

ARTICLE XXX
OFFICE OF GUARDIANSHIP AND CONSERVATORSHIP

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CHAPTER XXX-01-01
GENERAL ADMINISTRATION

Section

xxx-01-01-01 Organization and Functions of the Operations Committee

xxx-01-01-01. Organization and functions of the operations committee.

1. **Membership.** The Office of Guardianship and Conservatorship is governed by a committee which is made up only of those members appointed as provided by statute. Any vacancies on the committee must be filled as provided by statute.
2. **Administrative status.** The Office and committee is an administrative unit of the executive branch of state government and is subject to the Administrative Agencies Practice Act, North Dakota Century Code chapter 28-32.
3. **Committee officers.** The committee shall elect annually from its membership a chair and a vice chair. The duties of these officers are those ordinarily attached to a presiding officer and a vice presiding officer respectively. Any dispute over the duties or powers of one of these officers must be decided by vote of the committee.
4. **Duties.** The duties of the committee shall be as described in N.D.C.C. § 54-68-03.
5. **Meetings and quorum.** The committee shall meet at least once each year. A majority of committee membership is required to constitute a quorum for the transaction of business. A majority vote of committee members participating in any meeting is required for committee action.

History: Effective xxxxx.

General Authority: NDCC 54-68-02, 54-68-03

Law Implemented: NDCC 54-68-02, 54-68-03

CHAPTER XXX-01-02 DEFINITIONS

Section
xxx-01-02-01 Definitions

xxx-01-02-01. Definitions.

All words used in this article which are defined in North Dakota Century Code section 54-68-01 have the meanings given in that section. As used in this article, unless the context otherwise requires:

1. "Access to records" means the right to inspect records including as permitted under N.D.C.C. ch. 54-68 pertaining to an individual or group of individuals, including the right to make copies of those records.
2. "Care management" refers to the services provided by the guardian or conservator in managing a protected individual's residential, medical, educational, vocational, and financial matters.
3. "Committee" is the operations committee as established by North Dakota Century Code section 54-68-03.
4. "Conservator" means a person who is appointed by a court to manage the estate of a protected person, and includes limited conservators as defined in N.D.C.C. ch. 30.1-01..
5. "Credible informant" is a member of the public submitting a report of mismanagement or complaint to the Office of Guardianship and Conservatorship. Examples include a friend or family member of the protected individual, an employee of a service provider working with the protected individual, an employee of a financial institution working with the protected individual, an employee of Adult Protective Services, a landlord of the protected individual, or a caregiver of the protected individual.
6. "Disciplinary proceeding" is a formal proceeding to determine whether a guardian or conservator has committed misconduct, and to determine the appropriate sanction.
7. "Guardian" means a person who or nonprofit corporation that has qualified as a guardian of an incapacitated person pursuant to testamentary or court appointment, and includes limited guardians as defined in this section, but excludes one who is merely a guardian ad litem as defined in N.D.C.C. ch. 30.1-01..
8. "Office" means the Office of Guardianship and Conservatorship.
9. "Misconduct" means any violation by a guardian or conservator of any duties provided under statute, or violation of any rule enacted by the Office.

10. "Monitoring" means the review of finances, property and affairs, habilitation, treatment, program, or educational plans, facilities, programs, and all other services and care provided to persons under the protection of a guardianship or conservatorship, including implementation of these plans, services, and care.
11. "Protected individual" is an adult under the protection of an order of guardianship or conservatorship.
12. "Records" means all records relating to the care management of the protected individual.
13. "Service provider" is an individual or entity that directly provides treatment or services to address needs related to a protected individual. Examples include services that address economic, educational, employment, housing, medical, mental health, physical, psychological, psychiatric, or social needs. "Service provider" includes employees and board members of a service provider.

History: Effective xxxxx.

General Authority: NDCC 54-68-01, 54-68-03, 54-68-05

Law Implemented: NDCC 54-68-01, 54-68-03, 54-68-05

CHAPTER XXX-01-03 ELIGIBILITY FOR SERVICES

Section
xxx-01-03-01 Eligibility of Services

xxx-01-03-01. Eligibility for services – referral for investigation and monitoring.

1. The Office shall investigate allegations of misconduct against a guardian or conservator .
2. Guardianship and Conservatorship cases may be submitted to the Office by judicial referral, signed complaint by credible informant, or as determined necessary by the Office. A credible informant includes:
 - a. A friend or family member of the protected individual;
 - b. An employee of a service provider working with the protected individual;
 - c. An employee of a financial institution working with the protected individual;
 - d. An employee of Adult Protective Services;
 - e. A landlord of the protected individual; and
 - f. A caregiver of the protected individual.
3. The Office shall perform random reviews of active guardianship or conservatorship cases. Random reviews will include at least one review annually for each professional guardian entity.
4. Complaints which are substantiated by Office investigation or monitoring must be memorialized in a written report as provided in **xxx-01-06-04**. Complaints requiring further review of a guardian's or conservator's continued authority and management, or the imposition of sanctions or removal of licensure, may proceed before the review board for disciplinary proceedings.

History: Effective xxxxx.

General Authority: **NDCC 54-68-02, 54-68-05**

Law Implemented: **NDCC 54-68-02, 54-68-05**

**CHAPTER XXX-01-04
LICENSURE REQUIREMENTS**

Section
xxx-01-04-01 Licensure Requirements

xxx-01-04-01. Licensure requirements – Limitations.

This rule is subject to limitations as described in North Dakota Century Code section 54-68-08.

xxx-01-04-02. Definitions.

1. “Licensed guardian” or “licensed conservator” means an individual who has fulfilled the requirements of this chapter to serve as a guardian or conservator.
2. “Nonprofessional guardian” or “nonprofessional conservator” means an individual who serves as guardian or conservator for two or fewer individuals at the same time and is not required to be a licensed guardian or conservator through the Office.
3. “Professional guardian” or “professional conservator” means an individual or entity that serves as guardian or conservator for three or more individuals at the same time, or an individual or entity that serves as a public guardian or conservator and is authorized as a licensed guardian or conservator through the Office.

xxx-01-04-03. Qualifications - Nonprofessional guardian.

1. An individual proposed to serve as a nonprofessional guardian for one or two individuals need not be licensed by the Office but shall complete the following:
 - a. Submit an affidavit to the court stating that the proposed guardian has completed the online guardianship training program established by the North Dakota supreme court and file a certificate of completion with the appointing court before letters of guardianship are issued;
 - b. Unless waived by the court, provide a criminal history record check report to the appointing court before the hearing on the petition to appoint a guardian; and
 - c. Provide to the appointing court before the hearing on the petition to appoint the guardian an affidavit stating whether the proposed guardian has been investigated for offenses related to theft, fraud, or the abuse, neglect, or exploitation of an adult or child and shall provide a release authorizing access to any record information maintained by an agency in this or another state or a federal agency.

xxx-01-04-04. Licensure requirements – Qualifications – Professional guardian (Entity).

An entity proposed to serve as a professional guardian:

1. Shall be accredited through the Council on Accreditation or each of its employed guardians must possess certification through the Center for Guardianship Certification, and provide a certificate of accreditation or certification with the Office;
2. Shall provide to the Office a declaration stating whether any individual who will provide guardianship services for the protected individual has been investigated for a criminal offense related to fraud, theft, or abuse, neglect or exploitation of an adult or child or there has been a substantiated instance of abuse, neglect, or exploitation of an adult or child by the guardian;
3. Shall provide to the Office a declaration stating whether any individual who will provide guardianship services for the protected individual has been the subject of a substantive disciplinary order issued by a licensing entity or by an agency accredited through the Council on Accreditation;
4. Shall provide to the Office a declaration indicating the entity under the auspices of which any individual who will provide guardianship services has obtained a release authorizing access to any record information maintained by an agency in this or another state or a federal agency, a criminal history record check report and the results of a background inquiry for offenses related to theft, fraud, or the abuse, neglect, or exploitation of an adult or child with respect to any individual who will provide guardianship services and indicating the results of the report and inquiry; and
5. Shall provide to the Office a declaration indicating that all individuals employed by the entity to serve as a guardian have completed the online guardianship training program established by the North Dakota supreme court.
6. Shall maintain a minimum of \$500,000.00 of errors and omissions insurance which covers the acts of the licensed guardian or agency, and employees of the licensed guardian or agency.

xxx-01-04-05. Licensure requirements – Qualifications – professional guardian (Individual).

An individual proposed to serve as a professional guardian, whether or not employed by a professional guardian entity:

1. Shall possess certification through the Center for Guardianship Certification;
2. Shall submit to the Office a declaration that the proposed guardian has completed the online guardianship training program established by the North Dakota Supreme Court and provide a certificate of completion with the Office;

3. Shall provide a criminal history record check report to the Office; and
4. Shall provide to the Office a declaration stating whether the proposed guardian has been investigated for a criminal offense related to fraud, theft, or abuse, neglect or exploitation of an adult or child, there has been a substantiated instance of abuse, neglect, or exploitation of an adult or child by the guardian, or the guardian has been the subject of any disciplinary proceeding by a licensing entity or by an agency accredited through the Council on Accreditation, and shall provide a release authorizing access to any record information maintained by an agency in this or another state or a federal agency.
5. Shall maintain a minimum of \$500,000.00 of errors and omissions insurance which covers the acts of the licensed guardian or agency, and employees of the licensed guardian or agency. Licensed guardians with 25 or fewer guardianship case appointments and with less than \$500,000.00 total countable guardianship assets under management are exempt from the requirement of maintaining errors and omissions insurance.

xxx-01-04-06. Qualifications – Training for Conservators. (Reserved)

xxx-01-04-07. Qualifications – Public guardian or conservator. (Reserved)

xxx-01-04-08. Criminal convictions – effect on appointment as guardian or conservator.

An individual may not become a licensed guardian or conservator if the individual has been found guilty of, pled guilty to, or pled no contest to:

1. An offense described in N.D.C.C. ch. 12.1-16, homicide: § 12.1-17-01, simple assault, if a class C felony under subdivision a of subsection 2 of that section; § 12.1-17-01.1, assault; § 12.1-17-01.2, domestic violence: § 12.1-17-02, aggravated assault; § 12.1-17-03, reckless endangerment; § 12.1-17-04, terrorizing; § 12.1-17-06, criminal coercion: § 12.1-17-07.1, stalking; § 12.1-17-12, assault or homicide while fleeing a peace officer: ch. 12.1-18, kidnapping: § 12.1-20-03, gross sexual imposition: § 12.1-20-03.1, continuous sexual abuse of a child; § 12.1-20-04, sexual imposition: § 12.1-20-05, corruption or solicitation of minors: § 12.1-20-05.1, luring minors by computer or other electronic means: § 12.1-20-06, sexual abuse of wards: § 12.1-20-06.1, sexual exploitation by therapist: § 12.1-20-07, sexual assault: § 12.1-20-12.3, sexual extortion: § 12.1-21-01, arson: § 12.1-22-01, robbery: or § 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; ch. 12.1-27.2, sexual performances by children: ch. 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking: or § 12.1-29-01, promoting prostitution: § 12.1-29-02, facilitating prostitution: § 12.1-31-05, child procurement: § 12.1-31-07, endangering an eligible adult: § 12.1-31-07.1, theft

and related offenses: chapters 12.1-23 and 12.1-23.1, forgery and counterfeiting: ch. 12.1-24, exploitation of an eligible adult: § 14-09-22, abuse of a child: § 14-09-22.1, neglect of a child, subsection 1 of section § 26.1-02.1-02.1, fraudulent insurance acts: or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any enumerated North Dakota statutes; or

2. An offense, other than an offense identified above if the appointing court determines that the individual seeking appointment as a professional or nonprofessional guardian or conservator has not been sufficiently rehabilitated under xxx-01-04-09.
3. All offenses enumerated in sub-subsection 1 of this subsection have a direct bearing on the proposed professional guardian's or conservator's ability to provide guardianship or conservatorship services.

xxx-01-04-09. Criminal convictions – Rehabilitation.

For purposes of licensure, the Office:

1. May not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment without subsequent charge or conviction has elapsed, unless sufficient evidence is provided of rehabilitation; and
2. Shall treat completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections, or from imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.

xxx-01-04-10. Notification. The guardian or conservator shall notify the Office that the guardian or conservator has been charged with a criminal offense related to fraud, theft, or abuse, neglect or exploitation of an adult or child or there has been any allegations of abuse, neglect, or exploitation of an adult or child by the guardian or conservator. Where the guardian or conservator is or was employed by an entity at the time of the charge or allegation, the entity is also required to provide notification.

History: Effective xxxxx.

General Authority: NDCC 54-68-08, North Dakota Supreme Court Administrative Rule 59.

Law Implemented:

**CHAPTER XXX-01-05
GUARDIAN AND CONSERVATOR CODE OF ETHICS**

Section

xxx-01-05-01

Guardian and Conservator Code of Ethics

xxx-01-05-01. Decision-making.

A guardian or conservator shall exercise great care when making decisions on behalf of a protected individual. All decisions shall be made in a manner which protects the rights and assets of the protected individual and maximizes independence and self-reliance. A guardian or conservator shall make all reasonable efforts to ascertain the preferences of the protected individual, both past and current, when making decisions. A guardian or conservator shall conform to those preferences except when they are reasonably certain that substantial harm will result from such a decision. When the preferences of the protected individual cannot be ascertained, a guardian or conservator is responsible for making decisions which are in the best interests of the protected individual.

xxx-01-05-02. Relationship.

A guardian or conservator shall exhibit the highest degree of trust, loyalty, and fidelity in relation to the protected individual. A guardian or conservator shall protect the personal and financial interests of the protected individual and foster the individual's growth, independence and self-reliance to the maximum degree.

xxx-01-05-03. Custody of the protected individual.

A guardian shall assume legal custody of the protected individual and ensure the individual resides in the least restrictive environment available. A guardian shall be aware of the options and alternatives available for the protected individual's residence. The protected individual should reside in a non-institutional environment whenever possible.

xxx-01-05-04. Consent to care and services.

The guardian shall assume legal responsibility to provide informed consent on behalf of the protected individual for care, treatment, and services and shall ensure that such treatment represents the least restrictive form of intervention available.

xxx-01-05-05. Management of the estate.

A guardian or conservator of the estate shall provide competent management of the property and income of the estate. A guardian or conservator shall exercise intelligence, prudence, and diligence and avoid any self-interest.

xxx-01-05-06. Termination and limitation.

A guardian or conservator is obligated to seek termination or limitation of the guardianship or conservatorship when guardianship or conservatorship is no longer necessary. A guardian or conservator shall seek evidence of improvements in the capabilities of the protected individual, and shall assist the protected individual in arranging independent representation.

xxx-01-05-07. Sharing of information.

To the extent the protected individual is able to participate, the guardian and conservator has a duty to share relevant information with the protected individual and aim toward the goal of greater decision-making by the protected individual.

xxx-01-05-08. Ethical principles.

A guardian or conservator:

1. Treats the protected individual with dignity.
2. Involves the protected individual to the greatest extent possible in all decision making.
3. Selects the option that places the least restrictions on the protected individual's freedom and rights.
4. Identifies and advocates for the protected individual's goals, needs, and preferences.
5. Maximizes the self-reliance and independence of the protected individual.
6. Keeps confidential the affairs of the protected individual.
7. Avoids conflicts of interest and self-dealing.
8. Complies with all laws and court orders.
9. Manages all financial matters carefully.
10. Respects that the money and property being managed belongs to the protected individual.

History: Effective xxxxx.

General Authority: NDCC 30.1-28, 30.1-29, Model Code of Ethics for Guardians Adapted from the National Guardianship Association, National Guardianship Association Standards of Practice, National Guardianship Association Ethical Principles.

Law Implemented:

**CHAPTER XXX-01-06
GRIEVANCES AND DISCIPLINARY ACTION**

Section

xxx-01-06-01

Grievances and Disciplinary Action

xxx-01-06-01. Grievances and disciplinary action – Case selection.

1. The Office shall review the care management provided by a guardian and conservator for the health, safety, welfare, and financial wellbeing of a protected individual subject to a guardianship or conservatorship established by or transferred to a district court within the State of North Dakota.
2. Cases may be submitted to the Office by judicial referral, an allegation of misconduct, or as determined necessary by the Office. A credible informant includes a friend or family member of the protected individual, an employee of a service provider working with the protected individual, an employee of a financial institution working with the protected individual, an employee of Adult Protective Services, a landlord of the protected individual, or a caregiver of the protected individual.
3. The Office shall schedule random reviews of active guardianship or conservatorship cases. Random reviews will include at least one review annually for each professional guardian.

xxx-01-06-02. Grievances and disciplinary action – Case commencement.

1. Upon receipt of a judicial referral, an allegation of misconduct, or as determined otherwise necessary by the Office, the Office shall assess the need for an investigation of the report or complaint. If the Office determines that the allegations, if true, indicate the current care management provided by a guardian or conservator is likely to result in harm to the protected individual's health, safety, welfare, or financial wellbeing, the Office shall notify the alleging party if the case is accepted or declined for review.
2. For cases of judicial review in which no misconduct is identified by the Office, the Office shall file a Notice of Completed Investigation with the court.
3. For reports and complaints warranting investigation, the Office shall open an investigative file which must contain all pertinent names, contact information, notes, recommendations, and relevant information pertaining to the health, safety, welfare, and fiduciary wellbeing of the protected individual.

xxx-01-06-03. Grievances and disciplinary action – Investigation and access to records.

1. For purposes of investigating a report or complaint, the Office may, pursuant to N.D.C.C. § 54-68-10:
 - a. Interview an alleged victim, witness, or any other individual with knowledge of the situation.
 - b. Access any record or information on an applicant, provider, or recipient of public services.
 - c. Issue subpoenas for the attendance of witnesses and the production of designated documents, electronically stored information, or tangible things in accordance with the North Dakota Rules of Civil Procedure.
 - d. Order the deposition of a person residing within or outside the state to be taken in accordance with the North Dakota Rules of Civil Procedure.
 - e. Coordinate with other agencies and departments, including the attorney general and bureau of criminal investigation.
2. Other agencies, departments, care workers, financial institutions, and law enforcement shall assist the Office in obtaining sufficient information for the purpose of assessing the care management provided by the guardian or conservator. The Office may participate in residential visits to assess the protected individual in person.

xxx-01-06-04. Grievances and disciplinary action – Report and recommendation.

1. Upon completion of an investigation, the Office shall prepare a written Report detailing their observations, concerns, resources provided, and recommendation for next appropriate steps as determined by input from the Monitor, the protected person's care team, and the Office Executive Director.
2. The Report must be provided to:
 - a. If applicable, a court that has referred the matter for monitoring.
 - b. The Guardianship and Conservatorship Review Board, if recommendations include sanctions or other disciplinary action.
 - c. A court with jurisdiction of the guardianship or conservatorship when the investigation is initiated by the Office.
 - a. At the discretion of the Office, any cases in which a report of misconduct has been substantiated may be set for the soonest available district court review hearing or hearing before the Review Board. District court and Review Board hearings may occur simultaneously.

xxx-01-06-05. Grievances and disciplinary action – Review board.

1. In the event the Office refers the matter to the Review Board, Investigation Counsel shall prepare a Formal Disciplinary Complaint within 10 days after the

investigation is completed. The complaint must go before the Review Board as a Disciplinary Proceeding.

2. Pursuant to N.D.C.C. § 54-68-05, the Review Board shall consist of:
 - a. One member representing guardians, appointed by the guardianship association of North Dakota;
 - b. One member representing family guardians, appointed by the chief justice of the supreme court;
 - c. One member representing the protection and advocacy project, appointed by the committee on protection and advocacy;
 - d. Two members appointed by the state bar association of North Dakota, consisting of:
 - (1) One lawyer licensed to practice law in the state who is not an active judge or employee of a judge; and
 - (2) One retired judge, judicial referee, or surrogate judge; and
 - e. Two members of the public, appointed by the governor.
3. Review Board meetings are closed meetings under Chapter 44-04.

xxx-01-06-06. Grievances and disciplinary action – Disciplinary proceeding.

1. Notice of a Formal Disciplinary Complaint must be filed and served upon the responding party in the manner prescribed by N.D.C.C. § 28-32-21 and the North Dakota Rules of Civil Procedure.
2. The Review Board shall schedule a hearing within 20 days of receipt of the Formal Disciplinary Complaint. Notice of the hearing must be provided to the responding party at least 45 days prior to the scheduled hearing.
3. A Formal Disciplinary Complaint recommending the renewal, suspension, or revocation of a guardian or conservator license must be served, personally or by certified mail, with a copy of the notice for hearing with an affidavit, complaint, and specification of issues alleging violations upon which the hearing is based.
4. The Review Board shall appoint a hearing officer with authority to conduct pre-hearing meetings, supervise exchange or collection of information, advise the Review Board, and preside over the hearing.
5. During the proceedings, the responding party is entitled to representation by advisor or counsel of their choice and at their own expense as permitted under N.D.C.C. §§ 28-32-24 and 28-32-35. Investigation Counsel of the Office shall attend the Disciplinary Proceeding. The Disciplinary Proceeding must be closed to the public according to N.D.C.C. § 54-68-05.
6. The findings of fact, conclusions, and recommendations must be based solely on the evidence received by the Review Board. The Office has the burden to prove, by a preponderance of the evidence, that the care management

- provided by the guardian or conservator has resulted or is likely to result in harm to the protected individual's health, safety, welfare, or financial wellbeing.
7. The Review Board may admit any evidence which is of probative value in determining the issues or if doing so is in the interests of justice. Every reasonable effort must be made to obtain the most reliable evidence available. The Review Board shall grant adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.
 8. The responding party shall be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The parties shall have the right to confront and cross-examine all witnesses. Testimony may be taken by deposition, including deposition by telephone, or witnesses may testify by telephone, video, or other electronic means upon agreement of the parties or, absent an agreement, upon request of a party and determination by the hearing officer that such use does not substantially prejudice the rights of any party. Affidavits may be received as evidence upon stipulation of the parties.
 9. Within ten (10) days of the Disciplinary Proceeding, the Review Board shall provide written findings of fact and conclusions, with supporting reasons, to the Office Executive Director and the responding party or the responding party's representative for the issuance of sanctions, revocation or suspension of a guardian or conservator license.
 10. Appeals of these proceedings must be conducted in accordance with N.D.C.C. ch. 28-32.

xxx-01-06-07. Grievances and disciplinary action – Sanctions and removal of licensure.

Upon reviewing the Report and supporting evidence regarding allegations of care mismanagement, the Review Board may issue sanctions against the guardian or conservator, including:

1. Financial Penalties. The Review Board may recommend that Guardians and conservators be held financially liable for any losses or damages caused by the guardian's or conservator's negligence or failure to act in the protected person's best interest.
2. Loss of Authority. If a guardian or conservator is found to have abused their authority or failed to fulfill their duties, they may lose the right to manage the protected person's affairs. The Review Board may recommend to the district court in which the guardianship or conservatorship originated, that it order the removal of the guardian or conservator.
3. Loss of Licensure. If a guardian or conservator is found to have abused their authority or failed to fulfill their duties in such a way that the protected person was subjected to substantial harm with regard to their health, safety, welfare,

or financial wellbeing, the Review Board may suspend or terminate the license of the guardian or conservator. Such cases may also be referred to law enforcement for determination of appropriate criminal charges.

History: Effective xxxxx.

General Authority: NDCC 30.1-28, 30.1-29, Model Code of Ethics for Guardians
Adapted from the National Guardianship Association.

Law Implemented: