

## PART 2: THE PARTIES TO LITIGATION

***What this Part is about:*** Rules in this Part facilitate Court actions by and against personal representatives, trustees, partnerships, sole proprietors, and other entities.

The rules in this Part also specify those individuals who must be represented in Court by a litigation representative.

This Part describes when a lawyer becomes and ceases to be a lawyer of record and the responsibilities associated with that designation.

# TABLE OF CONTENTS

## Part 2: The Parties To Litigation

DIVISION 1 Facilitating Legal Actions		DIVISION 2 Litigation Representatives	
<i>Subdivision 1 Estates with a Personal Representative or Trustee</i>		<i>Subdivision 1 Persons Under Disability</i>	
2-1	Actions by or against personal representatives and trustees	2-14	Minor may proceed as adult or by litigation guardian
2-2	Court may order service and add parties	2-15	Rules re appointment of litigation guardian for minor
2-3	All personal representatives and trustees must be parties	2-16	If minor becomes adult
		2-17	Approval of settlement
		2-18	Litigation guardian for adult person and person under mental disability
<i>Subdivision 2 Partnerships</i>		2-19	Rules apply to litigation guardian
2-4	Action by partners	2-20	Duty and power of litigation guardian
2-5	Action against partners	2-21	Substitution of litigation guardian
2-6	Defence	2-22	Litigation guardian – no costs or compensation without order
2-7	Disclosure of members of partnership		
2-8	Irregularity		
<i>Subdivision 3 Sole Proprietors and Other Entities</i>		<i>Subdivision 2 Estates with No Personal Representative or Trustee</i>	
2-9	Actions by and against sole proprietors	2-23	Action against estate where no personal representative
2-10	Representative actions	2-24	Action by estate where no personal representative
2-11	Representation order	2-25	Unrepresented estate
<i>Subdivision 4 Intervenors</i>		2-26	Appointment of administrator <i>ad litem</i>
2-12	Intervenor status	2-27	Powers of administrator <i>ad litem</i>
2-13	Leave to intervene as a friend of the Court	2-28	Administrator <i>ad litem</i> is trustee – Court approval required re actions

- 2-29 Court may make orders or give directions
- 2-30 Where action not defeated
- 2-31 Enforcement of judgment against person other than administrator *ad litem*
- 2-32 Rules apply to trusts and administration actions

### **DIVISION 3**

#### **Self Representation before the Court**

- 2-33 Self-represented litigants

### **DIVISION 4**

#### **Lawyer of Record**

- 2-34 Lawyer required
- 2-35 Students-at-law
- 2-36 Lawyer of record
- 2-37 Duties of lawyer of record
- 2-38 Verifying lawyer of record
- 2-39 Retaining a lawyer for limited purposes
- 2-40 Change in lawyer of record or self-representation
- 2-41 Withdrawal of lawyer of record
- 2-42 Service after lawyer ceases to be lawyer of record
- 2-43 Withdrawal after trial date scheduled
- 2-44 Automatic termination of lawyer of record and resolving difficulties



## PART 2: THE PARTIES TO LITIGATION

### DIVISION 1 Facilitating Legal Actions

#### *Subdivision 1* *Estates with a Personal Representative or Trustee*

##### **Actions by or against personal representatives and trustees**

**2-1(1)** An action may be brought by or against a personal representative or trustee without naming any of the persons beneficially interested in the estate or trust.

(2) Notwithstanding subrule (1), the plaintiff may join as parties to the action those persons that may be appropriate having regard to the nature of the action or the remedy claimed.

#### **Information Note**

If an estate does not have a personal representative or trustee, refer to the rules in Subdivision 2 of Division 2 of this Part.

##### **Court may order service and add parties**

**2-2** At any stage of an action, the Court may order:

- (a) that a beneficiary, next of kin, creditor or other interested person be served, or that he or she be entitled to be heard, with or without making him or her a party; or
- (b) that a beneficiary, next of kin, creditor or other interested person be made a party, in place of or in addition to the personal representative or trustee, if the personal representative or trustee may not or cannot represent the interests of those persons.

##### **All personal representatives and trustees must be parties**

**2-3** All personal representatives and trustees must be joined in an action commenced on behalf of an estate or trust, and each personal representative or trustee who does not consent to be joined as a plaintiff must be joined as a defendant.

## ***Subdivision 2***

### ***Partnerships***

**Action by partners**

**2-4(1)** An action may be brought by:

- (a) a partnership that has not been dissolved, in the firm name of the partnership;
  - (b) a partnership that has been dissolved, in the firm name of the partnership unless a person who was a partner at the material time does not consent;
  - (c) all the partners, in the individual names of those partners; or
  - (d) subject to subrule (2), one or more of the partners, in the individual names of those partners if all partners who do not consent to be joined as plaintiffs are joined as defendants.
- (2) The Court may relieve against the necessity for the joinder of any partner as required by clause (1)(d).

**Action against partners**

**2-5(1)** An action may be brought against:

- (a) a partnership and all the partners in the firm name of the partnership;
  - (b) the partners of a partnership in the individual names of those partners; or
  - (c) a partnership and all the partners in the firm name of the partnership and one or more of the partners in the individual names of those partners.
- (2) A person not individually named as a defendant may be served with the statement of claim and notice to alleged partner in Form 2-5.
- (3) Each person who is served pursuant to subrule (2) is deemed to have been a partner at the material time, unless that person defends by denying that he or she was a partner at the material time.

#### **Information Note**

Rules for service of commencement documents on partnerships are contained in rule 12-6.

Rules respecting judgments against partnerships are found in rule 10-6.

**Defence**

- 2-6(1)** A partnership shall defend in its firm name.
- (2) A partner may defend separately or may join in a common defence with the partnership or with other partners.
- (3) In an action to which this rule applies:
- (a) costs are not allowed for more than one defence for common grounds of defence; and
  - (b) a successful plaintiff is to have costs for each separate unsuccessful defence.

**Information Note**

The Court may order otherwise respecting costs pursuant to this rule: see rules 11-1 and 11-6.

**Disclosure of members of partnership**

- 2-7(1)** If an action is commenced by or against a partnership in the firm name, or against a person alleging that the person was a member of a partnership, any party may, at any time, serve a notice requiring the partnership or that person to deliver an affidavit sworn or affirmed by a partner or that person disclosing, as on the date or dates specified in the notice:
- (a) the names and present addresses of all the partners constituting the partnership, and designating which, if any, were limited partners; and
  - (b) the firm name of the partnership.
- (2) A notice pursuant to subrule (1) must be in Form 2-7.
- (3) If the present address of a partner is not known, the affidavit must show the partner's address last known to the deponent.
- (4) The affidavit required by subrule (1) must be delivered within 8 days after service of the notice.
- (5) If an affidavit is not delivered as required by this rule:
- (a) any claim or defence as against the party who served the notice may be dismissed or struck out or the proceeding may be stayed; and
  - (b) an application may be made for an order that any person personally served with the order shall comply with the notice, and that the order may be enforced by process for contempt.
- (6) The affidavit required by subrule (1) is admissible as against the partnership and each partner as proof that each person so listed was a partner at the date specified, unless proven otherwise.

**Irregularity**

**2-8(1)** A proceeding by or against a partnership or partners must not be treated as a nullity because:

- (a) the proceeding was not properly constituted;
  - (b) the partnership is dissolved; or
  - (c) there is a change in a claim or defence of a partner or a partnership.
- (2) A proceeding mentioned in subrule (1) may continue as constituted, or may be reconstituted by the Court on any terms that the Court considers just.
- (3) If necessary, the Court may give directions with respect to the conduct or carriage of any claim or defence.
- (4) The rules in this subdivision apply, with any necessary modification:
- (a) to an action between a partnership and one or more of its partners and between partnerships having one or more partners in common; and
  - (b) to any action in which a partnership may be interested.

***Subdivision 3***  
***Sole Proprietors and Other Entities***

**Actions by and against sole proprietors**

- 2-9(1)** If a person carries on business under a business name other than the person's own name, an action may be commenced by or against the person in either or both names.
- (2) The rules respecting actions by or against partners apply, with any necessary modification, to an action by or against a sole proprietor in the sole proprietor's business name as though the sole proprietor were a partner and the sole proprietor's business name were the firm name of a partnership.

**Information Note**

Refer to Subdivision 2, above, for rules respecting actions by or against partners.

Rules for service of commencement documents on individuals and corporations operating under trade names are contained in rule 12-6 and rule 12-7.

**Representative actions**

- 2-10(1)** If numerous persons have a common interest in the subject of an intended claim, one or more of those persons may make or be the subject of a claim or may be authorized by the Court to defend on behalf of or for the benefit of all.
- (2) If a certification order is obtained pursuant to *The Class Actions Act*, an action referred to in subrule (1) may be continued pursuant to that Act.



**Information Note**

Section 3 of *The Class Actions Act* reads as follows:

“3 This Act does not apply to:

- (a) an action that may be brought in a representative capacity pursuant to another Act;
- (b) an action required by law to be brought in a representative capacity; and
- (c) a representative action commenced before this Act comes into force”.

**Representation order**

2-11(1) In this rule:

“**absent person**” means a person for whom a representative is or may be appointed pursuant to this rule and includes an unborn person, an unascertained person, or a person or member of a class of persons who cannot readily be ascertained, found or served, who has a present, future, contingent or unascertained interest in, or may be affected by, a proceeding; (« *personne absente* »)

“**proceeding**” means a proceeding concerning:

- (a) the interpretation of:
  - (i) a deed, will, contract or other instrument; or
  - (ii) an enactment, order in council or municipal bylaw or resolution;
- (b) the determination of a question arising in the administration of an estate or trust;
- (c) the approval of a sale, purchase, compromise or other transaction;
- (d) the approval of an arrangement pursuant to *The Trustee Act, 2009*;
- (e) the administration of the estate of a deceased person; or
- (f) any other matter if the Court considers it necessary or desirable.  
(« *instance* »)

(2) In a proceeding, the Court may appoint one or more persons to represent an absent person.

(3) If an appointment is made pursuant to this rule, a judgment in the proceeding is binding on an absent person represented pursuant to subrule (2), unless the Court, in the same or a subsequent proceeding, orders otherwise.

(4) The Court may approve a settlement that it is satisfied is for the benefit of the represented or absent persons if, in a proceeding:

- (a) a settlement is proposed; and
- (b) either:
  - (i) a person is represented in the proceeding by a person appointed pursuant to this rule who consents to the settlement; or
  - (ii) some of the persons interested in the proceeding are not parties but to require service on them would cause undue expense and delay and there are other parties of the same interest who consent to the settlement.

(5) If the settlement mentioned in subrule (4) is approved, it is binding on the absent persons but, in the same or a subsequent proceeding, the Court may order that the absent person is not bound if the Court is satisfied that:

- (a) the order was obtained by fraud or non-disclosure of material facts;
- (b) the interests of the absent person were different from those represented at the hearing; or
- (c) for some other sufficient reason the order should be set aside.

#### **Information Note**

A person acting in a representative capacity must be represented by a lawyer.  
See rule 2-34.

### ***Subdivision 4 Intervenors***

#### **Intervenor status**

**2-12** On application, the Court may grant status to a person to intervene in an action subject to any terms and conditions and with the rights and privileges specified by the Court.

#### **Information Note**

The rules about making application to the Court are in Part 6: see rule 6-3.

#### **Leave to intervene as a friend of the Court**

**2-13(1)** The Court may order that a person may, without becoming a party to the proceeding, intervene in the proceeding as a friend of the Court for the purpose of assisting the Court by way of argument or by presentation of evidence.

(2) The Court may make an order pursuant to subrule (1) on any terms as to costs or otherwise that the Court may impose.

## DIVISION 2 Litigation Representatives

### *Subdivision 1 Persons Under Disability*

#### **Minor may proceed as adult or by litigation guardian**

**2-14(1)** A minor may commence, continue or defend a proceeding as if of the age of majority if:

- (a) the minor is party to a proceeding as a spouse or a co-respondent and the proceeding is a family law proceeding;
  - (b) the minor is represented by a lawyer appointed by The Saskatchewan Legal Aid Commission;
  - (c) before or after commencing the proceeding, the minor obtains the leave of the Court.
- (2) A minor may sue for wages as if of the age of majority.
- (3) Except where otherwise provided, a minor may commence, continue or defend a proceeding by a litigation guardian.

Amended. Gaz. 2 Sep. 2016.

#### **Rules re appointment of litigation guardian for minor**

**2-15(1)** Unless the Court orders otherwise, any person who is not under disability may act as a litigation guardian for a minor without being appointed by the Court.

- (2) No person other than the Public Guardian and Trustee acting pursuant to *The Public Guardian and Trustee Act* or a litigation guardian appointed by the Court shall act as litigation guardian for a minor until the person has filed an affidavit in Form 2-15.
- (3) No person may be appointed as a litigation guardian without that person's consent.

#### **If minor becomes adult**

**2-16(1)** If, in the course of an action, a minor for whom a litigation guardian has been acting, other than a minor under mental disability, reaches the age of majority, the minor or the minor's litigation guardian shall file an affidavit verifying this fact.

- (2) On the filing of an affidavit pursuant to subrule (1), the local registrar shall issue an order to continue in Form 2-16 authorizing the continuation of the action without the litigation guardian.

#### **Approval of settlement**

**2-17(1)** On an application for the approval of a settlement of a claim of a minor pursuant to subsection 25(3) of *The Public Guardian and Trustee Act*, the applicant shall file:

- (a) the comment, if any, of the Public Guardian and Trustee;
- (b) the consent of the litigation guardian;

- (c) evidence regarding the facts and circumstances of the claim and injuries sustained;
  - (d) if the minor is over the age of 14 years and not under mental disability, the minor's consent in writing;
  - (e) a copy of the minutes of settlement and draft order;
  - (f) if the lawyer who acts for the minor requests that legal fees be paid out of the settlement proceeds, a copy of the account sought to be paid together with a statement of the time spent by each lawyer and the basis on which the amount is charged or calculated; and
  - (g) all other material necessary to set out in full the particulars on which the application may be judged.
- (2) If the Court approves a settlement of a claim of a minor, any moneys payable pursuant to the settlement to the minor must be paid to the Public Guardian and Trustee unless the Court directs otherwise.

**Litigation guardian for adult person or person under mental disability**

**2-18(1)** Unless otherwise ordered or provided, a person with respect to whom an order has been made pursuant to *The Adult Guardianship and Co-decision-making Act* or a person under a mental disability may commence, continue or defend an action by a litigation guardian.

- (2) For the purposes of this rule, “**litigation guardian**” means:
- (a) a property guardian appointed pursuant to *The Adult Guardianship and Co-decision-making Act*, except where the Court has imposed a limitation or condition on the property guardian's authority to make decisions respecting the carrying on of any legal proceeding;
  - (b) a personal guardian appointed pursuant to *The Adult Guardianship and Co-decision-making Act* with the authority to make decisions respecting the carrying on of any legal proceeding that does not relate to the estate of the adult;
  - (c) the Public Guardian and Trustee if he or she has signed an acknowledgment to act pursuant to clause 29(2)(a) of *The Public Guardian and Trustee Act*;
  - (d) subject to section 44.1 of *The Public Guardian and Trustee Act*, the Public Guardian and Trustee or another person appointed as litigation guardian pursuant to section 32 of *The Public Guardian and Trustee Act*;
  - (e) the litigation guardian of a minor who has reached the age of majority; or
  - (f) any other person appointed by the Court.

**Rules apply to litigation guardian**

**2-19(1)** Except where otherwise provided, anything that is required or authorized by these rules to be done by or invoked against a party under disability may:

- (a) be done on the party's behalf by the party's litigation guardian; or
- (b) be invoked against the party by invoking it against the party's litigation guardian.

(2) Notwithstanding any other provision of these rules, if a party under disability has a litigation guardian in an action:

- (a) service of a document that would otherwise be required to be served on the party under disability must be served on the litigation guardian; and
- (b) service of a document on the party under disability for whom the litigation guardian is appointed is ineffective.

**Duty and power of litigation guardian**

**2-20** A litigation guardian:

- (a) shall diligently attend to the interests of the party under disability for whom the litigation guardian acts and take all proceedings that may be necessary to protect the party under disability's interests, including proceedings by way of counterclaim, cross-claim or third party claim; and
- (b) may defend a counterclaim.

**Substitution of litigation guardian**

**2-21(1)** If, at any time, it appears to the Court that a litigation guardian is not acting in the best interests of the party under disability or if the litigation guardian wishes to resign, the Court may appoint and substitute another person as litigation guardian on any terms and conditions that the Court considers just.

(2) The Court may give any directions to protect a party under disability that the Court considers proper if, at any time:

- (a) no person appears for a party under disability;
- (b) the interests of the litigation guardian are, or may be, adverse to the interests of the party under disability; or
- (c) the Court is satisfied for any other reason that the interests of the party under disability may require protection.

**Information Note**

See sections 22 and 23 of *The Public Guardian and Trustee Act* regarding notice to the Public Guardian and Trustee in circumstances where a litigation guardian is adverse in interest to a minor or fails to protect the interests of a minor.

A litigation guardian is not liable to pay a costs award, and a litigation guardian of a minor cannot be compensated, unless ordered otherwise: see rule 2-22.

The Court may order that the costs of a litigation guardian be paid: see rule 11-5.

**Litigation guardian - no costs or compensation without order**

**2-22(1)** A litigation guardian is not personally liable for costs.

(2) A litigation guardian for a minor may not receive any compensation for his or her services on behalf of the minor in the proceeding.

**Subdivision 2*****Estates with No Personal Representative or Trustee*****Action against estate where no personal representative**

**2-23** If a person wishes to commence or continue an action against the estate of a deceased person and there is no personal representative for the estate of the deceased person, or the person who wishes to commence or continue the action does not know or is in doubt as to the name of the personal representative, the action may be commenced against any of the following persons to represent the estate of the deceased person:

- (a) a person to whom a grant of probate or administration has been made in any other jurisdiction, as administrator *ad litem*, without appointment by the Court;
- (b) a person appointed by the Court, before or after the commencement of the action, as administrator *ad litem*.

**Information Note**

With respect to clause (b), see section 9 of *The Survival of Actions Act*.

An administrator *ad litem* is a person appointed to advise a minor or other person under a disability with respect to legal proceedings.

**Action by estate where no personal representative**

**2-24(1)** If there is no personal representative for the estate of a deceased person, an action may be commenced or continued by or on behalf of the estate of a deceased person by:

- (a) any person to whom a grant of probate or administration has been made in any other jurisdiction, as administrator *ad litem*, without appointment by the Court;

- (b) any person entitled to apply for probate, as administrator *ad litem*, without appointment by the Court;
  - (c) any person entitled to apply for administration, as administrator *ad litem*, without appointment by the Court; or
  - (d) any person appointed by the Court as administrator *ad litem*.
- (2) Unless the Court orders otherwise, if more than one person seeks to bring or continue an action as administrator *ad litem* pursuant to this rule without appointment, the priority of right to bring that action is the same as the priority of right to a grant of probate or administration.
- (3) If more than one person of equal priority seeks to bring or continue an action as administrator *ad litem* pursuant to this rule without appointment, the action shall be brought by all those persons as plaintiffs.

**Information Note**

The priority of right to a grant of letters probate or administration is found in rule 16-16 and rule 16-24.

**Unrepresented estate**

- 2-25(1)** If the estate of a deceased person has an interest in a proceeding and there is no personal representative, the Court may:
- (a) proceed in the absence of a person representing the estate of the deceased person; or
  - (b) appoint a person to represent the estate for the purposes of the proceeding.
- (2) A judgment in the proceeding mentioned in subrule (1) binds the estate of the deceased person to the same extent as it would have been bound had a personal representative of that deceased person been a party to the proceeding.

**Information Note**

See also section 6-7 of *The King's Bench Act* respecting appointment of a representative for the estate of a deceased person where there is no personal representative.

Amended, Gaz. 13 Oct. 2023.

**Appointment of administrator *ad litem***

- 2-26(1)** An application for the appointment of an administrator *ad litem* may be made without notice or on any notice that the Court may direct.
- (2) No person may be appointed an administrator *ad litem* without the person's consent.

**Information Note**

A person acting in a representative capacity, including as an administrator *ad litem*, must be represented by a lawyer. See rule 2-34.

**Powers of administrator *ad litem***

**2-27(1)** An administrator *ad litem* may take all proceedings that may be necessary for the protection of the interests of the estate, including proceedings by way of counterclaim, cross-claim or third party claim.

(2) A judgment in an action to which an administrator *ad litem* is a party binds the estate of the deceased person but, unless otherwise ordered, has no effect against the administrator *ad litem* in the administrator *ad litem*'s personal capacity.

**Administrator *ad litem* is trustee – Court approval required re actions**

**2-28** If an estate of a deceased person is represented in an action by an administrator *ad litem*:

- (a) the administrator *ad litem* is deemed to be a trustee for the estate and the persons beneficially interested in the estate;
- (b) the action may not be settled or discontinued without leave of the Court; and
- (c) no distribution of the proceeds, if any, may be made, except to a personal representative to whom probate or administration has been granted or resealed.

**Court may make orders or give directions**

**2-29** If an estate of a deceased person is represented in an action by an administrator *ad litem*, the Court may, at any stage of the action:

- (a) remove an administrator *ad litem*, whether or not the administrator *ad litem* has been appointed by the Court, and substitute another;
- (b) remove an administrator *ad litem* and substitute a person to or for whom a grant of administration has been made or resealed in Saskatchewan;
- (c) remove an administrator *ad litem* and substitute a person to or for whom a grant of probate has been made or resealed in Saskatchewan;
- (d) substitute parties and amend the style of cause as may be necessary;
- (e) give directions for the service of notice of the action on any person who might be beneficially interested in the estate or who might be adversely affected by the action or a judgment in the action;
- (f) grant a stay of proceedings until probate or letters of administration have been granted or resealed in Saskatchewan, or for any other reason; or
- (g) dismiss the action or make any other order or give any directions that the Court considers just.



**Where action not defeated**

**2-30(1)** An action must not be treated as a nullity solely on the ground that:

- (a) it was commenced in the name of, or against, a person who died before its commencement;
- (b) it was commenced or continued by or against an administrator *ad litem* who acted or was appointed for the estate of a deceased person for which there was a personal representative;
- (c) it was commenced by or against a person as an administrator before a grant of administration in Saskatchewan;
- (d) it was commenced by or against the estate of a deceased person naming:
  - (i) “the estate of A.B. deceased”, “the personal representative of A.B. deceased” or any similar designation; or
  - (ii) the wrong person as the personal representative;
- (e) it was commenced or continued by or against a person as an executor before a grant of probate in Saskatchewan; or
- (f) it was otherwise not properly constituted.

(2) At any stage of the action, the Court may:

- (a) on any terms that the Court considers just:
  - (i) reconstitute the action; or
  - (ii) order that the action be continued by or against the personal representative of the deceased person or an administrator *ad litem* appointed for the purpose of the action or otherwise as the circumstances may require; or
- (b) order that no further step in the action be taken until the action is properly constituted and, unless the action is properly constituted within a reasonable time, dismiss the action or make any other order that the Court considers just.

**Information Note**

You may also wish to refer to rule 1-6.

**Enforcement of judgment against person other than administrator *ad litem***

**2-31(1)** If a person claims to be entitled to enforce a judgment or order against any person other than an administrator *ad litem*, the person claiming to be entitled may apply for leave to do so.

(2) On an application pursuant to subrule (1), the Court may:

- (a) if the liability is not disputed, give the leave applied for; or
- (b) if liability is disputed, order that the liability of the person other than an administrator *ad litem* be tried and determined in any manner in which any issue or question in an action may be tried and determined.

**Rules apply to trusts and administration actions**

**2-32** The rules in this subdivision apply, with any necessary modification:

- (a) to actions by or against trusts or trustees for the execution of a trust; and
- (b) to actions for the administration of the estates of deceased persons.

### **DIVISION 3**

#### **Self Representation before the Court**

**Self-represented litigants**

**2-33** Individuals may represent themselves in an action unless these rules otherwise provide.

#### **Information Note**

Rules for service of commencement documents on individuals are contained in rules 12-2 to 12-4.

### **DIVISION 4**

#### **Lawyer of Record**

**Lawyer required**

**2-34(1)** A party to a proceeding who is under disability or acts in a representative capacity must be represented by a lawyer.

(2) Subject to subrule (3), unless the Court orders otherwise, a party that is a corporation must be represented in a proceeding by a lawyer.

(3) Subrule (2) does not apply to:

- (a) the enforcement of judgments filed with the Court pursuant to *The Small Claims Act, 2016*; or
- (b) the enforcement of orders of the Director of Residential Tenancies filed with the Court pursuant to *The Residential Tenancies Act, 2006*.

**Students-at-law**

**2-35(1)** An articulated student-at-law may represent a party before a judge sitting in chambers if:

- (a) the student-at-law is accompanied by the lawyer in charge of the file; or
- (b) subject to subrule (2), the matter on which the student-at-law appears is:
  - (i) uncontested; or
  - (ii) an uncomplicated contested matter.

(2) An articulated student-at-law may not appear on a matter pursuant to subclause (1)(b)(ii) unless the lawyer in charge of the file has filed, no later than the day before the matter is to be heard, a written notice stating that the student-at-law will be appearing and certifying that the student-at-law has been properly briefed.

(3) Notwithstanding subrules (1) and (2), the chambers judge may require the personal attendance of the lawyer in charge of the file.

**Lawyer of record**

**2-36(1)** The lawyer or firm of lawyers whose name appears on a commencement document, pleading, affidavit or other document filed or served in an action as acting for a party is a lawyer of record for that party.

(2) If there is a lawyer of record, the party for whom the lawyer of record acts may not self-represent unless the Court permits.

(3) A lawyer of record remains a lawyer of record until the lawyer ceases to be a lawyer of record under these rules.

**Duties of lawyer of record**

**2-37** The duties of a lawyer of record include:

- (a) conducting the action in a manner that furthers the purpose and intention of these rules described in rule 1-3; and
- (b) continuing to act as lawyer of record while the lawyer is recorded in that capacity.

**Verifying lawyer of record**

**2-38(1)** If a person who is served with a commencement document, pleading, affidavit or other document asks a lawyer if the lawyer is a lawyer of record in an action, application or proceeding, the lawyer shall respond to the question in writing as soon as is practicable.

(2) If a lawyer or firm of lawyers whose name appears as a lawyer of record in an action denies being the lawyer of record:

- (a) every application and proceeding in the action is stayed; and
- (b) no further application, proceeding or step may be taken in the action without the Court's permission.

**Retaining a lawyer for limited purposes**

**2-39(1)** If a self-represented litigant or a lawyer of record retains a lawyer to appear before the Court for a particular purpose, the lawyer appearing shall inform the Court of the nature of the appearance before the appearance by filing the terms of the retainer, other than the terms related to the lawyers's fees and disbursements.

(2) If a self-represented litigant retains a lawyer for a particular purpose, the litigant shall attend the application or proceeding for which the lawyer is retained unless the Court otherwise permits.

**Change in lawyer of record or self-representation**

**2-40(1)** A party may change the party's lawyer of record or may self-represent by:

- (a) serving on every other party and on the lawyer or former lawyer of record and filing a notice of the change in Form 2-40; and
  - (b) filing proof of service in accordance with Part 12.
- (2) A self-represented litigant who retains a lawyer to act on the litigant's behalf shall:
- (a) serve on every other party and file a notice naming the lawyer of record in Form 2-40; and
  - (b) file proof of service in accordance with Part 12.
- (3) The notice must include an address for service.
- (4) The notice is not required to be served on:
- (a) a party noted in default; or
  - (b) a party against whom default judgment has been entered.

**Information Note**

The "address for service" mentioned in subrule (3) is a defined term. See Part 17.

Amended, Gaz. 13 Nov. 2015.

**Withdrawal of lawyer of record**

**2-41(1)** Subject to rule 2-43, a lawyer or firm of lawyers may withdraw as lawyer of record by:

- (a) serving on every party and filing a notice of withdrawal in Form 2-41A that states the client's last known address;
- (b) filing an affidavit of service of the notice; and
- (c) serving on the client or former client and filing a notice in Form 2-41B to the effect that, on the expiry of 10 days after the date on which the affidavit of service of the notice is filed, the withdrawing lawyer will no longer be the lawyer of record.

(2) The withdrawal of the lawyer of record takes effect 10 days after the affidavit of service is filed.

(3) The address of the party stated in the notice of withdrawal is the party's address for service after the lawyer of record withdraws unless another address for service is provided or the Court orders otherwise.

(4) The Court may, on application, order that a lawyer need not disclose the last known address of a client and instead provide an alternative address for service for the client in a notice of withdrawal served pursuant to this rule if the Court considers it necessary to protect the safety and well-being of the client.

(5) An application pursuant to subrule (4) may be made without notice.

(6) Service of the notice on the client or former client may be by ordinary mail.

(7) The lawyer withdrawing as lawyer of record shall provide the local registrar with any other address, phone number, cell phone number and email address the lawyer may have concerning the party stated in the notice of withdrawal unless that disclosure is, in the opinion of the lawyer, contrary to:

- (a) the safety or well-being of the party; or
- (b) the interests of justice.

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**Service after lawyer ceases to be lawyer of record**

**2-42** After a lawyer or firm of lawyers ceases to be a lawyer of record, no delivery of a pleading, affidavit, notice or other document relating to the action is effective service on the former lawyer of record or at any address for service previously provided by the former lawyer of record.

**Withdrawal after trial date scheduled**

**2-43** After a pre-trial date or a trial date is scheduled, a lawyer of record may not, without the Court's permission, serve a notice of withdrawal as lawyer of record, and any notice of withdrawal that is served without the Court's permission has no effect.

**Information Note**

A trial date is scheduled pursuant to rule 9-2.

**Automatic termination of lawyer of record and resolving difficulties**

**2-44(1)** A lawyer or firm of lawyers ceases to be the lawyer of record if:

- (a) in the case of an individual lawyer:
    - (i) the lawyer dies;
    - (ii) the lawyer is suspended or disbarred from practice as a lawyer; or
    - (iii) the lawyer ceases to practise as a lawyer; or
  - (b) in the case of a firm of lawyers, the firm dissolves.
- (2) If any of the circumstances described in subrule (1) occurs, any party may apply to the Court, without notice to any other party, for directions respecting service of documents.
- (3) The Court may:
- (a) direct the manner in which service is to be effected;
  - (b) dispense with service in accordance with rule 12-10; or
  - (c) make any other order respecting service that the circumstances require.
- (4) An order pursuant to this rule applies until a notice is given pursuant to rule 2-40 or rule 2-41 or the Court orders otherwise.
- (5) Nothing in this rule prevents a party from serving a notice of change of lawyer of record or notice that the party intends to self-represent.