

## Service Information for Starting a Case to Establish a Guardianship of an Alleged Incapacitated Adult (18 Years Old or Older)

### Important! Read Before Using These Forms & Instructions!

ND Legal Self Help Center staff and court employees can't help you fill out the form(s). If you're unsure if these forms and instructions suit your circumstances, consult a lawyer.

ND Legal Self Help Center forms aren't official court forms and judges and courts aren't required to accept them. There's no guarantee Center forms will be accepted.

If you need legal advice or legal representation, consult a lawyer licensed to practice in North Dakota. Go to [ndcourts.gov/legal-self-help/finding-a-lawyer](https://ndcourts.gov/legal-self-help/finding-a-lawyer) to learn more about finding a lawyer to represent you.

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 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](https://ndcourts.gov).

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

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.

*These instructions and forms aren't a complete statement of the law. They cover basic procedure for service to start a case in a North Dakota state district court to establish guardianship of an alleged incapacitated adult. 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 these forms and instructions at your own risk.***

***Warning! Appointment of a guardian can have serious legal and financial consequences for both the Ward and the guardian(s). It's strongly recommended that you consult a lawyer and carefully consider all of your options before you represent yourself in a petition to appoint a guardian for an alleged incapacitated adult in a North Dakota state district court.***

**The notice of hearing and statement of rights and a copy of the guardianship petition must be served on all persons listed in [Section 30.1-28-09](#) of the North Dakota Century Code.**

The petitioner **must** arrange for service of copies of the following documents:

- Notice of Hearing and Statement of Rights;
- Petition for Appointment of a Guardian;
- Completed and signed Order Appointing Guardian ad Litem;
- Completed and signed Order Appointing Visitor; and
- Completed and signed Order Appointing Expert Examiner

on the following persons listed in [Section 30.1-28-09](#) of the North Dakota Century Code:

- The proposed Ward;
- The proposed Ward's parents;
- Any person, corporation, or institution who is serving as the proposed Ward's guardian, representative payee for public benefits, or conservator, or who has the proposed Ward's care and custody;
- If the proposed Ward **doesn't have** parents, then the proposed Ward's adult siblings and any adult with whom the proposed Ward resides in a private residence, or if none can be found, any known adult relative;
- The attorney for the proposed Ward, if any; and
- The visitor, and the expert examiner.

**The petitioner is responsible for ensuring the documents are served as required by [Section 30.1-03-01](#) and [Section 30.1-28-09](#) of the North Dakota Century Code.**

**Proof of service tells the North Dakota state district court how, when and where the documents were served.**

**If proof of service isn't filed, the court won't act on the guardianship petition.**

Proof of service is an important step in the legal process. If proof of service isn't filed, the court won't act on your documents.

Proof of service to start a guardianship of an alleged incapacitated adult tells the judge or judicial referee assigned to the case when, how, and where the people listed on Page 2 were served copies of the required documents.

- A certificate of service gives the judge or judicial referee proof of service when a sheriff or other officer served a copy of the documents listed on Page 2.
- A declaration of service or affidavit of service gives the judge or judicial referee proof of service when a person other than a sheriff or other officer served copy of the documents listed on Page 2.

**The Petitioner must locate the addresses or locations for service.**

**Following are examples of ways to find people for service:**

- Last known address.
  - Contact the U.S. Post Office for information on how to determine if the person left a forwarding address.
- Friends, family, employers.
- Online search engines.
- Government entities, such as the County Recorder.
- North Dakota business entity search, available at the ND Secretary of State website.
- Social Security Death Index.
- Utility companies.
- Social networking websites.
- Reverse directories.
  - A reverse directory allows someone to search by phone number to find an address. (Your local library may have access to reverse directories.)

## There are three ways to serve the documents.

### 1. Serve to the Proposed Ward, Spouse, and Parents by Personal Service:

The proposed Ward must be personally served at least 14 days before the hearing.

If the proposed Ward's spouse and the proposed Ward parents are found within North Dakota, they must also be personally served at least 14 days before the hearing.

**You, the petitioner, can't personally serve the documents yourself.** You arrange for personal service as follows:

- The person who personally serves a copy of the documents listed on Page 2 must be at least 18 years old **and** not a party to the petition or an interested party.
- The person who serves a copy of the documents listed on Page 2 must complete a Declaration of Service by Personal Delivery. This is your proof of service.
  - If the Sheriff personally serves the documents, the Sheriff provides a completed certificate of service.
- Make a copy of each declaration or certificate for your records.
- You file the original declaration(s) of service or certificate(s) of service with the clerk of court.

### 2. Serve by Mail:

If the proposed Ward's spouse or the proposed Ward parents can't be found within North Dakota they may be served by mail.

All other persons listed in [N.D.C.C. § 30.1-28-09](#) may be served by mail. See [N.D.C.C. § 30.1-03-01](#).

Service by mail must occur at least 14 days before the hearing.

You, the petitioner, arrange for service by mail as follows:

- The person who mails a copy of the documents listed on Page 2 must be at least 18 years old.
- The copy of the documents listed on Page 2 must be sent by certified or ordinary first-class mail addressed to the person's office or place of residence.

- The person who mails a copy of the documents listed on Page 2 must complete a declaration of service by mail. This is your proof of service.
- Make a copy of each declaration of service by mail for your records.
- You file the original declaration(s) of service with the clerk of court.

### **3. Service by Publication:**

If, after a diligent search, you're unable to determine the address or identity of any of the other persons listed in [N.D.C.C. § 30.1-28-09](#), **except the proposed Ward**, you may give notice of the hearing by publication. See [N.D.C.C. § 30.1-03-01](#) and [Rule 4\(e\) of the North Dakota Rules of Civil Procedure](#).

The notice must be published at least once a week for three consecutive weeks.

The last publication of the notice must occur at least 10 days before the hearing:

- Publish the Notice of Hearing and Statement of Rights in a newspaper having general circulation in the North Dakota county where the hearing is scheduled to be held.
- The notice must be published at least once a week for three consecutive weeks.
- You, the petitioner, must request an affidavit of publication from the newspaper after publishing is complete. This is your proof of publication of the notice.
- You, the petitioner, must prepare a declaration for service by publication. The purpose of the declaration for service by publication is to describe to the court the diligent efforts you made to locate the person(s).
- Make a copy of the affidavit of publication you received from the newspaper and your declaration for service by publication for your records.
- You file the original declaration for service by publication and the affidavit of publication with the clerk of court.

STATE OF NORTH DAKOTA  
COUNTY OF \_\_\_\_\_

IN DISTRICT COURT  
\_\_\_\_\_ JUDICIAL DISTRICT

**IN THE MATTER OF THE GUARDIANSHIP OF**

\_\_\_\_\_

**AN ALLEGED INCAPACITATED INDIVIDUAL.**

Case No. \_\_\_\_\_

**DECLARATION OF SERVICE BY PERSONAL DELIVERY**  
*(A separate declaration is required for each person served.)*

**The person personally serving court documents states:**

1. My name is \_\_\_\_\_ *(name of person who personally served documents)*. I am at least 18 years of age. I am **not a party or interested in the above named matter.**

2. **List of Court Documents Served:**

- Notice of Hearing and Statement of Rights;
- Petition for Appointment of Guardian;
- Order Appointing Guardian ad Litem;
- Order Appointing Visitor; and
- Order Appointing Expert Examiner.

3. **Personal Service** *(Paragraph 3 continues on next page):*

I served a true and correct copy of each of the court documents listed in Paragraph 2 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*): \_\_\_\_\_

**4. Date, Time, and Address of Personal Service:**

Date: \_\_\_\_\_ Time: \_\_\_\_\_  a.m. (*or*)  p.m.

Address:

\_\_\_\_\_  
(*street address*) (city) (zip code)

5. I declare, under penalty of perjury under the law of North Dakota, that everything I stated in this Declaration of Service by Personal Delivery is true and correct.

Signed on \_\_\_\_\_ (*date*) in \_\_\_\_\_ (*city*),  
\_\_\_\_\_ County, \_\_\_\_\_ (*state*), \_\_\_\_\_ (*country*).

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Email Address

STATE OF NORTH DAKOTA  
COUNTY OF \_\_\_\_\_

IN DISTRICT COURT  
\_\_\_\_\_ JUDICIAL DISTRICT

**IN THE MATTER OF THE GUARDIANSHIP OF**

\_\_\_\_\_

**AN ALLEGED INCAPACITATED INDIVIDUAL.**

Case No. \_\_\_\_\_

**DECLARATION OF SERVICE BY MAIL**

*(May serve multiple persons ONLY IF envelopes are mailed the same day.)*

**The person serving court documents by mail states:**

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

**2. List of Court Documents Served:**

- Notice of Hearing and Statement of Rights;
- Petition for Appointment of Guardian;
- Order Appointing Guardian ad Litem;
- Order Appointing Visitor; and
- Order Appointing Expert Examiner.

**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  Certified Mail *(OR)*  First-Class mail, postage prepaid, and by depositing them in the United States Mail, directed to each person listed in Paragraph 5.

**4. Date of Service by Mail:**

Date Court Documents Were Served by Mail: \_\_\_\_\_



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: \_\_\_\_\_
4. Name of Person Served: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_

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

Signed on \_\_\_\_\_ (date) in \_\_\_\_\_ (city),  
\_\_\_\_\_ County, \_\_\_\_\_ (state), \_\_\_\_\_ (country).

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Email Address

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

**IN THE MATTER OF THE GUARDIANSHIP OF**

\_\_\_\_\_

**AN ALLEGED INCAPACITATED INDIVIDUAL.**

**Case No.** \_\_\_\_\_

**DECLARATION FOR SERVICE BY PUBLICATION**

I, \_\_\_\_\_ (*name of petitioner*),

the undersigned, state as follows:

1. I am the Petitioner in the above entitled action.
2. I make this Declaration for Service by Publication in support of service of the Notice of Hearing and Statement of Rights upon the following person(s) (*list full name(s) of each person*) \_

\_\_\_\_\_  
\_\_\_\_\_

by publication pursuant to Section 30.1-03-01 of the North Dakota Century Code (N.D.C.C.) and Rule 4(e) of the North Dakota Rules of Civil Procedure.

3. Pursuant to N.D.C.C. Section 30.1-03-01(1)(c), service of the Notice of Hearing and Statement of Rights by publication is permitted because the address or identity of the person(s) listed in Paragraph 2 of this Declaration is not known and cannot be ascertained with reasonable diligence.

4. I made the following diligent efforts to identify and locate the person(s) listed in Paragraph 2 of this Declaration in order to serve the Notice of Hearing and Statement of Rights *(describe your diligent efforts for each person):*

5. I made the following attempts to serve the person(s) listed in Paragraph 2 of this Declaration *(list the attempts to serve for each person, be specific with details, including dates and results, if you have documentation, include when you file the declaration):*

6. I state that after making diligent efforts, service of the Notice of Hearing and Statement of Rights cannot be made by personal delivery or by mail on the person(s) listed in Paragraph 2 to the best of my knowledge, information, and belief;

7. I declare, under penalty of perjury under the law of North Dakota, that the information contained in this Declaration for Service by Publication, is true and correct.

Signed on \_\_\_\_\_ (date) in \_\_\_\_\_ (city),  
\_\_\_\_\_ County, \_\_\_\_\_ (state), \_\_\_\_\_ (country).

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Email Address