

Estate Essentials: Rule Change — The Rules for Appointing Litigation Guardians Receive an Update

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By John Siferd

On October 6, 2025, the rules relating to litigation guardianship are receiving a welcome update.

Rule 7 of the *Rules of Civil Procedure*^[1] sets out the steps for appointing litigation guardians. Litigation guardians make decisions about the conduct of legal proceedings on behalf of parties under disability – individuals who are legally incapable of making decisions due to mental incapacity or because they are under 18 years old.

In the case of minors, the appointment of litigation guardians is usually simple – the Children's Lawyer will typically act on their behalf automatically.

Where the party under disability is an adult, the process is much less straightforward. It is here in particular that the amendments to Rule 7 are most welcome because they help to clarify and streamline the process for the appointment of litigation guardians.

Previously, the Rules set out starkly different processes for the appointment of a litigation guardian for a plaintiff versus a defendant. Anyone could act as litigation guardian for a plaintiff without a court order at any point in the proceeding provided the requisite affidavit was filed, while a motion was required to appoint a litigation guardian for a defendant (unless there was a guardian or attorney with authority to act, in which case a motion was unnecessary). Now, a motion is required to appoint a litigation guardian for both plaintiffs and defendants, unless there is a guardian or attorney with authority to act, in which case they may be appointed upon filing the requisite affidavit (7.02 and 7.03). However, some differential treatment of plaintiffs persists because anyone may be appointed litigation guardian for a plaintiff without a court order provided the affidavit is filed when the claim is started (7.02(3)).

The new Rule 7.03.1 sets out the procedure on appointment motions. If the moving party is another party to the proceeding, they must serve the new Form 7B requesting the identification of a litigation guardian. After 10 days from service on the alleged party under disability, the moving party may then bring the motion. This new requirement is eminently sensible. An appointment motion is a costly step that should be avoided if possible. If there is someone available with authority to act, then the motion becomes unnecessary.

The amendments also provide welcome direction to lawyers who may find it necessary to appoint a litigation guardian for their client. Rule 7.03.1 confirms that the motion may be brought by the lawyer for the party under disability and specifically notes that the lawyer shall remain the lawyer of record until a litigation guardian is appointed. It also provides clear directions about the treatment of privileged information, which may need to be disclosed as part of the motion. Any privileged information or information that may prejudice the party under disability must be redacted from the materials that are served and filed in court. Unredacted copies of the materials must be delivered to the judge hearing the motion and will not be part of the court file. This has been the accepted practice of the court for some time, but this update provides helpful guidance to parties and counsel who may be dealing with these issues for the first time.

Thank you for reading!

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

[\[1\]](#) RRO 1990, Reg 194.

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