

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

NOTICE OF COMMENT

Supreme Court No. 20190304

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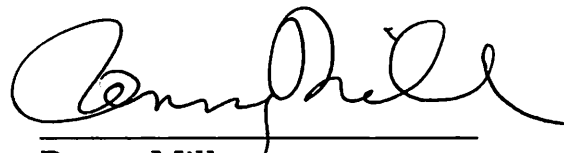
**Proposed Amendments to North Dakota Supreme Court  
Administrative Rule 59 Regarding Guardians**

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[¶1] On September 23, 2019, the Guardianship Working Group filed a petition proposing amendments to North Dakota Supreme Court Administrative Rule 59 regarding guardians. The proposals are available at <https://www.ndcourts.gov/news/north-dakota/north-dakota-supreme-court/notices>. Individuals who do not have internet access may contact the Office of the Clerk of the Supreme Court to obtain a copy of the proposal.

[¶2] **IT IS ORDERED**, any person wishing to comment on the proposals may do so by email to Penny Miller, Clerk of the Supreme Court, at [supclerkofcourt@ndcourts.gov](mailto:supclerkofcourt@ndcourts.gov) or in writing addressed to 600 E. Boulevard Ave., Bismarck, ND 58505-0530, no later than **Monday, November 4, 2019**.

[¶3] The Supreme Court of the State of North Dakota convened this 3rd day of October, 2019, with the Honorable Gerald W. VandeWalle, Chief Justice, and the Honorable Daniel J. Crothers, the Honorable Lisa Fair McEvers, the Honorable Jerod E. Tufte, and the Honorable Jon J. Jensen, Justices, directing the Clerk of the Supreme Court to enter the above order.



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Penny Miller  
Clerk  
North Dakota Supreme Court

# PROPOSED RULE OF COURT

Adopted effective \_\_\_\_\_

## RULE 59. GUARDIANS

1 (A) Purpose. This rule establishes qualifications and training requirements for  
2 nonprofessional and professional guardians appointed under N.D.C.C. ch. 30.1-28. For  
3 purposes of this rule, “nonprofessional guardian” means an individual who serves as  
4 guardian for two or fewer individuals at the same time, and “professional guardian” means  
5 an individual or entity that serves as guardian for three or more individuals at the same time,  
6 an individual or entity appointed to serve as a public guardian or administrator, or an  
7 individual or entity that holds itself out as providing guardianship services for hire. This rule  
8 does not apply to emergency guardians appointed under N.D.C.C. §30.1-28-10.1.

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10 (B) Qualifications - Nonprofessional Guardian. An individual proposed to serve as a  
11 nonprofessional guardian:

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13 (1) Shall submit an affidavit stating that the proposed guardian has completed the  
14 online guardianship training program established by the North Dakota Supreme Court  
15 and file a certificate of completion with the appointing court before letters of  
16 guardianship are issued;

17

18 (2) Unless waived by the court, shall provide a criminal history record check report  
19 to the appointing court before the hearing on the petition to appoint a guardian; and

20

21 (3) Shall provide to the appointing court before the hearing on the petition to appoint  
22 the guardian an affidavit stating whether the proposed guardian has been investigated  
23 for offenses related to theft, fraud, or the abuse, neglect, or exploitation of an adult or  
24 child and shall provide a release authorizing access to any record information  
25 maintained by an agency in this or another state or a federal agency.

26

27 (C) Qualifications - Professional Guardian (Entity). An entity proposed to serve as a  
28 professional guardian:

29

30 (1) Must be accredited through the Council on Accreditation or its employed  
31 guardians must possess certification through the Center for Guardianship  
32 Certification;

33

34 (2) Shall provide to the court considering the petition for appointment as a guardian  
35 an affidavit stating whether the individual(s) who will provide guardianship services  
36 for the ward has been investigated for offenses related to theft, fraud, or the abuse,  
37 neglect, or exploitation of an adult or child;

38

39 (3) Shall provide to the court considering the petition for appointment as a guardian  
40 an affidavit stating whether the individual(s) who will provide guardianship services  
41 for the ward has been the subject of any disciplinary proceeding by a licensing entity  
42 or by an agency accredited through the Council on Accreditation;

43

44 (4) Shall provide to the court considering the petition for appointment as a guardian  
45 an affidavit indicating the entity under the auspices of which the individual(s) will  
46 provide guardianship services has obtained a release authorizing access to any record  
47 information maintained by an agency in this or another state or a federal agency, a  
48 criminal history record check report and the results of a background inquiry for

49 offenses related to theft, fraud, or the abuse, neglect, or exploitation of an adult or  
50 child with respect to the individual(s) and indicating the results of the report and  
51 inquiry; and

52

53 (5) Shall provide to the court considering the petition for appointment as a guardian  
54 an affidavit indicating that all individuals employed by the entity to serve as a  
55 guardian have completed the online guardianship training program established by the  
56 North Dakota Supreme Court.

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58 (D) Qualifications - Professional Guardian (Individual). An individual proposed to serve as  
59 a professional guardian, whether or not employed by a professional guardian entity:

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61 (1) Must possess certification through the Center for Guardianship Certification;

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63 (2) Shall submit an affidavit that the proposed guardian has completed the online  
64 guardianship training program established by the North Dakota Supreme Court and  
65 file a certificate of completion with the appointing court before letters of guardianship  
66 are issued;

67

68 (3) Unless waived by the court, shall provide a criminal history record check report  
69 to the appointing court before the hearing on the petition to appoint a guardian; and

70

71 (4) Shall provide to the appointing court before the hearing on the petition to appoint  
72 the guardian an affidavit stating whether the proposed guardian has been investigated  
73 for offenses related to theft, fraud, or the abuse, neglect, or exploitation of an adult or  
74 child, has been the subject of any disciplinary proceeding by a licensing entity or by  
75 an agency accredited through the Council on Accreditation, and shall provide a

76 release authorizing access to any record information maintained by an agency in this  
77 or another state or a federal agency.

78

79 (E) Notification – professional and nonprofessional guardians. The guardian shall notify the  
80 trial court administrator in each administrative unit in which the guardian provides  
81 guardianship services that the guardian has been charged with a criminal offense related to  
82 fraud, theft, or abuse, neglect or exploitation of an adult or child or there has been a  
83 substantiated instance of abuse, neglect, or exploitation of an adult or child by the guardian.  
84 Where the guardian is or was employed by an entity, the entity is also required to provide  
85 notification.

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87 (F) Rule Implementation. This rule applies to all guardianships established after the effective  
88 date. For active guardianships established prior to the effective date of this rule, the guardian  
89 must complete the requirements above and must submit the required documentation to the  
90 court with jurisdiction over the guardianship within two years from the effective date of this  
91 rule.

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### 93 EXPLANATORY NOTE

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95 Rule \_\_\_\_ was adopted effective \_\_\_\_\_.

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97 SOURCES: Guardianship Standards Workgroup Minutes of July 20, 2015; August  
98 31, 2015; October 26, 2015; January 25, 2016; March 28, 2016, October 10, 2016,  
99 December 12, 2016, February 13, 2017, April 3, 2017, July 31, 2017, ~~and~~ August 21,  
100 2017, May 13, 2019, June 10, 2019, and July 22, 2019.

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