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SPECIAL SUPPLEMENT

PRACTICE NOTE SC Eq 8

Urgent Matters in the Equity Division

Commencement

1. This Practice Note was issued on 14 October 2009 and commences on 19 October 2009.

Application

2. This Practice Note applies to matters before the Duty Judge and in the Expedition List of the Equity Division.

Duty Judge

3. A Duty Judge is available at all times to hear urgent applications. Such applications are usually made between 10.00 am and 4.00 pm. Extremely urgent applications may be made outside those hours by making contact with the Associate to the Duty Judge or alternatively with the Security Officer of the Supreme Court of New South Wales on 9230 8025.
4. Any applications for extensions of Caveats that are to be made to the Duty Judge should be made no less than 5 days before the expiration of the Lapsing Notice in respect of the Caveat, unless exceptional circumstances exist. It is expected that parties will only apply for such extensions if it is impossible to reach an interim agreement to facilitate the substantive matter being heard promptly.
5. Where applications for urgent injunctive relief are made, the Court expects the moving party to have sought agreement as to undertakings from the defendant(s) prior to making any such application and, unless special circumstances exist, to have notified the defendant(s) of the application.
6. If the parties are in agreement that the case warrants an urgent final hearing and are in a position to agree on an interim injunctive regime until the matter is determined, they should be ready to inform the Court of: an accurate estimate of the timeframe within which the matter will be ready for hearing; an accurate estimate of the time for trial; and the available dates for their respective counsel.
7. Practitioners should note that any application made out of hours may be subject to an additional fee.

Expedition List

8. The Expedition Judge hears applications for expedition on Fridays. All applications are to be made by Notice of Motion with supporting affidavits. The affidavits should set out the grounds upon which the applicant claims an entitlement to take precedence over other cases in the Equity Division by obtaining an expedited hearing date.
9. Practitioners must be in a position to provide an agreed timetable for the preparation of the matter for trial with an accurate estimate of the timeframe within which the matter will be ready for trial and an accurate estimate of the necessary hearing time. Should the parties not comply with the timetable, the matter may lose its expedited status.
10. When a matter is expedited the parties should also include the Usual (or Modified) Order for Hearing referred to in Practice Note SC Eq 1 in their timetable.

Dated: 14 October 2009.

J. J. SPIGELMAN, AC,
Chief Justice of New South Wales

Related Information

Practice Note SC Eq 8 was issued on 14 October 2009 and commenced on 19 October 2009.

See also:

Practice Note SC Eq 1 – Case Management

SUPREME COURT PRACTICE NOTE SC Eq 1

Supreme Court Equity Division – Case Management

Commencement

1. This Practice Note was issued on 14 October 2009 and commences on 19 October 2009.

Application

2. This Practice Note applies to all cases in the Equity Division that are case managed by the Registrar in Equity.

Role of the Registrar in Case Management

3. The Registrar in Equity will manage the cases in the Division with the aim of ensuring the just, quick and cheap resolution of the real issues between the parties.
4. The Registrar in Equity case manages proceedings each day at 9am or 9.15 am. The times for the commencement of directions and/or special fixtures and the Court location may change and Practitioners and parties should always check the daily Court Lists prior to attendance at Court.

The Role of Practitioners in Case Management

5. The Court's expectations of Practitioners appearing before the Registrar in Equity include that:
 - 5.1. they have advised their clients of the effect of the provisions of the sections 56 to 61 inclusive of the Civil Procedure Act 2005;
 - 5.2. they will carefully review the case for the purpose of informing the Court as early as practicable of: a suitable date for mediation; the suitability of reference out of all or some of the issues; and/or for the use of a single expert; or a Court Appointed Expert; or the use of an appropriate concurrent evidence process;
 - 5.3. they will assist the Court to prepare the case for hearing by putting in place a timetable that will take the matter up to a date for hearing with the aim of having as few directions hearings as possible.
 - 5.4. agreement will be reached on a timetable for the preparation of matters for trial and/or reference and/or mediation and Consent Orders will be handed up during the directions hearing;
 - 5.5. trial counsel will be briefed as early as possible and consultation will occur between respective counsel and/or solicitors to ensure accurate estimates for trial are given when the matter is set down for hearing;
 - 5.6. if there is slippage in an agreed timetable, the parties will agree to an amendment of that timetable without the need for intervention by the Court and forward a Consent Order to the Registrar so that Orders may be made in Chambers or the matter re-listed for further directions;
 - 5.7. requests for Court intervention in relation to timetabling will only be sought rarely when, for good reason, agreement has proved to be impossible;
 - 5.8. there will be sensible co-operation between the Practitioners for the respective parties in preparing the Court Book, referred to in the Usual Order for Hearing in Annexure A to this Practice Note, so that agreement is reached on the most efficient and cost-effective method of preparing it.

The Role of Self-Represented Parties in Case Management

6. Any party that appears before the Registrar without legal representation must make themselves aware of the effect of the provisions of sections 56 to 61 inclusive of the Civil Procedure Act 2005. The Court expects self-represented parties to comply with paragraphs 5.2 – 5.4 and 5.6 – 5.8 of this Practice Note in the same manner as Practitioners.

Affidavits

7. Affidavits in the main case are not filed with the Court until final hearing. Provision should be made in the timetables for service (not filing) of those affidavits. Affidavits in support of Notices of Motion are filed with the Court and provision should be made in the timetables for the filing and service of those affidavits.

Consent Orders

8. To facilitate the just, quick and cheap resolution of matters Consent Orders will be made by the Registrar in Chambers on application in writing, electronically or otherwise. When the parties request the Registrar to make Consent Orders in Chambers, it is imperative that those orders include the vacation of any date for directions hearings or the hearing of motions that the parties no longer wish to maintain and provision for a future listing.

Usual Order for Hearing

9. When the matter is set down for hearing the Registrar will make the Usual Order for Hearing contained in Annexure A to this Practice Note. If for any reason the parties are of the view that the Usual Order for Hearing should be modified, they must provide a Consent Modified Order for Hearing on the day the matter is set down for hearing.

10. If it is not possible to agree on a Consent Modified Order for Hearing, application should be made to the Registrar to modify the Usual Order for Hearing in the form of a draft order to be provided to the Registrar together with the detail of the basis for such modification.
11. If there is a failure to comply with any of the orders in the Usual (or Modified) Order for Hearing, the parties must re-list the matter before the Registrar (or the Trial Judge) or alternatively file Consent Orders with the Registrar (or the Trial Judge) to adjust the timetable to ensure the hearing date is not jeopardised.
12. Notwithstanding the making of the Usual (or Modified) Order for Hearing, the trial judge may notify the parties that a pre-trial direction will be held prior to the hearing date.

Dated: 14 October 2009.

J. J. SPIGELMAN, AC,
Chief Justice of New South Wales

Related information

See also:

Supreme Court Practice Note SC Eq 8 – Urgent Matters in the Equity Division
Civil Procedure Act 2005

Amendment history

14 October 2009: This Practice Note replaces the previous version of SC Eq 1 that was issued on 17 August 2005.

ANNEXURE A

USUAL ORDER FOR HEARING

Expert Evidence

1. In any case in which expert evidence is to be given, the parties are to agree on and produce as early as possible, and no later than 10 weeks before the hearing date, a Statement of Issues for Expert Assistance to the Court and provide it to the experts for the purposes of the experts complying with order 2.
2. In any case in which expert evidence is to be given, the experts are to meet as soon as possible after the Statement of Issues for Expert Assistance to the Court is provided to them and not later than 8 weeks before the hearing date for the purpose of reaching agreement on as many issues as possible and producing:
 - 2.1 a joint report; and
 - 2.2 any separate report(s) dealing with those matters that are unable to be agreed.
3. The joint report and any separate report(s) are to be filed with the Court and served on the parties no later than 4 weeks before the hearing date.
4. In cases in which expert evidence is to be given concurrently, the experts are to meet as soon as the Statement of Issues for Expert Assistance to the Court is provided to them and not later than 8 weeks prior to the hearing date for the purpose of producing:
 - 4.1 a joint report; and
 - 4.2 any separate report(s) dealing with those matters that are unable to be agreed; and
 - 4.3 a draft agenda for discussion of the contested issues in the concurrent evidence session at trial.
5. The joint report and any separate report(s) and the draft agenda are to be filed with the Court and served on the parties no later than 4 weeks before the hearing date.

Court Book

6. No later than 10 working days before the hearing date all parties' barristers or solicitors shall cause to be filed with the Court a Court Book containing the current pleadings, all affidavits, reports and paginated documents to be relied upon at trial.
7. No later than 5 working days before the hearing date each barrister or solicitor shall cause to be filed and served a short outline of submissions; a statement of the real issues for determination; a list of authorities; a chronology of relevant events and a list of any objections to the opposing party's evidence.
8. Compliance with orders 6 and 7 is to be by delivery to the Trial Judge's Associate.
9. Liberty to restore the matter to the List on 1 day's notice.

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