

## **RULE 6 – PERSONS UNDER DISABILITY**

### **Interpretation**

- (1) In this rule, “person under a legal disability” includes a minor.

### **Commencement of proceedings by person under disability**

- (2) A person under a legal disability shall commence or defend a proceeding by a litigation guardian.
- (3) Unless a statute or regulation otherwise provides, anything that is required or authorized by the rules to be done by or invoked against a party under a legal disability shall:
  - (a) be done on the party’s behalf by the party’s litigation guardian; or
  - (b) be invoked against the party by invoking the same against the party’s litigation guardian.
- (4) A litigation guardian shall be represented by a lawyer unless the litigation guardian is the Public Guardian and Trustee.

### **Litigation guardian**

- (5) Unless the court otherwise orders or a statute or regulation otherwise provides, a person ordinarily resident in Yukon may be a litigation guardian of a person under a legal disability without being appointed by the court.

### **Consent of litigation guardian**

- (6) Before the name of a person is used in a proceeding as a litigation guardian that person’s consent, signed by the person or the person’s lawyer, shall be filed, unless the person has been appointed by the court or is the litigation guardian under s. 55 of the *Adult Protection and Decision Making Act*, SY 2003, c. 21 Schedule A, of a party in that proceeding.

### **Certificate of fitness**

- (7) Unless a litigation guardian has been appointed, the lawyer for a person under a legal disability, before acting in a proceeding, must file a Certificate of Fitness in Form 5 that it is known or believed:
  - (a) the person to whom the certificate relates is a person under a legal disability, giving the grounds of that knowledge or belief, and, that a litigation guardian has not been appointed for the person; and
  - (b) the proposed litigation guardian of the person under a legal disability has no interest in the proceeding adverse to that person.

### **Party becoming incompetent**

- (8) If a party to a proceeding becomes a person under a legal disability the court must appoint a litigation guardian for the person.

### **Removal of litigation guardian**

- (9) If it is in the interest of a party who is under a legal disability, the court on application or on its own motion may remove, appoint or substitute a litigation guardian.

### **Party attaining age of majority**

- (10) A party to a proceeding who attains the age of majority shall, if the party is not otherwise under a legal disability, file an affidavit confirming the attainment of the age of majority in Form 6, and deliver a copy of that affidavit to all parties of record.

### **Effect of filing affidavit**

- (11) After an affidavit is filed under subrule (10):
  - (a) the party on whose behalf the affidavit was filed shall assume conduct of that party's claim or defence in the proceeding; and
  - (b) the style of proceeding must no longer refer to a litigation guardian for that party.

### **Step in default**

- (12) A party shall not take a step in default against a person under a legal disability without leave of the court.
- (13) Unless the court otherwise orders, notice of the application for leave shall be served on the person under a legal disability 10 days before the hearing of the application, in the manner provided by Part 3 of the *Adult Protection and Decision Making Act*, SY 2003, c. 21 Schedule A.
- (14) If no appearance has been entered to an originating process on behalf of a person under a legal disability, the person who commenced the proceeding, before continuing the proceeding against the person under a legal disability, shall obtain an order from the court appointing a litigation guardian.

### **Compromise by person under disability**

- (15) Unless a statute or regulation otherwise provides, where a proceeding is settled by or on behalf of a person under a legal disability, no settlement, compromise, payment or acceptance of money paid into court, whenever entered into or made, so far as it relates to that person's claim, is binding without the approval of the court.

- (15.1) Subrule (15) does not apply if the person under a legal disability attains the age of majority or otherwise ceases to be under a legal disability at the time of the settlement.

**Approval of compromise**

- (16) Where, before a proceeding is commenced, an agreement is reached for the settlement or compromise of a claim of a person under a legal disability, whether alone or with others, and it is desired to obtain the court's approval, on a requisition with evidence, the court may make any order it thinks just.