

APPENDIX 14

Family Division: Best Practice Guide for Instructing a Single Joint Expert

[November 2002]

Foreword by Dame Elizabeth Butler-Sloss DBE, President of the Family Division

This is an excellent Practice Guide. It has my full support. I hope practitioners will take it to heart and observe the recommended procedures.

Foreword by Senior District Judge Gerald Angel

Following the introduction, on the 5th June 2000, of the revised ancillary relief procedure incorporating the Civil Procedure Rules about expert evidence, Lord Justice Thorpe, Chairman of the President's Ancillary Relief Advisory Group, constituted a working party to examine the topic of single joint experts in ancillary relief cases.

The working party, under the chairmanship of the Senior District Judge, comprised a High Court Family Division Judge, Mr Justice Bodey, District Judge Bird representing the Association of District Judges, Richard Freeman, representing the Academy of Experts, Nicholas Mostyn QC, representing the Family Law Bar Association and Richard Sax, representing the Solicitors Family Law Association, with Clive Buckley from the Principal Registry of the Family Division as its secretary. The working party met four times between October 2000 and October 2001. It set itself the task of examining whether it would be appropriate for there to be a protocol about Single Joint Experts in ancillary relief proceedings and if so, to settle its terms. In addition to examining a quantity of written material, the working party were provided with very valuable advice and assistance by Michael Cohen, Chairman Emeritus of the Academy of Experts and Geoffrey Bevans of the Royal Institution of Chartered Surveyors both of whom generously attended one of the meetings.

The working party concluded that it would recommend to the Advisory Group that there should be published Guidance about Single Joint Experts in ancillary relief proceedings. The final draft of the Guidance, to which each of the members of the working party contributed, was submitted to the President's Ancillary Relief Advisory Group at its meeting on the 24th April 2002. The Advisory Group accepted the working party's proposal that the Guidance be published.

THE PRESIDENT'S ANCILLARY RELIEF ADVISORY GROUP BEST PRACTICE GUIDE FOR INSTRUCTING A SINGLE JOINT EXPERT

1. The President's Practice Direction of the 25th May 2000 ([2000] 1 FLR 997), encouraged the appointment of a Single Joint Expert (SJE) as follows:

'The introduction of expert evidence in proceedings is likely to increase costs substantially and consequently the court will use its powers to restrict the unnecessary use of experts. Accordingly, where expert evidence is sought to be relied upon, parties should if possible agree upon a single joint expert whom they can jointly instruct. Where parties are unable to agree upon the expert to be instructed the court will consider using its powers under Part 35 of the Civil Procedure Rules 1998 to direct that evidence be given by one expert only. In such cases, parties must be in a position at the first appointment or when the matter comes to be considered by the court to provide the court with a list of suitable experts or to make submissions as to the method by which the expert is to be selected.'

2. This Best Practice Guide is intended to promote efficiency, effectiveness and economy in the management of ancillary relief cases and to assist practitioners and experts as to the procedure to be adopted when instructions are given jointly to experts in applications for ancillary relief. It is equally applicable prior to the issue of proceedings. Throughout, the principle of proportionality must be a primary consideration.
3. An expert instructed by one party separately will not usually be appointable later as an SJE. Parties should therefore consider the costs implications before appointing an expert for their own side, rather than suggesting the appointment of an SJE to the other party.
4. If parties agree to appoint an SJE, then before instructions are given, they should:
 - (1) obtain confirmation from the proposed expert:
 - (a) that there is no conflict of interest;
 - (b) that the matter is within the range of expertise of the expert;
 - (c) that the expert is available to provide the report within a specified timescale;
 - (d) of the expert's availability for attendance at any dates that are known to be relevant;
 - (e) of any periods when the expert will not be available;
 - (f) as to the expert's fee rate, basis of charging, other terms of business and best estimate of likely fee;
 - (g) if applicable, that the expert will accept instructions on a publicly funded basis, and
 - (2)
 - (a) have agreed in what proportion the SJE's fee is to be shared between them (at least in the first instance) and when it is to be paid;
 - (b) if applicable, have obtained agreement for public funding.

5. Where parties have not agreed on the appointment of an SJE before the relevant directions appointment, they should obtain the confirmations set out in 4(1) above, in respect of all experts they intend to put to the court for the purpose of CPR 35.7(3)(a).
6. Where the court directs a report by an SJE, the order should:
 - (a) if the SJE has already been instructed, adopt the instructions already given or make such amendments to the instruction as the court thinks fit;
 - (b) identify the SJE;
 - (c) specify the task that the SJE is to perform;
 - (d) provide that the instructions are to be contained in a jointly agreed letter;
 - (e) specify the time within which the letter of instruction is to be sent;
 - (f) specify the date by which the report must be produced;
 - (g) provide for the date by which written questions may be put to the SJE and the date by which they must be answered;
 - (h) make any such provision as to the SJE's fees which the court thinks appropriate.
7. The joint instructions to the SJE should reflect the proportionality principle and include:
 - (a) basic relevant information;
 - (b) any assumptions to be made;
 - (c) the principal known issues;
 - (d) the specific questions to be answered;
 - (e) arrangements for attendance at a property, business or accountant's office or other place;
 - (f) a copy of paragraphs 1.1 to 1.6 of the Practice Direction to CPR Part 35 (form and contents of expert's reports) and a copy of this Guide;
 - (g) a copy of the relevant parts of the court order;
 - (h) documents necessary for the expert's consideration of the case, sufficient for the purpose, clearly legible, properly sorted, paginated and indexed.
8. Upon receiving the joint letter of instruction, or subsequently should it become necessary to do so, the SJE should raise with the solicitors any issues or questions which may arise, including proportionality, lack of clarity or completeness in the instructions and the possible effect on fees of complying with the instructions.
9. Should a party wish to give supplementary instructions to the SJE, full consideration must be given to proportionality and to the possible effect on the timetable. Supplementary instructions should not be given to the SJE unless the other party has agreed or the court has sanctioned them.
10. All communications by the SJE should be addressed to both parties and the SJE should keep the parties informed of all material steps taken, by, for example, copying all correspondence to each party.

11. Any meeting or conference attended by the SJE should be proportionate to the case and should normally be with both parties and/or their advisers. Unless both parties have agreed otherwise in writing, the SJE should not attend any meeting or conference that is not a joint one.
12. The report of the SJE should be served simultaneously on both parties.
13. Where the SJE considers that the proportionality principle cannot be complied with in preparing the report within the terms of reference, the SJE should give notice to the parties, identifying what is perceived to be the difficulty.
14. Where the difficulty cannot be resolved by the parties and the SJE, the SJE should file a written request to the court for directions pursuant to CPR 35.14.
15. As a last resort, the SJE may resign the joint appointment. In this event, the SJE should serve a concise statement of the reasons on both parties. Where the court has ordered his joint appointment the SJE should also serve the court with the statement.