

EXPERT WITNESS CODE OF CONDUCT

Supreme Court of NSW

(Schedule K, Part 36 Rule 13C(1) and Part 39 Rule 2(1))

Application of code

1. This code of conduct applies to any expert engaged to:
 - (a) provide a report as to his or her opinion for use as evidence in proceedings or proposed proceedings, or
 - (b) give opinion evidence in proceedings or proposed proceedings, or

General duty to the Court

2. An expert witness has an overriding duty to assist the Court impartially on matters relevant to the expert's area of expertise.
3. An expert witness's paramount duty is to the Court and not to the person retaining the expert.
4. An expert witness is not an advocate for a party.

The form of expert reports

5. A report by an expert witness must (in the body of the report or in an annexure) specify:
 - (a) the person's qualifications as an expert, and
 - (b) the facts, matters and assumptions on which the opinions in the report are based (a letter of instructions may be annexed), and
 - (c) reasons for each opinion expressed, and
 - (d) if applicable—that a particular question or issue falls outside his or her field of expertise, and
 - (e) any literature or other materials utilised in support of the opinions, and
 - (f) any examinations, tests or other investigations on which he or she has relied and identify, and give details of the qualifications of, the person who carried them out.
6. If an expert witness who prepares a report believes that it may be incomplete or inaccurate without some qualification, that qualification must be stated in the report.
7. If an expert witness considers that his or her opinion is not a concluded opinion because of insufficient research or insufficient data or for any other reason, this must be stated when the opinion is expressed.
8. An expert witness who, after communicating an opinion to the party engaging him or her (or that party's legal representative), changes his or her opinion on a material matter must forthwith provide the engaging party (or that party's legal representative) with a supplementary report to that effect which must contain such of the information referred to in paragraph 5 (b), (c), (d), (e) and (f) as is appropriate.
9. Where an expert witness is appointed by the Court, the preceding paragraph applies as if the Court were the engaging party.

Experts' conference

10. An expert witness must abide by any direction of the Court to:
 - (a) confer with any other expert witness, and
 - (b) endeavour to reach agreement on material matters for expert opinion, and
 - (c) provide the Court with a joint report specifying matters agreed and matters not agreed and the reasons for any non agreement.

11. An expert witness must exercise his or her independent, professional judgment in relation to such a conference and joint report, and must not act on any instruction or request to withhold or avoid agreement.

Supreme Court rules for expert witnesses – Part 36 rule 13C

- (1) For the purposes of this rule and rule 13CA:

"expert witness" means an expert engaged for the purpose of:

- (a) providing a report as to his or her opinion for use as evidence in proceedings or proposed proceedings; or
- (b) giving opinion evidence in proceedings or proposed proceedings;

"the code" means the expert witness code of conduct in Schedule K.

- (2) Unless the Court otherwise orders:

- (a) at or as soon as practicable after the engagement of an expert as a witness, whether to give oral evidence or to provide a report for use as evidence, the person engaging the expert shall provide the expert with a copy of the code;
- (b) unless an expert witness's report contains an acknowledgment by the expert witness that he or she has read the code and agrees to be bound by it:
 - (i) service of the report by the party who engaged the expert witness shall not be valid service for the purposes of the rules or of any order or practice note; and
 - (ii) the report shall not be admitted into evidence;
- (c) oral evidence shall not be received from an expert witness unless:
 - (i) he or she has acknowledged in writing, whether in a report relating to the proposed evidence or otherwise in relation to the proceedings, that he or she has read the code and agrees to be bound by it; and
 - (ii) a copy of the acknowledgment has been served on all parties affected by the evidence.

- (3) If an expert witness furnishes to the engaging party a supplementary report, including any report indicating that the expert witness has changed his or her opinion on a material matter expressed in an earlier report by the expert witness:

- (a) the engaging party must forthwith serve the supplementary report on all parties on whom the engaging party has served the earlier report; and
- (b) the earlier report must not be used in the proceedings by the engaging party, or by any party in the same interest as the engaging party on the question to which the earlier report relates, unless paragraph (a) is complied with.

- (4) This rule shall not apply to an expert engaged before this rule commences.