

PRACTICE NOTE SC Gen 9

Supreme Court – Appointment of examiners outside NSW: procedures for practitioners

Commencement

1. This Practice Note commences 17 August 2005.

Application

2. This Practice Note applies to new and existing civil proceedings in the Common Law Division and the Equity Division.

Definitions

3. In this Practice Note:

CEO means *Chief Executive Officer and Principal Registrar of the Supreme Court*

SCR means the *Supreme Court Rules 1970*

UCPR means the *Uniform Civil Procedure Rules 2005*

Introduction

4. The purpose of this Practice Note is to set out the procedures to be followed when an examiner is to be appointed by the Court to take evidence outside NSW.

Making an application

5. An application to appoint a judge or master as examiner for the purpose of taking evidence interstate or overseas is made by notice of motion under the UCPR and SCR.
6. The notice of motion will address the following matters:
 - that a judge, master or other officer of the court be appointed an examiner pursuant to the rules;
 - that witnesses (usually named), be examined before a judge of the court in a specified place (in another state or overseas);
 - that the parties (if appropriate) arrange accommodation for the conduct of each examination and for transcription facilities;
 - that the costs and expenses of, and incidental to, the examinations be borne in the first instance equally by the parties, and subject to any order of the trial judge, be treated as part of the general costs of the proceedings;
 - specifying that the examination order is conditional upon the payment into Court of an amount, to be subsequently determined, as provision for expenses of the examiner and staff in relation to the examination, when so ordered by the Court; and
 - such other orders as are appropriate.
7. If the evidence is to be taken overseas, the supporting affidavit should address the following issues:
 - whether or not each witness is an Australian citizen; and
 - whether or not each witness is to give evidence voluntarily.
8. The application is referred to the relevant chief judge who will consult with the Chief Justice. If both judges concur, the orders will be made and the chief judge will nominate a judicial officer to be appointed examiner in the proceedings.

Notifying heads of jurisdiction and government

9. Once the Chief Justice has approved the taking of evidence overseas or interstate, the following letters are prepared and sent by the Court. Further letters may be necessary to confirm dates.

Sender	Recipient	Reason
Chief Justice	Counterpart in overseas or interstate jurisdiction	To obtain permission for the judicial officer to examine witnesses in that jurisdiction
CEO	Department of Foreign Affairs and Trade	Where there is to be an overseas examination, to ensure that the relevant government authorities are informed and all approvals are

		sought, including approval for the examiner to administer an oath or affirmation.
CEO	Relevant court administrator in overseas or interstate jurisdiction	To obtain courtroom or chamber accommodation, if required.

Determining the amount of travel expenses

10. For interstate examinations, the usual government travel arrangements are applied.
11. For overseas examinations, travel expenses are determined by the relevant chief judge or delegate. Generally, only one staff member travels with the examiner on overseas examinations. The parties should prepare a projection of costs (see annexure 1), including:
 - appropriate class, route and dates for air travel (in accordance with Government policy, fully refundable tickets are purchased);
 - three options (if possible) for hotel accommodation; and
 - a daily allowance to cover meals and incidentals.

Making payments into Court

12. Once the amount of travel expenses is determined, an order should be sought, specifying the amount to be paid into Court and the timeframe for doing so. When received, payments are placed in the court's trust account. If the CEO considers that the amount ordered to be paid is insufficient to provide for the expenses, the rules provide the mechanism for obtaining an order for payment of a further amount into court. It also provides for suspension of the operation of the examination order until payment is made.

Reconciling expenses

13. When the examination is complete, the expenses are reconciled. Any outstanding money paid into court will then, subject to any order by the court, be refunded (in the same proportions as their respective payments into Court) to the parties.

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

Related Information

Practice Note SC Gen 9 was issued and commenced on 17 August 2005.

See also:

Part 24.3, *Uniform Civil Procedure Rules 2005*
Part 75, rule 3C, *Supreme Court Rules 1970*

Amendment History:

Proposed travel expenses for the examiner and staff member

		Judge	Staff member
Venue for taking evidence	City, country		
Air travel	Class of travel		
	Route		
	Proposed dates of departure and return		
Accommodation	Daily rate – hotel		
	Option 1		
	Option 2		
	Option 3		
Meals and incidentals	Daily rate		
Other expenses	Specify		