# 1960 No. 1261 (L. 11)

# The Matrimonial Causes (Amendment) (No. 2) Rules, 1960

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| *Made* - - - - | 22*nd July*, 1960 |
| *Laid before Parliament* | 29*th July*, 1960 |
| *Coming into Operation* | 1*st November*, 1960 |

We, the Rule Committee of the Supreme Court, being the authority having for the time being power under subsection (4) of section ninety-nine of the Supreme Court of Judicature (Consolidation) Act, 1925(**a**), to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature, hereby exercise those powers as follows:—

**1.**—(1) These Rules may be cited as the Matrimonial Causes (Amendment) (No. 2) Rules, 1960, and shall come into operation on the first day of November, 1960.

(2) The Interpretation Act, 1889(**b**), shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

(3) In these Rules, unless the context otherwise requires, a Rule referred to by number means the Rule so numbered in the Matrimonial Causes Rules, 1957(**c**).

**2.** In sub-paragraph (*hh*) of paragraph (1) of Rule 4 and in sub-paragraph (*cc*) of paragraph (2) of Rule 58 the words "has come under the control of some person or authority under the provisions of the Mental Deficiency Acts, 1913 to 1938, or the Lunacy and Mental Treatment Acts, 1890 to 1930, or" shall be omitted.

**3.** The following Rule shall be substituted for Rule 66:—

*Persons under disability*

"66.—(1) In this Rule—

"patient" means a person who, by reason of mental disorder within the meaning of the Mental Health Act, 1959(**d**), is incapable of managing and administering his property and affairs;

"person under disability" means a person who is an infant or a patient;

"Part VIII" means Part VIII of the Mental Health Act, 1959.

(2) A person under disability may commence and prosecute any cause or make any application to which these Rules apply by his next friend and may defend or intervene in any such cause or resist any such application by his guardian *ad litem*, and, except as otherwise provided by this Rule, it shall not be necessary for a guardian *ad litem* to be appointed by the court.

(3) The name of any person shall not be used in any proceedings as next friend of a person under disability unless he is the Official Solicitor

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(a) 15 & 16 Geo. 5. c. 49. (b) 52 & 53 Vict. c. 63. (c) S.I. 1957/619 (1957 II, p. 2406).
(d) 7 & 8 Eliz. 2. c. 72.

or there have been lodged in the Divorce Registry the documents mentioned in paragraph (8) of this Rule.

(4) Where a person is authorised under Part VIII to conduct legal proceedings in the name of a patient or on his behalf, that person shall, subject to paragraph (3) of this Rule, be entitled to be next friend or guardian *ad litem* of the patient in any proceedings to which his authority extends.

(5) Where a person entitled to defend or intervene in any cause or to resist any application to which these Rules apply is a patient and there is no person authorised under Part VIII to defend the proceedings in his name or on his behalf, then—

(*a*) if the patient is alleged to be under care and treatment within the meaning of section 1 of the Act, the Official Solicitor shall, if he consents, be the patient's guardian *ad litem*, so, however, that at any stage of the proceedings an application may be made on not less than four days' notice to the Official Solicitor for the appointment of some other person as guardian;

(*b*) in any other case an application may be made on behalf of the patient for the appointment of a guardian *ad litem*;

and there shall be lodged in support of any application under this paragraph the documents mentioned in paragraph (8) of this Rule.

(6) Where a petition, answer or originating summons has been served on a person whom there is reasonable ground for believing to be a person under disability and no appearance has been entered for him, the party at whose instance the document was served shall, before taking any further step in the proceedings, apply to the court for the appointment of a guardian *ad litem* by whom that person may appear and defend or intervene in the proceedings, and a registrar may, if he considers it necessary in order to protect the interests of that person, order that some proper person be assigned as his guardian *ad litem*.

(7) An appearance shall not be entered in any proceedings for a person under disability unless the person entering the appearance—

(*a*) is the Official Solicitor, or

(*b*) in a case to which paragraph (5) of this Rule applies, is the Official Solicitor or has been appointed by the court to be guardian *ad litem* of the person under disability, or

(*c*) in any other case, has filed the documents mentioned in paragraph (8) of this Rule.

(8) The documents referred to in paragraphs (3), (5) and (7) of this Rule are—

(*a*) a written consent to act given by the person proposing to be next friend or guardian *ad litem* of the person under disability;

(*b*) where the person under disability is a patient and the proposed next friend or guardian *ad litem* is authorised under Part VIII to conduct the proceedings in his name or on his behalf, an office copy, sealed with the seal of the Court of Protection, of the order or other authorisation made or given under Part VIII; and

(*c*) except where the proposed next friend or guardian of the person under disability, being a patient, is authorised as mentioned in sub-paragraph (*b*) of this paragraph, 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 an infant or patient, giving (in the case of a patient) the grounds of his knowledge or belief ; and

(ii) where the person under disability is a patient, that there is no person authorised as aforesaid ; and

(iii) that the person named in the certificate as next friend or guardian *ad litem* has no interest in the cause or matter in question adverse to that of the person under disability and that he is a proper person to be next friend or guardian.

(9) Where a petition has been filed for nullity of marriage on the ground that the respondent was at the time of the marriage of unsound mind, or suffering from mental disorder within the meaning of the Mental Health Act, 1959, of such a kind or to such an extent as to be unfitted for marriage and the procreation of children, or subject to recurrent attacks of insanity or epilepsy, the applicant or petitioner shall not proceed with the cause without leave, whether an appearance is entered or not, and a registrar may, if he considers that the respondent is not properly represented or ought to be represented, order that some proper person be assigned as his guardian by whom he may appear and defend the cause.

(10) Subject to the following provisions of this Rule, a petition, answer or originating summons which is required to be served on a person under disability and any document which by these Rules is required to be served personally on such a person shall be served—

(*a*) in the case of an infant who is not also a patient, 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 patient—

(i) on the person (if any) who is authorised under Part VIII to conduct in the name of the patient or on his behalf the proceedings in connection with which the document is to be served, or

(ii) if there is no person so authorised, on the Official Solicitor if he has consented to act as guardian *ad litem* of the patient in accordance with paragraph (5) of this Rule, or

(iii) in any other case, on the person with whom the patient resides or in whose care he is ;

and shall be served in the manner required by these Rules with respect to the document in question.

(11) Notwithstanding anything in the last foregoing paragraph 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.

(12) A judgment or order requiring any person to do, or refrain from doing, any act, and a notice of motion or summons for the attachment or committal of 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.

(13) Any document served in accordance with paragraph (10) of this Rule shall be endorsed with a notice that the contents or purport of the document are to be communicated to the person under disability unless (in the case of a patient) the person on whom the document was served is satisfied, after consultation with the responsible medical officer within the meaning of the Mental Health Act, 1959, or, where the patient is not liable to be detained or subject to guardianship under that Act, his medical attendant, that the communication will be detrimental to his mental condition; and after service has been effected the party at whose instance the document was served shall, unless otherwise directed, file an affidavit made by the person on whom the document was served, stating whether or not the contents or purport of the document were communicated to the person under disability and, if not, giving the reasons why they were not so communicated."

Dated the 22nd day of July, 1960.

*Kilmuir*, C.
*Parker of Waddington*, C.J.
*Evershed*, M.R.
*Merriman*, P.
*B. Ormerod*, L.J.
*Harold Danckwerts*, J.
*Reginald W. Goff.*
*John F. Donaldson.*
*W. Charles Norton.*
*W. O. Carter.*

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## EXPLANATORY NOTE

*(This Note is not part of the Rules, but is intended to indicate their general purport.)*

These Rules make amendments in the Matrimonial Causes Rules, 1957, consequential on the coming into operation of the Mental Health Act, 1959.