

PRACTICE NOTE SC Eq 5

Supreme Court Equity Division - Expert Evidence in the Equity Division

Commencement

1. This Practice Note was issued on 23 December 2008 and commences on 2 February 2009.

Application

2. This Practice Note:
 - does not affect existing informal practices concerning valuation evidence and/or medical evidence in family provision applications and similar proceedings
 - applies to all new and existing proceedings in the Equity Division.

Definitions

3. In this Practice Note:

Act means the *Civil Procedure Act 2005*

UCPR means the *Uniform Civil Procedure Rules 2005*

Expert Evidence Rules means Part 31, Division 2 of the UCPR

Introduction

4. The object of this Practice Note is to supplement the Expert Evidence Rules and ensure the Court's processes are consistent with the Act's overriding purpose as set out in s.56.
5. This Practice Note aims to:
 - encourage prospective parties to discuss the extent to which they intend to rely on expert evidence before commencing proceedings
 - ensure parties promptly obtain expert evidence directions in accordance with UCPR 31.19,
 - minimise the costs of obtaining expert evidence, and
 - reduce the hearing time of a case.

Parties to confer regarding experts before commencing proceedings

6. Where the prospective parties have retained legal representatives the legal representatives of those parties must confer in an endeavour to jointly retain:
 - one expert, or
 - one expert for each specified issue or matters in issue.
7. Where it is not appropriate or possible to agree on one expert or one expert in each specified issue or matter, the legal representatives should confer as early as possible to minimise the number of expert witnesses.
8. Parties must consider whether the expert witnesses should give evidence together as detailed in UCPR 31.35 (c) to (h) inclusive. Generally, the procedure will be that the judge will examine them in chief as witnesses of the Court; cross examination will take place of all witnesses jointly, the order of cross examination being either agreed by counsel or determined by the Judge.

Restrictions on the number of experts

9. Generally, and in accordance with UCPR 31.20 (2), only one expert per specified issue will be allowed to:
 - the plaintiff, and
 - any one of multiple defendants. Defendants who have the same interest in the expert evidence will be treated as one, and should confer at an early stage to agree on a single expert.
10. More than one expert per specified issue may be allowed if good reason is shown in a particular case.
11. Generally, the experts engaged in relation to a specified issue should confer before the trial and produce a joint report in accordance with UCPR 31.24 to include (where relevant):
 - a statement as to their agreed conclusions, and
 - a statement of their differences and of the apparent reasons thereof.

Directions regarding experts

12. Under UCPR 31.19, a party considering or intending to adduce expert evidence at trial must promptly seek directions from the court in that regard. A party must seek those directions in accordance with paragraphs 13, 14 and 15 of this Practice Note.
13. The court may make directions concerning expert evidence in the absence of the parties provided:
 - a request for directions concerning expert evidence is filed in accordance with the form "Request for Expert Evidence Directions" in [Annexure A](#) to this Practice Note, and
 - all lawyers have signed the form of Request for Expert Evidence Directions.
14. If the parties do not agree on the proposed Expert Evidence Directions, the issue should be raised at the next directions hearing. The party who drafted the proposed directions should provide the Court with a copy at least three days before the directions hearing. If there is no upcoming directions hearing, the party may seek to have the proceedings listed before the Court on three days' notice to the Court and the other party/parties.
15. Directions for expert evidence can be sought:
 - In the Commercial List and Technology and Construction List, from the List Judge of those Lists on a Friday.
 - In the Corporations List, from the Judge operating the Corporations List on a Monday.
 - In the Probate or Protective List, from the Registrar in Probate or from the List Judge on a Monday.
 - In the Expedition List or Duty List, from the Judge operating that List.
 - In the Admiralty List, from the Judge operating that List.
 - In cases which have been fixed for trial before or are being case managed by a particular Judge, from that Judge.
 - In cases to be heard by an Associate Judge, from an Associate Judge.
 - In cases where special circumstances exist for not making an earlier application, from the Judge conducting the pre trial.
 - Otherwise from the Registrar in Equity, who in case of serious conflict or difficulty may refer the matter to the Duty Judge.

J J Spigelman AC
Chief Justice of New South Wales
23 December 2008

Related information

Practice Note SC Gen 5 was issued on 23 December 2008 and commenced on 2 February 2009.

Practice Note SC Gen 1 Supreme Court - Application of Practice Notes
Practice Note SC Eq 1 Supreme Court Equity Division - Case management
Civil Procedure Act 2005
Uniform Civil Procedure Rules 2005

ANNEXURE A

UCPR 31.19
Practice Note SC Eq 5

REQUEST FOR EXPERT EVIDENCE DIRECTIONS

COURT DETAILS

CourtSupreme Court of NSW

#DivisionEquity

#List

Registry

Case number

TITLE OF PROCEEDINGS

[First] plaintiff[name]

#Second plaintiff #Number of plaintiffs (if more than two)

[First] defendant[name]

#Second defendant #Number of defendants (if more than two)

PREPARATION DETAILS

Prepared for[name] [role of party eg plaintiff]

#Legal representative[solicitor on record] [firm]

#Legal representative reference[reference number]

Contact name and telephone[name] [telephone]

REQUEST FOR DIRECTIONS

In the absence of the parties, the Court is requested to make the following directions concerning expert evidence to be called in these proceedings.

TERMS OF REQUEST

The parties request that the court give the following directions:

1. Grant leave for the plaintiff to engage the following experts:

[set out details stating names and qualifications or, if names are not available, one person of stated qualification for each specified issue or matter for which expert evidence is to be called]

2. Grant leave for the defendant to engage the following experts:

[set out details stating names and qualifications or, if names are not available, one person of stated qualification for each specified issue or matter for which expert evidence is to be called]

3. Direct that the expert witnesses confer with each other and endeavour to reach agreement in relation to specified matters or on any matters in issue in accordance with UCPR 31.24 and deliver their joint report to the trial Judge's Associate at least 4 days before the hearing [#or as agreed].

CERTIFICATION

Before making this request, I certify that the parties have properly considered:

1. What expert evidence is required in order that these proceedings can be dealt with justly, cheaply and expeditiously
2. The desirability of calling one expert in respect of each specified issue.
3. Whether evidence can be given in accordance with UCPR 31.35(c) to (h) inclusive
[ie. two or more expert witnesses give evidence at the one time]

SIGNATURES

[Role of party]

#Signature of legal representative	
#Signature of or on behalf of party if not legally represented	
Capacity	[eg solicitor, authorised officer, role of party]
Date of signature	

[repeat as required for each party signing]

ORDER FOR DIRECTIONS

The Court gives the directions requested as set out under "Terms of Request" above.

SEAL AND SIGNATURE

Court seal
Signature
Capacity
Date made or given
Date entered