

# Rules of the High Court (Amendment) Rules 2008

## The Rules of the High Court (Cap. 4A)

### Order 80 – DISABILITY

#### Remarks

#### 1. Interpretation (O. 80, r. 1)

In this Order –

“mentally incapacitated person” (精神上無行為能力的人) means a mentally disordered person or a mentally handicapped person (within the meaning of the Mental Health Ordinance (Cap. 136)) who, by reason of mental disorder or mental handicap, as the case may be, is incapable of managing and administering his property and affairs; (81 of 1997 s. 59)

“the Ordinance” (條例) means the Mental Health Ordinance (Cap. 136);

“person under disability” (無行為能力的人) means a person who is a minor or a mentally incapacitated person. (81 of 1997 s. 59)

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#### 2. Person under disability must sue, etc. by next friend or guardian ad litem (O. 80, r. 2)

(1) A person under disability may not bring, or make a claim in, any proceedings except by his next friend and may not acknowledge service, defend, make a counterclaim or intervene in any proceedings, or appear in any proceedings under a judgment or order notice of which has been served on him, except by his guardian ad litem.

(2) Subject to the provision of these rules, anything which in the ordinary conduct of any proceedings is required or authorized by a provision of these rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his next friend or guardian ad litem.

(3) Except where the Official Solicitor is acting as next friend or guardian ad litem, a next friend or guardian ad litem of a person under disability must act by a solicitor. (L.N. 375 of 1991)

#### 3. Appointment of next friend or guardian ad litem (O. 80, r. 3)

(2) Except as provided by paragraph (4) or (5) or by rule 6, an order appointing a person next friend or guardian ad litem of a person under disability is not necessary.

(3) Where a person is authorized under Part II of the Ordinance to conduct legal proceedings in the name of a mentally incapacitated person or on his behalf, that person shall be entitled to be next friend or guardian ad litem, as the case may be, of the mentally incapacitated person in any proceedings to which his authority extends unless, in a case to which paragraph (4) or (5) or rule 6 applies, some other person is appointed by the Court under that paragraph or rule to be next friend or guardian ad litem, as the case may be, of the mentally incapacitated person in those proceedings. (81 of 1997 s. 59)

(4) Where a person has been or is next friend or guardian ad litem of a person under disability in any proceedings, no other person shall be entitled to act as such friend or guardian, as the case may be, of the person under disability in those proceedings unless the Court makes an order appointing him such friend or guardian in substitution for the person previously acting in that capacity.

(5) Where, after any proceedings have been begun, a party to the proceedings becomes a mentally incapacitated person, an application must be made to the Court for the appointment of a person to be next friend or guardian ad litem, as the case may be, of that party. (81 of 1997 s. 59)

(6) Except where the next friend or guardian ad litem, as the case may be, of a person under disability has been appointed by the Court –

- (a) the name of any person shall not be used in a cause or matter as next friend of a person under disability,
- (b) service shall not be acknowledged in a cause or matter for a person under disability, and
- (c) a person under disability shall not be entitled to appear by his guardian ad litem on the hearing of a petition, summons or motion which, or notice of which, has been served on him,

unless and until the documents listed in paragraph (8) have been filed in the Registry.

(8) The documents referred to in paragraph (6) are the following –

- (a) a written consent to be next friend or guardian ad litem, as the case may be, of the person under disability in the cause or matter in question given by the person proposing to be such friend or guardian; and
- (b) where the person proposing to be such friend or guardian of the person under disability, being a mentally incapacitated person, is authorized under Part II of the Ordinance to conduct the proceedings in the cause or matter in question in the name of the mentally incapacitated person or on his behalf, an office copy, sealed with the seal of the High Court, of the order or other authorization made or given under the said Part II by virtue of which he is so authorized; and (25 of 1998 s. 2)
- (c) except where the person proposing to be such friend or guardian of the person under disability, being a mentally incapacitated person, is authorized as mentioned in sub-paragraph (b) a certificate made by the solicitor for the person under disability certifying –
  - (i) that he knows or believes, as the case may be, that the person to

whom the certificate relates is a minor or a mentally incapacitated person, giving (in the case of a mentally incapacitated person) the grounds of his knowledge or belief; and

- (ii) where the person under disability is a mentally incapacitated person, that there is no person authorized as aforesaid; and
- (iii) except where the person named in the certificate as next friend or guardian ad litem, as the case may be, is the Official Solicitor, that the person so named has no interest in the cause or matter in question adverse to that of the person under disability. (L.N. 375 of 1991; 81 of 1997 s. 59)

**6. Appointment of guardian where person under disability does not acknowledge service (O. 80, r. 6)**

(1) Where –

- (a) in an action against a person under disability begun by writ, or by originating summons, no acknowledgment of service is given in the action for that person, or
- (b) the defendant to an action serves a defence and counterclaim on a person under disability who is not already a party to the action, and no acknowledgment of service is given for that person,

an application for the appointment by the Court of a guardian ad litem of that person must be made by the plaintiff or defendant, as the case may be, after the time limited (as respects that person) for acknowledging service and before proceeding further with the action or counterclaim.

(2) Where a party to an action has served on a person under disability who is not already a party to the action a third party notice within the meaning of Order 16 and no acknowledgment of service is given for that person to the notice, an application for the appointment by the Court of a guardian ad litem of that person must be made by that party after the time limited (as respects that person) for acknowledging service and before proceeding further with the third party proceedings.

(3) Where in any proceedings against a person under disability begun by petition or motion, that person does not appear by a guardian ad litem at the hearing of the petition or motion, as the case may be, the Court hearing it may appoint a guardian ad litem of that person in the proceedings or direct that an application be made by the petitioner or applicant, as the case may be, for the appointment of such a guardian.

(5) An application under paragraph (1) or (2) must be supported by evidence proving –

- (a) that the person to whom the application relates is a person under disability,
- (b) that the person proposed as guardian ad litem is willing and a proper person to act as such and has no interest in the proceedings adverse to that of the person under disability,

- (c) that the writ, originating summons, defence and counterclaim or third party notice, as the case may be, was duly served on the person under disability, and
- (d) subject to paragraph (6), that notice of the application was, after the expiration of the time limited for acknowledging service and at least 7 days before the day named in the notice for hearing of the application, so served on him.

(6) If the Court so directs, notice of an application under paragraph (1) or (2) need not be served on a person under disability.

(7) An application for the appointment of a guardian ad litem made in compliance with a direction of the Court given under paragraph (3) must be supported by evidence proving the matters referred to in paragraph (5)(b).

**7. Application to discharge or vary certain orders (O. 80, r. 7)**

An application to the Court on behalf of a person under disability served with an order made ex parte under Order 15, rule 7, for the discharge or variation of the order must be made –

- (a) if a next friend or guardian ad litem is acting for that person in the cause or matter in which the order is made, within 14 days after the service of the order on that person;
- (b) if there is no next friend or guardian ad litem acting for that person in that cause or matter, within 14 days after the appointment of such a friend or guardian to act for him.

**8. Admission not to be implied from pleading of person under disability (O. 80, r. 8)**

Notwithstanding anything in Order 18, rule 13(1), a person under disability shall not be taken to admit the truth of any allegation of fact made in the pleading of the opposite party by reason only that he has not traversed it in his pleadings.

**9. Discovery and interrogatories (O. 80, r. 9)**

Orders 24 and 26 shall apply to a person under disability and to his next friend or guardian ad litem.

**10. Compromise, etc., by person under disability (O. 80, r. 10)**

Where in any proceedings money is claimed by or on behalf of a person under disability, no settlement, compromise or payment and no acceptance of money paid into court, whenever entered into or made, shall so far as it relates to that person's claim be valid without the approval of the Court.

**11. Approval of settlement (O. 80, r. 11)**

(1) Where, before proceedings in which a claim for money is made by or on behalf of a person under disability (whether alone or in conjunction with any other person) are begun, an agreement is reached for the settlement of the claim, and it is desired to obtain the Court's approval to the settlement, then, ~~notwithstanding anything in Order 5, rule 2,~~ the claim may be made in proceedings begun by originating summons, and in the summons an application may also be made for –

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- (a) the approval of the Court to the settlement and such orders or directions as may be necessary to give effect to it or as may be necessary or expedient under rule 12, or
- (b) alternatively, directions as to the further prosecution of the claim.

(2) Where in proceedings under this rule a claim is made under the Fatal Accidents Ordinance (Cap. 22), the originating summons must include the particulars mentioned in section 5(4) of the Fatal Accidents Ordinance (Cap. 22).

(4) An originating summons under this rule shall be in Form No. 10 in Appendix A.

(5) In this rule “settlement” (和解) includes a compromise.

**12. Control of money recovered by person under disability (O. 80, r. 12)**

(1) Where in any proceedings –

- (a) money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability, or
- (b) money paid into court is accepted by or on behalf of a plaintiff who is a person under disability,

the money shall be dealt with in accordance with directions given by the Court, under this rule and not otherwise.

(2) Directions given under this rule may provide that the money shall, as to the whole or any part thereof, be paid into the Court and invested or otherwise dealt with there.

(3) Without prejudice to the foregoing provisions of this rule, directions given under this rule may include any general or special directions that the Court thinks fit to give and, in particular, directions as to how the money is to be applied or dealt with and as to any payment to be made, either directly or out of the amount paid into court and whether before or after the money is transferred to or paid into a District Court, to the plaintiff, or to the next friend in respect of moneys paid or expenses incurred for or on behalf or for the benefit of the person under disability or for his maintenance or otherwise for his benefit or to the plaintiff's solicitor in respect of costs.

(4) Where in pursuance of directions given under this rule money is paid into the

Court of First Instance to be invested or otherwise dealt with there, the money (including any interest thereon) shall not be paid out, nor shall any securities in which the money is invested, or the dividends thereon, be sold, transferred or paid out of court, except in accordance with an order of the Court. (25 of 1998 s. 2)

(5) The foregoing provisions of this rule shall apply in relation to a counterclaim by or on behalf of a person under disability, as if for references to a plaintiff and a next friend there were substituted references to a defendant and to a guardian ad litem respectively. (81 of 1997 s. 59)

**13. Provisions supplementary to rule 12 (O. 80, r. 13)**

(HK)(3) Where money is ordered to be transferred to or paid into a District Court, the Registrar shall send a sealed copy of the judgment or order to the Registrar of the District Court.

**15. Proceedings under Fatal Accidents Ordinance: apportionment by Court (O. 80, r. 15)**

(1) Where a single sum of money is paid into court under ~~Order 22, rule 1, in satisfaction of causes of action arising under the Fatal Accidents Ordinance (Cap. 22) and sections 20 to 25~~ **Order 22, in satisfaction of a cause of action under the Fatal Accidents Ordinance (Cap. 22) and a cause of action under Part IV or IVA** of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23), and that sum is accepted, the money shall be apportioned between the different causes of action by the Court either when giving directions for dealing with it under rule 12 (if that rule applies) or when authorizing its payment out of court.

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(2) Where, in an action in which a claim under the Fatal Accidents Ordinance (Cap. 22) is made by or on behalf of more than one person, a sum in respect of damages is adjudged or ordered or agreed to be paid in satisfaction of the claim, or a sum of money paid into court under ~~Order 22, rule 1~~ **Order 22**, is accepted in satisfaction of the cause of action under the said Ordinance, then, unless the sum has been apportioned between the persons entitled thereto by a jury, it shall be apportioned between those persons by the Court.

The reference in this paragraph to a sum of money paid into court shall be construed as including a reference to part of a sum so paid, being the part apportioned by the Court under paragraph (1) to the cause of action under the said Ordinances.

**16. Service of certain documents on person under disability (O. 80, r. 16)**

(1) Where in any proceedings a document is required to be served personally or in accordance with Order 10, rule 1(2) on any person and that person is a person under disability this rule shall apply.

(2) Subject to the following provisions of this rule and to Order 24, rule 16(3) and Order 26, rule 6(3) the document must be served –

- (a) in the case of a minor who is not also a mentally incapacitated person, on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;
- (b) in the case of a mentally incapacitated person, on the person (if any) who is authorized under Part II of the Ordinance to conduct in the name of the mentally incapacitated person or on his behalf the proceedings in connection with which the document is to be served or, if there is no person so authorized, on the person with whom he resides or in whose care he is;

and must be served in the manner required by these rules with respect to the document in question. (81 of 1997 s. 59)

(3) Notwithstanding anything in paragraph (2), the Court may order that a document which has been, or is to be, served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability.

(4) A judgment or order requiring a person to do, or refrain from doing, any act, a notice of motion or summons for the committal of any person, and a writ of subpoena against any person, must, if that person is a person under disability, be served personally on him unless the Court otherwise orders.  
This paragraph shall not apply to an order for interrogatories or for discovery or inspection of documents.

(Enacted 1988)