

1992—No. 349

DISTRICT COURT ACT 1973—RULE

NEW SOUTH WALES



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1. This rule is made by the Rule Committee on 16 June 1992, and has effect on and from 26 June 1992.
2. The District Court Rules 1973 are amended as follows:
 - (a) Part 22 rule 1 (4)
Omit “, other than proceedings to which Part 6 Division 4 applies.”.
 - (b) Part 24C rule 3
 - (i) In subrule (1) omit “third party”;
 - (ii) After subrule (2) insert the following subrule:
 - (3) The requirement in subrule (1) for service on the defendant’s insurer is satisfied by service:
 - (a) where the defendant is the Nominal Defendant under the Motor Accidents Act 1988—on the Nominal Defendant;
 - (b) where the defendant is an insured person for the purposes of that Act—on the defendant’s third party insurer; or
 - (c) where the defendant is insured, in respect of the liability alleged in the action, under a policy issued other than in New South Wales—on the insurer who issued the policy.
 - (c) Part 24C rule 5 (4)
Omit “defendant’s insurer”, insert instead “defendant”.
 - (d) Part 39 rule 22A
After Part 39 rule 22 insert the following rule:

Limitation on costs of expert evidence

22A. (1) This rule applies only to an action in which damages are claimed in respect of the death of a person or in respect of personal injuries.

(2) This rule applies notwithstanding rule 22.

(3) In an action to which this rule applies, unless the Court otherwise orders, there shall not be allowed on taxation, in respect of more than one expert witness in any medical specialty, any costs incurred in qualifying the expert witness to give evidence, preparing or obtaining a report from the expert witness, or calling the expert witness to give evidence.

(4) A medical practitioner who treated a person for injuries which led to the bringing of the action is not for the purposes of subrule (3) an expert witness.

(e) Part 47 rule 6

After subrule (1) insert the following subrule:

(2) The backsheet of an affidavit shall be endorsed with the name of the deponent and the date of swearing.

EXPLANATORY NOTE

The purpose of amendment (a) is to delete a reference to a repealed provision.

The purpose of amendments (b) and (c) is to make better and more complete provision for service of statements of claim on insurers in actions under the Motor Accidents Act 1988.

The purpose of amendment (d) is to reduce, by applying costs sanctions, the overuse of expert evidence in personal injuries actions. The Supreme Court has recently attacked this problem by the issue of Practice Note No. 70, which goes further than amendment (d). The District Court, having no inherent powers, does not think it appropriate to make provisions for rejecting the tender of otherwise admissible evidence. Further, bearing in mind the smaller amounts usually in issue in the District Court, that Court is of the opinion that its problem may be of less frequent occurrence than that in the Supreme Court, calling only for costs sanctions.

The purpose of amendment (e) is to make compulsory the practice whereby most solicitors identify affidavits filed by endorsing details on the backsheet.

E. J. O'Grady
Secretary to the Rule Committee.
