PART 21

CHILDREN AND PATIENTS

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SCOPE OF THIS PART

21.1 (1) This Part –

(a) contains special provisions which apply in proceedings involving children and patients; and

(b) sets out how a person becomes a litigation friend.

(2) In this Part –

(a) 'child' means a person under 18; and

(b) 'patient' means a person who by reason of mental disorder within the meaning of the Mental Health Act 1983**(**[25]**)** is incapable of managing and administering his own affairs.

(Rule 6.6 contains provisions about the service of documents on children and patients)

(Rule 48.5 deals with costs where money is payable by or to a child or patient)

(25) 1983 c.20.

REQUIREMENT FOR LITIGATION FRIEND IN PROCEEDINGS BY OR AGAINST CHILDREN AND PATIENTS

21.2

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

(2) A child must have a litigation friend to conduct proceedings on his behalf unless the court makes an order under paragraph (3).

(3) The court may make an order permitting the child to conduct proceedings without a litigation friend.

(4) An application for an order under paragraph (3) –

(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.

(5) Where –

(a) the court has made an order under paragraph (3); 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.

STAGE OF PROCEEDINGS AT WHICH A LITIGATION FRIEND BECOMES NECESSARY

21.3

(1) This rule does not apply where the court has made an order under rule 21.2(3).

(2) A person may not, without the permission of the court –

(a) make an application against a child or patient before proceedings have started; or

(b) take any step in proceedings except –

(i) issuing and serving a claim form; or

(ii) applying for the appointment of a litigation friend under rule 21.6,

until the child or patient has a litigation friend.

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

(4) Any step taken before a child or patient has a litigation friend shall be of no effect unless the court otherwise orders.

WHO MAY BE A LITIGATION FRIEND WITHOUT A COURT ORDER

21.4

(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, a person may act as a litigation friend if he –

(a) can fairly and competently conduct proceedings on behalf of the child or patient;

(b) has no interest adverse to that of the child or patient; and

(c) where the child or patient is a claimant, undertakes to pay any costs which the 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 child or patient.

HOW A PERSON BECOMES A LITIGATION FRIEND WITHOUT A COURT ORDER

21.5

(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(GL) 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 21.4(3).

(4) A person who is to act as a litigation friend for a claimant must file –

(a) the authorisation; or

(b) the certificate of suitability,

at the time when the claim is made.

(5) A person who is to act as a litigation friend for a defendant 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 defendant.

(6) The litigation friend must –

(a) serve the certificate of suitability on every person on whom, in accordance with rule 6.6 (service on parent, guardian etc.), the claim form should be served; and

(b) file a certificate of service when he files the certificate of suitability.

(Rule 6.10 sets out the details to be contained in a certificate of service)

HOW A PERSON BECOMES A LITIGATION FRIEND BY COURT ORDER

21.6 (1) The court may make an order appointing a litigation friend.

(2) An application for an order appointing a litigation friend may be made by –

(a) a person who wishes to be the litigation friend; or

(b) a party.

(3) Where –

(a) a person makes a claim against a child or patient;

(b) the child or patient has no litigation friend;

(c) the court has not made an order under rule 21.2(3) (order that a child can act without a litigation friend); and

(d) either –

(i) someone who is not entitled to be a litigation friend files a defence; or

(ii) the claimant wishes to take some step in the proceedings,

the claimant must apply to the court for an order appointing a litigation friend for the child or patient.

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

(5) 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 21.4(3).

COURT'S POWER TO CHANGE LITIGATION FRIEND AND TO PREVENT PERSON ACTING AS LITIGATION FRIEND

21.7 (1) The court may –

(a) direct that a person may not act as a litigation friend;

(b) terminate a litigation friend's appointment;

(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) 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 21.4(3).

APPOINTMENT OF LITIGATION FRIEND BY COURT ORDER – SUPPLEMENTARY

21.8

(1) An application for an order under rule 21.6 or 21.7 must be served on every person on whom, in accordance with rule 6.6 (service on parent, guardian etc.), the claim form should be served.

(2) Where an application for an order under rule 21.6 is in respect of a patient, the application must also be served on the patient unless the court orders otherwise.

(3) An application for an order under rule 21.7 must also be served on –

(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.

(4) On an application for an order under rule 21.6 or 21.7, the court may appoint the person proposed or any other person who complies with the conditions specified in rule 21.4(3).

PROCEDURE WHERE APPOINTMENT OF LITIGATION FRIEND CEASES

21.9

(1) When a child who is not a patient reaches the age of 18, a litigation friend's appointment ceases.

(2) When a party ceases to be a patient, the litigation friend's appointment continues until it is ended 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) The child or patient in respect of whom the appointment to act has ceased must serve notice on the other parties –

(a) stating that the appointment of his litigation friend to act has ceased;

(b) giving his address for service; and

(c) stating whether or not he intends to carry on the proceedings.

(5) If he does not do so within 28 days after the day on which the appointment of the litigation friend ceases the court may, on application, strike out(GL) any claim or defence brought by him.

(6) The liability of a litigation friend for costs continues until –

(a) the person in respect of whom his appointment to act has ceased serves the notice referred to in paragraph (4); or

(b) the litigation friend serves notice on the parties that his appointment to act has ceased.

COMPROMISE ETC. BY OR ON BEHALF OF CHILD OR PATIENT

21.10 (1) Where a claim is made –

(a) by or on behalf of a child or patient; or

(b) against a child or patient,

no settlement, compromise or payment and no acceptance of money paid into court shall be valid, so far as it relates to the claim by, on behalf of or against the child or patient, without the approval of the court.

(2) Where –

(a) before proceedings in which a claim is made by or on behalf of, or against a child or patient (whether alone or with any other person) are begun, an agreement is reached for the settlement of the claim; and

(b) the sole purpose of proceedings on that claim is to obtain the approval of the court to a settlement or compromise of the claim,

the claim must –

(i) be made using the procedure set out in Part 8 (alternative procedure for claims); and

(ii) include a request to the court for approval of the settlement or compromise.

(Rule 48.5 contains provisions about costs where money is payable to a child or patient)

CONTROL OF MONEY RECOVERED BY OR ON BEHALF OF CHILD OR PATIENT

21.11 (1) Where in any proceedings –

(a) money is recovered by or on behalf of or for the benefit of a child or patient; or

(b) money paid into court is accepted by or on behalf of a child or patient, the money shall be dealt with in accordance with directions given by the court under this rule and not otherwise.

(2) Directions given under this rule may provide that the money shall be wholly or partly paid into court and invested or otherwise dealt with.

APPOINTMENT OF GUARDIAN OF CHILD'S ESTATE

21.12 (1) The court may appoint the Official Solicitor to be a guardian of a child's estate where –

(a) money is paid into court on behalf of the child in accordance with directions given under rule 21.11 (control of money received by a child or patient);

(b) the Criminal Injuries Compensation Board or the Criminal Injuries Compensation Authority notifies the court that it has made or intends to make an award to the child;

(c) a court or tribunal outside England and Wales notifies the court that it has ordered or intends to order that money be paid to the child;

(d) the child is absolutely entitled to the proceeds of a pension fund; or

(e) in any other case, such an appointment seems desirable to the court.

(2) The court may not appoint the Official Solicitor under this rule unless –

(a) the persons with parental responsibility (within the meaning of section 3 of the Children Act 1989**(**[26]**)**) agree; or

(b) the court considers that their agreement can be dispensed with.

(3) The Official Solicitor's appointment may continue only until the child reaches 18.

(26) 1989 c.41.