

Instructions to Answer a Petition to Transfer a North Dakota Guardianship or Conservatorship of an Adult to Another State

IMPORTANT! READ BEFORE USING THESE FORMS AND INSTRUCTIONS

ND Legal Self Help Center staff and court employees cannot help you fill out forms.

If you are 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 must abide by the following:

- 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 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.

When you represent yourself, you are held to the same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures. If you are unsure if these forms and instructions suit your circumstances, consult a lawyer.

A glossary with definitions of legal terms is available at www.ndcourts.gov/legal-self-help.

These instructions and forms are not a complete statement of the law. They cover the basic procedure for answering a petition to a North Dakota state district court to transfer the North Dakota guardianship/conservatorship of an adult to another state. There is no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center. The Center is not responsible for any consequences that may result from the forms or information provided.

Use at your own risk.

Purpose

These forms may be used by a person required to receive notice of North Dakota state district court adult guardianship or conservatorship proceedings to oppose the petition of the current Guardian or Conservator to transfer the entire case to the court of another state.

[North Dakota Century Code Section 28-35-15](#) gives the requirements and procedures related to requesting a North Dakota state district court transfer a guardianship and/or conservatorship of an adult to another state.

If you are representing yourself, you complete and sign the forms. If you are unsure how to proceed or unsure if these forms are suitable for your situation, consult an attorney.

Information About the Process the Guardian/Conservator Must Follow

When a guardian or conservator wants to transfer a guardianship or conservatorship established by a North Dakota district court to another state's court, the guardian or conservator must petition the North Dakota district court for permission to transfer jurisdictions. (References to guardian or conservator also include co-guardians and co-conservators.)

If the North Dakota district court approves the transfer, the court will issue an order transferring the guardianship or conservatorship to the other state and terminating the North Dakota guardianship or conservatorship.

For more information about the steps in the process of asking a North Dakota state district court to transfer a guardianship/conservatorship to another state, review the instructions for the guardian/conservator must follow at www.ndcourts.gov/legal-self-help/conservatorship/transfer.

Requesting a Guardian Ad Litem for the Ward/Protected Person

The court may appoint a guardian ad litem for the ward or protected person upon the request of the ward or protected person, or any interested person. A guardian ad litem is a lawyer appointed by a North Dakota District Court to advocate for the best interests of the ward or protected person.

Guardian Ad Litem request forms are available with this packet of forms and available at www.ndcourts.gov/legal-self-help/conservatorship/transfer.

Forms to Answer the Petition to Transfer Guardianship/Conservatorship from North Dakota to Another State

The following forms allow a person to oppose the Petition within the 14 or 17 day deadline:

- Answer Brief to Petition to Transfer Guardianship/Conservatorship to Another State;
- Affidavit in Support of Answer Brief to Petition to Transfer Guardianship/Conservatorship to Another State;
- Rule 3.2 Notice of Hearing on Petition to Transfer Guardianship/Conservatorship to Another State (*Optional*);
- Affidavit of Service by Mail; and
- Affidavit of Service by Hand Delivery.

In order to oppose the Petition, the person must be someone who is required to receive notice of proceedings related to the guardianship/conservatorship case.

Step One: Calculate Your Deadline to Answer the Petition. Decide Whether to Request a Hearing on the Petition.

Calculate your Deadline to Answer the Petition to Transfer

After you are served a copy of the Petition to Transfer Guardianship/Conservatorship to Another State, you have either 14 or 17 calendar days to serve and file an answer brief to the petition.

If you were served by hand delivery, or by leaving the petition documents at your office or residence:

- You have 14 calendar days after service of the petition documents to serve and file your written answer.
- The date of service is the date the petition documents were personally delivered or left at your office or residence.

If you were served by mail or third party commercial carrier:

- You have 17 calendar days after service of the petition documents to serve and file your written answer.
- The date of service is the date the petition documents were mailed. Keep the envelope with the postmarked date for reference.

When calculating days:

- Do not include the day of the event that triggers the start of the period;
- Count by calendar days, including Saturdays, Sundays, and legal holidays; and
- Include the last day of the period, **but** if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is **not** a Saturday, Sunday, or legal holiday.

Decide Whether to Request a Hearing on the Petition to Transfer

A hearing is not required. The Petition to Transfer Guardianship/Conservatorship to Another State will be decided **only** on the documents filed with the District Court unless the guardian/conservator or a person required to receive notice of the Petition requests a hearing.

If you decide to request a hearing on the Petition or Transfer, you may make the request as part of your answer to the petition.

- If you **do not** make the request as part of your answer to the petition, you can make a separate request. You have 7 days after the deadline expires for serving and filing your answer to make a separate request for a hearing.

If you decide to request a hearing as part of your answer to the petition, you must contact the Clerk of North Dakota District Court where the guardianship/ conservatorship is filed to obtain a hearing date and time.

Step Two: Complete the Answer Brief Form and Affidavit in Support of Answer Brief Form. To Request a Hearing, Complete the Notice of Hearing Form.

Answer Brief to Petition to Transfer Guardianship/Conservatorship to Another State

- **Top of Form (Caption)**
 - Fill in the county name, district court name, name of the ward/protected person, and case number exactly as they appear in the Petition to Transfer Guardianship/Conservatorship to Another State.
- **Read and Complete Paragraphs 1 through 5 of the Form.**
 - Read Paragraphs 3 and 5 carefully. Paragraphs 3 and 5 do not require you to fill in any information.
- **Date and Signature**
 - Date, sign the form and complete the lines following the signature line.

Affidavit in Support of Answer Brief to Petition to Transfer Guardianship/Conservatorship to Another State

- **Top of Form (Caption)**
 - Fill in the Caption exactly as you filled in the Caption for Answer Brief to Petition to Transfer Guardianship/Conservatorship to Another State.
- **Read and Complete Paragraphs 1 through 5 of the Form**
 - Read Paragraph 5 carefully. Paragraph 5 does not require you to fill in any information.
- **Date and Signature**
 - Date, sign the form and complete the lines following the signature line.

Rule 3.2 Notice of Hearing on Petition to Transfer Guardianship/Conservatorship to Another State (Required if Requesting a Hearing)

- **If you are requesting a hearing as part of your answer, see the instructions for the form.**
 - If you have not already obtained a hearing date and time from the Clerk of District, do so.

Step Three: Arrange Service of the Completed Answer to Petition Forms.

Arrange to Have Completed Answer to Petition Forms Served

The guardian/conservator, ward/protected person, and all interested persons designated in the order appointing the guardian/conservator must receive a copy of each of the following completed forms and any supporting documents you plan to file:

- Answer Brief to Petition to Transfer Guardianship/Conservatorship to Another State;
- Affidavit in Support of Answer Brief to Petition to Transfer Guardianship/Conservatorship to Another State; and
- Rule 3.2 Notice of Hearing on Petition to Transfer Guardianship/Conservatorship to Another State (*Optional*).

Copies may be mailed by first class, postage prepaid, **or** hand-delivered.

You must provide proof to the District Court that copies of the completed documents were mailed or hand-delivered to the guardian/conservator, ward/protected person and all interested persons.

An affidavit of service gives the District Court proof that copies were provided.

If you arrange to have the copies served by mail, the individual who takes the envelopes to the United States Post Office and pays the first-class postage completes the **Affidavit of Service by Mail Form**.

If you arrange to have the copies served hand-delivered, the individual who hand-delivers the copies completes the **Affidavit of Personal Service Form**.

Step Four: File the Original, Completed Forms with the Clerk of District Court.

File the Original, Completed Forms with the Clerk of District Court Where the Petition was Filed

File the original, completed answer to Petition forms, any supporting documentation, and the affidavit(s) of service with the clerk of court of the North Dakota State District Court that currently has jurisdiction of the guardianship.

- Answer Brief to Petition to Transfer Guardianship/Conservatorship to Another State;
- Affidavit in Support of Answer Brief to Petition to Transfer Guardianship/Conservatorship to Another State;
- Rule 3.2 Notice of Hearing on Petition to Transfer Guardianship/Conservatorship to Another State (*Optional*);
- Any supporting documentation; and
- Affidavit(s) of Service.

Step Five: The Judge/Judicial Referee Decides Whether to Grant the Provisional Order to Transfer.

If a Hearing is Scheduled, Attend the Hearing

If a hearing is scheduled, attend the hearing.

Be prepared to prove your Answer Brief to the Petition to Transfer Guardianship/Conservatorship to Another State.

The Judge or Judicial Referee assigned to the guardianship/conservatorship will decide whether to grant the provisional order to transfer after the hearing.

The Judge or Judicial Referee may announce their decision at the end of the hearing, or may make their decision sometime after the end of the hearing.

You will receive a copy of the Judge or Judicial Referee’s decision, or order, usually by mail.

If No Hearing is Scheduled, the Decision will be made Based on the Documents

If no hearing is scheduled, the court will decide whether to grant the provisional order based only on the documents filed.

You will receive a copy of the Judge or Judicial Referee’s decision, or order, usually by mail.

Next Steps: If the Judge/Judicial Referee Decides to Grant the Provisional Order to Transfer, the Guardian/Conservator has More Steps.

If the Judge or Judicial Referee assigned to the guardianship/conservatorship grants the provisional order to transfer, the guardian/conservator must take additional steps:

- First: The guardian/conservator must petition a court of the other state to accept the transfer of the guardianship/conservatorship from North Dakota.
- Second: If the court of the other state accepts the transfer, the guardian/conservator must make a written motion to the North Dakota District Court for a final order confirming the transfer to the other state and terminating the North Dakota District Court guardianship/conservatorship.
- Third: If the North Dakota District Court grants the motion, the District Court issues a final order granting the transfer and terminating the North Dakota District Court guardianship/conservatorship.
- Fourth: The other state court takes over authority to hear and decide issues related to the guardianship/conservatorship.

Do not include these instructions when you serve or file the completed forms.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP/CONSERVATORSHIP OF

AN INCAPACITATED INDIVIDUAL/PROTECTED PERSON

Case Number: _____

**ANSWER BRIEF TO PETITION TO TRANSFER GUARDIANSHIP/CONSERVATORSHIP TO
ANOTHER STATE**

1. As required by Rule 3.2 of the North Dakota Rules of Court, _____

(name of person answering the petition), submits this Answer
Brief to the Petition to Transfer Guardianship/Conservatorship to Another State.

FACTS

2. In response to the facts stated in the Guardian's/Conservator's Petition to Transfer
Guardianship/Conservatorship to Another State, _____
(name of person answering the petition) facts are stated in the Affidavit in Support of Answer
Brief to the Petition to Transfer Guardianship/Conservatorship to Another State, which is filed
with this Answer Brief and incorporated by reference.

LAW AND ARGUMENT

3. Section 28-35-15 of the North Dakota Century Code allows the District Court to issue a
provisional order granting the transfer of the guardianship/conservatorship to another state if
the District Court is satisfied the guardianship/conservatorship will be accepted by the other
state **and** the District Court finds:

- a. The Ward/Protected Person is physically present in the other state, or is reasonably expected to permanently move to the other state;
- b. Persons objecting to the transfer have not established that the transfer to another state would not be in the interests of the Ward/Protected Person; **and**
- c. Plans for care and services for the Ward/Protected Person in the other state are reasonable and sufficient.

4. Based on the information provided in the Petition and the requirements of Section 28-35-15 of the North Dakota Century Code, _____
(name of person answering the petition) opposes the Transfer Guardianship/ Conservatorship to Another State because (explain how the information in the Petition to Transfer, the facts from your Affidavit in Support of Answer Brief and the requirements of Section 28-35-15 support your reasons for opposing the Petition to Transfer to Another State):

(Paragraph 4 continues on next page.)

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP/CONSERVATORSHIP OF

AN INCAPACITATED INDIVIDUAL/PROTECTED PERSON

Case Number: _____

**AFFIDAVIT IN SUPPORT OF ANSWER BRIEF TO PETITION TO TRANSFER
GUARDIANSHIP/CONSERVATORSHIP TO ANOTHER STATE**

1. I am _____ (*name of person answering the petition*).

2. My relationship to the Ward/Protected Person is _____.

3. I was served a copy of the Petition to Transfer Guardianship/Conservatorship to Another State on _____ (*date copy of petition was served on you*).

4. Based on the information provided in the Petition and the requirements of Section 28-35-15 of the North Dakota Century Code, I oppose the Transfer Guardianship/ Conservatorship to Another State because (*type or write your reasons*): _____

(Paragraph 4 continues on next page.)

5. I swear under penalty of perjury under the law of North Dakota that everything I stated in this Affidavit in Support of Answer Brief to the Petition to Transfer Guardianship/ Conservatorship to Another State is true and correct.

Signed on the _____ day of _____, 20____ at
_____ (city), _____ (state), _____ (country).

Signature of Party Answering Petition

Printed Name

_____ Address _____ City, State, Zip Code

Telephone Number

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP/CONSERVATORSHIP OF

AN INCAPACITATED INDIVIDUAL/PROTECTED PERSON

Case No. _____

AFFIDAVIT OF SERVICE BY HAND DELIVERY

(A separate affidavit is required for each person served.)

The person serving court documents by hand delivery swears:

1. My name is: _____ *(person who served documents by hand delivery)*. I am at least 18 years of age. **I am not a party or interested in the above named matter.**

2. Service by Hand Delivery:

I served a true and correct copy of each of the court documents listed in Paragraph 4 to _____ *(name of person served)* by *(choose one)*:

Giving the court documents directly to him/her.

Leaving the court documents with: _____ *(name)*, a person of suitable age and discretion who lives at the same address.

I know the person I served is the person intended to be served because: *(explain how you identified the person)* _____

3. Date, Time, and Address of Service by Hand Delivery:

Date: _____ Time: _____ a.m. *(or)* p.m.

Address:

_____ *(street address)*

_____ *(city)*

_____ *(zip code)*

4. **List of Court Documents Served** (check all that apply):
(Check only the documents that were served. Use "Other" to write the title of each document served that is not already listed.)

Notice of Hearing on Petition to Transfer Guardianship/Conservatorship to Another State

Answer Brief to Petition to Transfer Guardianship/Conservatorship to Another State

Affidavit in Support of Answer Brief to Petition to Transfer Guardianship/Conservatorship to Another State

Other: _____

Other: _____

5. I swear under penalty of perjury under the law of North Dakota that everything I stated in this Affidavit of Personal Service is true and correct.

Signed on the _____ day of _____, 20____ at

(city), _____ County, _____
(state), _____ (country).

Signature

Printed Name

Address

City, State, Zip Code

Telephone Number: _____

STATE OF NORTH DAKOTA IN DISTRICT COURT
COUNTY OF _____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP/CONSERVATORSHIP OF

AN INCAPACITATED INDIVIDUAL/PROTECTED PERSON

Case No. _____

AFFIDAVIT OF SERVICE BY MAIL

(May serve multiple persons ONLY IF envelopes are mailed same day from same Post Office.)

The person serving court documents by mail swears:

1. My name is: _____ *(person who mailed documents)*. I am at least 18 years of age.

2. **List of Court Documents Served** *(check all that apply):*
(Check only the documents that were served. Use "Other" to write the title of each document served that is not already listed.)

Notice of Hearing on Petition to Transfer Guardianship/Conservatorship to Another State

Answer Brief to Petition to Transfer Guardianship/Conservatorship to Another State

Affidavit in Support of Answer Brief to Petition to Transfer Guardianship/Conservatorship to Another State

Other: _____

Other: _____

3. **Service by Mail:**

I served a true and correct copy of each of the court documents listed in Paragraph 2 by mailing them, enclosed in an envelope, by First-Class mail, postage prepaid, and by depositing them in the United States Mail, directed to each person listed in Paragraph 5.

4. **Date and Post Office Location of Service by Mail:**

Date Court Documents Were Served by Mail: _____

United States Post Office Location:

(city) (county) (state)

5. **Person or Persons Served by Mail:**

1. Name of Person Served: _____

Mailing Address: _____

City, State, Zip Code: _____

2. Name of Person Served: _____

Mailing Address: _____

City, State, Zip Code: _____

3. Name of Person Served: _____

Mailing Address: _____

City, State, Zip Code: _____

6. I swear under penalty of perjury under the law of North Dakota that everything I stated in this Affidavit of Service by Mail is true and correct.

Signed on the ____ day of _____, 20____ at

_____ (city), _____ County, _____

(state), _____ (country).

Signature

Printed Name

Address City, State, Zip Code

Telephone Number