de Rechtspraak

Practice direction for experts in Dutch civil law cases

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Contents

1 Introduction

1. You have been selected by a Dutch court to give expert evidence. This court order was made after consulting the parties to the proceedings. You receive a copy of the court order. The directions of the court are usually stated in the final section of the court order listing the decisions. It is advisable to check as soon as possible, in any event prior to the start of the examination, whether the questions fall within the scope of your expertise and whether they are sufficiently clear. If this is not the case, please do not start the examination and contact the Liaison Officer (see par. 3) without delay.
2. This Practice Direction is meant to provide you with information relevant to your examination and report. With this Practice Direction the Judiciary provides you with insights that are important according to current law in relation to preparing an expert report. Expert evidence in civil law cases is governed by the Dutch Code of Civil Procedure (abbreviated as "Rv"). This Practice Direction does not discuss any standards that may apply in your field of expertise and may be relevant to carrying out your examination and issuing the expert report. It is up to you to use the Practice Direction in combination with any applicable standards of your profession.
3. It is advisable to read the Practice Direction before starting your examination, even if you have already served as an expert in civil proceedings before. The Practice Direction is however also meant as a first information provider in case you have any questions during the performance of your duties. The model expert opinion includes footnotes referring to sections of this Practice Direction for further information (see also no. 119 for more information on the model report).
4. The text of legal provisions cited in the Practice Direction is available in Dutch on www.overheid.nl.

2 Legal framework

5. The law refers to the results of your work in a case as an expert report. An expert report may, for example, be required in cases where the judge lacks the expertise relevant to the decision of the dispute or where a party may furnish evidence.
It is also possible that the judge has ordered an expert report on account of the fact that a party requires an expert report to assess his chances of success in the proceedings. In that case the law refers to the report as a provisional expert report. The term 'provisional' does not mean that the contents of your report are provisional (see for more information the Definition of terms and abbreviations under 'provisional expert report).
6. Your answers to the questions of the court must be well-founded. Otherwise the expert report will not be of use in the further proceedings and it will be difficult for the judge and the parties to verify them. Thus in principle a simple yes or no does not suffice as an answer. If, in a certain case, a simple yes or no is impracticable, you are asked to say so. Please remember that you have been asked to serve as an expert and that the parties and the judge avail themselves of your answers and reasoning to verify the significance of your expert report to the proceedings.

3 Communication with the judge and the court registrar

7. During the expert examination you may need the assistance of the court registrar or the judge for the answer to any questions. The court has a Liaison Officer for this purpose. The court registrar will inform you who your Liaison Officer is and you may contact this officer whenever necessary.
8. In correspondence please be sure to always state the names of the parties and the case number.

4 Communication with the parties to the proceedings

4.1 Equality of arms

9. In communicating with the parties to the proceedings please remember that, as a rule, you should not communicate with one party without informing the other party beforehand. Some exceptions to this rule may apply in medical examinations (see below: medical documents (no. 62), requests for corrections (par. 5.4), meetings with one person (par. 11.3) and the right of inspection and obstruction (par. 11.5)).
10. This Practice Direction states at various points that, in view of the equality of arms, you are not allowed to take notice of documents sent to you by one party that do not mention that a copy has been sent to the other party. In that case you may suffice by giving that party the opportunity to remedy the failure as it is his obligation to forward such documents. You are free, for efficiency's sake, to send a copy of such document to the other party, but you are under no obligation to do so.

4.2 Effect of legal assistance

11. Should a party to the proceedings be assisted by counsel the principal rule is that you do not contact such party without contacting counsel. Any correspondence and procedural consultation should be conducted with the counsel. You may not consult the party to the proceedings without informing the counsel of the parties. The following chapters will from time to time mention in what way you are allowed to consult the parties and their counsels. The effect of legal assistance on communication with the parties is explained in further detail in paragraphs 13-16.
12. For more information on the effect of legal assistance in medical examinations please refer to: medical documents (no. 62), requests for corrections (par. 5.4), meetings with one person (par. 11.3) and the right of inspection and obstruction (par. 11.5).
13. If you are appointed by a cantonal judge ('kantonrechter') and no counsel is mentioned on the first page of the court order where the name of the party to the proceedings is listed, you may as a rule presume that you are free to communicate with this party without third-party intervention.

In cantonal proceedings a party to the proceedings need not be assisted by counsel. On the first page of the court order you will find which judge has appointed you. It will state 'kantonrechter' or 'sector kanton' if this is a cantonal judge.

14. If you are appointed by a different tribunal (the court's civil law division, the court's family law division, the Court of Appeal's civil law division, the Court of Appeal's family law division, Tenancies Division), you will, in principle, communicate with the parties' counsel only. You may not communicate directly with either party without the parties' counsel being informed. The first page of the court order states whether you have been appointed by one of these judges.

15. There is an exception to the two main rules listed under 13 and 14. Occasionally an expert is appointed while one of the parties has failed to appear in the proceedings, or did initially appear but failed to make a subsequent appearance. In that case, the court order will state under the parties' names on the first page "did not appear", "without counsel", "not (or no longer) represented by counsel", or a similar phrase. If the court fails to inform you how to communicate with the party concerned, please contact the Liaison Officer prior to the start of the examination to discuss whether, and if so how, you should communicate with that party.

16. It is expected that, prior to the start of the examination, you will verify, based on the said instructions, with whom you should communicate. The court can assist you in this respect. Should the expert report model be sent to you, the court stipulates with whom you must maintain contact. The copy of the court order appointing you also states under the parties' names on the first page whether a party to the proceedings is assisted by counsel. If you have any questions, please contact the Liaison Officer.

5 The principle of equality of arms

5.1 Introduction

17. The expert report is ordered on the basis of a statutory regulation. It must comply with the legal rules applicable to evidence in court proceedings. The most important rule you will encounter is the principle of equality of arms. The exact meaning of this principle is explained in par. 5.2. An important aspect of this principle in the expert examination is discussed in par. 5.3, i.e. the legal obligation on the part of the expert to give both parties the opportunity to make comments and requests. The right to request a correction to errors of fact in the report is discussed in par. 5.4.
18. When the equality of arms is observed during the expert examination,the parties are in an equal position to give and receive information to and from one another and to you as an expert. Should the equality of arms be at risk during the expert examination, a court intervention may be required. It is even conceivable that the court or the parties will then be unable to avail themselves of the expert report. In order to enable you to observe the equality of arms, this Practice Direction, where necessary, separately discusses the aspects related to this principle.

5.2 No communication with one party only

19. The parties are entitled to a fair trial. This means, inter alia, that they must have equal opportunities in the proceedings to convince the judge of their arguments and to respond to the other party's arguments. The parties are entitled to being informed of one another's actions during the proceedings. This means that the judge may not communicate with one party without informing the other party.
The same applies to you as an expert in your dealings with the parties. For you equality of arms means that you have to give both parties equal opportunities to communicate with you. It is essential that you see to it that you do not speak or correspond with one party without giving the other party the opportunity to be present at the meeting or without sending the other party a copy of your letter, fax or email.
20. For more information on equality of arms in medical examinations please refer to: medical documents (no. 62), requests for corrections

(par. 5.4), meetings with one person (par. 11.3) and the right of inspection and obstruction (par. 11.5).

5.3 Comments and requests of parties

5.3.1 General

21. By law the parties are entitled to send you comments and requests in relation to your examination. In the expert report you must state that you have provided the parties with the opportunity to do so. If either party avails himself of this opportunity, your expert report should state the substance of his comments and requests. These legal requirements are based on the equality of arms. Failure to comply with these requirements may affect the usefulness of the expert report in the further proceedings. Non-compliance with these requirements may also mean that the court, after receiving the report, will get back to you and request that you will give the parties the opportunity to make comments and requests and that you issue a supplementary report on any such comments and requests.

5.3.2 Working method

22. The court order rules that you must carry out the examination under the auspices of the judge or independently (see par. 9). This choice influences the way in which you give the parties the opportunity to make comments and requests.

23. Should the court rule that you have to carry out the examination under the auspices of a judge, you should always verify in the court order whether it also states in what way you have to implement the right of making comments and requests. If it does, please follow the prescribed instructions. If it does not, please ask the Liaison Officer prior to the examination for instructions. Please contact the Liaison Officer if you are in doubt or uncertain about the correct way to deal with the parties' right of making comments and requests.

24. If the judge has ruled that you must carry out the examination independently, please note the following.

25. You are requested to observe the following guidelines when providing the parties with the opportunity to make comments and requests. You will carry out the examination and write the report. This report includes all your findings, i.e. not just the report of your examination, but also your answers to questions posed by the court.

You will send the report to the parties. In an accompanying letter you will state that they have been given the opportunity to submit any comments and requests to you within a term fixed by you. This Practice Direction also refers to this report as the draft report. The 'draft' aspect just means that the report is only final once you have given the parties the opportunity to make comments and requests and once you have processed such comments and requests. You then append a copy of the comments and requests to the expert report. You can reply to the comments and requests in two ways: either you append an annex to the report in which you respond to the comments and requests or you incorporate your response to the comments and requests in your report. The report with annex(es) is the final report which you send to the court (see also: Report (par. 13) and Payment (par. 14).

26. Your sending of the complete report, i.e. including your answers to the questions, to the parties and their opportunity to send comments and requests to you, does not mean that the parties are invited to convince you of the correctness of their arguments. Not you, but the judge, has to be convinced by the parties after receiving the expert report. How to deal with the comments and requests of the parties is discussed in par. 5.3.3.

N.B. 1: Please do not inform the parties by word of mouth only that they may make comments and requests.

N.B. 2: If you have to observe the right of inspection and obstruction in any medical examination, please adhere to the working method related to the right of inspection and obstruction as outlined in par. 11.5 before allowing the parties to make comments and requests further to your draft report.

27. In some cases you will not be able to conduct your examination without first consulting the parties and interviewing them or other persons. This often occurs in examinations by auditors or in professional liability cases, in which you need to hear the versions of both parties before writing down your findings. Often it is also advisable and practical to enable parties in the initial stage of your examination to discuss with you how you intend to conduct the examination. If you need information too and it would be practical to obtain this information from both parties at the same time, you might combine this. Upon contacting the parties they will often make comments and requests of their own accord. Even then you still have to

enable parties to make comments and requests after completing your examination and report. When in doubt about the exact procedure, please consult par. 9 and if necessary please contact the Liaison Officer.

5.3.3 What to do with comments and requests?

28. What to do with comments and requests made by the parties depends, among other things, upon their content. You have to respond to comments and requests falling within the scope of the questions raised by the court. Sometimes you will really have to react. In other cases you can suffice by referring to a passage in the report in which you believe the comment or request is adequately discussed. This does require an exact reference to such a passage.

29. When do comments and requests fall within the scope of the questions raised by the court? There is no general answer to this. One guideline might be to determine whether the answer would fall within the scope of the court's questions. If the comment or request concerns an entirely different issue, this may well be an indication that the comment or request falls outside their scope. The court formulates questions in the ruling after consulting the parties. The substance of this consultation may sometimes be found in the ruling and be evident from preceding court documents or a record of a verbal hearing. Based on this, you are usually able to determine whether comments or requests fall outside the scope of the questions raised by the court. For example, if the court decides not take over a certain question suggested by a party and this party submits the same question to you in the form of a comment or request.

30. If you are in doubt whether or not to respond to certain comments and requests made by a party, please contact the Liaison Officer. If necessary, the judge may decide to which comments and request you should or should not respond.

31. If a party objects to comments and requests of the other party, you must also call in the assistance of the Liaison Officer. The judge will then have to rule on the objection. The court's decision may mean that the objection is unfounded, after which you may proceed to respond to the parties' comments and requests. The decision may also mean that you do not have to or should not respond to some comments and requests. Another possibility is that the court rules that it is up to you to determine whether or not to respond to a comment or request. This usually occurs in cases where your expertise is required to assess

whether a comment/request falls within the scope of the court's questions.

32. You do not have to respond to comments and requests falling outside the scope of the court's questions. You must state in the expert report or in the annex to which comments and requests you did not respond and the reasons why (in this example: because the comments and requests fall outside the scope of the court's questions).

33. The more you have allowed parties to participate at the start of or during the examination on how to set up the examination (see no. 27), the less you need to reply to requests that you receive following the draft expert report and that might have been made earlier.

34. Under the law of civil procedure you do, in principle, not have to enable parties to respond to one another's comments and requests, nor to how you process the comments and requests following the draft report, before sending your final report to the court. The parties have the opportunity to make such comments and requests in the subsequent proceedings before the court. It is conceivable that the standards of your profession nevertheless lead you to provide them with this opportunity.

5.3.4 Request for extension for comments and requests

35. You may not simply ignore a reasonable request to extend your deadline for comments and requests. You may require the parties to state their reasons for the request. Good reasons are, for example, that more time is required for consultations between the lawyer and the client or between lawyer/client and the expert by whom the client is assisted, that documents need to be translated, that a party awaits certain documents and is unable to adequately respond without these documents, etc. When deciding whether or not to grant the request for an extension you also have to take account of the period of the requested extension and the other party's reaction. It is also relevant whether the extension means that you exceed the deadline by which the expert report has to be submitted, in which case you must consult the Liaison Officer before granting the request. If the request does not state that a copy of the request has been sent to the other party, you are not allowed to take notice of it. You do however usually provide the opportunity to remedy this failure. If the failure is not remedied, you will note in the expert report that you have disregarded the request for an extension stating the reason for this. All this follows from the

equality of arms. In case of doubt or problems, please contact the Liaison Officer.

36. If you grant an extension of the deadline, please notify both parties in writing. In your notification you will state by which date at the very latest you must receive any comments and requests.

5.3.5 Comments and requests received after the deadline

37. In principle, you do not have to include in the report any comments and requests you receive after the deadline without a prior request for an extension and without stating reasons. You must however state in the report – provided it has not already been sent to the court – which comments and requests you have disregarded. You also have to state that you have disregarded them on account of the fact that you received them after the deadline for comments and requests had expired. If you have not already submitted the final report and your response to the comments and requests received after the deadline would not be very time consuming, you may consider responding to these comments and requests. This will in any event be useful if you foresee that the court after receiving the expert report requires such a response in relation to decisions in the further proceedings. In this respect, it may be useful to consult the Liaison Officer.

Should you receive comments and requests after the deadline has expired and after you have submitted the report to the court, you may notify the sender in writing that you are unable to process the comments and requests as the report is already sent to the court.

You may of course consult the Liaison Officer. If comments and requests are not included in the report, the party concerned will in most cases ask the court for its opinion. If necessary, the court will hear the parties and you and decide what course should be taken.

5.4 Requests for correction

5.4.1 Meaning

38. It is conceivable that your professional standard obliges you to observe a 'right to correct'. There is no absolute 'right' to correct. However, the parties to whom the report refer do have the right to request you to correct any inaccuracies of a factual nature in the data you use in your report. For example, a wrongly noted date of birth or a misspelt name. The right to request corrections does not mean that

changes can be made simply because a party disagrees with a section in your draft report or deems a particular passage irrelevant.

5.4.2 Working method in an examination other than a medical examination

39. If you have to provide parties with the opportunity to make requests for correction on account of your professionial standard, please do so when informing parties that they may make comments and requests. Due to the equality of arms, a party's request for correction falls under the information they have, at the same time, to supply to the other party. By including requests for corrections in the comments and requests round, you may comply with the requirement that requests for corrections are known to both parties before processing them.

40. The party asking for corrections is obliged to send a copy of his request to the other party. If this is not stated in the request, you are not allowed to honour the request. However, usually you do provide the party concerned with the opportunity to remedy this failure. Thus you do not process a request for correction if the other party has not been able to take note of its content. These requirements ensue from the equality of arms, i.e. the parties' right to be in an equal position to give and receive information in the proceedings.

5.4.3 Working method in a medical examination

41. The principles outlined in nos. 39 and 40 also apply to a medical examination. In addition, it is relevant whether you must observe the right of inspection and obstruction because of your professional standard. If so, the request for correction should, once again, in principle be made in the comments and requests stage. It is possible that a party involved has already filed a request for correction of factual inaccuracies in the inspection round prior to the stage in which you provide the opportunity to make comments and requests. It is obvious that a party, upon taking note of a report, immediately wishes to signal any errors. You are not expected to actively seek to stop the inspecting party from filing requests for correction at this stage. You should however inform this party that you may only handle the request for correction once the party has informed you that he will not block the report and has sent a copy of the request for correction to the other party.

42. Thus also in the medical examination you may only process a request for correction in the stage in which both parties may make comments and requests. Only then both parties are informed of the request for correction and the contents of your draft report. Also in medical examinations the right to request corrections does not mean that changes can be made simply because a party disagrees with a section in your draft report or deems a particular passage irrelevant. You may only respond to such requests when both parties have been allowed to make comments and requests and have stated in their written replies that they have sent a copy to the other party.
43. There is one exception to these rules. Where a request for correction – in the inspection round – concerns an obvious error in writing that is irrelevant to your findings, such as the spelling of a name or an inadvertently wrongly stated date, you are free to correct the draft report at an earlier stage. It would be impractical and serve no reasonable purpose not to correct such facts before sending the draft report to the other party and giving the parties the opportunity to make comments and requests. This is however only permitted subject to the stringent condition that the other party can see what has been altered, because the request for correction states that a copy of the request has been sent to the other party and the latter receives a draft report from you after you have been informed that the party concerned will not block the report. If in doubt about whether or not correcting a manifest error at this stage might give the impression that your findings are being influenced, you are advised to refrain from processing the requests for corrections until both parties have been given the opportunity to make comments and requests. You may state so in the letter to the parties in which you provide this opportunity.

6 Impartial and to the best of one's ability

6.1 Introduction

44. After accepting your appointment as an expert, you are, by law, obliged to act impartially and to the best of your ability. Compliance with these requirements is essential. In many cases the outcome of the case depends on the expert report. Moreover, the court is unable to render a decision based on the expert report if it takes the view that the expert has not provided independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise. What is expected from you in this respect?

6.2 Impartiality

45. Due to the requirement of impartiality it must be established, prior to your appointment, whether you know the parties, through business, professionally or privately, and whether you believe that you have no ties to either party. You are requested to verify this once you have received the court documents.
Doubts about whether you are able to meet the requirements of impartiality may arise at first glance, but occasionally doubts do not arise until after examining the documents. It is even possible that you do not find out until after you have started your examination that there is a connection between you and a party. Concealing this generally gives rise to more problems than reporting the connection.
46. Should it become evident that you know one of the parties privately, you are not allowed to conduct the examination on account of the principle of impartiality. If you know either party professionally or through business, it depends on the relationship and the circumstances whether or not you may conduct the examination. On encountering you should immediately mention the connection with either party to the Liaison Officer.
47. This may be illustrated by an example: if one of the parties is a bank and you have a private bank account with this bank, this does not impede your impartiality. If you are, for example, a former employee of that bank, you are as a rule not allowed to conduct the examination. This may be different if the employment was simply a holiday job you had years ago as a student.

48. Occasionally, an expert changes jobs during the examination and completes his examination after this change. Changing jobs as such is no reason to discontinue the examination. However, a new employer might affect the question of the expert's impartiality. Thus you must at all times notify, in writing, the Liaison Officer and the other parties of a new job/employer. You must do so immediately upon learning that the new job/employer is certain.
49. Your impartiality may already be called into question when, according to one party, you seem to be biased. If a party claims you are biased you must contact the Liaison Officer and discontinue the examination. The court will assess whether there is an objective justification for such appearance. You are then informed whether or not to resume the examination.
50. What is meant by impartiality does not merely follow from your professional standard, but also from the rules of procedural law. In general there is no full overlap between those two sets of rules. Nor is it always evident beforehand what is meant by an expert's impartiality under the civil procedure rules. As stated earlier, your impartiality is of vital importance to the further proceedings. Thus timely consultations with the Liaison Officer are essential once you discover a link with one of the parties. Naturally you are free to discuss this issue with the parties.
51. One suggestion: as an expert you act in a situation in which the parties are involved in a dispute and have an interest in defending their interests to the best of their ability. Occasionally they thereby avail themselves of means that may not always be to your liking. Please do not be tempted to react in an emotional manner, but seek to ensure that you and the parties may expect one another to refrain from personal attacks. This may contribute to your impartiality.

6.3 To the best of one's ability

52. 'To the best of one's ability' (see no. 44) refers to your expertise. You are expected to conduct the examination and issue the report on matters within your expertise by observing any rules, standards or customs applicable in your profession. For example, a doctor has to observe the medical professional standard.
53. You have been appointed as an expert on account of your knowledge and professional experience in your field of expertise.

This means that you yourself are expected to conduct the examination and to report. If you wish to call in the assistance of third parties, please read the information in par. 10.

7 Court documents and other documents

54. You have received from the court a copy of the ruling appointing you as an expert.
55. How do you obtain a copy of the case file? The ruling may mention in the final section under the decision that you must receive copies of these documents from (one of) the parties by a certain date. It may also mention that the court registrar will send you the documents. In both cases if you receive no documents, please contact the Liaison Officer.
56. Once you have received the documents relating to the case, it is easy to check, based on the court ruling or rulings, whether they are complete. Following the heading with the parties' names, every ruling lists the documents available to the court in rendering a decision. If at any point you notice that the case file is incomplete, you are expected to ask for the missing documents. You may request them from the party that was instructed by the court to send you a copy of the case file .
57. It is possible that the court has already sent you documents relating to the case in order to determine whether you wish to accept the appointment as an expert and/or to enable you to mention the advance for your expenses. This does not always mean that you have received a copy of the entire case file. Please exercise due care in the use of these docoments after accepting the appointment. Once again, decisive is what is stated in the ruling by which you are appointed. Should it state that a party or the parties or the court registrar must send you a copy of the case file, you must conduct the examination based on the documents sent to you after the ruling.
58. There are also cases in which the court expressly rules that the documents relating to the case should not (or only in part) be sent to you. This happens for example when you do not need (all) the documents to conduct the examination. A DNA examination is an example of this, or if the case is heard in chambers.
59. If the court rules that a copy of the case file must be sent to you, you can, based on these documents, get an idea of the context of the questions put to you.

60. If you need any further copies of case-related documents, you may ask for them from each of the parties. They are in principle obliged to grant your request. Should this give rise to problems, you may contact the Liaison Officer. The parties may also send you documents of their own accord and request you to include them in your examination. In your expert report you briefly list the documents sent to you by the parties in addition to the court documents. The model expert report provides room to do so (for the model report, please refer to no. 119).
61. If the parties send you documents at your request or of their own accord, they must also send a copy to the other party. You are requested to see to it that they state in their letter to you that they have done so and, if necessary, to point out this obligation to them. Should a party fail to do so, you are not allowed to include the document that is sent just to you and not to the other party in your report. You have to state this in your report. All this is required on the basis of the equality of arms.
62. If you are conducting a medical examination and wish to obtain further medical documents relating to a party, please remember that you may have to ask for authorisation from that party. You are reminded that the use of such documents in the expert report may be subject to restrictions based on your professional standard.

8 Accepting the appointment

8.1 Acceptance

63. The court registrar or the court has asked you if you are willing to conduct an expert examination for the court. Such request is usually made by phone, in writing or by email before you receive the ruling appointing you as an expert. After you have declared yourself willing to do so, the court appoints you as an expert by a court ruling and sends you such ruling. You receive the court documents either before or after the ruling appointing you as an expert (see also par. 7).
64. With the help of the court documents you will check or have already checked whether you feel free to conduct the examination (see par. 6). You then accept the appointment, or, if you don't feel free, you inform the court that you can not accept the appointment. How do you accept the appointment? You may accept the appointment either explicitly or implicitly. Explicitly by accepting the appointment in writing. Implicitly, for example, by commencing the examination. If you wish to attach a liability restriction clause to your appointment, please inform the court of this before accepting the appointment (see par. 8.2).
65. Upon accepting the appointment you must conduct the examination and issue an expert report. After accepting the appointment you may only prematurely terminate the instruction in special circumstances and after consulting the Liaison Officer.

8.2 Acceptance subject to the condition of limited liability

66. You have been appointed as an expert on account of the court's reliance on your expertise. Nevertheless an expert is only human. Occasionally something goes wrong in an expert examination. Should this happen to you, you may be held liable by a party. Even if it is subsequently established that you did something wrong, there is usually little risk of you being liable for damages of another party. There are various correction mechanisms for parties and the judge in the further proceedings. A party may bring an error to the court's attention by submitting to the court information furnished by his own expert. The court itself may request supplementary information. The parties are nearly always able to file a legal remedy (e.g. an appeal).

The higher court will pay attention to the eventual correction of any errors. In short, errors in an expert examination will usually be corrected in the further proceedings. If a party nevertheless claims to have suffered damage and has failed to avail himself of any correction mechanisms, although he could have done so, the result is usually that he has to bear any loss himself.

67. It is however conceivable that you are faced, for example, with the costs of legal assistance, should you be held liable by a party. You may be faced with complaints brought before your disciplinary court. In general, it is useful to verify whether you are insured against the risk of (professional) liability and the costs of legal assistance. The State does not provide insurance against such risks.

68. If you are accustomed to availing yourself of a limitation of liability clause in your day-to-day business and wish to use such clause in your performance as an expert, the following is relevant to you.

69. Some courts discuss the liability question before you accept the appointment. In that case, should you so desire, you may consult with the court. The court will coordinate the further course of action in relation to the limitation of liability and this Practice Direction provides no further details in that respect.

70. In other cases, should you so desire, you may inform the parties and the court in writing that you wish to accept the appointment subject to the condition of your customary limitation of liability. You thereby state the content of the limitation of liability clause. It is useful to request parties to sign this document for approval and return it to you. Please do not commence the examination before receiving the approval from the parties (see also no. 138).

N.B.: If you do commence the examination before this matter has been resolved satisfactorily, this may subsequently be interpreted as you having accepted the appointment without a limitation of liability clause.

71. If you fail to agree on your limitation of liability clause with one of the parties, you may consider amending the clause in consultation with the parties. If this leads to an agreement between you and the parties, you may, if necessary, request the written approval of the parties (see no. 70).

72. If you fail to agree on the limitation of liability clause with one of the parties and you do not wish to amend the clause, you may call in

the court's assistance. This procedure is as follows. Please do not commence the investigation and send a letter to the Liaison Officer stating under which condition you wish to accept the appointment. Enclose a copy of the exchange of letters in that respect. Apply to the court to intervene. The court will then provide both parties with the opportunity to explain their position regarding the limitation of liability clause to the court. If necessary, the court may request an explanation from you. The court reviews whether it is in the best interests of due process that you conduct the examination subject to your limitation of liability clause. There are three possible outcomes. First of all, the parties may accept your limitation of liability clause, upon which you may, if necessary, request the parties' written approval (see no. 70). Secondly, you may receive the message that the court has ruled that the examination is cancelled, since one of the parties refuses to accept your condition. Thirdly, the court may ask you if you are willing to amend the clause followed, if necessary, by consultations between you, the court and the parties, leading to the first or second outcome.

N.B.: If you do commence the examination before this matter has been resolved satisfactorily, this may subsequently be interpreted as you having accepted the appointment without a limitation of liability clause.

73. You may not limit your liability if you are by law prohibited from limiting your liability. This may apply to a care provider who falls under the prohibition of Section 7:463 of the Dutch Civil code (the Medical Treatments Contracts Act). Nor may you limit or exclude any liability under criminal or disciplinary law.
74. The court may not sign your limitation of liability clause. The court may not bind parties to your condition.
75. Suppose you do apply a limitation of liability clause and the parties declare that they do not object to such clause, but afterwards a party nevertheless holds you liable in relation to the expert examination. If you then invoke the limitation of liability clause or its applicability, a judge may have to rule on this. This will not be the judge hearing the case in which you were appointed as an expert and in which you issued a report.

9 Conducting the examination: independently or under the auspices of the court

76. The law provides two options: either you conduct the examination independently or under the auspices of the court.
77. In many cases the court rules that you will independently conduct the examination. This means that you may decide how to set up, conduct and report on the expert examination and how you involve the parties in your examination. You lead the examination and this means that you are also responsible for its progress. In your coordination of the examination you must take account of the justified interests of both parties and their counsel. This may be illustrated by the following example: if you invite the parties and their counsel to attend part of the examination and you receive a reasonable request to postpone such hearing in good time, you may not simply disregard such request. If you conduct the examination independently, you do not have to submit your action plan to the court before commencing the examination. Thus 'conducting the examination independently' means that you coordinate the examination, as long as you and the parties have no problems with this. Should any problems arise, please consider whether you must contact the Liaison Officer and do so if necessary. 'Conducting the examination independently' does not, for example, concern the question of whether you may be assisted by third parties in the course of your examination (see par. 10) or of which information you may avail yourself in the report (see par. 7 and par. 10.5).
78. If the court rules that you must conduct the examination under the auspices of a judge, the ruling usually lists some instructions regarding the examination. If anything is unclear or if you are in doubt or have questions, please contact the Liaison Officer prior to the start of the examination on how you are expected to set up, conduct and report on the examination under the auspices of the court.

10 Calling in the assistance of third parties in the course of the examination

10.1 General

79. You may not delegate the entire examination to a third party. The court has appointed you as an expert on account of your own expertise.
80. If you do not want to or are unable to carry out a specific part of the examination, you may in principle call in the assistance of a third party. The parties must be informed of this. If they object, you must have a word with them. If the parties and you fail to agree on the third-party assistance, please contact the Liaison Officer.
81. Where appropriate, you ought to inform the parties beforehand that a third party is to conduct part of the examination. You should not confront them with this once the examination is to be conducted or even afterwards.
82. Please remember in good time that calling in the assistance of a third party may induce costs. If you do not include these costs in your statement of the advance or in a supplementary request for an advance, you may run a potential risk of collection. For more information on this, see par. 14.
83. Below some frequently occurring aspects of calling in the assistance of third parties are discussed. If you have any other questions, please consult the Liaison Officer before calling in the assistance of third parties or have a supplementary examination conducted.

10.2 Conducting the examination in a team

84. In some professions it is customary to conduct the examination in a team. If you have been appointed as an expert by a court, you should in principle carry out all the activities yourself and report on them. This is because you have not been appointed as an expert on the grounds of your qualities as a supervisor or manager, but due to the fact that the court relies on your own knowledge and skill in your field of expertise. If you believe that you should call in the assistance of colleagues in the course of the expert examination or the reporting, you should inform the parties and the Liaison Officer of this prior to

commencing the examination. This also applies if you presume that the parties are aware that you usually work in a team.

10.3 Assistance in the examination

85. Occasionally, you need the assistance of third parties in the course of your expert examination. You should inform the parties of this before having third parties carry out part of the examination.
86. You may require a third party to carry out part of your examination independently or to conduct a supplementary examination before you are able to proceed with the examination. For example, if you have been called in as an employment expert and are unable to use an existing functional limitations profile. If you would like to call in the assistance of a medical advisor, you should consult with the parties before deciding whether you will contact someone yourself or whether you will contact the Liaison Officer. You must in any event refrain from calling in the assistance of a third party without consulting the parties, because of the equality of arms. A similar situation occurs, for example, if you are appointed as a neurologist and wish to call in a neuropsychologist.
87. If a party objects to calling in the assistance of a third party or conducting a supplementary examination and you fail to reach agreement on this with the parties, please consult the Liaison Officer. A party who fails to cooperate may suffer serious consequences if the court takes the view that such party acts in violation of its obligation to cooperate with the making of the expert report.
88. It is generally useful to be clear about whether someone else will conduct a supplementary examination and to inform the parties that the costs of such examination must be reimbursed in combination with the other costs of the expert report.

10.4 Customary supplementary medical examination

89. The general information of par. 10.3 also applies to the medical examination with due regard to the following modifications.
90. Occasionally, you may deem it necessary to take a blood sample from the subject of the expert examination or have the subject undergo an x-ray and obtain a radiologist's assessment. If you have not yet informed the parties of such supplementary medical examination, but

you meet with the party involved in the course of your own examination, and discuss the necessity of the supplementary examination to which the party involved does not object, you are in principle free to proceed to conduct the examination.
This may be different in cases where, e.g. due to the costs of the supplementary examination, the advance is no longer adequate or the supplementary medical examination is not customary and the other party could not be expected to foresee any such supplementary examination. In such exceptional cases you should give both parties the opportunity to respond to your intention to have a supplementary examination conducted before commencing such examination (for more information on the estimate of a further advance see no. 140).
91. It is possible that your professional standard indicates that the mere absence of an objection does not suffice, and that you must obtain permission of the party involved to conduct a supplementary examination that infringes upon his physical or mental integrity.

10.5 Incorporation in the report

92. If you have called in the assistance of someone else in the course of the examination or if there was any customary supplementary examination, you must refer to this in the report.
93. After completing the examination and before submitting the report, you should no longer consult third parties or have them conduct a supplementary examination without informing both parties and without both parties being able to respond. This follows from the equality of arms.

10.6 Adjusting the costs

94. In all cases where you call in the assistance of third parties or have them conduct a supplementary examination, you may only charge the costs for such examinations on your advance invoice and your final invoice. You do not send separate invoices for this, neither to the court, nor to the parties (see par. 14).
The person who has assisted you in your examination may not submit an invoice to the court, but should submit the invoice to you. You process these costs in your invoice. This is because the person who assisted you was not appointed by the court as an expert. By law only

costs incurred by the person appointed as an expert by the court are to be reimbursed. This is you and that is why you incorporate the costs of your assistants in your invoice.

11 Consequences of the parties' rights and obligations during the expert examination

11.1 General

95. The law provides that parties must cooperate with the expert examination. If a party fails to do so, the court may attach consequences to this. The court must give the parties the opportunity to react before deciding on the consequences. In most cases the refusal to cooperate will have negative implications for the refusing party.
96. The obligation to cooperate also includes the obligation to pay the assessed advance of your expenses. If the advance is not paid in a timely fashion, the court may rule that the examination be cancelled. Thus it is essential not to commence the examination before you have received a notification from the court registrar that the advance is paid and that you may start the examination (see par.14). The obligation to cooperate may also mean that a party complies with your wish to attach a limitation of liability clause to accepting the appointment, but this may be different depending on the substance of the clause (see par. 8.2).
97. The parties must furthermore grant any reasonable requests made by you for information and documents, they must perform agreements concluded with you in good time and state reasons when requesting an extension of deadlines, and such. If you have the impression that the examination is being seriously delayed or complicated by the lack of cooperation on the part of either party, you should contact the Liaison Officer.

11.2 Meeting with the parties

98. If you invite a party to meet, e.g. to obtain oral information, you should as a rule also provide the other party with the opportunity to be present (see par. 11.3 for exceptions in view of privacy). This follows from the equality of arms. There are exceptions to this rule, e.g. if you have reason to believe that the other party's presence might unreasonably impede the examination. If such grounds do not apply to the other party's counsel, you must provide his counsel with the opportunity to be present. If you would like to meet with one party without the other party and his counsel being present, you must inform them prior to the meeting that you are to meet with one party and that you will inform the other party of the outcome of that meeting and provide the latter with the opportunity to respond to such outcome.
If the other party objects to your intention to meet with one party only and you fail to come to a mutual understanding, please contact the Liaison Officer. You inform the other party of the outcome of a meeting with one party, for example, by making available an audio or video recording of the meeting or a written report to the other party.
If you conduct a meeting with a party without providing the other party and/or his counsel with the opportunity to be present, please mention this and the reasons in the expert report.
99. If you conduct the examination independently rather than under the auspices of the court, you reasonably determine how much room the parties will have in the meeting to inform you and respond to one another. If you meet with the parties, they may bring their counsel.
If both parties are assisted by a professional legal assistance provider, it is usually advisable to avoid a situation in which one party is assisted by counsel while the other party is not. Under procedural law you do not have to prepare a record of every meeting with the parties and submit this to them before using it in the expert report. The standards of your profession may however contain rules to that effect. The room you provide to verify that you and the parties have properly understood one another should not end up in a debate about aspects of the case which the parties should settle before the court and not before you, nor should it lead to excessive costs for the expert report.
100. If you conduct the examination independently in stead of under the court's auspices, you have to determine within reason to what extent parties will have the possibility during the meeting to be

assisted by third parties, such as an expert called in by a party or a life partner. You may observe two aspects as a guideline. First of all, it must not interfere with the object of the meeting. In addition, a party may in principle be assisted by whomever he prefers in answering your questions and making comments, unless it would seriously disrupt the examination's effectiveness. In case of doubt or problems, please consult the Liaison Officer.

101. Occasionally, the parties appear without counsel due to the expense and subsequently, once counsel take note of the substance of the meeting, this may give rise to discussion about what a party said or meant to say to an expert. You may seek to reduce the risk of miscommunication. One simple option would be to summarise a party's relevant comments at the end of the meeting and ask the party whether this summary is accurate. Alternatively, you may, at the end of the meeting, put down in writing a concise summary of a party's comments that you deem relevant to your further examination or report and ask the party to sign such summary. If you intend to make an audio recording of the meeting, it is advisable to inform the parties of this beforehand.

102. If you convene a meeting with both parties, but one party and his counsel fail to appear, you must provide them with the opportunity to be informed of the outcome of the meeting. It is in principle up to you to decide how such information is communicated. You may well incorporate the meeting's results in your draft expert report to which the parties can respond by making comments and requests (see par. 5.3). If this would be ineffective, you may consider making available a written report or an audio or video recording of the meeting.

11.3 Meeting with one party and privacy

103. There is one exception to the requirement that both parties have to be allowed to attend a meeting with you, or at least have to be informed of the substance of a meeting with one party. This exception occurs when a party's privacy must prevail over the interest of both parties to have access to the same information. This is regulated by law in respect of medical examinations. If you have to conduct a medical examination of one party, you do not have to provide any other party with the opportunity to be present during such examination. You invite the party through his counsel. You send a copy of the invitation to the other party's counsel.

104. Aside from the medical examination, the same information should in principle be available to both parties. In exceptional cases it is conceivable that compelling interests of one party mean that certain information need not be supplied to the other party. If a party is prepared to inform you but not the other party and you are unable to come to a mutually acceptable understanding, please contact the Liaison Officer. The court may decide whether a refusal by one party to furnish information to the other party is justified (Section 22 of the Dutch Code of Civil Procedure). If the court deems the refusal unjustified, the refusal may have negative implications for the refusing party.

11.4 Examination on location and personal examination

105. If necessary you may have to inspect the object of your examination. In that case you must notify the parties and their counsel in good time of the intended inspection and allow them to attend it. If the parties inform you that they waive their right to be present, please make a note of this in the expert report.
106. This may be illustrated by the following examples. For example, if you carry out a valuation as an estate agent on the instructions of the court, you must provide the parties with the opportunity to be present when you survey the object concerned. If you inspect a building as a construction expert, you should give both parties the opportunity to accompany you. If you are an IT expert and would like a party to demonstrate hardware or software to you, you must give both parties the opportunity to both be present. If you take the view that the parties' presence does not serve any reasonable purpose in a certain kind of examination and you fail to come to a mutual understanding, please contact the Liaison Officer.
The following are examples of examinations that you may carry out without offering the parties the opportunity to be present: literature study, audit by an auditor, consulting your internal knowledge systems to find information in your field of expertise which you will process in your expert report. In case you process the results of this examination in your expert report, please state the source of your findings, e.g. author, title and the usual publishing details .

11.5 Right of inspection and obstruction of the medical examination

11.5.1 Do you have to observe the right of inspection and obstruction?

107. In the medical examination the right of inspection and obstruction may apply (see no. 104 for the privacy aspects of information aside from the medical examination). If you are a care provider in the sense of the Medical Treatments Contracts Act, you must, in the course of a medical expert examination, observe the right of inspection and obstruction of Section 7:464 (2) (b) of the Dutch Civil Code. Care providers in the sense of the Medical Treatments Contracts Act are, for example, the care providers listed in Section 47 (2) of the Individual Healthcare Professions Act: doctor, dentist, pharmacist, healthcare psychologist, psychotherapist, physiotherapist, midwife, nurse. The right of inspection and obstruction must however also be respected by other care providers who perform acts in the course of their medical profession relating to the assessment of the health or medical supervision of a person, performed on the instructions of a person other than that person in connection with determining claims or obligations, application for an insurance policy or facility, or the assessment of the suitability for a course/training, future employment or the performance of certain activities (Section 7:464 (2) (b) of the Dutch Civil Code, Section 7:446 (1) of the Dutch Civil Code and Section 7:446 (5) of the Dutch Civil Code). This covers, for example, paramedics. A care provider in the sense of the Medical Treatments Contracts Act is also the legal entity carrying out medical acts in the course of a medical profession, e.g. a hospital.

108. The right of inspection and obstruction in any event applies to civil personal injury cases. It is sometimes argued that the right of inspection and obstruction does not have to be observed if you report on medical liability claims. The underlying idea is that the right of inspection and obstruction would not cover the part of the report in which you answer the question of whether the doctor held liable acted in violation of the professional standard. This question specifically concerns the performance of the doctor held liable. However, in most cases the answer to that question is closely related to the facts and circumstances concerning the person and the patient's health. This means that the answer to such question might also contain information that is subject to the right of inspection and obstruction. Moreover, the question of the medical error is usually followed by questions of

causality and damage and the answers to those questions are usually covered by the right of inspection and obstruction. If you act as an expert in medical liability cases and you limit the inspection opportunity to parts of your report, there is a risk that you do not entirely fulfil your obligation to allow parties to exercise their right of inspection and obstruction.

11.5.2 The object of the right of inspection and obstruction

109. The right of inspection and obstruction gives the subject of the report the right to decide whether he may be the first to take note of the contents of the report (inspection). He may also prevent the report from being made available to the other party (obstruction). If a party does indeed block the report, your activities end. The party blocking the report acts in violation of his obligation to cooperate with the expert examination. The court may attach consequences to the obstruction as it deems advisable. Before the court rules on the possible consequences, the court gives the parties the opportunity to respond.

11.5.3 Working method

110. You observe the right of inspection and obstruction as follows.

111. You conduct the entire examination and write your report. You do not yet give the parties the opportunity to make comments and requests regarding your report (see par. 5.3). As far as you are concerned, your examination and report are completed; the report is still referred to as a draft report at this stage, as the opportunity for inspection and obstruction and for comments and requests are yet to follow. You send your draft report to the party that has the right of inspection and obstruction, i.e. the subject of the expert examination. This person is also referred to as the inspectee or the person involved. If the person involved is assisted in the proceedings by counsel, the rules of procedural law prescribe that you must send the report to his counsel and not directly to the person involved.

112. In order to be sure that you comply with the purpose of the right of inspection or obstruction, you can put the report in a sealed envelope addressed to the person involved. You then put the sealed envelope in another envelope which you send to his counsel. Please enclose a letter to his counsel in which you state that the report is sent to the person involved so that he may be the first to inspect the report

to assess whether he wishes to block the report. Please state by which date you wish to hear his answer. You should also state that there will be opportunity to make comments and requests if the report is not blocked.

113. At this stage the person involved may inspect the report, but does not yet have the opportunity to make comments and requests. Should you nevertheless receive any, please check whether a copy has been sent to the other party (par. 7). It is advisable to write to both parties that you will not include comments and requests in the report until you respond to the comments and requests of both parties. Thus at this stage you do not yet respond to any comments or requests of the person involved (or his counsel). This is because, on account of the equality of arms, you should only respond to comments and requests of the person involved once you have provided both parties with the opportunity to make comments and requests. Processing any comments and requests of the person involved in the report at this stage would jeopardise the equality of arms. Otherwise the other party would be unaware which changes are at issue. The other party is entitled to know what changes have been made between inspection of the report by the person involved and the start of the comments and requests round. Thus you may not discuss the contents of the report with one party without informing the other party. When you ask the person involved whether he wishes to block the report, only a straight 'yes' or 'no' is permissible as an answer.

114. For more information on what to do if the person involved makes any requests for correction, please refer to par. 5.4, as you may not process those requests at this stage.

115. If the person involved blocks the report, your activities come to an end. Please inform the Liaison Officer that the report is blocked while enclosing your final invoice (see par. 14). Please do not send the report to any one else.

116. If the person involved informs you that he will not block the report, please send the draft report to the other party as well and inform both parties that they may make comments and requests within a fixed term (see par. 5.3).

12 Appointment together with other experts

117. Occasionally you are appointed as an expert together with other experts to answer questions together. The court may rule which one of you will lead the examination. If not, you will appoint one of you to lead the examination and you will inform the Liaison Officer and the parties whom you have appointed. After completing the examination, a joint expert report is issued, unless this is not possible due to the nature of the report. Any difference of opinion between you may be noted in your report.
118. If you are appointed together with other experts, but different questions are put to each of you which you must answer independently, you may conduct your own examination and issue an individual report, unless the court rules otherwise. You are free to consult one another as experts, unless the ruling determines that consultations between the experts are not permitted. In your report you should note any consultations you have conducted with other experts.

13 Report

13.1 Preparing and issuing the report

119. A model expert report is available to ensure that you omit no data which may be relevant in terms of procedural law. You are not bound to the set-up of the model report. The model serves to enable you, aside from the content of the expert report, to focus attention on information which is relevant in terms of procedural law. It is up to you to use the model expert report as a basis for your report or to avail yourself of your own model and include the data of the model expert report therein. The court registrar will send you the model expert report in digital form when your email address is known to the court. You can also find the model report on www.rechtspraak.nl.
120. It is important that you state reasons for your answers (see no. 5).
121. The court may ask as a final question whether you have any comments to add that may be relevant to the assessment of the dispute. This question is meant to provide you with the opportunity to

make comments which you believe have not yet been put forward in the court's questions and may however be relevant to a full understanding of your expert report or the further proceedings. Two notes should be made in that respect. Your comments should fall within the scope of the dispute of the parties as outlined by the court in one or more interlocutory rulings in this matter. In addition, the standards in your field of expertise may indicate that your comments may not exceed the parameters of your field of expertise.
122. Please do not send the expert report to the court before it is completed. Please do not send to the court the draft you send to the parties in order to give them the opportunity to make comments and requests or to exercise their right of inspection and obstruction.
123. Before sending the report to the court you have to sign and date it.
124. The law provides that you must submit a written report to the court. Please enclose the final invoice (see par. 14.3). The court would also like to receive a digital copy of your report if available. This facilitates the processing of your report in the ruling.
125. Please send your final written report to the court that has appointed you, for the attention of the Liaison Officer. The latter has already informed you how many copies of the report you must send. The court sees to the forwarding of the report to the (counsel of the) parties.

13.2 Impediment/delay

126. If you are, for whatever reason, unable to issue the expert report (in time), please notify the Liaison Officer of this in writing at your earliest convenience.

14 Payment

14.1 General

127. Payments include the advance and the final settlement. Below you will find an outline of some general aspects of the payment procedure. This is followed by a description of the working method regarding the advance and the final invoice.
128. The law provides the option of an advance payment to reduce the risks of collection for you as an expert. By law this risk ultimately lies with the expert. Each court has fixed rules regarding the advance for and payment of the expert's costs and fees to reduce this risk. By using these rules you will cover the risk of collection. Please find below an outline of the proceedings commencing with an advance invoice (par. 14.2).
129. The court may rule that the advance must be borne by a party who has been assigned counsel under the legal aid scheme. In that case, the advance is charged to the State and, afterwards, you will get payment from the State.
130. Once the expert report is submitted to the court the final financial settlement takes place. You then have to submit your final invoice, specifying your fees and the costs you have had to incur in the course of the examination. Section 199 of the Dutch Code of Civil Procedure refers to compensation (costs) and remuneration (fees). The fees offer compensation for the activities you have carried out. The reimbursement of costs may cover costs of materials used, supplementary examinations such as blood samples or x-rays, the assistance of third parties, travel expenses and such.
131. Thus you do not charge parties or the court with the costs of the examination separately or before the final invoice. All costs plus your fees are stated on your final invoice. If you inadvertently invoice certain matters, services or activities separately, you will as a rule be requested to state all specified costs and fees on your final invoice (see par. 14.3).
132. If you are liable to pay VAT please state the applicable tariff and, where necessary, add the VAT both to your advance and final invoice.
133. The equality of arms also applies to advances and final invoices. After receiving your invoice the court registrar gives the parties the opportunity to respond. The court then determines the amount you are entitled to.

14.2 Working method regarding the advance payment

134. Prior to or shortly after your appointment the court will request you to state your advance payment. If possible, please state the sum that you expect to be in line with the final invoice. It is important to be realistic. You should not merely take account of your expected examination activities, but you should also include a margin for costs pertaining to the comments and requests made by the parties. A realistic estimate of the real costs enables parties to consider, before the start of the examination, whether they wish to continue the proceedings or to try to settle their dispute and it reduces the risk of delay as a result of having to estimate a further advance during the proceedings. If possible, please specify the sum you state by listing your hourly rate, the estimated number of hours and expected expenses. Please state the expected VAT if you are liable to pay VAT. The court will give the parties the opportunity to respond to your invoice after which it will assess the advance payment with due regard to your advance invoice and the parties' response.

135. A party who disagrees with the advance payment assessed by the court may immediately file an appeal against the court's decision regarding the advance. If an appeal is filed against the assessed advance payment, you should not commence your activities (see no. 138).

136. In most cases no appeal is filed and the court collects the advance payment from the party/parties who have to pay the advance according to the court ruling. If a party has been assigned counsel under the legal aid scheme the court registrar charges the advance to the Treasury.

137. Paying an advance falls under the parties' obligation to cooperate with the expert examination. If payment is not received (in time), the examination will be cancelled.
You are then notified that you need not conduct the examination.

138. The basic assumption is that you do not commence the examination before you have been notified by the court that the assessed advance has been paid and you can commence the examination. Late or no payment or an appeal may mean that the examination will not take place. It also happens that the parties reach an amicable settlement after all, as a result of which the examination is no longer required.

139. If you see cause to depart from the basic assumption of not to start the examination before having been notified by the court that you

may start, please consult the Liaison Officer first. If you commence the examination before the advance payment has been made, you do run a risk of non-payment and recovery. Please remember that without payment of the advance a subsequent insolvency of a party may interfere with the payment of the costs of the expert examination.
140. During the examination you must be careful not to exceed the amount of the advance payment. If this is imminent, please suspend the examination temporarily, send a written request for a supplementary advance to the Liaison Officer and wait for a reply from the Liaison Officer before continuing the examination. Meanwhile, the court follows the same procedure as with the first advance payment (see no. 134). If you fail to act as described and the court gives a higher final assessment of the costs than the paid advance, you will receive a ruling to entitle you to collect the payment, but the risk of collection lies with you. You can reduce this risk by requesting an assessment of an eventual supplementary advance in due time.

14.3 Working method regarding the final invoice

141. Upon submitting the written report please enclose your final invoice. The invoice specifies the costs, fees and VAT. Regarding any costs you would like to be reimbursed, please specify the activities and costs per activity, e.g. a blood sample, x-ray examination, etc. If you have called in the assistance of third parties, please state their name and specify their hourly rate and number of hours. The statement of fees should include your own hourly rate and the number of hours you have spent on the examination and the written report.
142. As long as the court does not have your final invoice, the finances of the expert examination cannot be settled and thus you will receive no payment. If the expert report is not accompanied by a final invoice, the Liaison Officer will ask you to send it to the court.
143. Upon receiving your expert report and final invoice, the court registrar sends a copy to the parties to the proceedings. They are given the opportunity to reply to the final invoice within a certain period. The court will then assess the total costs of the expert examination with due rgard for your final invoice and the eventual replies of the parties. The court registrar may occasionally request a written explanation of (part of) the final invoice.

144. If the costs are assessed at the paid or deposited advance (including any supplementary advance) you do not run the risk of collection. The court registrar pays you the available advance.
145. If the costs are estimated at a lower amout than the paid or deposited advance, the court registrar pays you the sum that you are entitled to out of the available advance. The difference is repaid to the party who has paid the advance or in case a deposit has been made the amount remains with the State.
146. If the costs are assessed higher than the paid or deposited advance (including any supplementary advance paid), all kinds of varieties are possible, which are listed below.
147. First of all the situation in which a party has been assigned counsel under the legal aid scheme and the advance has been deposited by the State. The court registrar pays you the deposited amount. If the party to whom the costs are charged is still assigned counsel under the legal aid scheme and the finances are settled before the court has ruled on the costs of the proceedings, the court registrar also pays you the difference. However, if the finances are not settled until the final court ruling on the costs of the proceedings, the party who must pay the difference is ordered to pay you the difference. You may then collect the sum which this party owes you and, if necessary, call in the assistance of a bailiff. In this case the law provides that you bear the risk of collection.
148. Finally, the situation in which no counsel has been assigned under the legal aid scheme, but the advance is paid by a party/parties in accordance with a court ruling. The court registrar pays you this amount. Regarding the difference between the advance and the assessed sum to which you are entitled, you receive a court ruling on the remainder that must be paid by the party/parties. If payment after this ruling is not made voluntarily, you need the assistance of a bailiff to collect the payment.

15 Copy of the ruling after the expert report

149. If your expert report is used in a ruling in the case in which it was issued, you will in principle receive a copy of the ruling. There may be cases in which the compelling interests of the parties to the proceedings or third parties preclude sending you a non-anonymised ruling.
150. The expert report is not always used in the court ruling. Occasionally, an expert report is issued on the instructions of the court without the parties having brought the dispute before the court (a so-called provisional expert report). Or parties may settle their dispute after the expert report is issued, as a result of which no final court ruling is rendered. You are not notified if no final court ruling is issued.

16 Retention period for documents

151. The courts must retain court files for a period of seven years under the applicable rules of archiving. The seven-year period commences when the court renders the final ruling in the case in which you issued a report.
152. The courts' obligation to retain the court files for a period of seven years does not automatically apply to you. Rules applicable to your profession may however include a retention period for documents such as those of an expert examination.
153. Experience shows that after an expert report the proceedings are usually completed within a couple of years. If you have received no copy of the court ruling after about five years and you are not sure whether you may destroy the documents, please contact the Liaison Officer to ask whether the case is completed.

Definition of terms and abbreviations

advance payment the declaration, made by the expert to the court before the start of the examination, in which the the total expected costs of the expert examination and report according to the expert are stated.

assignment of counsel under the legal aid scheme assignment of counsel under the legal aid scheme means that a party, pursuant to the Legal Aid Act, does not have to bear all of his costs of the proceedings. The State pays part of the costs. This party must however at all times bear some income-dependent part of his costs of the proceedings. Furthermore, a party who has been assigned counsel under the legal aid scheme may be ordered to pay the costs of the proceedings incurred by the other party and must pay such costs by himself. According to the rules applicable to the order to pay the costs of the proceedings, a party who has been assigned counsel under the legal aid scheme may (ultimately) have to bear the costs of the expert report.

considerations a court ruling includes the considerations on which the ruling is based. They are also referred to as legal grounds (for the decision) and thus state the reasons for the decision.

counsel anyone instituting legal proceedings before a court of appeal or the civil-law division of a district court must by law be assisted by a counsel who is an attorney at law.
In cantonal court proceedings a person may be assisted by a counsel. For example, then attorneys, bailiffs, debt-collection agencies, legal assistance providers, legal advisers may act as counsel.

court ruling a court ruling is a collective term for judicial decisions. Court rulings are distinguished into judgments and orders/decrees. The distinction refers to the kind of case.
A judgment is issued by a district court, a court of appeal or the Dutch Supreme Court. Judgments are usually rendered in proceedings initiated by a writ of summons.
An order/decree may come from the Dutch Supreme Court, a court of appeal or a district court and is usually rendered in proceedings initiated by a petition.
A decision of a district court may come from the civil law division, the cantonal division or the family (and juvenile) law division (or team). A decision

of a court of appeal may come from the civil law division or the family (and juvenile) law division (or team).

equality of arms a fundamental principle of procedural law. The court may not base its opinion to the detriment of a party on documents or other information to which that party has been unable to reply. If a court is assisted by an expert the equality of arms also applies to the expert examination, e.g. the parties' right to make comments and requests follows from the equality of arms.

examining magistrate the judge instructed by a ruling of a three-judge division under whose auspices or instruction the expert examination is to be conducted.

expert hearing in an expert hearing the expert is heard by the court at a court session in a court building or at another location determined by the court. The parties are at all times invited to attend. An expert hearing may be held without the expert having issued an expert report. The expert may also be heard further to an expert report. An expert may be summoned to appear for an expert hearing by letter or by court ruling.
If the court has not requested the expert beforehand to indicate dates on which he is unable to attend, the expert, if unable to attend, may request the court, in writing and within a period of fourteen days of the date of the summons, to set another date, while indicating the dates on which he is unable to attend in the next three months.

expert report the written, signed and dated report of the examination that an expert conducts on the instructions of the court. The instruction is issued in the course of legal proceedings before the court. The court orders an expert report to be able to further assess the parties' dispute (see no. 5). These proceedings are also referred to as proceedings on the substance or the substance of the case, as the parties submit their entire dispute for judgment by the court and do not solely apply to the court to appoint an expert.

final invoice following the end of his activities the expert specifies on the final invoice his fees and expenses and sends the final invoice to the court.

in chambers a case may be heard in chambers, i.e. the court session is not open to the public and may only be attended by those who are entitled to attend by law or those whom the court allows to attend.

Liaison Officer the person who has been appointed by the court to act as a liaison for the experts appointed by the court. See par. 3.

mandatory legal representation a party to the proceedings is legally obliged to be represented by counsel in proceedings before a civil division of a court. This obligation applies to civil proceedings, except for proceedings before the cantonal division of a district court.

means of proof any means to furnish evidence in court proceedings, e.g. a witness interrogation, a written document or an expert report.

parties the parties conducting the proceedings before the court.

provisional expert report the written, signed and dated report of the examination conducted by an expert on the instructions of the court (see no. 5). The court instructed the examination at the request of a party to the proceedings. The provisional expert report may serve, inter alia, to provide a party with insight into the feasibility of a position, to substantiate a position, or to enable a party to consider whether it is useful to institute proceedings or continue pending proceedings.
Thus the instruction to conduct an expert examination is not issued within the broader context of a dispute brought before the court by the parties and on which a court must decide after the expert report.
In many cases the parties will (try to) settle their dispute after a provisional expert report and won't bring the dispute before the court that issued the instruction to the expert. If the parties do bring their entire dispute before the court, the parties and the court may use the provisional expert report in the civil law proceedings and a new expert report may be omitted. In that case it is necessary that both parties have appeared in the proceedings that led to the provisional expert report and that the legal requirements in the preparation of a provisional expert report, as explained in this Practice Direction, have been observed.

State deposit The State grants a deposit for the costs of the advance of the expert examination where the party to the proceedings bearing the costs of the advance has been assigned counsel under the legal aid scheme (see also: assignment of counsel under the legal aid scheme).

supplementary examination examination conducted not by the expert himself and required to enable the expert to answer the questions submitted by the court.

third party a person who is not appointed as an expert and by whom the expert is assisted in the course of the examination or in recording his findings in the report.

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