

High Court Practice Directions

HC120

Wards of Court

I, David Barniville, President of the High Court, hereby issue the following practice direction in accordance with s.11 (12) of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020. This Practice Direction, which concerns applications pursuant to Part VI of the Assisted Decision Making (Capacity) (Amendment) Act 2022 (hereafter the 2022 Act) and the documents to accompany all Applications, will come into force on 26th day of April 2023

1. All applications for discharge from Wardship shall be by Notice of Motion, grounded on Affidavit sworn by the applicant and service averred by Affidavit of Service
2. All applications shall be accompanied by Form WOC2 (as per the appendix hereto) and the documents provided for in the form
3. Form WOC2 (as per the appendix hereto) must be completed for all discharge applications made in the wardship list.
4. The Form is available on the Courts.ie website and should be filled in electronically, following the formatting and layout prescribed in the Form.
5. The Affidavit grounding applications for discharge or discharge with a Decision Making Assistant seeking a declaration under s. 55(1)(a) shall contain:

Averments

The will and preference of the ward and other relevant information as mandated by s. 8(7)(b) and (c) and the views of anyone covered by s. 8(8), if relevant.

Exhibits

- i. Medical Visitors Report
 - ii. Schedule of Assets
 - iii. Medical Report of the applicant (if applicable)
6. The Affidavit grounding applications for discharge with a Co-Decision Maker (hereafter CDM) seeking a declaration under s. 55(1)(b)(i) shall contain:

Averments

- i. The will and preference of the ward and other relevant information as mandated by s. 8(7)(b) and (c) and the views of anyone covered by s. 8(8), if relevant.
- ii. The obligations of the Co-Decision Maker under s. 8(7) and (8) of the Act to be included the grounding affidavit.

Exhibits

- i. Medical Visitors Report

- ii. Schedule of Assets
 - iii. Medical Report of the applicant (if applicable)
 - iv. Proposal for the future management of assets to be remitted to the relevant person
 - v. Draft of the proposed CDM agreement
 - vi. Any existing enduring Power of Attorney made under the 1996 Act
 - vii. Any Advance Healthcare Directive
7. The Affidavit grounding applications for discharge with a Decision-Making Representative (hereafter DMR) seeking a declaration under s.55(1)(b)(ii) shall contain:

Averments

- i. Whether the ward has been notified of the application and invited to attend the hearing, and if not, whether any steps have been taken to improve his or her ability to participate pursuant to s.8(7)(a);
- ii. The will and preference of the ward and other relevant information as mandated by s. 8(7)(b) and (c).
- iii. The views of anyone covered by s.8(8), if relevant.
- iv. The obligations of the Decision-Making Representative under s.8(7) and (8) of the Act to be included in the grounding affidavit.
- v. The grounding affidavit should specify the type of decisions the DMR will make -
Personal Welfare or Property and Affairs
Personal Welfare and Property and Affairs
In addition to the specifying decisions provided for in s.43
- vi. The grounding affidavit may propose a DMR. If so, the affidavit should address (a) each of the matters identified in in s.38(5) (b) each of the matters identified in s.38(6).
- vii. The grounding affidavit should specify whether or not to the knowledge of the deponent there exists any Enduring Power of Attorney made under the 1996 Act and or any Advance Healthcare Directive. The same should be exhibited if available. The affidavit must address the requirements of s.38 (3) and (4).
- viii. Where there is no suitable person willing to act as a DMR, the grounding affidavit should request the Court to ask the Director to nominate two or more persons from the panel established under s.101.

Exhibits

- i. Medical Visitors Report
- ii. Schedule of Assets
- iii. Medical Report of the applicant (if applicable)
- iv. Proposal for the future management of assets to be remitted to the relevant person
- v. Signed statement from the proposed representative confirming that they understand and will act in accordance with their obligations as identified at s. 38(11) and that they are not a person to whom s. 39 applies.

8. The Affidavit of Service to include averments:
 - i. As to service on the relevant person, the committee and any other person required
 - ii. Explanation of the application and implications
 - iii. The response and reaction of the relevant person
9. Two weeks prior to the date allocated for hearing, a booklet for hearing must be lodged with the Court electronically and in paper form in the Wards of Court Office
10. The documentation in the booklet for hearing must appear in the following order:
 - i. Form WOC 2.
 - ii. The document detailing the application *i.e.* the *ex parte* docket/Notice of Motion as appropriate.
 - iii. The grounding affidavit and exhibits behind.
 - iv. Exhibits to include:
 - a. Courts medical visitor report
 - b. Schedule of assets
 - c. Proposal for the future management of assets to be remitted to the relevant person
 - v. Any proposed draft Order.
 - vi. Other relevant affidavits.
 - vii. Affidavit of service
 - viii. The most recent Order(s) made in the proceedings
 - ix. The most recent medical reports and any other relevant documents
11. This Practice Direction will remain in force until further notice.

David Barniville
President of the High Court
24th April 2023

Appendix

Form WOC2: To accompany all High Court Wardship Discharge Applications

WOC Ref:

High Court