

PRACTICE NOTE SC CL 1

Supreme Court Common Law Division - General

Commencement

1. This Practice Note commences on 17 August 2005.

Application

2. This Practice Note applies to all proceedings in the Common Law Division of the Supreme Court.

Definitions

3. In this Practice Note:

Central West District means the district of the State comprising Bathurst, Cowra, Dubbo, Forbes, Lithgow, Mudgee, Orange, Parkes, and Wellington

Northern Rivers District means the district of the State comprising Ballina, Bellingen, Byron Bay, Casino, Coffs Harbour, Dorrigo, Glen Innes, Grafton, Kempsey, Kyogle, Lismore, Macksville, Maclean, Mullumbimby, Murwillumbah, Port Macquarie, Tenterfield, Tweed Heads and Wauchope

Northern Tablelands district means the district of the State comprising Armidale, Narrabri and Tamworth

Riverina District means the district of the State comprising Albury, Cootamundra, Deniliquin, Griffith, Gundagai, Leeton, Narrandera, Temora, Tumut and Wagga Wagga

a List Judge means the Judge appointed by the Chief Justice to be the List Judge of a List (ie. the Administrative Law List, the Defamation List, the Professional Negligence List, the Possession List, or the General Case Management List)

the List Judge means the Judge appointed by the Chief Justice to be the List Judge for the Division

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 outline the case management practices of the Division.

Commencement of Proceedings

5. Proceedings in the Division are commenced by way of Summons or Statement of Claim (see UCPR 6.2, but also see UCPR 6.1). Subject to any other provisions of the SCR, Part 12 rule 2 and Schedule 1 of SCR determines the Division and the List that a matter is allocated to.

Venue

6. The venue for proceedings in the Division is Sydney.
7. In matters commenced by way of a Statement of Claim, the venue may additionally be the Broken Hill, "Central West District", Goulburn, Newcastle, the "Northern Rivers District", the "Northern Tablelands District", the "Riverina District" or Wollongong.
8. Whilst the Division does not have fixed sittings in country regions, the Court is committed to hearing appropriate cases outside Sydney as required. Where there is sufficient work to hold a sittings of at least one week outside Sydney, the List Judge, with the concurrence of the Chief Judge at Common Law, will list matters at an appropriate venue.
9. Where a party proposes that there are sufficient matters to hold a sittings outside Sydney, that party may contact the Manager, Listings of the Supreme Court to request appropriate consideration by the Court.
10. Where the venue selected by the plaintiff pursuant to UCPR 8.1 is not Sydney, documents may be filed in the Supreme Court registry for that region, or in any registry of the Local Court for that region or venue.

Default Proceedings

11. Proceedings that may be wholly determined by way of the entry of a default judgment are not allocated a Directions Hearing on filing. Instead, the matter proceeds administratively until either a default judgment is entered, the matter is discontinued, consent orders are made, or a defence is filed.
12. Where a defendant files a defence, the Court will allocate a Directions Hearing before the registrar. The matter will then proceed as a defended matter in either the General Case Management List (see Practice Note SC CL 5) or the Possession List (see Practice Note SC CL 6).

Case Management Generally

13. Where proceedings are not "Default proceedings" (or where a defence has been filed in Default proceedings) the proceedings will be allocated a Directions Hearing on filing of the Summons or Statement of Claim (or defence as appropriate) and case managed by a registrar. The registrar sits each weekday at 9am.
14. At the directions hearing, the presiding registrar will take urgent matters first (commonly known as "referrals"). Where the registrar is satisfied that the matter is urgent, the registrar will refer the proceedings to either the Duty Judge, a List Judge or the Duty Associate Judge as appropriate.
15. Consent matters will be dealt with before the registrar calls over the remaining list. Parties will be strongly encouraged to discuss matters prior to the Directions Hearing, and have Short Minutes of Order available for handing up.
16. Where previous directions have not been complied with, parties will be expected to provide an explanation for the delay and must be able to satisfy the registrar that the matter will be able to progress normally. Where the registrar is not satisfied with the explanation, a costs order may be made, or the matter may be referred to a List Judge to show cause.
17. Matters will not be adjourned generally and in most instances will not be adjourned for lengthy periods of time. In personal injuries actions, where a matter is unlikely to be ready to proceed for a period of time, parties should be able to inform the Court whether a separate hearing on liability can take place prior to the determination of the questions of quantum.
18. Matters ready for hearing will be listed for call-up before the List Judge.

Strike Out for inactivity

19. Plaintiffs should note the provisions of UCPR 12.8 which provides that the Court of its own motion may make an order dismissing proceedings where a defence or cross-claim is not filed, a default judgment is not entered, or the proceedings are not otherwise disposed of.
20. The Court cause to be issued a notice to a parties' address for service prior to considering whether a matter will be disposed of under UCPR 12.8. Where there is no response to the notice issued, the Court will determine whether the proceedings should be dismissed in chambers without further notice to the parties.
21. Upon receipt of the notice, a party may write to the registrar objecting to the disposal of the proceedings under UCPR 12.8. Where the registrar is satisfied that sufficient cause has been shown, an order will not be made. The registrar will usually specify a further period of time of inactivity before the issue of a further show cause notice.
22. Where the registrar is not satisfied, the registrar will either issue a requisition or list the matter to show cause in open Court. At the show cause, the party concerned will have the opportunity of making further submissions against dismissal.

Mediation

23. The parties should consider whether the matter is suitable for mediation or arbitration. Parties must advise the presiding registrar at an appropriate stage why the matter is not suitable for mediation or arbitration. Parties are reminded that the Court has trained registrar-mediators able to conduct mediations through the Court.
24. Parties should also note the provisions of Practice Note SC Gen 6 which relates to the Alternative Dispute Resolution practices of the Court.

Applications List

25. Applications returnable before the Duty Judge will be listed on Mondays at 9am. The List will be called over by the registrar, who will make consent orders and consider requests for adjournment. Where matters are expected to take more than half a day, the registrar will list the matter before the List Judge at the next Callup.

26. Matters that will take half a day or less to hear, and which are ready to proceed, will be referred by the registrar to the Duty Judge at 10am. At 10am, the Duty Judge will give an indication when the matter is likely to be heard during that week.
27. Existing arrangements for urgent applications to go directly to the Duty Judge will remain unchanged.
28. Urgent stays of execution for writs in the Possession List will continue to be dealt with in chambers by the Duty Registrar.

Progressive Hearing List

29. Matters in the Progressive Hearing List (ie. those matters listed for hearing which do not have a Judicial Officer allocated) will no longer be listed automatically before a registrar on the morning of the hearing. Instead, parties will be required to fax in the details of their appearance to the List Clerk on the afternoon prior to the hearing date. These details will be used to contact parties when a Judicial Officer has been allocated.
30. Where a party has not provided those details to the List Clerk, the List Clerk will list the matter for mention before the registrar at 9am. An appearance is only expected from the parties who have not provided details of their appearance to the List Clerk.
31. A sample form for provision to the List Clerk is available on the Court's website at http://www.lawlink.nsw.gov.au/lawlink/Supreme_Court/ll_sc.nsf/pages/SCO_hearinginformationsheet

Callup

32. The List Judge generally sits on the second Friday of each month during term to callup matters that are ready to receive hearing dates. At the callup, the List Judge expects that parties will have instructions on the following matters:
 - the available dates of counsel, instructing solicitors and witnesses;
 - a reliable estimate of the length of the hearing;
 - whether there is a need for expedition;
 - whether there are overseas, interstate or country witnesses proposed to be called;
 - whether the matter has been arbitrated or mediated;
 - whether the matter should be heard in Sydney, or heard elsewhere; and
 - any outstanding issues on which directions are required.
33. Whilst the venue for hearing matters in the Supreme Court is generally Sydney, the Court can and will hear appropriate matters at venues away from Sydney.

Vacating hearing dates

34. All applications to vacate a hearing date must be made immediately upon the party seeking to have the trial date vacated upon becoming aware of the existence of the grounds that will be relied upon in seeking such an order. Where a trial judge has not been allocated, the List Judge will determine the application on a date suitable to the Court.
35. Applications to vacate hearings in the Duty Associate Judge List are considered by the registrar (except on the day of hearing).
36. Applications to vacate should only not be made at the hearing date except for exceptional circumstances.

Standard directions for personal injury claims listed for hearing

37. In a claim for personal injuries, unless the Court otherwise orders, the Plaintiff's legal representative is to prepare a draft chronology of the relevant events in the matter, and serve a copy of it upon the other parties which have an address for service at least 4 weeks prior to the hearing date allocated by the List Judge.
38. Each party is to prepare:
 - a draft schedule of damages, outlining in detail the heads of damages, and what damages are likely to be in the event of liability being established; and
 - a draft schedule of issues, and serve a copy of it upon the other parties which have an address for service at least 4 weeks prior to the hearing date.
39. A joint chronology, a schedule of damages and a schedule of issues, outlining the areas of agreement and dispute, is to be filed by the plaintiff at least 7 days before the hearing date.

J J Spigelman AC

Chief Justice of NSW

17 August 2005

Related Information

Practice Note SC CL 1 was issued and commenced on 17 August 2005.

See also:

Practice Note SC CL 5 Supreme Court Common Law Division – General Case Management List

Practice Note SC CL 6 Supreme Court Common Law Division – Possession List

Practice Note SC Gen1 Supreme Court – Application of Practice Notes

Practice Note SC Gen6 Supreme Court – Mediation

Supreme Court Rules 1970

Uniform Civil Procedure Rules 2005