

EXPERT WITNESS CODE OF CONDUCT

District Court of NSW

(Part 28, rule 9C and Part 28A, rule 2)

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
 - (c) inquire into and report on a question under Part 28A as the Court appointed expert.

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.