

ST HELENA

**MENTAL HEALTH AND MENTAL CAPACITY ORDINANCE, 2016****COURT (RULES) ORDINANCE, CAP. 9*****COURTS (MENTAL CAPACITY AND APPOINTMENT OF DEPUTIES) RULES, 2016***

In exercise of the powers conferred by section 130 of the Mental Health and Mental Capacity Ordinance, 2016, read with section 2 of the Courts (Rules) Ordinance, Cap. 9, and section 89(2) of the Constitution, I, the Chief Justice, make the following Rules of Court:

Citation

1. These Rules may be cited as the Courts (Mental Capacity and Appointment of Deputies) Rules, 2016.

Application for declaration regarding mental capacity

2. (1) An application for a declaration under section 114 of the Ordinance with respect to—

- (a) the mental capacity of a person (P); or
- (b) the lawfulness or otherwise of any act done or to be done in relation to P,

must be made in the form prescribed in Form A in Schedule 1 and must be accompanied by a certificate from an approved practitioner confirming that P lacks capacity and specifying in which areas P lacks capacity.

(2) An application under this Rule may be accompanied by an application for appointment of a deputy under Rule 3.

Application for appointment as deputy

3. (1) An application for appointment of a deputy in relation to a person (P) who lacks capacity must be made in the form prescribed in Form B in Schedule 1 and must be accompanied by the following:

- (a) where the application is not made simultaneously with an application for a declaration as provided in Rule 2(2)—
 - (i) a certified copy of a declaration made under section 114 of the Ordinance within the last 12 months; and
 - (ii) a certificate from an approved practitioner confirming that the circumstances surrounding P's lack of capacity have not changed since that declaration was made;

- (b) a statement from the proposed deputy including—
 - (i) his or her relationship to P;
 - (ii) why he or she seeks to act as deputy for P;
 - (iii) why it is in P's best interests for him or her to act as deputy;
 - (iv) over what issues he or she should act as deputy;
 - (v) what, if any, expenses he or she seeks from P's property;
 - (vi) whether he or she is a deputy or donee for any other person and, if so, whether he or she has sufficient time and resources to act as deputy for P; and
 - (vii) whether he or she seeks for the court to appoint a successor deputy;
- (c) a statement from the Public Guardian including—
 - (i) the outcome of the checks referred to in Rule 3(3);
 - (ii) whether there are any other persons who seek to act as deputy for P;
 - (iii) whether he or she supports the applicant, providing reasons therefor;
 - (iv) what concerns, if any, he or she has in relation to the applicant;
 - (v) whether he or she considers there is a need for the appointment of a deputy for P;
 - (vi) what powers or restrictions, if any, should be placed on the deputy;
 - (vii) the frequency of reports to be made by the deputy to the Public Guardian;
 - (viii) whether any expenses are justified to be paid to the deputy from P's property;
 - (ix) whether the applicant is a deputy or donee for any other person and, if so, whether the Public Guardian is of the view that the applicant has sufficient time and resources to act as deputy for P;
 - (x) the views of P, if possible to ascertain; and
 - (xi) whether the court should appoint a successor deputy for P.

(2) The application under sub-rule (1) must be submitted to the Registrar of the Supreme Court.

Assessment of the proposed deputy

4. (1) The applicant must, at least 28 days prior to submitting an application under Rule 2, notify the Public Guardian and the Attorney General of his or her intention to apply for appointment as deputy.

(2) The Public Guardian, or his or her representative, must meet with the proposed applicant on at least one occasion to discuss the application.

(3) The Public Guardian, or his or her representative, must undertake the following checks:

- (a) a full background and criminal record check;
- (b) a discussion with the applicant's family and/or friends; and
- (c) a discussion with the applicant's employer, if applicable.

Proceedings

5. (1) Upon receipt of the application, a statement from the Public Guardian and any information provided by the Attorney General, the court must consider whether the matter can be disposed of without a hearing and advise the parties accordingly.

(2) In the event that the court considers that a hearing is required, it must decide whether—

- (a) the proceedings should be conducted in private;
- (b) a suitable person must be appointed to act on behalf of or represent P in the application;

- (c) any further evidence is required and, if so, from whom.

Attendance by Attorney General

6. (1) The Attorney General or his or her representative, must, if the Attorney General considers it necessary and appropriate, attend the hearing for appointment as deputy and act as amicus curiae.

(2) The court may request the assistance of the Attorney General or his or her representative at any hearing relating to a deputy or proposed deputy.

Attendance by person who is subject of application

- 7.** P need not attend the hearing if—
- (a) a certificate from an approved practitioner involved in his or her care declares that attending would not be in his or her best interest;
 - (b) he or she is physically unable to attend;
 - (c) the court is satisfied that P's views, as far as is possible, have been ascertained and recorded; or
 - (d) the court declares that P's attendance is not required.

Fees

8. (1) An application under these Rules must be accompanied by the fee prescribed in Schedule 2, unless the applicant submits with such application a request for an order under sub-rule (2) setting out the reasons for such request.

(2) The court may order that an applicant is exempt from paying the fee under sub-rule (1) where the court is satisfied that payment thereof will cause serious hardship and that in the circumstances it is just and equitable not to enforce payment thereof.

(3) If the court denies a request for an order under sub-rule (2), the court must not hear the application under Rule 2 or 3 until the prescribed fee is paid.

SCHEDULE 1

FORM A
APPLICATION FOR DECLARATION WITH RESPECT TO MENTAL CAPACITY <i>(Section 114(1) of the Mental Health and Mental Capacity Ordinance, 2016)</i>
<p>To — The Honourable Chief Justice.</p> <p>I <i>(Name of Applicant)</i></p> <p>of <i>(Address)</i>.....</p> <p>HEREBY APPLY for a declaration under section 114(1) of the Mental Health and Mental Capacity Ordinance, 2016, with respect to:</p> <p><i>(Name of Person)</i>.....</p>

<p>of (<i>Address</i>)</p> <p>*(1) The abovementioned person lacks capacity to make decisions on the following matter or matters:</p> <p>OR</p> <p>*(2) The court is requested to make a declaration on the lawfulness or otherwise of the following acts done or to be done with respect to abovementioned person:</p> <p>(<i>*Delete whichever is not applicable</i>)</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>This application is based on the grounds set out in the accompanying certificate by:</p> <p>(<i>Name of Approved Practitioner</i>):</p>
<p>Dated this, 20.....</p>
<p>.....</p> <p>(<i>Signature</i>)</p> <p>Applicant.</p>

<p>FORM B</p> <p>APPLICATION FOR APPOINTMENT AS DEPUTY</p> <p>(<i>Section 115(2)(b) of the Mental Health and Mental Capacity Ordinance, 2016</i>)</p>
<p>To — The Honourable the Chief Justice.</p> <p>I (<i>Name of Applicant</i>)</p> <p>of (<i>Address</i>).....</p> <p>HEREBY APPLY for an order under section 115(2)(b) of the Mental Health and Mental Capacity Ordinance, 2016, to be appointed as Deputy in relation to:</p> <p>(<i>Name of Person</i>).....</p> <p>of (<i>Address</i>)</p> <p>who lacks capacity in relation to a matter or matters concerning his or her—</p> <p>*(a) personal welfare; or</p>

*(b) property and affairs.

(*Delete whichever is not applicable)

This application is based on the grounds set out in the accompanying statements.

Dated this, 20.....

(Signature)

Applicant.

SCHEDULE 2

FEES	
Application for declaration with respect to mental capacity	£12
Application for appointment as deputy	£12

Made this 1st day of December 2016

Charles Ekins
Chief Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

The purpose of these Rules is to prescribe the procedures for applications for declarations relating to a person's mental capacity and for the appointment of deputies in respect of persons who lack capacity with respect to matters concerning their personal welfare or property and affairs.