

From: [Christopher](#)
To: [RulesCommittee Secretary](#)
Cc: [C. Cross](#)
Subject: Suggested changes to Fed.R.Civ.P. Rule 17
Date: Monday, June 13, 2022 9:51:08 PM

22-CV-G

RulesCommittee_Secretary@ao.uscourts.gov

To Whom It May Concern,

I am sending this email to suggest changes to Fed.R.Civ.P. Rule 17(a) and (c). Below is the issue and the reasons I am making my suggestions.

I am a duly court appointed legal guardian of an adult ward with severe disabilities. My statutory authority derives from Section 475.120.3 et seq., and 475.123 RSMo. For purposes of litigation, Fed.R.Civ.P. Rule 17(a) and/or (c) permits me to file and litigate a case as the real party of interest even though my ward benefits from the litigation.

However, despite the statutory scheme and federal rule that permits me to sue and defend against a suit as a real party of interest, two federal trial court judges I have encountered have flat out refused to comply with the federal rule. The argument used is that because my ward would have benefited from the suit, I was required to be represented by an attorney in order to file and litigate the case as the real party of interest.

Once a person files a suit as a real party of interest, he or she has the constitutional right to proceed pro se if he or she makes this choice. By depriving guardians this constitutional right and forcing guardians to hire attorneys under the argument that we must be represented by an attorney for no other reason than the fact our wards will benefit from the litigation, violates our rights of immunity under state guardianship laws and ultimately deprives due process, equal protection of law, and equal access to the courts.

Rules 17(a) and (c) must state in explicitly clear terms that a duly court appointed legal guardian is permitted to act pro se in filing and litigating the case even if the case will benefit the guardians ward, and if a trial court is to assert the guardian must be represented by an attorney, then the trial court shall (not may, or can) appoint the guardian an attorney.

Moreover, Rule 17 must also explicitly state that the guardian is duly entitled to file and litigate a case for and on his or her own behalf independent of their ward without having to be represented by an attorney. Many times, the rights of guardians themselves are violated but the barrier we face is that we are barred from litigating

the case because trial court judges say the litigation benefits the wards and thus, we are required to be represented by an attorney.

In the last federal case I litigated, I provided a laundry list of case laws including an 8th Circuit Court case law on the subject and showing how contradicting case laws are -- some saying guardians are to be substituted for the ward in the litigation, some saying we are to be enjoined in the case, and some saying we can litigate the case independent of our wards. The judge did not care about any case law and dismissed the case because he refused to permit me to litigate the case for damages and injuries that I suffered, and those that my ward also suffered.

Respectfully,

Christopher Cross, M.A., C.M.A., D.S.P. (ret.)
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