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STATUTORY INSTRUMENTS

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**2015 No. 1490**

**The Criminal Procedure Rules 2015**

**PART 46**

**REPRESENTATIVES**

**Application to change legal representative: legal aid**

**46.3.**—(1) This rule applies—

- (a) in relation to a party who has legal aid for the purposes of a case;
  - (b) where such a party wants to select a legal representative in place of the representative named in the legal aid representation order.
- (2) Such a party must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so; and
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) the legal representative named in the legal aid representation order.
- (3) The application must—
- (a) explain what the case is about, including what offences are alleged, what stage it has reached and what is likely to be in issue at trial;
  - (b) explain how and why the applicant chose the legal representative named in the legal aid representation order;
  - (c) if an advocate other than that representative has been instructed for the applicant, explain whether the applicant wishes to replace that advocate;
  - (d) explain, giving relevant facts and dates—
    - (i) in what way, in the applicant’s opinion, there has been a breakdown in the relationship between the applicant and the current representative such that neither the individual representing the applicant nor any colleague of his or hers any longer can provide effective representation, or
    - (ii) what other compelling reason, in the applicant’s opinion, means that neither the individual representing the applicant nor any colleague of his or hers any longer can provide effective representation;
  - (e) give details of any previous application by the applicant to replace the legal representative named in the legal aid representation order;
  - (f) state whether the applicant—
    - (i) waives the legal professional privilege attaching to the applicant’s communications with the current representative, to the extent required to allow that representative to respond to the matters set out in the application, or

- (ii) declines to waive that privilege and acknowledges that the court may draw such inferences as it thinks fit in consequence;
- (g) explain how and why the applicant has chosen the proposed new representative;
- (h) include or attach a statement by the proposed new representative which—
  - (i) confirms that that representative is eligible and willing to conduct the case for the applicant,
  - (ii) confirms that that representative can and will meet the current timetable for the case, including any hearing date or dates that have been set, if the application succeeds,
  - (iii) explains what, if any, dealings that representative has had with the applicant before the present case; and
- (i) ask for a hearing, if the applicant wants one, and explain why it is needed.
- (4) The legal representative named in the legal aid representation order must—
  - (a) respond in writing no more than 5 business days after service of the application; and
  - (b) serve the response on—
    - (i) the court officer,
    - (ii) the applicant, and
    - (iii) the proposed new representative.
- (5) The response must—
  - (a) explain which, if any, of the matters set out in the application the current representative disputes;
  - (b) explain, as appropriate, giving relevant facts and dates—
    - (i) whether, and if so in what way, in the current representative’s opinion, there has been a breakdown in the relationship with the applicant such that neither the individual representing the applicant nor any colleague of his or hers any longer can provide effective representation,
    - (ii) whether, in the current representative’s opinion, there is some other compelling reason why neither the individual representing the applicant nor any colleague of his or hers any longer can provide effective representation, and if so what reason,
    - (iii) whether the current representative considers there to be a duty to withdraw from the case in accordance with professional rules of conduct, and if so the nature of that duty, and
    - (iv) whether the current representative no longer is able to represent the applicant through circumstances outside the representative’s control, and if so the particular circumstances that render the representative unable to do so;
  - (c) explain what, if any, dealings the current representative had had with the applicant before the present case; and
  - (d) ask for a hearing, if the current representative wants one, and explain why it is needed.
- (6) The court may determine the application—
  - (a) without a hearing, as a general rule; or
  - (b) at a hearing, which must be in private unless the court otherwise directs.
- (7) Unless the court otherwise directs, any hearing must be in the absence of each other party and each other party’s representative and advocate (if any).
- (8) If the court allows the application, as soon as practicable—

- (a) the current representative must make available to the new representative such documents in the current representative's possession as have been served on the applicant party; and
  - (b) the new representative must serve notice of appointment on each other party.
- (9) Paragraph (10) applies where—
- (a) the court refuses the application;
  - (b) in response to that decision—
    - (i) the applicant declines further representation by the current representative or asks for legal aid to be withdrawn, or
    - (ii) the current representative declines further to represent the applicant; and
  - (c) the court in consequence withdraws the applicant's legal aid.
- (10) The court officer must serve notice of the withdrawal of legal aid on—
- (a) the applicant; and
  - (b) the current representative.

*[Note. Under sections 16 and 19 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(1) and Part 2 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013(2), a court before which criminal proceedings take place may determine whether an individual qualifies for legal aid representation in accordance with the 2012 Act.*

*Under regulation 13 of the 2013 Regulations, in relation to any proceedings involving co-defendants a represented person must select a representative who is also instructed by a co-defendant unless there is, or there is likely to be, a conflict of interest between the two defendants.*

*Under regulation 14 of the 2013 Regulations, once a representative has been selected the person who is represented has no right to select another in the place of the first unless the court so decides, in the circumstances set out in the regulation.*

*Under regulation 9 of the 2013 Regulations, if a represented person declines to accept representation on the terms offered or requests that legal aid representation is withdrawn, or if the current representative declines to continue to represent that person, the court may withdraw legal aid.*

*See also regulation 11 of the 2013 Regulations, which requires that an application under regulation 14 (among others) must be made by the represented person, must be in writing and must specify the grounds.*

*The Practice Direction sets out forms of application and response for use in connection with this rule.]*

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(1) 2012 c. 10.  
(2) S.I. 2013/614.