

PRACTICE NOTE SC Gen 5

Supreme Court – Costs orders against legal practitioners

Commencement

1. This Practice Note commences 17 August 2005.

Application

2. This Practice Note applies to new and existing civil proceedings in the Court.

Definitions

3. In this Practice Note:

UCPR means the *Uniform Civil Procedure Rules 2005*

Introduction

4. The purpose of this Practice Note is to ensure compliance with directions and the rules of the Court.

Cost sanctions

5. The requirement that parties and practitioners comply with directions and rules will be confirmed by the use of costs sanctions in appropriate cases, including costs orders against practitioners personally and costs ordered on a *payable forthwith* basis.

Obligations of practitioners

6. Practitioners are reminded of their duty to the Court to ensure the efficient and expeditious conduct of proceedings. Practitioners must have regard to “the speedy and efficient administration of justice” (*Giannarelli v Wraith*).
7. Practitioners should be familiar with the UCPR requirements to:
 - facilitate the just, quick and cheap disposal of proceedings;
 - identify the issues genuinely in dispute;
 - be satisfied that there is a reasonable basis for alleging, denying or not admitting facts in pleadings.
8. The Court relies on practitioners, either directly or by giving appropriate advice to a client, to observe listing procedures, rules and Court directions, to ensure readiness for trial, to provide reasonable estimates of the length of hearings, to present written submissions on time and to give the earliest practicable notice of an adjournment application. Failure in any of these respects may be taken into account in exercising the jurisdiction to order costs against practitioners personally.

Late amendment of pleadings

9. The late amendment of pleadings may also attract a costs order against a practitioner. The considerations proposed by Justice Kirby in *State of Queensland v JL Holdings Pty Ltd* in relation to the granting of an indulgence with respect to a late amendment provide guidance, specifically in relation to late amendments but also generally in relation to procedural indulgences.
10. In appropriate cases, particularly those involving repeated defaults, the Court may refer an incident or incidents of default to the Law Society, Bar Association or Legal Services Commissioner.

Procedural considerations

11. The procedure to be followed where the Court is minded to make a costs order against a practitioner personally will be:
 - A practitioner will be given an opportunity to show cause why costs should not be ordered against him or her;
 - With the consent of the practitioner, the Court may take the show cause submission orally at the conclusion of any trial, application or other appearance before the Court;
 - The Court may adjourn the matter to another day or date to be fixed, and may direct the practitioner to provide written submissions to the Court within a period specified by the Court;
 - The Court may further direct that the matter proceed by written submission and by reference primarily to the materials that were before the Court during the proceedings to which the costs order relates;

- If it will assist the Court, the other parties to the proceedings may be directed or invited to make submissions in relation to the question of costs or any ancillary matter;
- If a practitioner informs the Court that he has requested his or her client to waive legal professional privilege in a respect which the practitioner asserts is relevant to the Court's consideration of the costs order, the Court will invite the client to make submissions on the matter and to indicate whether the client wishes an order to be made against the practitioner;
- Upon a determination by the Court that a practitioner shall be personally liable for the costs of a party to the proceedings or any part thereof and such costs are ordered to be *payable forthwith*, the Court may Order that a bill of costs relevant to the costs order be filed with the Court and served on the party liable to pay within such time as the Court orders and that such a bill of costs be in the form prescribed pursuant to section 193 of the *Legal Profession Act*; and
- The Judge or Associate Judge may determine and order the amount of costs payable under the costs order.

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

Related Information

Practice Note SC Gen 5 was issued and commenced on 17 August 2005.

See also:

Whyte v Brosch. (1998) 45 NSWLR 354

Giannarelli v Wraith (1988) 165 CLR 543 at 556

State of Queensland v JL Holdings Pty Ltd (1996-97) 189 CLR 146 at 169-172

Uniform Civil Procedure Rules 2005

Amendment History: