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| --- | --- |
| **Our Ref:**  | Phone: Fax:  |

**By Email:**

Dear Sir/Madam

**Independent Representation of:**

|  |  |
| --- | --- |
|  | **Born on:**  |

**Court name**

**Proceedings No.**

Thank you for agreeing to the appointment as the Court’s Single Expert in the above matter.

I confirm that I am the Independent Children's Lawyer in the matter.

On , an Order was made for your appointment as the Court’s Expert. A copy of that Order is *enclosed*. I note that the interview/s is/are booked for

The matter is next listed for on in the at before Judge/Justice/Registrar .

**Payment**

I confirm that the cost of your report is likely to be in the sum of $ . I confirm that the Court has ordered that each of the parties meet one half of this sum.

OR

I confirm that your report is to be prepared at the Legal Aid Scale of Fees for Independent Children's Lawyer matters. I enclose a copy of the scale of fees.

**Considerations**

You have been requested to provide a report which addresses the following considerations:

1. whether the child/ren is/are at risk of being exposed to any physical or psychological harm from being subjected to or exposed to abuse, neglect or family violence;
2. any views expressed by the child/ren and any factors (such as maturity and level of understanding) that may affect the weight to be accorded to those views;
3. the relationship between the child/ren and each other and with each of his/her/their parents and any other relevant person;
4. the likely effect of any change in the child/ren’s circumstances, including the likely effect on the child of any separation from either of the parents or any other person with whom the child/ren has been living;
5. the capacity of each parent or any other person to provide for the needs of the child/ren, including emotional and intellectual needs;
6. the attitude to the child/ren and to the responsibilities of parenthood, demonstrated by each of the child/ren’s parents (or any other relevant person);
7. the effect on the child/ren of any family violence to which he/she/they may have been exposed to;
8. the effect on the child/ren of spending equal time, or substantial and significant time, with each parent having regard to the parent’s current and future capacity to:
	* implement such an arrangement; and
	* communicate with each other and resolve difficulties that might arise.
9. the mental state of the parents in so far as it relates to parenting issues;
10. the mental health/special needs of the child/ren;
11. your opinion concerning the allegations of sexual abuse of the child/ren; and
12. any other matter the Court Expert considers relevant.

**Enclosures**

I enclose copies of the documents and subpoena material in the attached *Index of Documents*.

Optional

I will seek photocopy access to subpoenaed material and will forward such documents to you.

**Family Law Rules 2004**

I draw your attention to the requirements of Division 15.5.5 of the *Family Law Rules 2004* which sets out the duties and rights of expert witnesses in family law matters. I enclose a copy of Part 15.5.5 for your information. Please note that under the Rules a copy of this letter of instruction should be attached to your report.

**Federal Circuit Court Rules 2001**

As these proceedings are before the Federal Circuit Court I refer you to Rule 15.07 of the *Federal Circuit Court Rules 2001* which summarises the key aspects of an Expert's duties, and the Federal Circuit Court practice direction guidelines for expert witnesses, a copy of which is attached.

Please note that under the Rules a copy of this letter of instruction should be attached to your report.

Your completed report marked with proceedings number should be forwarded to:

 The Registry Manager

When forwarding your report, it would be of assistance if you could notify the Court of any known dates for which you would not be available for cross-examination and any preference you have in relation to scheduling any cross-examination.

If you require any further information, please do not hesitate to contact me.

Yours sincerely

**Solicitor**

Encl.

**Court Proceedings Name – Court Proceedings Number**

**Matter/Service Number**

| **No.** | **Document** | **Date Sworn** | **Date Filed** |
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Division 15.5.5 Expert witness’s duties and rights

15.59 Expert witness’s duty to the court

(1) An expert witness has a duty to help the court with matters that are within the expert witness’s knowledge and capability.

(2) The expert witness’s duty to the court prevails over the obligation of the expert witness to the person instructing, or paying the fees and expenses of, the expert witness.

(3) The expert witness has a duty to:

(a) give an objective and unbiased opinion that is also independent and impartial on matters that are within the expert witness’s knowledge and capability;

(b) conduct the expert witness’s functions in a timely way;

(c) avoid acting on an instruction or request to withhold or avoid agreement when attending a conference of experts;

(d) consider all material facts, including those that may detract from the expert witness’s opinion;

(e) tell the court:

(i) if a particular question or issue falls outside the expert witness’s expertise; and

(ii) if the expert witness believes that the report prepared by the expert witness:

(A) is based on incomplete research or inaccurate or incomplete information; or

(B) is incomplete or may be inaccurate, for any reason; and

(f) produce a written report that complies with rules 15.62 and 15.63.

(4) The expert witness’s duty to the court arises when the expert witness:

(a) receives instructions under rule 15.54; or

(b) is informed by a party that the expert witness may be called to give evidence in a case.

(5) An expert witness who changes an opinion after the preparation of a report must give written notice to that effect:

(a) if appointed by a party — to the instructing party; or

(b) if appointed by the court — to the Registry Manager and each party.

(6) A notice under subrule (5) is taken to be part of the expert’s report.

**15.60 Expert witness’ right to seek orders**

(1) A single expert witness may, by written request to the court, seek a procedural order to assist in carrying out the expert witness’s function.

Note: The written request may be by letter and may, for example:

(a) ask for clarification of instructions;

(b) relate to the questions mentioned in Division 15.5.6; or

(c) relate to a dispute about fees.

(2) The request must:

(a) comply with subrule 24.01 (1); and

(b) set out the procedural orders sought and the reason the orders are sought.

(3) The expert witness must serve a copy of the request on each party and satisfy the court that the copy has been served.

(4) The court may determine the request in chambers unless:

(a) within 7 days of being served with the request, a party makes a written objection to the request being determined in chambers; or

(b) the court decides that an oral hearing is necessary.

15.61 Expert witness’ evidence in chief

1. An expert witness’s evidence in chief comprises the expert’s report, any changes to that report in a notice under subrule 15.59 (5) and any answers to questions under rule 15.66.

(2) An expert witness has the same protection and immunity in relation to the contents of a report disclosed under these Rules or an order as the expert witness could claim if the contents of the report were given by the expert witness orally at a hearing or trial.

15.62 Form of expert’s report

(1) An expert’s report must:

(a) be addressed to the court and the party instructing the expert witness;

(b) have attached to it a summary of the instructions given to the expert witness and a list of any documents relied on in preparing the report; and

(c) be verified by an affidavit of the expert witness.

(2) The affidavit verifying the expert’s report must state the following:

* ‘I have made all the inquiries I believe are necessary and appropriate and to my knowledge there have not been any relevant matters omitted from this report, except as otherwise specifically stated in this report’.
* ‘I believe that the facts within my knowledge that have been stated in this report are true’.
* ‘The opinions I have expressed in this report are independent and impartial’.
* ‘I have read and understand Part 15.5 of the *Family Law Rules 2004* and have used my best endeavours to comply with it’.
* ‘I have complied with the requirements of the following professional codes of conduct or protocol, being [*state the name of the code or protocol*]’.
* ‘I understand my duty to the court and I have complied with it and will continue to do so’.

15.63 Contents of expert’s report

An expert’s report must:

(a) state the reasons for the expert witness’s conclusions;

(b) include a statement about the methodology used in the production of the report; and

(c) include the following in support of the expert witness’s conclusions:

(i) the expert witness’s qualifications;

(ii) the literature or other material used in making the report;

(iii) the relevant facts, matters and assumptions on which the opinions in the report are based;

(iv) a statement about the facts in the report that are within the expert witness’s knowledge;

(v) details about any tests, experiments, examinations or investigations relied on by the expert witness and, if they were carried out by another person, details of that person’s qualifications and experience;

(vi) if there is a range of opinion on the matters dealt with in the report - a summary of the range of opinion and the basis for the expert witness’s opinion;

(vii) a summary of the conclusions reached;

(viii) if necessary, a disclosure that:

(A) a particular question or issue falls outside the expert witness’s expertise;

(B) the report may be incomplete or inaccurate without some qualification and the details of any qualification; or

(C) the expert witness’s opinion is not a concluded opinion because further research or data is required or because of any other reason.

15.64 Consequences of non-compliance

If an expert witness does not comply with these Rules, the court may:

(a) order the expert witness to attend court;

(b) refuse to allow the expert’s report or any answers to questions to be relied on;

(c) allow the report to be relied on but take the non‑compliance into account when considering the weight to be given to the expert witness’s evidence; and

(d) take the non-compliance into account when making orders for:

(i) an extension or abridgment of a time limit;

(ii) a stay of the case;

(iii) interest payable on a sum ordered to be paid; or

(iv) costs.

Note: For the Court’s power to order costs, see subsection 117 (2) of the Act.

**Division 15.5.6 Questions to single expert witness**

15.65 Questions to single expert witness

1. A party wanting to ask a single expert witness questions about the expert’s report must do so before the hearing or trial.

(2) The questions must:

(a) be in writing and be put once only, within 21 days after the party receives a copy of the report;

(b) be only for the purpose of clarifying the expert’s report; and

(c) not be vexatious or oppressive or require the expert witness to undertake an unreasonable amount of work to answer.

(3) The party must give a copy of any questions to each other party.

*Note:* A party may cross-examine a single expert witness (see rule 15.50).

15.66 Single expert witness’s answers

1. A single expert witness must answer a question received under rule 15.65 within 21 days after receiving it.
2. An answer to a question:

(a) must be in writing;

(b) must specifically refer to the question; and

(c) must:

(i) answer the substance of the question; or

(ii) object to answering the question.

1. If the single expert witness objects to answering a question or is unable to answer a question, the single expert witness must state the reason for the objection or inability in the document containing the answers.

(4) The single expert witness’s answers:

(a) must be:

(i) attached to the affidavit under subrulen 15.62 (2);

(ii) sent by the single expert witness to all parties at the same time;

(iii) filed by the party asking the questions; and

(b) are taken to be part of the expert’s report.

15.67 Single expert witness’ costs for answers

1. A single expert witness’s reasonable fees and expenses incurred in answering any questions are to be paid by the party asking the questions.
2. Despite subrule 15.66 (1), a single expert witness is not required to answer any questions until the fees and expenses for answering them are paid or secured.

Note:This rule applies unless the court orders otherwise (see rule 1.12).

**FEDERAL CIRCUIT COURT RULES 2001 - RULE 15.07**

Duty to Court and form of expert evidence

For an expert's duty to the Court and for the form of expert evidence, an expert witness should be guided by the Federal Court practice direction guidelines for expert witnesses.

Note: While not intended to address all aspects of an expert's duties, the key points in the guidelines are:

* an expert witness has a duty to assist the Court on matters relevant to the expert's area of expertise;
* an expert witness is not an advocate for a party;
* the overriding duty of an expert witness is to the Court and not to the person retaining the expert; and
* if expert witnesses confer at the direction of the Court it would be improper for an expert to be given or to accept instructions not to reach agreement.
* FEDERAL COURT OF AUSTRALIA

## Practice Note CM 7

**EXPERT WITNESSES IN PROCEEDINGS IN THE**

**FEDERAL COURT OF AUSTRALIA**

Practice Note CM 7 issued on 1 August 2011 is revoked with effect from midnight on 3 June 2013 and the following Practice Note is substituted.

**Commencement**

1. This Practice Note commences on 4 June 2013.

**Introduction**

2. Rule 23.12 of the Federal Court Rules 2011 requires a party to give a copy of the following guidelines to any witness they propose to retain for the purpose of preparing a report or giving evidence in a proceeding as to an opinion held by the witness that is wholly or substantially based on the specialised knowledge of the witness (see **Part 3.3 - Opinion** of the Evidence Act 1995 (Cth)).

3. The guidelines are not intended to address all aspects of an expert witness’ duties but are intended to facilitate the admission of opinion evidence[[1]](#footnote-1), and to assist experts to understand in general terms what the Court expects of them. Additionally, it is hoped that the guidelines will assist individual expert witnesses to avoid the criticism that is sometimes made (whether rightly or wrongly) that expert witnesses lack objectivity or have coloured their evidence in favour of the party calling them.

**Guidelines**

**1. General Duty to the Court[[2]](#footnote-2)**

1.1 An expert witness has an overriding duty to assist the Court on matters relevant to the expert’s area of expertise.

1.2 An expert witness is not an advocate for a party even when giving testimony that is necessarily evaluative rather than inferential.

1.3 An expert witness’s paramount duty is to the Court and not to the person retaining the expert.

**2. The Form of the Expert’s Report[[3]](#footnote-3)**

2.1 An expert’s written report must comply with Rule 23.13 and therefore must:

(a) be signed by the expert who prepared the report;

(b) contain an acknowledgement at the beginning of the report that the expert has read, understood and complied with the Practice Note;

(c) contain particulars of the training, study or experience by which the expert has acquired specialised knowledge;

(d) identify the questions that the expert was asked to address;

(e) set out separately each of the factual findings or assumptions on which the expert’s opinion is based;

(f) set out separately from the factual findings or assumptions each of the expert’s opinions;

(g) set out the reasons for each of the expert’s opinions;

(ga) contain an acknowledgment that the expert’s opinions are based wholly or substantially on the specialised knowledge mentioned in paragraph (c) above[[4]](#footnote-4); and

(h) comply with the Practice Note.

2.2 At the end of the report the expert should declare that “ has made all the inquiries that believes are desirable and appropriate and that no matters of significance that regards as relevant have, to knowledge, been withheld from the Court.”

2.3 There should be included in or attached to the report the documents and other materials that the expert has been instructed to consider.

2.4 If, after exchange of reports or at any other stage, an expert witness changes the expert’s opinion, having read another expert’s report or for any other reason, the change should be communicated as soon as practicable (through the party’s lawyers) to each party to whom the expert witness’s report has been provided and, when appropriate, to the Court[[5]](#footnote-5).

2.5 If an expert’s opinion is not fully researched because the expert considers that insufficient data are available, or for any other reason, this must be stated with an indication that the opinion is no more than a provisional one. Where an expert witness who has prepared a report believes that it may be incomplete or inaccurate without some qualification, that qualification must be stated in the report.

2.6 The expert should make it clear if a particular question or issue falls outside the relevant field of expertise.

2.7 Where an expert’s report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the opposite party at the same time as the exchange of reports[[6]](#footnote-6).

**3. Experts’ Conference**

3.1 If experts retained by the parties meet at the direction of the Court, it would be improper for an expert to be given, or to accept, instructions not to reach agreement. If, at a meeting directed by the Court, the experts cannot reach agreement about matters of expert opinion, they should specify their reasons for being unable to do so.

**J L B ALLSOP**

**Chief Justice**

**4 June 2013**

1. As to the distinction between expert opinion evidence and expert assistance see Evans Deakin Pty Ltd v Sebel Furniture Ltd [2003] FCA 171 per Allsop J at [676]. [↑](#footnote-ref-1)
2. The “*Ikarian Reefer*” (1993) 20 FSR 563 at 565-566. [↑](#footnote-ref-2)
3. Rule 23.13. [↑](#footnote-ref-3)
4. See also *Dasreef Pty Limited v Nawaf Hawchar* [2011] HCA 21. [↑](#footnote-ref-4)
5. The “Ikarian Reefer” [1993] 20 FSR 563 at 565 [↑](#footnote-ref-5)
6. The “Ikarian Reefer” [1993] 20 FSR 563 at 565-566.  See also Ormrod “Scientific Evidence in Court” [1968] Crim LR 240 [↑](#footnote-ref-6)