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STATUTORY INSTRUMENTS

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**1994 No. 3046**

**THE COURT OF PROTECTION RULES 1994**

**PART IV  
APPLICATIONS**

**Forms of application**

**8.—**(1) Subject to the following provisions of this rule, a first application to the court for the appointment of a receiver shall be in Form A and an application to the court respecting the exercise of any of its other jurisdiction in relation to a patient may be made by letter unless the court directs that a formal application shall be made, in which case it shall be made in Form B.

(2) An application to the Public Trustee relating to the exercise of any of his functions in relation to a patient shall be made by letter or in such other manner as he may direct, unless he directs that a formal application be made to the court in which case it shall be made in Form B.

(3) An application in Form A shall be treated as an application for the appointment as receiver of the person named in the application or some other suitable person.

(4) On grounds of urgency the court or the Public Trustee as appropriate may dispense with the need for an application in writing.

(5) An application relating to the committal of a person for contempt of court shall be made to a judge but all other applications to the court shall be returnable in the first instance before the Master.

**Procedure for short order or direction without appointment of receiver**

**9.—**(1) Without prejudice to the generality of rule 7, and where the conditions in paragraph (2) below are satisfied—

- (a) if an application for the appointment of a receiver for the patient has been made the court may instead make a short order under this rule; and
- (b) if no such application has been made, the Public Trustee may—
  - (i) give a direction under this rule; or
  - (ii) require that such an application be made to the court.

(2) The conditions to be satisfied are that—

- (a) the property of the patient does not exceed £5,000 in value; or
- (b) it appears to the court or the Public Trustee that it is otherwise appropriate to proceed under this rule and that it is not necessary to appoint a receiver for the patient.

(3) A short order or direction under this rule is an order or direction directing an officer of the Public Trust Office or some other suitable person named in the order or direction to deal with the patient's property, or any part of it, or with his affairs, in any manner authorised by the Act and specified in the order or direction.

### **Date for hearing**

10.—(1) Upon receiving an application under rule 8 the court shall fix a date for the hearing of the application unless it considers that the application can properly be dealt with without a hearing, and upon the same ground the court may cancel any hearing fixed under this paragraph.

(2) Where a hearing is fixed under paragraph (1) an officer shall endorse the date of it on the application form, shall seal and return the form and retain a copy.

### **Consolidation of proceedings**

11. The court may allow one application to be made in respect of two or more patients or may consolidate applications relating to two or more patients, if in the opinion of the court the proceedings relating to them can be more conveniently dealt with together.

### **Power to direct application by the Public Trustee or Official Solicitor**

12. Where in the opinion of the court an application ought to be made for the appointment or discharge of a receiver or for the exercise of any other function with respect to the property and affairs of a patient, and there appears to be no other suitable person able and willing to make the application, or the court for any other reason thinks fit, the court may direct that the application be made by the Public Trustee or, if he consents, by the Official Solicitor.

### **Power of the Public Trustee to make applications to the court or exercise functions of his own motion**

13. Where it appears to the Public Trustee that an application should be made to the court for the exercise of any of its functions or that any of his own functions ought to be exercised, he may make an application or exercise such functions of his own motion.

### **Representation of patient by receiver**

14.—(1) Except as mentioned in rule 20(c), (d) and (e), an application on behalf of a patient for whom a receiver has been appointed shall, unless the court otherwise directs, be made by the receiver in his own name.

(2) Subject to any directions given by the court, a patient for whom a receiver has been appointed may be represented by the receiver at any hearing relating to the patient or of which the patient has been given notice.

### **Representation of patient by Official Solicitor**

15. Where in any proceedings the court considers that the interests of a patient are not adequately represented, the court may, with the consent of the Official Solicitor, direct that the Official Solicitor shall act as solicitor for the patient either generally in the proceedings or for any particular purpose connected with the proceedings, except that it shall not be necessary to appoint the Official Solicitor to be receiver or guardian ad litem for the patient.

### **Persons under disability**

16.—(1) In this rule “person under disability” means a minor or a patient for whom no receiver has been appointed.

(2) A person under disability shall not make an application in proceedings relating to another person except by his next friend and shall not resist an application in any such proceedings except by his guardian ad litem.

(3) Where a person is to be appointed next friend or guardian ad litem of a person under disability in substitution for the person previously acting as next friend or guardian ad litem, the appointment shall be made by the court but, except for this, an order of the court appointing a next friend or guardian ad litem of a person under disability shall not be necessary.

(4) Before the name of any person is used in any proceedings as next friend or guardian ad litem of a person under disability there shall be filed—

- (a) a written consent of the first-mentioned person to act as next friend or guardian ad litem, as the case may be, of the person under disability in the proceedings, and
- (b) a certificate by the solicitor acting for the person under disability certifying—
  - (i) that he knows or believes that the person to whom the certificate relates is a minor or patient giving (in the case of a patient) the grounds of his knowledge or belief, and
  - (ii) except where the person named in the certificate as next friend or guardian ad litem is the Official Solicitor, that the person so named has no interest in the proceedings adverse to that of the person under disability.

#### **Application under section 54 of the Trustee Act 1925**

17. An application to the court with respect to the jurisdiction referred to in section 54(2) of the Trustee Act 1925 may be made only by—

- (a) the receiver for the patient, or
- (b) any person who has made an application for the appointment of a receiver which has not yet been determined, or
- (c) a continuing trustee, or
- (d) any other person who, according to the practice of the Chancery Division, would have been entitled to make the application if it had been made to the High Court.

#### **Application under section 36(9) of the Trustee Act 1925**

18. No person other than a co-trustee, or other person with power to appoint a new trustee, may make an application to the court under section 36(9) of the Trustee Act 1925 for leave to appoint a new trustee in place of a patient.

#### **Application under section 96(1)(k) of the Act**

19. The provisions of rule 17 shall apply with such modifications as may be necessary to an application under section 96(1)(k) of the Act for an order for the exercise of any power vested in a patient of appointing trustees or retiring from a trust.

#### **Application for settlement or gift of patient's property or for execution of will of patient**

20. An application under section 96(1)(d) of the Act for an order for the settlement or gift of any property of a patient, or an application under section 96(1)(e) of the Act for an order of execution for a patient of a will, may be made only by—

- (a) the receiver for the patient, or
- (b) any person who has made an application for the appointment of a receiver which has not yet been determined, or
- (c) any person who, under any known will of the patient or under his intestacy, may become entitled to any property of the patient or any interest in it, or

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- (d) any person for whom the patient might be expected to provide if he were not mentally disordered,
- (e) an attorney acting under a registered enduring power of attorney, or
- (f) any other person whom the court or, where it relates to a function to be exercised by him, the Public Trustee, may authorise to make it.