

# REPRESENTATION OF PROTECTED PARTIES

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### 15.1 Application of this Part

This Part contains special provisions which apply in proceedings involving protected parties.

### 15.2 Requirement for litigation friend in proceedings

A protected party must have a litigation friend to conduct proceedings on that party's behalf.

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

- (1) 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 15.6, until the protected party has a litigation friend.
- (2) If during proceedings a party lacks capacity (within the meaning of the 2005 Act) to continue to conduct proceedings, no party may take any step in proceedings without the permission of the court until the protected party has a litigation friend.
- (3) Any step taken before a protected party has a litigation friend has no effect unless the court orders otherwise.

### 15.4 Who may be a litigation friend for a protected party without a court order

- (1) This rule does not apply if the court has appointed a person to be a litigation friend.
- (2) A person with authority as a deputy to conduct the proceedings in the name of a protected party or on that party's behalf is entitled to be the litigation friend of the protected party in any proceedings to which that person's authority extends.

- (3) If there is no person with authority as a deputy to conduct the proceedings in the name of a protected party or on that party's behalf, a person may act as a litigation friend if that person –
- (a) can fairly and competently conduct proceedings on behalf of the protected party;
  - (b) has no interest adverse to that of the protected party; and
  - (c) subject to paragraph (4), undertakes to pay any costs which the protected party may be ordered to pay in relation to the proceedings, subject to any right that person may have to be repaid from the assets of the protected party.
- (4) Paragraph (3)(c) does not apply to the Official Solicitor.
- (‘deputy’ is defined in rule 2.3.)

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

- (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 with authority as a deputy to conduct the proceedings in the name of a protected party or on that party's behalf must file an official copy<sup>(GL)</sup> of the order, declaration or other document which confers that person's authority to act.
- (3) Any other person must file a certificate of suitability stating that that person satisfies the conditions specified in rule 15.4(3).
- (4) A person who is to act as a litigation friend must file –
- (a) the document conferring that person's authority to act; or
  - (b) the certificate of suitability,
- at the time when that person first takes a step in the proceedings on behalf of the protected party.
- (5) A court officer will send the certificate of suitability to every person on whom, in accordance with rule 6.28, the application form should be served.
- (6) This rule does not apply to the Official Solicitor.

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

- (1) The court may, if the person to be appointed so consents, make an order appointing –
- (a) a person other than the Official Solicitor; or
  - (b) the Official Solicitor,
- 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 protected party 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 15.4(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 15.4(3).

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

- (1) The court may –
  - (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 or direction under paragraph (1) must be supported by evidence.
- (3) Subject to rule 15.4(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 15.4(3).

### **15.8 Appointment of litigation friend by court order - supplementary**

- (1) A copy of the application for an order under rule 15.6 or 15.7 must be sent by a court officer to –
  - (a) every person on whom, in accordance with rule 6.28, the application form should be served; and
  - (b) unless the court directs otherwise, the protected party.
- (2) A copy of an application for an order under rule 15.7 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, if not the applicant, who it is proposed should be the litigation friend.

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

- (1) When a party ceases to be a protected party, the litigation friend's appointment continues until it is brought to an end by a court order.
- (2) An application for an order under paragraph (1) may be made by –
  - (a) the former protected party;
  - (b) the litigation friend; or
  - (c) a party.
- (3) On the making of an order under paragraph (1), the court officer will send a notice to the other parties stating that the appointment of the protected party's litigation friend to act has ended.

