
STATUTORY INSTRUMENTS

2007 No. 1744

The Court of Protection Rules 2007

PART 17

LITIGATION FRIEND

Who may act as a litigation friend

140.—(1) A person may act as a litigation friend on behalf of a person mentioned in paragraph (2) if he—

- (a) can fairly and competently conduct proceedings on behalf of that person; and
 - (b) has no interests adverse to those of that person.
- (2) The persons for whom a litigation friend may act are—
- (a) P;
 - (b) a child; or
 - (c) a protected party.

Requirement for a litigation friend

- 141.**—(1) Subject to rule 147, P (if a party to proceedings) must have a litigation friend.
- (2) A protected party (if a party to the proceedings) must have a litigation friend.
- (3) A child (if a party to proceedings) must have a litigation friend to conduct those proceedings on his behalf unless the court makes an order under paragraph (4).
- (4) The court may make an order permitting the child to conduct proceedings without a litigation friend.
- (5) An application for an order under paragraph (4)—
- (a) may be made by the child;
 - (b) if the child already has a litigation friend, must be made on notice to the litigation friend; and
 - (c) if the child has no litigation friend, may be made without notice.
- (6) Where—
- (a) the court has made an order under paragraph (4); and
 - (b) it subsequently appears to the court that it is desirable for a litigation friend to conduct the proceedings on behalf of the child,
- the court may appoint a person to be the child's litigation friend.

Litigation friend without a court order

142.—(1) This rule does not apply—

- (a) in relation to P;
- (b) where the court has appointed a person under rule 143 or 144; or
- (c) where the Official Solicitor is to act as litigation friend.

(2) A deputy with the power to conduct legal proceedings in the name of the protected party or on the protected party's behalf is entitled to be a litigation friend of the protected party in any proceedings to which his power relates.

(3) If no one has been appointed by the court, or in the case of a protected party, there is no deputy with the power to conduct proceedings, a person who wishes to act as a litigation friend must—

- (a) file a certificate of suitability stating that he satisfies the conditions specified in rule 140(1); and
- (b) serve the certificate of suitability on—
 - (i) the person on whom an application form is to be served in accordance with rule 32 (service on children and protected parties); and
 - (ii) every other person who is a party to the proceedings.

(4) If the person referred to in paragraph (2) wishes to act as a litigation friend for the protected party, he must file and serve a copy of the court order which appointed him on those persons mentioned in paragraph (3)(b).

Litigation friend by court order

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

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

to act as a litigation friend.

(2) The court may act under paragraph (1)—

- (a) either on its own initiative or on the application of any person; but
- (b) only with the consent of the person to be appointed.

(3) An application for an order under paragraph (1) must be supported by evidence.

(4) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed satisfies the conditions specified in rule 140(1).

(5) The court may at any stage of the proceedings give directions as to the appointment of a litigation friend.

Court's power to prevent a person from acting as litigation friend or to order change

144.—(1) The court may either on its own initiative or on the application of any person—

- (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 place of an existing one.

(2) An application for an order under paragraph (1) must be supported by evidence.

(3) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed satisfies the conditions specified in rule 140(1).

Appointment of litigation friend by court order – supplementary

145. The applicant must serve a copy of an application for an order under rule 143 or 144 on—

- (a) the person on whom an application form is to be served in accordance with rule 32 (service on children and protected parties);
 - (b) every other person who is a party to the proceedings;
 - (c) any person who is the litigation friend, or who is purporting to act as the litigation friend, when the application is made; and
 - (d) unless he is the applicant, the person who it is proposed should be the litigation friend,
- as soon as practicable and in any event within 21 days of the date on which it was issued.

Procedure where appointment of litigation friend comes to an end – for a child or protected party

146.—(1) This rule applies—

- (a) when a child reaches 18, provided he is neither—
 - (i) P; nor
 - (ii) a protected party; and
 - (b) where a protected party ceases to be a person who lacks capacity to conduct the proceedings himself.
- (2) Where paragraph (1)(a) applies, the litigation friend’s appointment ends.
- (3) Where paragraph (1)(b) applies, the litigation friend’s appointment continues until it is brought to an end by a court order
- (4) An application for an order under paragraph (3) may be made by—
- (a) the former protected party;
 - (b) his litigation friend; or
 - (c) any other person who is a party to the proceedings.
- (5) The applicant must serve a copy of the application notice seeking an order under this rule on all parties to the proceedings as soon as practicable and in any event within 21 days of the date on which it was issued.
- (6) Where paragraph (2) applies the child must serve notice on every other party—
- (a) stating that he has reached full age;
 - (b) stating that the appointment of the litigation friend has ended; and
 - (c) providing his address for service.
- (7) Where paragraph (3) applies, the former protected party must provide his address for service to all other parties to the proceedings.

Procedure where appointment of litigation friend comes to an end – for P

- 147.**—(1) This rule applies where P ceases to be a person who lacks capacity to conduct the proceedings himself but continues to lack capacity in relation to the matter or matters to which the application relates.
- (2) 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) P;
 - (b) his litigation friend; or
 - (c) any other person who is a party to the proceedings.

(4) The applicant must serve a copy of the application notice seeking an order under this rule on all other parties to the proceedings as soon as practicable and in any event within 21 days of the date on which it was issued.

(5) Where the court makes an order under this rule, P must provide his address for service to all other parties to the proceedings.

Procedure where P ceases to lack capacity

148.—(1) This rule applies where P ceases to lack capacity both to conduct the proceedings himself and in relation to the matter or matters to which the application relates.

(2) The litigation friend’s appointment continues until it is brought to an end by a court order.

(3) An application may be made by—

- (a) P;
- (b) his litigation friend; or
- (c) any other person who is a party to the proceedings,

for the proceedings to come to an end.

(4) The applicant must serve a copy of the application notice seeking an order under this rule on all parties to the proceedings as soon as practicable and in any event within 21 days of the date on which it was issued.

Practice direction in relation to litigation friends

149. A practice direction may make additional or different provision in relation to litigation friends.