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STATUTORY INSTRUMENTS

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**2001 No. 824**

**The Court of Protection Rules 2001**

**PART V**

**EVIDENCE**

**Affidavit evidence**

**27.**—(1) Except where these Rules provide otherwise, evidence in proceedings governed by these Rules shall be given by affidavit.

(2) An affidavit for use in proceedings under these Rules may be sworn—

- (a) in England or Wales, before any person authorised to take affidavits under the Commissioners for Oaths Acts 1889 and 1891<sup>(1)</sup>, under the Solicitors Act 1974<sup>(2)</sup>, or under the Courts and Legal Services Act 1990<sup>(3)</sup> or before any officer of the court of, or above, the rank of higher executive officer;
- (b) outside England and Wales, before any person before whom an affidavit may be sworn for use in the Supreme Court.

**Unsworn evidence**

**28.**—(1) Notwithstanding rule 27(1), the court may accept and act upon a statement of facts or other such evidence, whether oral or written, as the court considers sufficient, although not given on oath and whether or not it would be admissible in a court of law apart from this rule.

(2) The court may give directions as to the manner in which a statement of facts or other written evidence under paragraph (1) is to be given but subject to such directions any such statement or other evidence shall—

- (a) be drawn up in numbered paragraphs and dated; and
- (b) be signed by the person by whom it is given.

**Written questions to Visitors**

**29.**—(1) Where a Visitor's report, or information contained in such a report, has been disclosed to any person in pursuance of section 103(8) of the Act, the court may, on the application of any person who appears to the court to be interested, give leave for written questions relevant to the issues before the court to be put to the Visitor by whom the report was made.

(2) The questions sought to be put to the Visitor shall be submitted to the court, which may put to the Visitor with such amendments (if any) as it thinks fit and the Visitor shall give his replies in writing to the questions so put.

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(1) 1889 c. 10; 1891 c. 50.  
(2) 1974 c. 47.  
(3) 1990 c. 41.

(3) The court may disclose the replies given by the Visitor under this rule to any person who appears to the court to be interested, or to his legal or medical adviser, on such conditions (if any) as it thinks fit.

(4) No Visitor shall be required to give written evidence for the purpose of any proceedings to which these rules relate, other than in accordance with this rule.

(5) In this rule, “Visitor” means a Medical or Legal Visitor.

### **Cross-examination of deponent**

**30.** Any person who has made an affidavit or given a certificate or other written evidence for use in proceedings under these Rules may be ordered by the court to attend for cross-examination.

### **Administration of oaths**

**31.** The court may direct that an oath be administered to any witness or interpreter in any proceedings before the court.

### **Filing of written evidence**

**32.—**(1) Before an affidavit certificate or other evidence is used in any proceedings under these rules it shall be filed but the court may make an order on the basis of such evidence before it is filed if the person tendering it undertakes to file it before the order is drawn up.

(2) There shall be endorsed on every affidavit, certificate or other written evidence the name and address of the solicitor, if any, acting for the person on whose behalf it is filed.

### **Use of evidence in subsequent proceedings**

**33.—**(1) Except where the court otherwise directs, evidence which has been used in any proceedings relating to a patient may be used at any subsequent stage of those proceedings or in any other proceedings relating to the same patient or to another member of the patient’s family.

(2) Without prejudice to paragraph (1), the Master may, upon application being made for that purpose, authorise the use of such evidence in any legal proceedings that he may specify.

### **Evidence to be filed on a first application for receiver, etc**

**34.—**(1) Where a first application has been made for the appointment of a receiver for a patient or for a short order or direction under rule 8 authorising any person to do any act or carry out any transaction on behalf of a patient without appointing him receiver—

(a) the applicant shall, unless the court otherwise directs, file a medical certificate and evidence of family and property; and

(b) the court may—

(i) require the applicant to produce to it such evidence as it shall direct of the suitability of the applicant to be appointed a receiver or to do any such act or carry out any such transaction without being appointed receiver; and

(ii) make such enquiries as it shall think fit with regard to the suitability of the applicant for such appointment.

(2) In this rule, “evidence of family and property” means a certificate or, if the court so directs, in a particular case, an affidavit giving particulars of the patient’s relatives and such other persons as the court may direct, property and affairs and of the circumstances giving rise to the application.

(3) Rule 28 applies to unsworn evidence of family and property as it applies to unsworn evidence generally.

**Evidence of patient's recovery or death and inquiry by court as to whether patient has recovered**

**35.**—(1) Where at any stage of proceedings relating to a patient the court has reason to believe that the patient has recovered or has died, the court may require medical evidence of the recovery or evidence of the death (as the case may be) to be furnished to it by such person as it thinks appropriate.

(2) The court shall, from time to time, review a patient's case where a medical certificate provided to the court expressed an opinion that there is a possibility of mental recovery and make such inquiries and carry out such investigations as it thinks fit to establish whether or not the patient has recovered.

**Proof of amount due to public authority**

**36.** The amount due to any public authority for the past maintenance of a patient may, unless the court otherwise directs, be proved by the filing of an account certified under the hand of the proper officer of the authority.