

PRACTICE DIRECTION – LITIGATION FRIEND

This practice direction supplements Part 17 of the Court of Protection Rules 2007

PRACTICE DIRECTION A – LITIGATION FRIEND

General

1. Part 17 contains rules about the appointment of a litigation friend to conduct proceedings on behalf of P, a child, or a protected party.¹ This practice direction is made under rule 149 and provides guidance in relation to the appointment and removal of a litigation friend pursuant to Part 17.
2. Rule 140 provides that a litigation friend may be appointed for:
 - (a) P;
 - (b) a child; or
 - (c) a protected party.
3. Where:
 - (a) P has a litigation friend, P should be referred to in the proceedings as “P (by A.B., his litigation friend)”;
 - (b) the protected party has a litigation friend, he should be referred to in the proceedings as “E.F. (by A.B., his litigation friend)”;
 - (c) a child has a litigation friend, the child should be referred to in the proceedings as “C.D. (a child by A.B., his litigation friend)”;
 - (d) a child is conducting proceedings on his own behalf, the child should be referred to in the proceedings as “A.B. (a child)”.

Litigation friend without a court order

4. Rule 142 makes provision for the appointment of a litigation friend without a court order. The rule does not apply:
 - (a) in relation to P;
 - (b) where the court has appointed a litigation friend; or
 - (c) where the Official Solicitor is to act as litigation friend.

¹ “Protected party” means a party, or an intended party (other than P or a child) who lacks capacity to conduct the proceedings.

Deputy as a litigation friend

5. Rule 142(2) provides that where there is a deputy appointed with power to conduct legal proceedings in the name of the protected party or on the protected party's behalf, that deputy is entitled to be a litigation friend of the protected party in any proceedings to which the deputy's power relates. To be a litigation friend the deputy must file and serve a copy of the court order which appointed him on:
 - (a) every person on whom an application form in relation to a protected party must be served in accordance with rule 32; and
 - (b) every other person who is a party to the proceedings.

Litigation friend where there is no deputy

6. A person who wishes to become a litigation friend without a court order pursuant to rule 142 must file a certificate of suitability using form COP22.
7. In addition to the matters listed in rule 140(1), the certificate of suitability referred to in rule 142(3) which the litigation friend files must also:
 - (a) state that he consents to act;
 - (b) state that he knows or believes that the child or the protected party lacks capacity to conduct the proceedings himself; and
 - (c) state the grounds of his belief and, if his belief is based upon medical opinion, or the opinion of another suitably qualified expert, attach any relevant document to the certificate.
8. The certificate of suitability must contain a statement of truth.
9. The litigation friend must serve the certificate of suitability on:
 - (a) every person on whom an application form must be served in accordance with rule 32; and
 - (b) every other person who is a party to the proceedings.
10. The litigation friend is not required to serve the document referred to in paragraph 7(c) when he serves a certificate of suitability under paragraph 9 (unless the court directs otherwise).
11. The litigation friend must file the certificate of suitability together with a certificate of service of it when he first takes a step in the proceedings.

Litigation friend by court order

12. Rule 143 sets out when and how the court may appoint a litigation friend, either on application or on its own initiative.
13. An application for an order appointing a litigation friend must be made by filing a COP9 application notice in accordance with the Part 10 procedure. The application must be supported by evidence, as required by rule 143(3).
14. The evidence in support must satisfy the court that the proposed litigation friend:
 - (a) consents to act;
 - (b) can fairly and competently conduct proceedings on behalf of P, the child, or the protected party; and
 - (c) has no interest adverse to that of P, the child, or the protected party.

Change of litigation friend and prevention of person acting as litigation friend

15. Rule 144(1) provides that the court may, on application or on its own initiative:
 - (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.
16. An application made pursuant to rule 144 should be made by filing a COP9 application notice in accordance with the Part 10 procedure and must be supported by evidence.
17. If the order sought is the substitution of a new litigation friend for an existing one, the evidence must satisfy the court of the matters set out in paragraph 14.

Procedure where the need for a litigation friend has come to an end

18. Rules 146, 147 and 148 make provision for where the need for a litigation friend comes to an end during the proceedings.

19. Where a child having reached full age files a notice under rule 146(6) and the notice states that the child intends to carry on with or continue to participate in the proceedings he shall subsequently be described in the proceedings as:

“A.B. (formerly a child but now of full age).”

20. Where an application is made under rule 146 or 147 the application must be supported by evidence that P or the protected party now has capacity to conduct the proceedings in question.

21. Where an application is made under rule 148 the application must be supported by evidence that P now has capacity in relation to the matter or matters to which the proceedings relate.

Costs

22. Rule 166 allows the court to make an order against a person who is not a party to proceedings (including a litigation friend).