

SUPREME COURT PRACTICE NOTE SC Eq 1

Supreme Court Equity Division - Case Management

Commencement

1. This Practice Note commences 17 August 2005.

Application

2. This Practice Note applies to new and existing proceedings filed in the Equity Division with the exception of those matters assigned to the Division's specialist lists.

Definitions

3. In this Practice Note:

CPA means the *Civil Procedure Act 2005*

E judge means a judge assigned to manage the Expedition List

Specialist lists means the Admiralty List, Adoptions List, Commercial List, Corporations List, Probate List, Protective List and the Technology and Construction List

Introduction

4. The purpose of this Practice Note is to set out the case management procedures applied in the Equity Division.

5. This Practice Note does not aim to override the specific practice directions governing the operation of the Division's specialist lists.

Lists generally

6. Not including specialist lists, the following lists are maintained in the Equity Division for matters to be heard in the Division:

- Duty Judge List (see paragraph 17 below)
- Expedition List (see paragraph 25 below)
- General List (see paragraph 38 below)
- Long Matters List (see paragraph 43 below)
- Short Matters List (see paragraph 46 below)
- Associate Judges' List (see paragraph 50 below)
- Registrar's Lists (see paragraph 59 below)

7. The Court relies on legal practitioners giving accurate estimates of hearing times. Wilfully misstating the length of a trial will be considered a serious matter.

8. The Court expects each direction to be faithfully obeyed. Should circumstances arise where this cannot be done, the court must be informed as soon as practicable.

9. No case will be stood over generally. In all cases, except final disposals, draft orders must contain a definite date to which the proceedings are next to be considered by the Court.

10. Practitioners must arrive at the courtroom at least three minutes before the relevant list commences and record their names on the attendance sheet before the list commences.

11. The Court's procedures are tuned to avoid applications for adjournment. Thus, before a date is taken, legal practitioners are expected to have considered the pleadings and the evidence and have satisfied themselves that no amendments are required and that all witnesses and documents are available and that they are in a position to give a genuine and accurate estimate of the length of hearing.

12. In the rare case where an adjournment is sought, the application is to be made on notice to all other parties either to the trial judge, or if that is not practicable, to the Duty Judge.

13. Subpoenas are to be made returnable before the Deputy Registrar in the 9am list. In particular, the practice of making subpoenas returnable at the first day of hearing is to be avoided as this usually causes delays while documents are examined. No subpoena should be made returnable in the Registrar's 9:30 list unless the matter is to be heard that day.

14. Unless directions are made to the contrary, the Judge or other judicial officer may read all written material including affidavits prior to the hearing (subject to all just objections).

15. Unless directions are otherwise made, before any trial of any matter other than Duty Judge matters, at least three working days before the hearing each party will provide to the Judge's Associate and to all other parties:

- A full list of affidavits to be read;
- A list of objections to opponent's affidavits; and
- A list of persons to be cross-examined (NB, it is assumed that all such witnesses will already have been informed of this requirement).

16. Unless directions are otherwise made, all exhibits and all agreed bundles of documents are to be delivered to the trial judge's Associate at least three working days before the hearing.

Duty Judge List

17. The prime function of the Duty Judge is to hear urgent applications.

18. Judges of the Equity Division are ordinarily rostered as Duty Judge for a two-week period. Legal representatives and parties should consult the daily court list to determine the current Duty Judge.

19. The Duty Judge will ordinarily sit in court from 9:30, 9:50 or 10am until 4pm.

20. The Judge will hear very urgent applications outside those hours, ordinarily in court. Counsel should contact the Associate in the first instance, or Security on 9230 8025. The Security Officer will contact the Judge and arrange a time for the application to be heard.

21. The Duty Judge's Associate should be contacted as soon as it is realised that an application is to be made. The Associate will monitor arrangements for the hearing.

22. While no truly urgent matter in the duty list will be left unheard at least to some minimal extent, normally it is inappropriate for any matter before the Duty Judge to take more than two hours. However, the Duty Judge hears all matters out at least to the stage of considering what interim relief should be given if they are so urgent that such action is required.

23. As a general rule, no matter is "not reached" in the Duty Judge List. Thus all practitioners must expect that there will be at least a limited hearing of every matter that is not resolved on an interim basis between the parties.

24. Solicitors should be armed with the filing fee (remembering the increase of fees that apply after 5:00 pm) plus minutes of the proposed orders.

Expedition List

25. All applications for expedition and all expedited cases are heard by the one or two Judges assigned exclusively to the Expedition List each year, save that some cases will be heard by judges who have had settlements.

26. One of the E Judges will sit each Friday to hear applications for expedition.

27. Applications for expedition must be made by Notice of Motion accompanied by one affidavit of grounds.

28. As the E Judge normally will read all material on the preceding Wednesday or Thursday, it is imperative that all material to be relied on be filed or delivered to the E Judge's Chambers no later than the preceding Tuesday.

29. It is expected that applications will be made as early as possible. However, the Court does not expect that the application should be made until after the real issues between the parties have been clarified.

30. There will no longer be any requirement that a case be ready for trial before an application is granted. However, ordinarily the case must be in such a state that a reliable estimate of its length can be made.

31. It will be necessary to make out a substantial case for expedition. The degree of proof of urgency will depend upon the competing candidates for the limited time available.
32. The progress of all cases expedited will be subject to directions by the Judge who will hear the trial. Directions will be given for purposes which include confining the issues to those really in dispute. There must be strict compliance with directions given. Non-compliance may lead to vacation of the hearing date.
33. Although endeavours will be made to set a date that suits the legal representatives, this will not always be possible and the parties must be prepared to accept whatever hearing date is allocated.
34. Once a hearing date is allocated, it is usually not possible to change it.
35. If an expedited case is adjourned, a fresh application for expedition must normally be made. The Court's general rule is that second applications are not looked on favourably.
36. The Duty Judge does not hear applications for expedition. However, a Duty Judge may see fit to deal with an application for an early final hearing associated with a claim for interlocutory relief listed before the Duty Judge.
37. Applications for urgent hearings of matters normally heard by the Associate Justices such as applications under the Family Provision Act must be made to an Associate Judge and not to the E Judge.

General List

38. When the Registrar directs that a case is ready to be entered into the General List, a case will be entered in the General List.
39. Cases in the General List estimated to take six days or less will be listed in the call-over next following their entry into the General List unless the list already contains over 100 matters ahead of it.
40. Call-overs will normally be held before the Registrar on the second Wednesday of March, June, September and November.
41. The Registrar will allot a date for provisional hearing of the case as well as fix a time for pre-trial conference, ordinarily before the trial judge, normally at 9:30am.
42. Cases likely to take more than six days will be re-allocated to the Long Matters List.

Long Matters List

43. Where the Registrar becomes aware that a matter set down in the General list is estimated by any party to last more than 6 days, the Registrar shall relist the matter before a Registrar.
44. On such relisting hearing, the Registrar shall require each party to file within a specified time a synopsis of the matters of fact and law to be agitated at the hearing together with such other details as the Registrar considers necessary.
45. On receipt of such synopsis and other details, the Registrar shall transmit the file to one of the judges and thereafter that judge will conduct case management hearings and, in due time, fix the hearing date.

Short Matters List

46. If it is appropriate to fix a hearing date for a case and the Registrar is of the opinion that it is ready for hearing and that it will last one day or less, the Registrar shall place it on the Short Matters List, unless exceptional circumstances are shown.
47. The Short Matters List will be called over before the E Judge on the last Friday of each month immediately after the Expedition list.
48. The E Judge will need to be satisfied that the case will actually occupy only one day or less, and, if not satisfied, the matter will be placed in the next General List call-over.
49. Dates will be fixed so that the matter can be heard as soon as practicable.

Associate Judges' List

50. The Associate Judges sit for referrals on Fridays.
51. Matters referred to the Associate Judge will be called over by the Associate Judge at 10 am in the order in which they are referred. At the call-over, counsel should indicate the type of matter and the time estimate. They should not announce their appearance.
52. Matters in the Associate Judges' List will then generally be dealt with as follows:
- "long" matters (matters with an estimate of one hour or more) will be allocated a hearing date often on a future Thursday, with directions being made as to the exchange and filing of written submissions (see paragraph 52 below);
 - matters by consent;
 - Family Provision Act matters;

- hearing of "short" matters (matters with an estimate of less than one hour), which will generally be dealt order in which they were called over.

53. Where possible the Associate Judge will give "not before" markings to those parties appearing in "short" matters.

Directions for written submissions in "long" matters listed before an Associate Judge

54. Failure to file and serve submissions in accordance with directions to do so may result in a matter not being heard on the date on which it is fixed for hearing.

Standard directions in Family Provision Act matters listed for hearing before an Associate Judge

55. The Associate Judge directs each party to hand up to the Court at the commencement of the hearing:

- a chronology setting out relevant dates in the matter
- submissions dealing with the issues that are in dispute. These should briefly refer to any issue which is a substantial one in the proceedings. It can be assumed that one of the issues that each party must address is the way in which the plaintiff alleges that they have been left without adequate or proper provision for their maintenance, education and advancement in life. In each case the document should address precisely what is the failure to properly provide and set out briefly the order sought whether it be in terms of legacy or the provision of particular property. If the claim is by reference to a sufficient provision to purchase accommodation then there should be a reference to the evidence in respect to this matter.

56. As the amount of costs of the parties which invariably has an impact on the orders that may be made by the Court, the Court requires that:

- the solicitor for each party shall in the week prior to the hearing file an affidavit setting out what the party's costs will be from the commencement until the conclusion of the proceedings
- such affidavit be served on the solicitor's client and other party before the commencement of the hearing.

Proportionality of costs to result in Family Provision Proceedings

57. In accordance with ss 56 & 60 of the CPA, the Court does not require formal valuations of dwelling houses, home units, town houses or the like unless a Judge or an Associate Judge has otherwise directed.

58. The Court takes care that the costs of proceedings are proportionate to the result. Practitioners in cases where the estate is under \$500,000 should take particular care to minimise costs as it may be that costs of a successful claim will be capped.

Registrar's Lists

59. A Registrar usually sits as follows:

- a Deputy sits at 9am to deal with subpoenas Mondays to Thursdays;
- a Registrar sits to deal with general matters at 9:30am, Wednesday excepted; and
- a Registrar sits to deal with Corporation List matters at 11 am, Wednesday excepted.

60. Because of the large number of matters in each Registrar's list, the Court expects that practitioners will endeavour to assist by conducting their matters as efficiently as possible. This will include:-

- All order/directions by consent should be reduced to writing to be handed to the Registrar;
- Where the parties cannot agree on the orders to be made, competing versions should be written and handed to the Registrar;
- No one shall seek to mention a matter out of list order except to make a bona fide request that a matter be referred to the Duty Judge, the Corporations List Judge or an Associate Judge on that day.

Referrals in the Registrar's Lists

61. Referrals to the Duty Judge or to the Associate Judges' List are to be made at the commencement of the Registrar's List. No further referrals will be made after 9:40am.

62. An opposition to a referral should state precisely the basis of opposition. The person opposing should also provide the Registrar and the applicant for referral a written set of proposed orders and directions.

63. The following shall apply to referrals to an Associate Judge:-

All matters for referral to the Associate Judge (regardless of their estimated length), other than urgent matters are, only referred to the Associate Judge on Fridays;

- On any day other than a Friday, matters for referral to the Associate Judge are stood over to the Associate Judge's list for the following Friday. On the following Friday any matters in the Registrar's List on Friday can be referred to the Associate Judge;
- Failure to mention a matter for referral at the beginning of the list on a Friday may result in the matter not being referred to the Associate Judge that day;
- Urgent matters for referral to the Associate Judge (such as urgent applications for extensions of caveats) may be referred to the Duty Associate Judge on any day of the week. If the Duty Associate Judge cannot deal with the matter that day, it may be referred to the Duty Judge or another Judge.

Motions in the Registrar's Lists

64. The Registrar will attempt to deal with motions at the end of the list as time permits.

65. Motions exceeding one hour duration will need to be specially fixed. Practitioners appearing in such matters must have their list of available dates with them in Court.

66. On the hearing of the motion the applicant should:

- file submissions of no more than 2 pages in length in support of the motion at least three working days before the hearing and serve the same on all opposing parties;
- ensure that all material to be relied on is in the court file; and
- identify to the Registrar the source of the registrar's power to deal with the matter.

67. On the hearing of the motion the respondent should:

- file submissions of no more than two pages in length in opposition to the motion and serve the same on the applicant not later than noon on the day before the hearing; and
- ensure that all material to be relied upon is on the court file.

J J Spigelman AC
Chief Justice of New South Wales
17 August 2005

Related information

Practice Note SC Eq 1 was commenced and issued on 17 August 2005.

See also:

Supreme Court Practice Note SC Gen 1 – Application of Practice Notes

Supreme Court Practice Note SC Gen 4 – Affidavits

Civil Procedure Act 2005

Family Provision Act 1982

Amendment History: