
STATUTORY RULES OF NORTHERN IRELAND

1996 No. 322

The Family Proceedings Rules (Northern Ireland) 1996

Part VI

Disability

Interpretation

6.1.—(1) In this Part—

“person under disability” means a person who is a minor or a person who by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986(1) is incapable of managing and administering his property and affairs.

(2) So far as they relate to minors who are the subject of applications the provisions of this Part shall not apply to proceedings which are specified proceedings within the meaning of Article 60(6) of the Order of 1995 and this Part shall have effect subject to the said Article 60(6) and Part IV.

(3) Rule 6.3 shall apply only to proceedings under the Order of 1995.

Person under disability must sue by next friend etc

6.2.—(1) A person under disability may begin and prosecute any family proceedings by his next friend and may defend any such proceedings by his guardian ad litem and, except as otherwise provided by this rule, it shall not be necessary for a guardian ad litem to be appointed by the court.

(2) No person’s name shall be used in any proceedings as next friend of a person under disability unless he is the Official Solicitor or the documents mentioned in paragraph (6) have been filed.

(3) Where the disability of a person who is entitled to defend any family proceedings is not solely due to minority, the Official Solicitor shall, if he consents, be guardian ad litem; but at any stage of the proceedings an application may be made (on not less than 4 days’ notice to the Official Solicitor, if he has consented to act) for the appointment of some other person as guardian; and there shall be filed in support of any application under this paragraph the documents mentioned in paragraph (6).

(4) Where a petition, answer, application or originating summons has been served on a person whom there is reasonable ground for believing to be a person under disability and no notice of intention to defend has been given or answer or affidavit in answer filed on his behalf, the party at whose instance the document was served shall, before taking any further step in the proceedings, apply to the Master for directions as to whether a guardian ad litem should be appointed to act for that person in the cause, and on any such application the Master may, if he considers it necessary in order to protect the interest of the person served, order that some proper person be appointed his guardian ad litem.

(5) No notice of intention to defend shall be given, or answer or affidavit in answer filed (by or on behalf of a person under disability) unless the person giving the notice or filing the answer or affidavit—

- (a) is the Official Solicitor or, in a case in which paragraph (3) applies, is the Official Solicitor or has been appointed by the court to be guardian ad litem; or
 - (b) in any other case, has filed the documents mentioned in paragraph (6).
- (6) The documents referred to in paragraphs (2), (3) and (5) are—
- (a) a written consent to act by the proposed next friend or guardian ad litem;
 - (b) a certificate by the solicitor acting for the person under disability—
 - (i) that he knows or believes that the person to whom the certificate relates is a person under disability stating the grounds of his knowledge or belief, and
 - (ii) that the person named in the certificate as next friend or guardian ad litem has no interest in the cause or matter in question adverse to that of the person under disability and is a proper person to be next friend or guardian.

Certain minors may sue without next friend etc

6.3.—(1) Where a person entitled to begin, prosecute or defend any proceedings to which this rule applies, is a minor to whom this Part applies, he may subject to paragraph (3), begin, prosecute or defend, as the case may be, such proceedings without a next friend or guardian ad litem—

- (a) where he has obtained the leave of the court for that purpose; or
 - (b) where a solicitor—
 - (i) considers that the minor is able, having regard to his understanding, to give instructions in relation to the proceedings; and
 - (ii) has accepted instructions from the minor to act for him in the proceedings and, where the proceedings have begun, is so acting.
- (2) A minor shall be entitled to apply for the leave of the court under paragraph (1)(a) without a next friend or guardian ad litem either—
- (a) by filing a written request for leave setting out the reasons for the application, or
 - (b) by making an oral request for leave at any hearing in the proceedings.
- (3) On considering a request for leave filed under paragraph (2)(a), the court shall either—
- (a) grant the request, whereupon the proper officer or chief clerk shall communicate the decision to the minor and, where the leave relates to the prosecution or defence of existing proceedings, to the other parties to those proceedings, or
 - (b) direct that the request be heard *ex parte*, whereupon the proper officer or chief clerk shall fix a date for such a hearing and give to the minor making the request such notice of the date so fixed as the court may direct.
- (4) Where a minor has a next friend or guardian ad litem in proceedings and the minor wishes to prosecute or defend the remaining stages of the proceedings without a next friend or guardian ad litem, the minor may apply to the court for leave for that purpose and for the removal of the next friend or guardian ad litem; and paragraph (2) shall apply to the application as if it were an application under paragraph (1)(a).
- (5) On considering a request filed under paragraph (2) by virtue of paragraph (4), the court shall either—
- (a) grant the request, whereupon the proper officer or chief clerk shall communicate the decision to the minor and next friend or guardian ad litem concerned and to all other parties to the proceedings, or

- (b) direct that the request be heard, whereupon the proper officer or chief clerk shall fix a date for such a hearing and give to the minor and next friend or guardian ad litem concerned such notice of the date so fixed as the court may direct;

provided that the court may act under sub-paragraph (a) only if it is satisfied that the next friend or guardian ad litem does not oppose the request.

- (6) Where the court is considering whether to—
 - (a) grant leave under paragraph (1)(a), or
 - (b) grant leave under paragraph (4) and remove a next friend or guardian ad litem,

it shall grant the leave sought and, as the case may be, remove the next friend or guardian ad litem if it considers that the minor concerned has sufficient understanding to participate as a party in the proceedings concerned or proposed without a next friend or guardian ad litem.

(7) Where a request for leave is granted at a hearing fixed under paragraph (3)(b) (in relation to the prosecution or defence of proceedings already begun) or (5)(b), the proper officer or chief clerk shall forthwith communicate the decision to the other parties to the proceedings.

(8) The court may revoke any leave granted under paragraph (1)(a) where it considers that the child does not have sufficient understanding to participate as a party in the proceedings concerned without a next friend or guardian ad litem.

(9) Without prejudice to any requirement of C.C.R. Order 43, rule 2 or R.S.C. Order 67, where a solicitor is acting for a minor in proceedings which the minor is prosecuting or defending without a next friend or guardian ad litem by virtue of paragraph (1)(b) and either of the conditions specified in the paragraph (1)(b)(i) and (ii) cease to be fulfilled, he shall forthwith so inform the court.

- (10) Where—
 - (a) the court revokes any leave under paragraph (8), or
 - (b) either of the conditions specified in paragraph (1)(b)(i) and (ii) is no longer fulfilled,

the court may, if it considers it necessary in order to protect the interests of the minor concerned, order that some proper person be appointed his next friend or guardian ad litem.

(11) Where a minor is of sufficient understanding to begin, prosecute or defend proceedings without a next friend or guardian ad litem—

- (a) he may nevertheless begin, prosecute or defend them by his next friend or guardian ad litem; and
- (b) where he is prosecuting or defending proceedings by his next friend or guardian ad litem, the respective powers and duties of the minor and next friend or guardian ad litem, except those conferred or imposed by this rule shall not be affected by the minor's ability to dispense with a next friend or guardian ad litem under the provisions of this rule.

Service on person under disability

6.4.—(1) Where a document to which rule 2.9 applies is required to be served on a person under disability it shall be served—

- (a) in the case of a minor who is not otherwise a person under disability, on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;
- (b) in the case of any other person under disability—
 - (i) on the Official Solicitor if he has consented under rule 6.2(3) to be the guardian ad litem, or
 - (ii) if the Official Solicitor has not so consented, on the person with whom he resides or in whose care he is:

Provided that the court may order that a document which has been, or is to be, served on the person under disability or on a person other than one mentioned in sub-paragraph (a) or (b) shall be deemed to be duly served on the person under disability.

(2) Where a document is served in accordance with paragraph (1), it shall be indorsed with a notice in Form M22; and after service has been effected the person at whose instance the document was served shall, unless the Official Solicitor is the guardian ad litem of the person under disability or the court otherwise directs, file an affidavit by the person on whom the document was served stating whether the contents of the document were, or its purport was, communicated to the person under disability and, if not, the reasons for not doing so.

Petition for nullity on ground of insanity, etc

6.5.—(1) Where a petition for nullity has been presented on the ground that at the time of the marriage the respondent was suffering from mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986 of such a kind or to such an extent as to be unfitted for marriage, then, whether or not the respondent gives notice of intention to defend, the petitioner shall not proceed with the cause without the leave of the Master.

(2) The Master may make it a condition of granting leave that some proper person be appointed to act as guardian ad litem of the respondent.

Separate representation of children

6.6.—(1) Without prejudice to rule 2.59, if in any family proceedings it appears to the court that any child ought to be separately represented, the court may appoint—

- (a) the Official Solicitor, or
- (b) some other proper person

(provided, in either case, that he consents) to be the guardian ad litem of the child, with authority to take part in the proceedings on the child's behalf.

(2) An order under paragraph (1) may be made by the court of its own motion or on the application of a party to the proceedings or of the proposed guardian ad litem.

(3) The court may at any time direct that an application be made by a party for an order under paragraph (1) and may stay the proceedings until the application has been made.

(4) Unless the court otherwise directs, on making an application for an order under paragraph (1) the applicant shall—

- (a) unless he is the proposed guardian ad litem, file a written consent by the proposed guardian to act as such;
- (b) unless the proposed guardian ad litem is the Official Solicitor, file a certificate that the proposed guardian has no interest in the proceedings adverse to that of the child and is a proper person to be guardian.

(5) Unless the court otherwise directs, a person appointed under this rule or rule 2.59 to be the guardian ad litem of a child in any family proceedings shall be treated as a party for the purpose of any provision of these Rules requiring a document to be served on or notice to be given to a party to the proceedings.