STATUTORY INSTRUMENTS

2017 No. 1035

The Court of Protection Rules 2017

PART 17

LITIGATION FRIENDS AND RULE 1.2 REPRESENTATIVES

SECTION 1 – LITIGATION FRIENDS

Who may act as a litigation friend

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

(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;

(c) a protected party.

Requirement for a litigation friend

17.2.—(1) This rule does not apply to P (whether P is an adult or a child).

(2) A protected party (if a party to the proceedings) must have a litigation friend.

(3) A child (if a party to the proceedings) must have a litigation friend to conduct those proceedings on that child's behalf unless the court makes an order under paragraph (4).

(4) The court may make an order permitting a 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

17.3.—(1) This rule does not apply—

(a) in relation to P;

(b) where the court has appointed a person under rule 17.4 or 17.5; or

(c) where the Official Solicitor is to act as a litigation friend.

(2) A deputy with the power to conduct legal proceedings in the name of a 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 the deputy's 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 they satisfy the conditions in rule 17.1(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 6.4 (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, that person must file and serve on the persons mentioned in paragraph (3)(b) a copy of the court order which appointed that person.

Litigation friend by court order

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

(a) the Official Solicitor; or

(b) some other person,

to act as a litigation friend for a protected party, a child or P.

(2) The court may make an order 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 in rule 17.1(1).

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

(Rule 1.2 requires the court to consider how P should participate in the proceedings, which may be by way of being made a party and the appointment of a litigation friend under this Part.)

Court's power to prevent a person from acting as a litigation friend or to bring an end to an appointment of a person as a litigation friend or to appoint another one

17.5.—(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) bring to an end a litigation friend's appointment; or

(c) appoint a new litigation friend in place of an existing one.

(2) If an application for an order under paragraph (1) is based on the conduct of the litigation friend, it 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 in rule 17.1(1).

(4) The appointment of a litigation friend continues until brought to an end by court order.

(Rule 13.1 (procedure for disputing the court's jurisdiction) applies if P has capacity in relation to the matter or matters to which the application relates.)

Appointment of litigation friend by court order – supplementary

17.6. The applicant must serve a copy of an application for an order under rule 17.4 or 17.5 on—

(a) the person on whom an application form is to be served in accordance with rule 6.4 (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 that person is the applicant, the person who it is proposed should be the litigation friend,

as soon as practicable and in any event within 14 days of the date on which the application was issued.

Procedure where appointment of a litigation friend comes to an end for a child

17.7. When a child reaches 18, provided the child is neither—

(a) P; nor

(b) a protected party,

the litigation friend's appointment ends and the child must serve notice on every other party—

(i) stating that the child has reached full age;

(ii) stating that the appointment of the litigation friend has ended; and

(iii) providing an address for service.

Practice direction in relation to litigation friends

17.8. A practice direction may make additional or supplementary provision in relation to litigation friends.

Changes to legislation:
There are currently no known outstanding effects for the The Court of Protection Rules 2017, SECTION 1 – LITIGATION FRIENDS.