
STATUTORY INSTRUMENTS

1991 No. 1247

The Family Proceedings Rules 1991

PART IX

DISABILITY

Person under disability must sue by next friend etc.

9.2.—(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 (7) have been filed.

(3) Where a person is authorised under Part VII to conduct legal proceedings in the name of a patient or on his behalf, that person shall, subject to paragraph (4), be entitled to be next friend or guardian ad litem of the patient in any family proceedings to which his authority extends.

(4) Where a person entitled to defend any family proceedings is a patient and there is no person authorised under Part VII to defend the proceedings in his name or on his behalf, then—

- (a) the Official Solicitor shall, if he consents, be the patient's guardian ad litem, but at any stage of the proceedings an application may be made on not less than four days' notice to the Official Solicitor, for the appointment of some other person as guardian;
- (b) in any other case, an application may be made on behalf of the patient for the appointment of a guardian ad litem;

and there shall be filed in support of any application under this paragraph the documents mentioned in paragraph (7).

(5) Where a petition, answer, originating 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 steps in the proceedings, apply to a district judge 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 district judge may, if he considers it necessary in order to protect the interests of the person served, order that some proper person be appointed his guardian ad litem.

(6) 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 to which paragraph (4) 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 (7).

(7) The documents referred to in paragraphs (2), (4) and (6) are—

- (a) a written consent to act by the proposed next friend or guardian ad litem;

- (b) where the person under disability is a patient and the proposed next friend or guardian ad litem is authorised under Part VII to conduct the proceedings in his name or on his behalf, an office copy, sealed with the seal of the Court of Protection, of the order or other authorisation made or given under Part VII; and
- (c) except where the proposed next friend or guardian ad litem is authorised as mentioned in sub-paragraph (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 minor or patient, stating (in the case of a patient) the grounds of his knowledge or belief and, where the person under disability is a patient, that there is no person authorised as aforesaid, 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 that he is a proper person to be next friend or guardian.