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STATUTORY INSTRUMENTS

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**2005 No. 2795**

**The Family Procedure (Adoption) Rules 2005**

**PART 7**

**LITIGATION FRIEND, CHILDREN'S GUARDIAN, REPORTING  
OFFICER AND CHILDREN AND FAMILY REPORTER**

*SECTION 1*

*LITIGATION FRIEND*

**Application of this Section**

**49.**—(1) This Section—

- (a) contains special provisions which apply in proceedings involving non-subject children and patients; and
- (b) sets out how a person becomes a litigation friend.

(2) The provisions of this Section also apply to a child who does not have a children's guardian, in which case, any reference to a "non-subject child" in these Rules is to be taken as including a child.

**Requirement for litigation friend in proceedings**

**50.**—(1) Subject to rule 51, a non-subject child must have a litigation friend to conduct proceedings on his behalf.

(2) A patient must have a litigation friend to conduct proceedings on his behalf.

**Circumstances in which the non-subject child does not need a litigation friend**

**51.**—(1) A non-subject child may conduct proceedings without a litigation friend—

- (a) where he has obtained the court's permission to do so; or
- (b) where a solicitor—
  - (i) considers that the non-subject child is able, having regard to his understanding, to give instructions in relation to the proceedings; and
  - (ii) has accepted instructions from that child to act for him in the proceedings and, if the proceedings have begun, he is already acting.

(2) An application for permission under paragraph (1)(a) may be made by the non-subject child without notice.

(3) Where a non-subject child has a litigation friend in proceedings and he wishes to conduct the remaining stages of the proceedings without a litigation friend, the non-subject child may apply to the court, on notice to the litigation friend, for permission for that purpose and for the removal of the litigation friend.

- (4) Where the court is considering whether to—
- (a) grant permission under paragraph (1)(a); or
  - (b) grant permission under paragraph (3) and remove a litigation friend

it will grant the permission sought and, as the case may be, remove the litigation friend if it considers that the non-subject child concerned has sufficient understanding to conduct the proceedings concerned or proposed without a litigation friend.

(5) In exercising its powers under paragraph (4) the court may require the litigation friend to take such part in the proceedings as the court directs.

(6) The court may revoke any permission granted under paragraph (1)(a) where it considers that the non-subject child does not have sufficient understanding to participate as a party in the proceedings concerned without a litigation friend.

(7) Where a solicitor is acting for a non-subject child in proceedings without a litigation friend by virtue of paragraph (1)(b) and either of the conditions specified in paragraph (1)(b)(i) or (ii) cease to be fulfilled, he must inform the court immediately.

- (8) Where—
- (a) the court revokes any permission under paragraph (6); or
  - (b) either of the conditions specified in paragraph (1)(b)(i) or (ii) is no longer fulfilled

the court may, if it considers it necessary in order to protect the interests of the non-subject child concerned, appoint a person to be that child's litigation friend.

#### **Stage of proceedings at which a litigation friend becomes necessary**

**52.**—(1) This rule does not apply where a non-subject child is conducting proceedings without a litigation friend in accordance with rule 51.

- (2) A person may not without the permission of the court take any step in proceedings except—
- (a) filing an application form; or
  - (b) applying for the appointment of a litigation friend under rule 55

until the non-subject child or patient has a litigation friend.

(3) If a party becomes a patient during proceedings, no party may take any step in proceedings without the permission of the court until the patient has a litigation friend.

#### **Who may be a litigation friend for a patient without a court order**

**53.**—(1) This rule does not apply if the court has appointed a person to be a litigation friend.

(2) A person authorised under Part VII of the Mental Health Act 1983 to conduct legal proceedings in the name of a patient or on his behalf is entitled to be the litigation friend of the patient in any proceedings to which his authority extends.

(3) If nobody has been appointed by the court or, in the case of a patient, authorised under Part VII of the Mental Health Act 1983, a person may act as a litigation friend if he—

- (a) can fairly and competently conduct proceedings on behalf of the non-subject child or patient;
- (b) has no interest adverse to that of the non-subject child or patient; and
- (c) subject to paragraph (4), undertakes to pay any costs which the non-subject child or patient may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the non-subject child or patient.

(4) Paragraph (3)(c) does not apply to the Official Solicitor, an officer of the Service or a Welsh family proceedings officer.

#### **How a person becomes a litigation friend without a court order**

**54.**—(1) If the court has not appointed a litigation friend, a person who wishes to act as a litigation friend must follow the procedure set out in this rule.

(2) A person authorised under Part VII of the Mental Health Act 1983 must file an official copy<sup>(1)</sup> of the order or other document which constitutes his authorisation to act.

(3) Any other person must file a certificate of suitability stating that he satisfies the conditions specified in rule 53(3).

(4) A person who is to act as a litigation friend must file—

- (a) the authorisation; or
- (b) the certificate of suitability

at the time when he first takes a step in the proceedings on behalf of the non-subject child or patient.

(5) A court officer will send the certificate of suitability to every person on whom, in accordance with rule 37(1) (service on parent, guardian etc.), the application form should be served.

(6) This rule does not apply to the Official Solicitor, an officer of the Service or a Welsh family proceedings officer.

#### **How a person becomes a litigation friend by court order**

**55.**—(1) The court may make an order appointing—

- (a) the Official Solicitor;
- (b) in the case of a non-subject child, an officer of the Service or a Welsh family proceedings officer (if he consents); or
- (c) some other person (if he consents)

as a litigation friend.

(2) An order appointing a litigation friend may be made by the court of its own initiative or on the application of—

- (a) a person who wishes to be a litigation friend; or
- (b) a party to the proceedings.

(3) The court may at any time direct that a party make an application for an order under paragraph (2).

(4) An application for an order appointing a litigation friend must be supported by evidence.

(5) Unless the court directs otherwise, a person appointed under this rule to be a litigation friend for a non-subject child or patient will be treated as a party for the purpose of any provision in these Rules requiring a document to be served on, or sent to, or notice to be given to, a party to the proceedings.

(6) Subject to rule 53(4), the court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 53(3).

#### **Court's power to change litigation friend and to prevent person acting as litigation friend**

**56.**—(1) The court may—

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(1) An official copy is a copy of an official document supplied and marked as such by the office that issued the original.

- (a) direct that a person may not act as a litigation friend;
  - (b) terminate a litigation friend's appointment; or
  - (c) appoint a new litigation friend in substitution for an existing one.
- (2) An application for an order under paragraph (1) must be supported by evidence.
- (3) Subject to rule 53(4), the court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 53(3).

**Appointment of litigation friend by court order – supplementary**

**57.**—(1) A copy of the application for an order under rule 55 or 56 must be sent by a court officer to every person on whom, in accordance with rule 37(1) (service on parent, guardian etc.), the application form should be served.

(2) Where an application for an order under rule 55 is in respect of a patient, the court officer must also send a copy of the application to the patient unless the court directs otherwise.

(3) A copy of an application for an order under rule 56 must also be sent to—

- (a) the person who is the litigation friend, or who is purporting to act as the litigation friend, when the application is made; and
- (b) the person who it is proposed should be the litigation friend, if he is not the applicant.

**Procedure where appointment of litigation friend comes to an end**

**58.**—(1) When a non-subject child who is not a patient reaches the age of 18, a litigation friend's appointment comes to an end.

(2) When a party ceases to be a patient, the litigation friend's appointment continues until it is brought to an end by a court order.

(3) An application for an order under paragraph (2) may be made by—

- (a) the former patient;
- (b) the litigation friend; or
- (c) a party.

(4) A court officer will send a notice to the other parties stating that the appointment of the non-subject child or patient's litigation friend to act has ended.