

PRACTICE NOTE SC Gen 10

SUPREME COURT – SINGLE EXPERT WITNESSES

Commencement

1. This Practice Note commences on 17 August 2005.

Application

2. This Practice Note applies to all proceedings commenced after its commencement in which a claim is made for damages for personal injury or disability.
3. This Practice Note does not apply to the Criminal List of the Common Law Division.

Definitions

4. **Single expert witness** means an expert witness jointly retained by the parties or appointed by the court pursuant to this practice note.

Single expert direction is the direction referred to in paragraph 7 of this practice note.

Purpose

5. The purpose of this Practice Note is to prescribe the procedures surrounding the use of single expert witnesses in the Court.

Single Expert Witnesses

6. Unless cause is otherwise shown, a single expert direction will be made in every proceeding and at the earliest practicable time in the course of case management.
7. A “single expert direction”, when made in those terms, means that the following directions are to be taken as having been made, with such variations as may be specified at that time or subsequently:
 - a. Any expert evidence is confined to that of a single expert witness in relation to any one head of damages, including but not limited to the nature, extent and cost of required nursing care or domestic care (including claims under *Griffiths v Kerkmeyer* and under *Sullivan v Gordon*), physiotherapy, speech therapy, home modification, motor vehicle or aids and equipment, being evidence of the kind customarily given (by way of example) by rehabilitation consultants, occupational therapists, nursing and domestic care providers, architects, builders, motor vehicle consultants, and by aids and equipment suppliers.
 - (a) Evidence may be provided by the same single expert in relation to more than one head of damages provided the expert is appropriately qualified. It is contemplated, however, that there may be a number of single expert witnesses retained or appointed in the one proceedings.
 - (b) In relation to any head of damages as to which any party wishes expert evidence to be adduced, the parties are to agree on a single expert to be retained and are to obtain the concurrence of the expert within 14 days from a date specified in the order as the commencement date of the direction, otherwise within 14 days from the making of the direction.
 - (c) Failing agreement and concurrence within that time, the parties are to notify the court forthwith, and the court will, pursuant to Pt 39, appoint a court expert to be the single expert.
 - (d) Within 14 days from the selection or appointment of a single expert witness, the parties are to brief the expert, in such manner as the parties may agree, with materials sufficient to enable the expert to prepare a report. If the parties do not so agree, they are to notify the court forthwith and the court will give directions as to how the single expert witness is to be briefed.
 - (e) If the parties agree or the single expert witness so requests, the plaintiff in the proceedings is to submit to clinical examination by the single expert witness.
 - (f) Within 21 days from the date on which a single expert witness is so briefed, the expert is to send his or her report to each of the parties to the proceedings, through their legal representatives.
 - (g) A single expert witness may be requested to provide a supplementary report taking into account any new or omitted factual material. The provisions of this practice note apply to such a supplementary report *mutatis mutandis*.

(h) Any party may, within 14 days from receipt of the report, put a maximum of 10 written questions to the expert, but for the purpose only of clarifying matters in the report unless the court otherwise grants leave. The expert is to answer the questions within 14 days.

(i) The report of a single expert witness and any question put to the expert and the expert's answer thereto may be tendered by any party at the trial subject to all just exceptions.

(j) A single expert witness may be cross-examined at the trial by any party.

(k) A single expert witness's fee for preparation of the report and any supplementary report and for attending court, if required to do so, is to be paid by the parties equally, subject to other agreement or direction and subject to any later order concerning the costs of the proceedings. A single expert witness's fee for answering questions put by a party is to be paid by the party, subject to the same qualification.

(l) A single expert witness may apply to the court for directions.

8. Nothing in this practice note is intended to require the retaining or appointment of a single expert witness in relation to liability, the nature or extent of injury or disability, or the causation of injury or disability.

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

Related Information

Practice Note SC Gen 10 was issued and commenced on 17 August 2005.
This Practice Note replaced Former Practice Note No. 120 on 17 August 2005.