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STATUTORY INSTRUMENTS

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**2017 No. 1035**

**The Court of Protection Rules 2017**

**PART 14**

**ADMISSIONS, EVIDENCE AND DEPOSITIONS**

*Depositions*

**Evidence by deposition**

**14.15.**—(1) A party may apply for an order for a person to be examined before the hearing takes place.

(2) A person from whom evidence is to be obtained following an order under this rule is referred to as a “deponent” and the evidence is referred to as a “deposition”.

(3) An order under this rule shall be for a deponent to be examined on oath before—

- (a) a circuit judge or a district judge, whether or not nominated as a judge of the court;
- (b) an examiner of the court; or
- (c) such other person as the court appoints.

(4) The order may require the production of any document which the court considers is necessary for the purposes of the examination.

(5) The order will state the date, time and place of the examination.

(6) At the time of service of the order, the deponent must be offered or paid—

- (a) a sum reasonably sufficient to cover the deponent’s expenses in travelling to and from the place of examination; and
- (b) such sum by way of compensation for loss of time as may be specified in the relevant practice direction.

(7) Where the court makes an order for a deposition to be taken, it may also order the party who obtained the order to file a witness statement or witness summary in relation to the evidence to be given by the person to be examined.

**Conduct of examination**

**14.16.**—(1) Subject to any directions contained in the order for examination, the examination must be conducted in the same way as if the witness were giving evidence at a final hearing.

(2) If all the parties are present, the examiner may conduct the examination of a person not named in the order for examination if all the parties and the person to be examined consent.

(3) The examiner must ensure that the evidence given by the witness is recorded in full.

(4) The examiner must send a copy of the deposition—

- (a) to the person who obtained the order for the examination of the witness; and

(b) to the court.

(5) The court shall give directions as to the service of a copy of the deposition on the other parties.

#### **Fees and expenses of examiners of the court**

**14.17.**—(1) An examiner of the court may charge a fee for the examination and need not send the deposition to the court until the fee is paid, unless the court directs otherwise.

(2) The examiner's fees and expenses must be paid by the party who obtained the order for examination.

(3) If the fees and expenses due to an examiner are not paid within a reasonable time, the examiner may report that fact to the court.

(4) The court may order the party who obtained the order for examination to deposit in the court office a specified sum in respect of the examiner's fees and, where it does so, the examiner shall not be asked to act until the sum has been deposited.

(5) An order under this rule does not affect any decision as to the person who is ultimately to bear the costs of the examination.

#### **Examiners of the court**

**14.18.**—(1) The Lord Chancellor shall appoint persons to be examiners of the court.

(2) The persons appointed shall be barristers or solicitor-advocates who have been practising for a period of not less than 3 years.

(3) The Lord Chancellor may revoke an appointment at any time.

(4) In addition to persons appointed in accordance with this rule, examiners appointed under rule 34.15 of the Civil Procedure Rules 1998 may act as examiners in the court.

#### **Enforcing attendance of a witness**

**14.19.**—(1) If a person served with an order to attend before an examiner—

(a) fails to attend; or

(b) refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document at the examination,

a certificate of that person's failure or refusal, signed by the examiner, must be filed by the party requiring the deposition.

(2) On the certificate being filed, the party requiring the deposition may apply to the court for an order requiring that person to attend or to be sworn or to answer any question or produce any document, as the case may be.

(3) An application for an order under this rule may be made without notice.

(4) The court may order the person against whom an order is sought or made under this rule to pay any costs resulting from that person's failure or refusal.

#### **Use of deposition at a hearing**

**14.20.**—(1) A deposition ordered under rule 14.15, 14.22 or 14.23 may be put in evidence at a hearing unless the court orders otherwise.

(2) A party intending to put a deposition in evidence at a hearing must file notice of intention to do so on the court and serve the notice on every other party.

(3) Unless the court directs otherwise, that party must file the notice at least 14 days before the day fixed for the hearing.

(4) The court may require a deponent to attend the hearing and give evidence orally.