

INSTRUCTIONS FOR EMERGENCY GUARDIANSHIP OF A CHILD IN JUVENILE COURT

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.

To protect your rights, carefully read this information and any instructions to which you are 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 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, go to ndcourts.gov/legal-self-help/finding-a-lawyer.

*These instructions and forms aren't a complete statement of the law. They cover basic procedure for asking a North Dakota Juvenile Court to appointment an emergency guardian of a child. There's 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.***

WARNING – Asking a North Dakota Juvenile Court to appoint an emergency guardian for a child can be a confusing and complicated process. It's strongly recommended that you consult a lawyer and carefully consider all of your options before you represent yourself in a Juvenile Court emergency guardianship action.

WHAT IS AN EMERGENCY GUARDIANSHIP?

A Juvenile Court Judge or Judicial Referee may appoint an emergency guardian for a child if the Judge or Judicial Referee determines there is probable cause to believe:

- Using the non-emergency guardianship appointment process is likely to result in substantial harm to the child’s health, safety, or welfare; **AND**
- An emergency appointment is in the best interest of the child; **AND**
- **At least one of the following is true:**
 - Both parents are deceased or the surviving parent's rights have been terminated by a previous court order, but there’s been no appointment of a guardian for the child by will; or
 - Both parents are deceased or the surviving parent's rights have been terminated by a previous court order and, under [N.D.C.C. Chapter 30.1-27](#), a North Dakota state district court transferred the case to juvenile court without appointing a guardian for the child; or
 - Both parents are deceased or the surviving parent's rights have been terminated by a previous court order and, under [N.D.C.C. Chapter 30.1-27](#), the guardian nominated for the child in the deceased parent’s will failed to accept the appointment; or
 - The parents have consented to the appointment of the emergency guardian for the child in writing by affidavit; or
 - All parental rights have been previously terminated by court order; or
 - The child is a child in need of protection as defined under [N.D.C.C. Section 27-20.1-01](#).

A Juvenile Court hearing is required for ALL emergency guardianships. The hearing on the appropriateness of the emergency guardianship must be held within 96 hours after the petition for emergency guardianship is filed.

After the hearing, if the Juvenile Court Judge or Judicial Referee decides that appointment of an emergency guardian is appropriate, the emergency guardianship LASTS NO MORE THAN 60 DAYS from the date of the hearing. However, the Judge or Judicial Referee may extend the emergency guardianship for up to 6 months.

YOU MAY USE THIS PACKET OF FORMS IF:

1. You are a person interested in the child’s welfare and want to be appointed the emergency guardian for the child; **AND**
2. The child’s circumstances make using the non-emergency guardianship appointment process likely to result in substantial harm to the child’s health, safety, or welfare; **AND**
3. At least one of the statements listed under “At least one of the following is true” on Page 2 is true.

EX PARTE EMERGENCY GUARDIANSHIP FORMS PACKET:

A court hearing is required for all emergency guardianships. However, in rare circumstances an emergency guardian may be appointed before holding the required hearing. This is called an ex-parte appointment of an emergency guardian.

In addition to the requirements for appointing an emergency guardian, **you must also show, in writing, that the child will be substantially harmed before a hearing can be held.**

An Ex Parte Emergency Guardianship Forms Packet is available at ndcourts.gov/legal-self-help/minor-guardianship/juvenile-court for petitioning a North Dakota Juvenile Court to appoint you the emergency guardian of a child **without holding a hearing first.**

SOCIAL SERVICES IS NOTIFIED OF POTENTIAL ABUSE & NEGLECT

When a petition for emergency guardianship is filed in Juvenile Court that alleges potential abuse or neglect of a child, a Juvenile Court officer files a report of suspected abuse and neglect with county social services. North Dakota Juvenile Court staff are mandated reporters of potential abuse and neglect of a child.

County social services reviews the report and decides whether to intervene. Generally, if the child is in a safe environment, county social services won’t intervene in the case or take any action other than an administrative review.

LAWS & RULES

(This is not a complete statement of laws and rules)

Chapter 27-20.1 of the North Dakota Century Code legis.nd.gov/cencode/t27c20-1.pdf gives the requirements for a Juvenile Court to appoint an emergency guardian of a child.

Indian Child Welfare Act (ICWA): 25 U.S.C. §§ 1901-1963

(uscode.house.gov/browse/prelim@title25/chapter21&edition=prelim) is a federal law that applies to children who are members or citizens of a Native American tribe or eligible for membership or citizenship in a Native American tribe and the biological child of a member or citizen of the tribe.

Rule 13 of the North Dakota Administrative Rules ndcourts.gov/legal-resources/rules/ndsupctadminr/13 allows a Judicial Referee to hear and decide the petition for emergency guardianship, rather than a District Court Judge.

The North Dakota Rules of Juvenile Procedure apply to emergency guardianships in North Dakota Juvenile Courts. The rules are available at ndcourts.gov/legal-resources/rules/ndrjuvp.

The North Dakota Rules of Evidence apply to matters in North Dakota Juvenile Courts. The rules are available at ndcourts.gov/legal-resources/rules/ndrev.

DEFINITIONS

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

Allegation – A factual statement or claim that hasn't been proven true.

Allege – To assert or claim a fact is true, although final proof hasn't yet been provided.

Alleged Father – A man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity hasn't been determined. An alleged father isn't a man whose parental rights have been terminated or declared not to exist, or a male donor.

Child – An individual who is under age eighteen and isn't married.

Child in Need of Protection (CHIPS) – The definition is found in [N.D.C.C. Section 27-20.1-01\(3\)](#).

Custodian – The definition is found in [N.D.C.C. Section 27-20.1-01\(5\)](#).

Fit and willing relative or other appropriate individual – The definition is found in [N.D.C.C. Section 27-20.1-01\(6\)](#).

Emergency Guardian/Co-Emergency Guardians – An individual, or individuals, appointed by the Juvenile Court on an emergency basis to act as the child’s parent.

Guardian ad Litem (GAL) – An individual appointed by the Juvenile Court to advocate for the best interests of the child.

Indian Child (See Indian Child Welfare Act (ICWA) in Laws and Rules) – An unmarried person under age eighteen who is either:

1. A member or citizen of a federally recognized Indian tribe; or
2. Eligible for membership or citizenship in a federally recognized Indian tribe and is the biological child of a member or citizen of the federally recognized Indian tribe.

Juvenile Court – North Dakota juvenile courts are a division of North Dakota state district courts. Juvenile courts have jurisdiction over emergency guardianships of children who are under the age of 18. Juvenile courts protect the best interests of children and address the unique characteristics and needs of children in guardianship matters.

Known Father – A man who is listed on the child’s birth certificate as the father.

Presumed Father – A man recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding. A man is presumed to be the father of a child if:

1. He and the mother of the child were married to each other and the child was born during the marriage;
2. He and the mother of the child were married to each other and the child was born within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or decree of separation;
3. Before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days after its termination by death, annulment, declaration of invalidity, divorce, or decree of separation;
4. After the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child, and:
 - a. The assertion is in a record filed with the state department of health;
 - b. He agreed to be and is named as the child's father on the child's birth certificate;
OR
 - c. He promised in a record to support the child as his own; OR

5. For the first two years of the child's life, he resided in the same household with the child and openly held out the child as his own.

Probable Cause – The burden of proof by which the Petitioner must convince the Judge or Judicial Referee that an emergency guardian should be appointed for the child.

Black’s Law Dictionary (11th Edition, 2019) partially defines probable cause as “. . . more than a bare suspicion.” “A reasonable belief in the existence of facts of which a claim is based . . .”

Relative – The definition is found in [N.D.C.C. Section 27-20.1-01\(7\)](#).

Venue – The location (North Dakota county) where the Juvenile Court will hear and decide the emergency guardianship case. The case may be filed in one of the following:

1. The North Dakota county where the child lives;
2. If the Petitioner alleges the child is in need of protection, the North Dakota county where the child is present when the guardianship case starts;
3. If the Petitioner alleges the child is in need of protection, the North Dakota county where the child has lived for the majority of the thirty days before the date of the alleged need of protection happened; OR
4. If the Petitioner alleges the child is in need of protection, the North Dakota county where the alleged need of protection happened.

A JUDICIAL REFEREE MAY HEAR AND DECIDE THE EMERGENCY GUARDIANSHIP

A Judicial Referee is a judicial officer appointed by the presiding District Court Judge. A Judicial Referee has the authority to preside in Juvenile Court cases. 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.

Rule 13 of the North Dakota Supreme Court Administrative Rules allows emergency guardianship petitions in Juvenile Court to be heard and decided by a Judicial Referee, rather than a District Court Judge. (A Judge is an elected judicial officer who has the authority to hear and decide North Dakota State District Court cases, including Juvenile Court cases.)

If a Judicial Referee is assigned to the emergency guardianship petition, 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 (7) days after service of the notice of hearing.

If the emergency guardianship petition 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 by a written order of a District Court Judge.

If any party to the emergency guardianship petition 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 (7) days after service of notice of the right to review.**

The party requesting 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 (14) days after service of the notice of the request for review.

FORMS FOR APPOINTING A GUARDIAN FOR A CHILD IN NEED OF PROTECTION

Forms **you must** file when asking a Juvenile Court to appoint an emergency guardian for a child:

Form Title
Petition for Appointment of Emergency Guardian
Affidavit in Support of Petition for Appointment of Emergency Guardian

Forms you **may** need to complete and file with your Petition and Affidavit in Support of Petition:

Form Title
Exhibit A to Petition for Emergency Guardianship Additional Unknown, Presumed, or Alleged Fathers
Affidavit of Parent Consenting to Emergency Guardian(s)

Oral Notice of Hearing form you **may** need if you’re unable to give written notice of the hearing:

Form Title
Affidavit of Petitioner – Oral Notice of Hearing on Appointment of Emergency Guardian

Proposed Notice of Hearing and Orders you may need:

The Court where you plan to file your petition may require you to file one or more of the following forms. Check with the Court for special requirements.

Form Title
Notice of Hearing for Appointment of an Emergency Guardian
Order Appointing GAL (Emergency Guardian)
Findings of Fact and Order Appointing Emergency Guardian(s)
Letters of Emergency Guardianship

STEPS FOR JUVENILE COURT APPOINTMENT OF AN EMERGENCY GUARDIAN FOR A CHILD

- Step One. Gather the Information Needed to Complete the Forms**
- Step Two. Prepare the Petition for Appointment of Emergency Guardian(s) and the Affidavit in Support of Petition**
- Step Three. File the Petition for Appointment of Emergency Guardian(s) and the Affidavit in Support of Petition with the Court**
- Step Four. If the Juvenile Court Approves the Petition for Filing, a Notice of Hearing is Issued and a Guardian ad Litem Appointed to Advocate for the Best Interests of the Child**
- Step Five. If the Juvenile Court Requires, Serve the Notice of Hearing and Copies of the Petition for Appointment of Emergency Guardian(s)**
- Step Six. Prepare Your Case**
- Step Seven. A Hearing is Held Before the Juvenile Court Makes a Decision**
- Step Eight. Findings of Fact and Order; Letters of Emergency Guardianship**
- Step Nine. After the Juvenile Court Appoints an Emergency Guardian**

STEP ONE: Gather the Information Needed to Complete the Forms

First, review the powers and duties of a guardian appointed by a North Dakota Juvenile Court. The powers and duties of a guardian of a child appointed by a North Dakota Juvenile Court are listed in Section 27-20.1-15 of the North Dakota Century Code and [here](#).

Second, decide where to file the Petition. See “Venue” in the Definitions section above.

Third, identify all of the parties and interested persons in the emergency guardianship case. You, the Petitioner, will list their names in the Caption (Top) of each form.

- **Petitioner** – The person, or persons, starting the Juvenile Court emergency guardianship case by filing a petition for emergency guardianship with a North Dakota Juvenile Court.
 - There may be more than one Petitioner on the same petition for guardianship.
- **Respondent** – The person or persons who are required to be part of the emergency guardianship case.
 - The child;
 - The child’s parents, guardians or legal custodians.
- **Interested Persons** – Persons who may participate in Juvenile Court emergency guardianship case.
 - Guardian ad litem (GAL);
 - The child’s Indian custodian, if the child is an Indian Child;
 - The child’s Indian tribe through the tribal representative, if the child is an Indian Child;
 - Foster parents;
 - Pre-adoptive parents;
 - Relatives providing care for the child;
 - Other persons named by the court.

Fourth, review the Petition for Appointment of Emergency Guardian(s) form for information that must be included in the Petition. At minimum, gather the following:

- Information about you, the Petitioner.
 - Including your occupation and qualifications to be the emergency guardian.
- Information about you, the Co-Petitioner, if any.
 - Including your occupation and qualifications to be the guardian.
- Information about the child.

- Information about the persons with whom the child currently lives.
- Information about the mother(s), and all known, presumed, and alleged fathers.
- If all of the child’s parents agree in writing to appointment of an emergency guardian, get a completed and signed **Affidavit of Parent Consenting to Emergency Guardian(s) form** from each of the child’s parents.
- Information about the reasons you’re requesting appointment of an emergency guardian.

Fifth: If you plan to refer to documents in your petition that support why you believe an emergency guardian should be appointed for the child, gather the supporting documentation for your petition.

STEP TWO: Prepare the Petition for Appointment of Emergency Guardian(s) and the Affidavit in Support of Petition for Appointment of Emergency Guardian(s).

TIPS FOR COMPLETING FORMS

- Complete every paragraph that requires you to type or write in a space.
 - If a space doesn’t apply to you, type or write “not applicable” or “N/A”
- Write in your own words why you’re asking the Juvenile Court to appoint you the emergency guardian.
- Stick with the facts: who, what, when, where and how.
 - Avoid opinions.
- Remember, you’ll need to prove what you type or write in your petition.

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

You must make all decisions related to the forms, including:

- What words to write; and
- Whether the words you’ve written are sufficient or correct.

If you’d like assistance filling out your forms, consult a lawyer licensed to practice in North Dakota. Ask the lawyer about Limited Legal Representation. The lawyer may agree to help you with part of your Juvenile Court emergency guardianship, while you handle the rest of the case. You and the lawyer must agree in writing to limited legal representation.

Petition for Appointment of Emergency Guardian(s) form:

The Petitioner or Petitioners complete this form. If there are two Petitioners, both **MUST** sign the form.

Caption (top of form):

- County – the North Dakota county where you’ll file the petition.
- Judicial District – the name of the Judicial District where you’ll file the petition. (The county is within the Judicial District.) County and Judicial District information and maps are available at ndcourts.gov/court-locations.
- “In the Interest of” – the child’s full name.
- “DOB” – the child’s full birthdate.
- Case Number – leave blank. The case number will be assigned by the clerk of court when you file the petition in Step Three.
- Lines below “In the Interest of” – Your full name on the first line. If there are two Petitioners, the full name of the second Petitioner on the second line.
 - The child’s full name on the third line.
 - Each parent’s full name on the next lines.
 - If the child has a guardian or custodian, write in their full name below the fifth line.

To complete the Petition for Appointment of Emergency Guardian(s) form:

- Read each paragraph completely.
 - When you date and sign this form, you’re swearing that all of the information on the form is accurate and true.
- Complete all paragraphs that require you to type or write information.

Date and Verified Signature:

- The Petitioner signs and dates this form.
- If there is a Co-Petitioner, the Co-Petitioner **MUST** sign and date this form.

***OPTIONAL* Exhibit A to Petition for Emergency Guardianship Additional Unknown, Presumed, or Alleged Fathers form:**

Review Paragraph 13 of the Petition for Appointment of Emergency Guardian(s) form. If you check marked the box that says there are more fathers, you must complete this form.

Caption (top of form):

- Fill out the top of the form Complete **exactly** as you completed the Petition for Appointment of Emergency Guardian(s) form.

To complete the Exhibit A to Petition for Emergency Guardianship Additional Unknown, Presumed, or Alleged Fathers form:

- 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 is a Co-Petitioner, the Co-Petitioner **MUST** sign and date this form.

Affidavit in Support of Petition for Appointment of Emergency Guardian(s) form:

The Petitioner completes this form. If there are two Petitioners, each **MUST** complete a **separate** form.

Caption (top of form):

- Complete **exactly** as you completed the Petition for Appointment of Emergency Guardian(s) form.

To complete the Affidavit in Support of Petition for Appointment of Emergency Guardian(s) form;

- Read each paragraph completely.
 - When you date and sign this form, you stating under penalty of perjury that all of the information on the form is accurate and true.
- Complete all paragraphs that require you to type or write information.

Date and Signature:

- Each Petitioner dates and signs their own completed affidavit form.

***OPTIONAL* Affidavit of Parent Consenting to Emergency Guardian(s) form:**

If **all of the child's parents agree in writing** to appointment of an emergency guardian, **each parent MUST complete** a separate form.

Caption (top of form):

- Fill out the top of the form Complete **exactly** as you completed the Petition for Appointment of Emergency Guardian(s) form.

Give a form to each parent to complete;

- Ask each parent to read each paragraph completely.
- The parent must complete all paragraphs that require them to type or write information.

Date and Parent's Signature:

Each parent dates and signs their own completed affidavit form.

- When the parent dates and signs this form, they stating under penalty of perjury that all of the information on the form is accurate and true

Make Copies of the Completed Petition, Affidavit in Support of Petition, and Affidavit of Parent Consenting to Emergency Guardian(s):

Make one copy of the completed petition, affidavit in support of the petition, affidavit(s) of parent's consent (if any), and any other exhibits you are filing with the petition. Keep the copies for your records.

STEP THREE: File the Petition for Appointment of Emergency Guardian(s), the Affidavit in Support of Petition Appointment of Emergency Guardian(s), and Supporting Documentation with the Court.

File the following **ORIGINAL, completed forms** with the Court:

- Petition for Appointment of Emergency Guardian(s)
- Exhibit A to Petition for Emergency Guardianship Additional Unknown, Presumed, or Alleged Fathers
 - Required only if the child has more unknown, presumed, or alleged fathers than space allows in the Petition for Appointment of Emergency Guardian(s)
- The Affidavit in Support of Petition for Appointment of Emergency Guardian(s)

File the following **supporting documentation** with the Court:

- Affidavit of Parent Consenting to Emergency Guardian(s) for each parent.
 - Required only if all of the child’s parents agree in writing to the appointment of the emergency guardian(s).
- Other supporting documentation you referred to in your petition, if any.

You won’t be charged a filing fee.

A case number will be assigned.

STEP FOUR: If the Juvenile Court Approves the Petition for Appointment of Emergency Guardian(s) for Filing, a Notice of Hearing is Issued and a Guardian Ad Litem Appointed to Advocate for the Best Interests of the Child.

Notice of Hearing Issued:

If your petition is approved for filing, the Juvenile Court will issue a Notice of Hearing with a date, time and location of the hearing on your petition for emergency guardianship.

The Juvenile Court may require you, the Petitioner, to prepare your own Notice of Hearing document. You may wish to bring the completed Notice of Hearing form with you when you file your Petition and Affidavit in Support of Petition and any supporting documentation.

Notice of Hearing for Appointment of an Emergency Guardian form:

Caption (top of form):

- Complete exactly as you completed the Petition for Appointment of Emergency Guardian(s) form.

To complete the Notice of Hearing:

- Paragraph 2: If your Petition is approved for filing, get the hearing date, time, location, and name of the Judge or Judicial Referee from the Juvenile Court.
 - Otherwise, leave blank.
- Paragraph 3: If your Petition is approved for filing and the Guardian ad Litem appointed, get the Guardian ad Litem’s name and contact information.
 - Otherwise, leave blank. You’ll fill in the information after your petition is approved for filing and a Guardian ad Litem appointed.

- Paragraph 9: Fill in the phone number for the Juvenile Court. If you don't know, you may leave blank until your Petition has been approved for filing.

Date and Signature:

- DON'T sign or date.
- Take your completed Notice of Hearing form to the Juvenile Court for the Judge's or Judicial Referee's signature.

A copy of the Notice of Hearing is served on the child, if at least fourteen years old, and the child's parents or legal custodian. A copy of the Petition for Appointment of Emergency Guardian(s) must be served with the Notice of Hearing.

If the child is an Indian Child, the child's tribe and any Indian custodian is also served a copy of the Notice of Hearing. (See "Indian Child Welfare Act" in the Laws and Rules section above.)

Guardian ad Litem Appointed for Child:

If the petition is approved for filing, the Juvenile Court is required to appoint a Guardian ad Litem to advocate for best interests of the child. A Guardian ad Litem provides the Juvenile Court Judge or Judicial Referee with independent information and recommendations on the best interests of the child.

Review [Rule 17 of the North Dakota Rules of Juvenile Procedure](#) for the duties of the Lay Guardian ad Litem. In general, they have access to the child and interview all concerned. They file a report with the court with recommendations for court outcomes that are in the best interests of the child.

STEP FIVE: If the Juvenile Court Requires, Serve the Notice of Hearing and Copies of the Petition for Appointment of Emergency Guardian(s).

GENERALLY, THE JUVENILE COURT WILL SERVE THE NOTICE OF HEARING AND COPIES OF THE PETITION DOCUMENTS ON ALL PARTIES.

If the Juvenile Court serves the Notice of Hearing, **skip Step 5 and go to Step 6.**

HOWEVER, THE JUVENILE COURT MAY REQUIRE YOU, THE PETITIONER, TO ARRANGE TO HAVE THE NOTICE OF HEARING AND COPIES OF THE PETITION DOCUMENTS SERVED.

If the Juvenile Court requires you, the Petitioner, to arrange to have the Notice of Hearing and copies of the Petition documents served, **complete Step 5.**

Gather the names and current addresses of the following:

- The child, if at least fourteen years old;
- The child's parents;
 - If a parent is deceased, don't serve that parent.
 - If a parent is living, but their parental rights are terminated by court order, don't serve that parent.
- The child's legal custodian, if any;
- If the child is an Indian Child, as defined by the Indian Child Welfare Act:
 - The child's Indian custodian, if any; and
 - The child's tribe, through the tribal representative.

If you're unable to find the physical location of the child, if at least fourteen years old, any of the child's parents, or the child's legal custodian, BUT you can speak to them, you may give oral (spoken) notice of the hearing.

For more information about giving oral (spoken) notice of the hearing AND to complete the required affidavit to prove you gave oral notice, go to Page 19.

Make copies of the following completed and signed forms:

- Notice of Hearing for Appointment of an Emergency Guardian
- Petition for Appointment of Emergency Guardian(s)
- Exhibit A to Petition for Emergency Guardianship Additional Unknown, Presumed, or Alleged Fathers
 - Required only if the child has more unknown, presumed, or alleged fathers than space allows in the Petition for Appointment of Emergency Guardian(s)
- The Affidavit in Support of Petition for Appointment of Emergency Guardian(s)

Make one copy for each of the people you'll serve.

Make one copy for your records.

Make copies of all supporting documentation you filed with your Petition for Appointment of Emergency Guardian(s). You may not have any supporting documentation.

Make one copy for each of the people you'll serve.

Make one copy for your records.

You, the Petitioner CAN'T personally serve the documents yourself.

You, the Petitioner arrange for the following:

- The child, if at least fourteen years old;
- The child's parents;
 - If a parent is deceased, don't serve that parent.
 - If a parent is living, but their parental rights are terminated by court order, don't serve that parent.
- The child's legal custodian, if any;
- If the child is an Indian Child, as defined by the Indian Child Welfare Act:
 - The child's Indian custodian, if any; and
 - The child's tribe, through the tribal representative,

To be served one copy of each of the following:

- Notice of Hearing for Appointment of an Emergency Guardian;
- Petition for Appointment of Emergency Guardian(s);
- Exhibit A to Petition for Emergency Guardianship Additional Unknown, Presumed, or Alleged Fathers;
 - Required only if the child has more unknown, presumed, or alleged fathers than space allows in the Petition for Appointment of Emergency Guardian(s)
- The Affidavit in Support of Petition for Appointment of Emergency Guardian(s); and
- All supporting documentation you filed with your Petition for Appointment of Emergency Guardian(s) (you may not have any supporting documentation).

If a party is within North Dakota and can be found, the documents must be served on the party at least twenty-four hours before the hearing. The Notice of Hearing and petition documents may be served in one of the following ways:

- By Personal Service (Sheriff): Arrange for personal service by the sheriff of the county where the party resides. (You'll be charged a fee.) The sheriff will provide an affidavit of service. The affidavit must be filed with the Juvenile Court.

- **By Personal Service (Adult)**: Arrange for personal service by a person who is at least 18 years of age and not a party to nor interested in the action. (You may be charged a fee.) The person who served the documents must fill out an Affidavit of Service by Personal Delivery and date and sign the affidavit. The Affidavit of Service by Personal Delivery must be filed with the Juvenile Court.
- **By Obtaining the Party's Signature**: You may ask the party to admit to service of the summons and petition. Ask the party to fill out and sign an Admission of Service. The Admission of Service must be filed with the Juvenile Court.

If the party is within North Dakota and can't be found, OR if the party is outside North Dakota but can be found, consult an attorney who can agree to represent you for an interpretation of the rules for service. The ND Legal Self Help Center is unable to locate any rules within the North Dakota Rules of Juvenile Procedure that specifically apply.

Obtain Proof of Service of the Juvenile Court Summons and Guardianship Petition:

Proof of service of the summons and petition on all parties is required. A completed affidavit of service or a completed admission of service is your proof of service.

The following Affidavit of Service forms for this packet of forms are available at ndcourts.gov/legal-self-help/minor-guardianship/juvenile-court:

- Affidavit of Service by Personal Delivery
- Admission of Service

File Proof of Service with the Juvenile Court:

The document(s) showing proof of service must be filed with the Juvenile Court. The Juvenile Court won't act on your petition until you provide proof of service.

Oral (Spoken) Notice of the Hearing

If you're unable to find the physical location to arrange to serve the child, if at least fourteen years old, any of the child's parents, or the child's legal custodian, BUT you can speak to them, you may give oral (spoken) notice of the hearing.

After you've give oral (spoken) notice of the hearing, you **MUST** complete and sign an **Affidavit of Petitioner – Oral Notice of Hearing on Appointment of Emergency Guardian form**:

- Caption (top of form):
 - Complete **exactly** as you completed the Petition for Appointment of Emergency Guardian(s) form.

- To complete the Affidavit in Support of Petition for Appointment of Emergency Guardian(s) form;
 - Read each paragraph completely.
 - Complete all paragraphs that require you to type or write information.
 - When you date and sign this form, you stating under penalty of perjury that all of the information on the form is accurate and true.
- Date and Signature:
 - The Petitioner who gave oral (spoken) notice of the hearing to each person listed in Paragraph 2 dates and signs the form.

File Affidavit of Petitioner – Oral Notice of Hearing on Appointment of Emergency Guardian with the Juvenile Court:

The completed and signed Affidavit of Petitioner – Oral Notice of Hearing on Appointment of Emergency Guardian form must be filed with the Juvenile Court. If you gave oral (spoken) notice of the hearing, the Juvenile Court won't act on your petition until you file the completed and signed affidavit.

STEP SIX: Prepare Your Case.

You, the Petitioner, must prove your allegations an emergency guardianship is necessary, and that there is probable cause to believe:

- Using the non-emergency guardianship appointment process is likely to result in substantial harm to the child's health, safety, or welfare; **AND**
- An emergency appointment is in the best interest of the child; **AND**
- **At least one of the following is true:**
 - Both parents are deceased or the surviving parent's rights have been terminated by a previous court order, but there's been no appointment of a guardian for the child by will; or
 - Both parents are deceased or the surviving parent's rights have been terminated by a previous court order and, under [N.D.C.C. Chapter 30.1-27](#), a North Dakota state district court transferred the case to juvenile court without appointing a guardian for the child; or
 - Both parents are deceased or the surviving parent's rights have been terminated by a previous court order and, under [N.D.C.C. Chapter 30.1-27](#), the guardian nominated for the child in the deceased parent's will failed to accept the appointment; or

- The parents have consented to the appointment of the emergency guardian for the child in writing by affidavit; or
- All parental rights have been previously terminated by court order; or
- The child is a child in need of protection as defined under [N.D.C.C. Section 27-20.1-01](#).

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

At minimum, you'll need to review and research the laws and rules listed in the Laws and Rules section above.

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](#) is available at ndcourts.gov/legal-self-help.

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. (polaris.odinlibrary.org) 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.
- [Legal Research, How to Find & Understand the Law](#), Stephen Elias, Editors of Nolo, NOLO, 2015.
- [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, 2019.

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

At least one hearing is required before the Juvenile Court Judge or Judicial Referee makes a decision. There may be more than one hearing, depending on the circumstances.

If the Hearing will be Held in Person, Attend the Hearing in Person:

If you need to request to appear at the hearing some other way, a request form is available at ndcourts.gov/other-courts/juvenile-court.

Be prepared to prove everything you typed or wrote in the documents you filed with the court.

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:

If your hearing is in person at the courthouse, arrive early so you 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.

If the Hearing will be Held by Zoom, Make Sure You Can Connect to the Zoom Hearing:

If your hearing is held electronically by Zoom, well before the hearing begins, make sure you can connect and understand how to function in Zoom.

Don't be late to the Zoom hearing. If you have a serious, unavoidable reason you can't attend the hearing 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 other parties may cross-examine witnesses and object to the petitioner's evidence.

- Other Parties Present Witnesses and Evidence
 - The other parties present their case after the petitioner. The petitioner may cross-examine witnesses and object to each other party's evidence.
- Closing Arguments
 - Each party gives a closing statement. Usually the other parties go first.

Before You Leave the Hearing:

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 and Letters of Emergency Guardianship.

An emergency guardian isn't appointed until the Juvenile Court Judge or Judicial Referee issues Findings of Fact and Order.

The Letters of Emergency Guardianship list the powers and duties ordered by the Juvenile Court Judge or Judicial Referee, and the Letters are proof of the appointed emergency guardian's authority.

THE JUDGE OR JUDICIAL REFEREE MAY PREPARE THEIR OWN FINDINGS OF FACT AND ORDER AND LETTERS OF EMERGENCY GUARDIANSHIP.

If the Judge or Judicial Referee prepares their own Findings of Fact and Order and Letters of Emergency Guardianship, you will be mailed a signed copy. **Skip Step 8 and go to Step 9.**

HOWEVER, YOU, THE PETITIONER, MAY BE REQUIRED TO PREPARE PROPOSED FINDINGS OF FACT AND ORDER AND LETTERS OF GUARDIANSHIP 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 and Letters of Guardianship, **complete Step 8.**

Proposed Findings of Fact and Order Appointing Emergency Guardian(s):

The Findings of Fact and Order Appointing Guardian of a Child aren't official until signed and dated by the Judge or Judicial Referee.

The following proposed Findings of Fact and Order Appointing Emergency Guardian(s) form for this packet of forms is available at ndcourts.gov/legal-self-help/minor-guardianship/juvenile-court:

- Findings of Fact and Order Appointing Emergency Guardian(s)

Proposed Letters of Emergency Guardianship:

Letters of emergency guardianship is the document issued by the Juvenile Court that identifies the authority and limitations of the emergency guardian to make decisions on behalf of the child and identifies any other powers or authority given to the emergency guardian.

The letters of emergency guardianship aren't official until signed and dated by the Judge or Judicial Referee.

The following proposed Letters of Emergency Guardianship form for this packet of forms is available at ndcourts.gov/legal-self-help/minor-guardianship/juvenile-court:

- Letter of Emergency Guardianship

(Buy several certified copies of the signed and dated letters of emergency guardianship. A certified copy has a clerk's stamp on it stating that the document is a duplicate of the original on file with the Juvenile Court. The guardian may be required to provide a certified copy of the letters of guardianship when dealing with schools, government agencies, and other entities.)

STEP NINE: After the Juvenile Court Appoints an Emergency Guardian.

The emergency guardianship LASTS NO MORE THAN 60 DAYS from the date of the hearing. However, the Judge or Judicial Referee may extend the emergency guardianship for up to 6 months.

If you decide to need to petition the Juvenile Court for appointment of a non-emergency guardian for the child, forms and instructions are available at ndcourts.gov/legal-self-help/minor-guardianship/juvenile-court.