
STATUTORY INSTRUMENTS

2005 No. 2795

The Family Procedure (Adoption) Rules 2005

PART 15

ADMISSIONS AND EVIDENCE

Making an admission

122.—(1) A party may admit the truth of the whole or any part of another party's case by giving notice in writing.

(2) The court may allow a party to amend or withdraw an admission.

Power of court to control evidence

123.—(1) The court may control the evidence by giving directions as to—

- (a) the issues on which it requires evidence;
- (b) the nature of the evidence which it requires to decide those issues; and
- (c) the way in which the evidence is to be placed before the court.

(2) The court may use its power under this rule to exclude evidence that would otherwise be admissible.

(3) The court may limit cross-examination.

Evidence of witnesses – general rule

124.—(1) The general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved—

- (a) at final hearing, by their oral evidence; and
- (b) at any other hearing, by their evidence in writing.

(2) This is subject—

- (a) to any provision to the contrary contained in these Rules or elsewhere; or
- (b) to any order of the court.

Evidence by video link or other means

125. The court may allow a witness to give evidence through a video link or by other means.

Service of witness statements for use at final hearing

126.—(1) A witness statement is a written statement signed by a person which contains the evidence which that person would be allowed to give orally.

(2) The court will give directions about the service of any witness statement of the oral evidence which a party intends to rely on in relation to any issues of fact to be decided at the final hearing on the other parties.

(3) The court may give directions as to—

- (a) the order in which witness statements are to be served; and
- (b) whether or not the witness statements are to be filed.

Use at final hearing of witness statements which have been served

127.—(1) If—

- (a) a party has filed a witness statement which has been served on the other parties; and
- (b) he wishes to rely at the final hearing on the evidence of the witness who made the statement,

he must call the witness to give oral evidence unless the court directs otherwise or he puts the statement in as hearsay evidence.

(2) Where a witness is called to give oral evidence under paragraph (1), his witness statement shall stand as his evidence in chief unless the court directs otherwise.

(3) A witness giving oral evidence at final hearing may with the permission of the court—

- (a) amplify his witness statement; and
- (b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties.

(4) The court will give permission under paragraph (3) only if it considers that there is good reason not to confine the evidence of the witness to the contents of his witness statement.

(5) If a party who has filed a witness statement which has been served on the other parties does not—

- (a) call the witness to give evidence at final hearing; or
- (b) put the witness statement in as hearsay evidence, any other party may put the witness statement in as hearsay evidence.

Evidence in proceedings other than at final hearing

128.—(1) Subject to paragraph (2), the general rule is that evidence at hearings other than the final hearing is to be by witness statement unless the court, a practice direction or any other enactment requires otherwise.

(2) At hearings other than the final hearing, a party may, rely on the matters set out in—

- (a) his application form; or
- (b) his application notice, if it is verified by a statement of truth.

Order for cross-examination

129.—(1) Where, at a hearing other than the final hearing, evidence is given in writing, any party may apply to the court for permission to cross-examine the person giving the evidence.

(2) If the court gives permission under paragraph (1) but the person in question does not attend as required by the order, his evidence may not be used unless the court gives permission.

Form of witness statement

130. A witness statement must comply with the requirements set out in the relevant practice direction.

Witness summaries

131.—(1) A party who—

- (a) is required to file a witness statement for use at final hearing; but
- (b) is unable to obtain one, may apply, without notice, for permission to file a witness summary instead.

(2) A witness summary is a summary of—

- (a) the evidence, if known, which would otherwise be included in a witness statement; or
- (b) if the evidence is not known, the matters about which the party filing the witness summary proposes to question the witness.

(3) Unless the court directs otherwise, a witness summary must include the name and address of the intended witness.

(4) Unless the court directs otherwise, a witness summary must be filed within the period in which a witness statement would have had to be filed.

(5) Where a party files a witness summary, so far as practicable, rules 126 (service of witness statements for use at final hearing), 127(3) (amplifying witness statements), and 130 (form of witness statement) shall apply to the summary.

Cross-examination on a witness statement

132. Where a witness is called to give evidence at final hearing, he may be cross-examined on his witness statement whether or not the statement or any part of it was referred to during the witness's evidence in chief.

False statements

133.—(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

(2) Proceedings under this rule may be brought only—

- (a) by the Attorney General; or
- (b) with the permission of the court.

(3) This rule does not apply to proceedings in a magistrates' court.

Affidavit evidence

134. Evidence must be given by affidavit instead of or in addition to a witness statement if this is required by the court, a provision contained in any other rule, a practice direction or any other enactment.

Form of affidavit

135. An affidavit must comply with the requirements set out in the relevant practice direction.

Affidavit made outside the jurisdiction

- 136.** A person may make an affidavit outside the jurisdiction in accordance with—
- (a) this Part; or
 - (b) the law of the place where he makes the affidavit.

Notarial acts and instruments

137. A notarial act or instrument may be received in evidence without further proof as duly authenticated in accordance with the requirements of law unless the contrary is proved.

Use of plans, photographs and models as evidence

- 138.—**(1) This rule applies to evidence (such as a plan, photograph or model) which is not—
- (a) contained in a witness statement, affidavit or expert's report; and
 - (b) to be given orally at the final hearing.
- (2) This rule includes documents which may be received in evidence without further proof under section 9 of the Civil Evidence Act 1995⁽¹⁾.
- (3) Unless the court orders otherwise the evidence shall not be receivable at the final hearing unless the party intending to put it in evidence has given notice to the court in accordance with this rule and the court will give directions about service of the notice on any other party.
- (4) Where the party intends to use the evidence as evidence of any fact then, subject to paragraph (6), he must give notice not later than the latest date for filing witness statements.
- (5) He must give notice at least 21 days before the hearing at which he proposes to put in the evidence, if—
- (a) there are not to be witness statements; or
 - (b) he intends to put in the evidence solely in order to disprove an allegation made in a witness statement.
- (6) Where the evidence forms part of expert evidence, he must give notice when the expert's report is filed.
- (7) Where the evidence is being produced to the court for any reason other than as part of factual or expert evidence, he must give notice at least 21 days before the hearing at which he proposes to put in the evidence.
- (8) Where a party has given notice that he intends to put in the evidence, the court may direct that every other party be given an opportunity to inspect it and to agree to its admission without further proof.

Evidence of finding on question of foreign law

- 139.—**(1) This rule sets out the procedure which must be followed by a party who intends to put in evidence a finding on a question of foreign law by virtue of section 4(2) of the Civil Evidence Act 1972⁽²⁾.
- (2) He must give the court notice of his intention—
- (a) if there are to be witness statements, not later than the latest date for filing them; or

(1) 1995 c. 38. Section 9 of the Civil Evidence Act 1995 provides that documents forming part of the records of a business or public authority, as defined in that section, may be received in evidence without further proof.

(2) 1972 c. 30.

- (b) otherwise, not less than 21 days before the hearing at which he proposes to put the finding in evidence

and the court will give directions about service of the notice on any other party.

(3) The notice must—

- (a) specify the question on which the finding was made; and
- (b) enclose a copy of a document where it is reported or recorded.