence
  - The respondent presents their case after the petitioner. The petitioner may cross-examine witnesses and object to the respondent's evidence.
- Closing Arguments
  - Each party gives a closing statement. Usually the Respondent goes first.

### **Before You Leave the Courthouse:**

Make sure you understand what happens next. Ask if you aren't sure what, if anything, you need to do next.

## **STEP EIGHT: Findings of Fact and Order**

Until the judge or judicial referee signs an order stating that the guardianship is terminated and the guardian(s) is/are discharged, the guardianship and guardian(s) remain in place.

After the judge or judicial referee reviews all documents filed and following the hearing, the judge or judicial referee will issue findings of fact and an order.

If the order terminates the guardianship and discharges the guardian(s), the guardianship ends.

If the order doesn't terminate the guardianship, the guardianship remains in place.

### **THE JUDGE OR JUDICIAL REFEREE MAY PREPARE THEIR OWN FINDINGS OF FACT AND ORDER.**

If the Judge or Judicial Referee prepares their own Findings of Fact and Order, you'll be mailed a signed copy. **Skip Step 8.**

### **HOWEVER, YOU, THE PETITIONER, MAY BE REQUIRED TO PREPARE PROPOSED FINDINGS OF FACT AND ORDER FOR THE JUDGE OR JUDICIAL REFEREE TO SIGN.**

**If the Judge or Judicial Referee requires you, the Petitioner, to prepare proposed Findings of Fact and Order, **complete Step 8.****

#### **Form 4: Findings and Order Terminating Guardianship and Discharging Guardian/Co-Guardians (Proposed)**

The petitioner or co-petitioners complete this form.

- **Top of Form (Caption)**
  - Fill out exactly as you filled out the Caption of Form 1: Petition for Termination.
- **To complete Form 4: Findings and Order Confirming Termination**
  - Read the paragraphs carefully.
  - Complete all paragraphs that require you to type or write information.
- **DON'T SIGN OR DATE THIS FORM!**
  - If, after the hearing, the Judge or Judicial Referee decides you meet the legal requirements to terminate the guardianship, the Judge or Judicial Referee will issue an order.
  - This is your proposed order for the court to sign to terminate the guardianship and discharge the guardian or co-guardians. If the Judge or Judicial Referee decides to use your proposed order, they will sign it.
  - The proposed order isn't effective until it's signed by the court.

**Don't include these instructions when you mail or file the completed forms.**