

NSW District Court Standard Order for Conferral of Experts

The Law Society is aware of concerns about the operation of the NSW District Court's Standard Orders regarding the conferral of experts. In particular there are concerns that the requirement for experts to participate in a "conclave" and provide joint reports in accordance with the standard orders may increase the legal costs of preparing for a hearing and, in turn, provide an impediment to the settlement of proceedings.

The Litigation Law and Practice Committee has consulted with the NSW District Court and provides the following information to assist practitioners:

- Neither Practice Note DC1 nor the Standard Orders require experts to participate in a conclave and provide a joint report in each matter. Standard Order 9 requires experts to *confer* and provide a joint report (as per the order) but only if the experts are to give oral evidence. If experts are not giving oral evidence (that is, in chief or cross examination), then the Court does not require the experts to confer or provide a joint report. The parties should liaise between themselves as to whether experts will be required to attend court and give evidence in order to determine whether there is a need for the experts to confer and provide a joint report.
- Whilst the order requires the experts to confer, it does not require a formal conference or conclave of experts as mandated in some other courts (for example, in Supreme Court Practice Note SC Gen 11). For example, there is no requirement for the parties to draft and settle proposed questions for the experts, for the conferral to occur in person, or for legal representatives to be present. The purpose is for the experts to seek to narrow the issues in dispute between themselves, identify areas of disagreement and the reasons for any disagreement. How that is to occur is a matter for the parties to arrange between themselves and the experts.
- However, the court only requires the parties to meet the requirement of the standard orders as expressed; the parties can seek to have a different order made by the court. If the parties wish to have a formal conclave or conference between the experts occur akin to the requirements of Supreme Court Practice Note SC Gen 11, then they are at liberty to seek such an order.
- Consideration may also be given to advising experts as to Rule 31.24 of the Uniform Civil Procedure Rules 2005, in particular rr 31.24(3) and 31.24(4) which provide that an expert directed to hold a conference may apply to the court, in a written request, for further directions, specifying the matter in relation to which the directions are sought.
- It should be noted that the District Court is mindful of the costs to the parties in this process in particular in matters involving smaller sums of damages.

If there are any concerns by practitioners with respect to the standard orders regarding the conferral of experts, practitioners should seek clarification from the Court regarding any uncertainties in the standard orders when the matter is listed.