
STATUTORY INSTRUMENTS

1991 No. 1247

The Family Proceedings Rules 1991

**PART IX
DISABILITY**

Interpretation and application of Part IX

9.1.—(1) In this Part—

“patient” means a person who, by reason of mental disorder within the meaning of the Mental Health Act 1983(1), is incapable of managing and administering his property and affairs;

“person under disability” means a person who is a minor or a patient;

“Part VII” means Part VII of the Mental Health Act 1983.

(2) So far as they relate to minors, the provisions of this Part of these rules shall not apply to proceedings which are specified proceedings within the meaning of section 41(6) of the Children Act 1989(2) and, with respect to proceedings which are dealt with together with specified proceedings, this Part shall have effect subject to the said section 41 and Part IV of these rules.

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).

(1) 1983 c. 20.
(2) 1989 c. 41.

(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.

Service on person under disability

9.3.—(1) Where a document to which rule 2.9 applies is required to be served on a person under disability within the meaning of the last foregoing rule, it shall be served—

- (a) in the case of a minor who is not also a patient, 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 a patient—
 - (i) on the person (if any) who is authorised under Part VII to conduct in the name of the patient or on his behalf the proceedings in connection with which the document is to be served, or
 - (ii) if there is no person so authorised, on the Official Solicitor if he has consented under rule 9.2(4) to be the guardian ad litem of the patient, or
 - (iii) in any other case, on the person with whom the patient 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 M24; 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 mental disorder

9.4.—(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 Act 1983 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 district judge.

(2) The district judge by whom an application for leave is heard 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

9.5.—(1) Without prejudice to rule 2.57, 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 otherwise directed, 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 by a solicitor that the proposed guardian has no interest in the proceedings adverse to that of the child and that he is a proper person to be a guardian.

(5) Unless otherwise directed, a person appointed under this rule or rule 2.57 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.