

# BEST PRACTICE

Barristers - A Guide for Legal Support Staff





# ABOUT THIS GUIDE

The Support Staff Community Inc was formed to represent administrative and support professionals within the legal profession. The Community provides support staff professionals within the legal profession a platform for networking and socialising with colleagues, and access to mentors, educational seminars and resources. Membership to the Community is free, and gives legal support staff access to our events and resources, including our Best Practice Guides.

The Support Staff Community's Best Practice guides are designed to provide guidance to support staff in relation to the various aspects of their role. They are prepared by the Management Committee of The Support Staff Community, which is comprised of legal support staff from different areas of law, with different backgrounds and levels of experience.

This guide covers the topic of barristers, and provides best practices for all aspects of dealing with barristers in which support staff may be involved.

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**Gemma Berkhout**  
PRESIDENT





## INTRODUCTION TO BARRISTERS

A barrister is a specialist legal professional who is retained by a solicitor to provide expert advice or to advocate for a client. To become a barrister, legal professionals must undertake advanced studies and successfully pass a series of exams. They are then required to undertake what is essentially a traineeship, known as a "readership", during which they work under an experienced barrister for a one-year period.

Barrister's may also often be referred to as "Counsel". This can sometimes be confused with Special Counsel, which is a job title for a senior lawyer and *not* a barrister.

Once barristers have practiced for some time, they may be appointed as Senior Counsel or Queen's Counsel. This title identifies the barrister as having an advanced level of knowledge and experience. These senior barristers are sometimes referred to as "silk", which is a reference to the material that their gowns are made from (compared to the cotton from which a junior barrister's gown is made).

Each barrister manages their own practice as if they were a sole practitioner, however they will usually rent a room which operates out of a single space with other barristers, which is known as "Chambers". Each Chambers usually has a clerk, who is a support staff professional who manages the bookings for each barrister within those Chambers. Some barristers may also have their own personal clerk or secretary, who assists with other tasks such as bookings, invoicing and preparing reporting letters.



Barristers may be retained during the course of a matter to assist in various ways, including:

- To appear at Court, instructed by the Solicitor who acts in the matter;
- To appear at Court, instructed directly by a client (although this is rare);
- To provide advice as to the prospects of success or strategy in a client's case;
- To act as a mediator or arbitrator; or
- To act on behalf of a client in a mediation or arbitration.

As a legal support staff professional, you will usually be involved in several aspects of briefing a barrister and it is important for you to become familiar with the processes involved. Tasks that you may undertake include:

- Communicating with barristers generally, including via their clerks and secretaries;
- Preparing Briefs to barristers; and
- Arranging payment of a barrister's fees.





## COMMUNICATING WITH BARRISTERS & THEIR CLERKS

As a legal support staff professional, you will predominantly communicate with a barrister via their clerk or secretary.

Be aware that there may be some jurisdictional differences between different States and areas of practice in this regard. For example, in Victoria, each barrister is assigned to a "List" and the list manager will be responsible for the barrister's bookings, rather than a clerk of Chambers.

If your firm does not already have one, it might assist to develop a list of barristers that your solicitor briefs regularly. Try to include further information like their fees and their contact details including the details for their clerk. You may also wish to record whether or not the barrister will accept an electronic brief.

It is a good idea to get to know the clerks that you deal with regularly. Remember their names and find out how they prefer to operate - for example, whether they would prefer you to contact them via phone or email. If you actively work with the clerk and adapt to how they prefer to work, you will be able to obtain information from them much more effectively.

A client should not communicate directly with a barrister or their Chambers unless they are being instructed directly by the client, although this is rare to occur.



## OBTAINING BARRISTER AVAILABILITY

It is common for lawyers to ask their assistant to obtain barrister availability, either for a specific date (such as for a Court hearing) or for general availability (such as for a conference).

Sometimes, the preferred barrister may not be available on the date required. You should notify your solicitor if this is the case and seek their guidance as to the next steps. Your solicitor may then want you to see which other barristers are available on this date, or see if the date can be rescheduled to one that suits the preferred barrister.

If you are asked to obtain availability for an extended time period, such as for more than two months, you may wish to email the clerk to obtain these dates as it may be easier for them to respond in an email rather than reciting all of the dates over the phone.

If your solicitor doesn't give you specific names of which barristers to contact, you can refer to your list of preferred barristers, as this will assist you with knowing who you should call as a priority. Ideally, your solicitor will direct you as to which chambers or level of experience they require for the matter (rather than having you cold calling countless barrister's clerks).

A barrister's availability changes frequently. If you have obtained availability on one day, you should not assume that they are still available at a future time. If you have been instructed to book in a barrister for a certain date, you should do so as soon as possible to ensure that you don't lose this available date.

## BOOKING A BARRISTER



Once your solicitor has decided to retain a barrister and the barrister is available on the date required, you can proceed with booking the barrister.



When you are contacting the clerk to book the barrister, you will need to have all of the relevant information at hand, including:

- Your client's full name.
- The other party's full name.
- The name of the instructing solicitor.
- If it is for a Court event, the details of the Court event including:
  - The date and time of the listing;
  - Which Court it is in, including the location of the Court registry.
- If it is for a mediation, the details of the mediation, including:
  - The date and start time;
  - The location of the mediation.
- If it is for a conference, the details of the conference, including:
  - The date and start time;
  - Who is attending the conference;
  - The location, if the conference is in person;
  - If the conference is by phone, who will be initiating the call and any arrangements for conference calling if required.

Once the barrister has been booked, the clerk will usually send you the barrister's costs agreement. More details about a barrister's costs can be found in the Barrister's Fees chapter of this guide.



# PREPARING A BRIEF TO COUNSEL

In order to retain a barrister, your firm will need to provide them with all of the relevant information and documents. This is referred to as a Brief to Counsel. As a legal support staff professional, you may be asked to assist with the preparation of briefs to barristers.

The brief should be issued well in advance of the Court date, mediation or conference, to ensure the barrister is provided with enough time to read the material which can often be quite voluminous. If your solicitor tends to issue briefs at the last minute, it might be a good idea to diarise reminders in both of your diaries a few weeks before the Court date or conference to prompt them to start preparing the Brief to Counsel.

Typically, a Brief would include:

- A briefing memo which may be referred to as "Observations", which are essentially a summary memo to the barrister outlining the background of the case and the issues in dispute;
- An index to the documents which are to be contained within the barrister's Brief; and
- Copies of the relevant documents for the matter. This will usually include:
  - Court documents;
  - Discovery / disclosure;
  - Correspondence between each of the parties, including any offers of settlement;
  - Correspondence between the firm and the client, subject to the nature of the correspondence; and
  - Any other documents that the solicitor acting on the matter deems relevant to the brief.





## *OBSERVATIONS TO BRIEF*

It is unlikely that you will be asked to prepare the observations to the brief unless you are highly experienced and/or employed in a paralegal role. In the event that you have been asked to prepare observations to a brief and you do not have previous experience doing so, we suggest:

- Determining whether there are any firm precedents for the preparation of observations to brief that you can use to assist you to draft same.
- Reviewing briefs prepared by your solicitor in other matters, to see what style and format they usually prefer to use when drafting these documents.
- Reviewing important documents within the matter which contain factual information about the matter, including Court forms and any other relevant documents.
- Summarising in the observations all aspects of the case, and particularly:
  - Who the parties are, including who it is that you act for;
  - The background to the proceedings and how they came about; and
  - The main issues in dispute.
- Don't forget to confirm the purpose of the brief, i.e. that the barrister is briefed to appear at a Court date, or briefed to advise on a certain issue in conference.

## *PREPARING AN INDEX TO BRIEF*

When preparing the index to the brief, it is important to include all relevant documents. Ensure that you include all of the documents that are mentioned in the observations.

You should list the documents in a logical order, for example, in chronological order and/or categorised by which party filed the documents.

Law firms often have a preferred format or style for briefs to counsel, so make sure that you are following any style guides which may be provided by your firm.

## *COLLATING AND FINALISING A BRIEF TO COUNSEL*

Once the index has been drafted, you can start collating the documents to be included. Follow your firm's protocols about how these should be prepared, including whether it needs to be printed single sided or double sided, whether it should be stapled, whether you should be using numbered tabs or labelled tabs and any other presentation guidelines issued by your firm.

Some barristers can be quite particular about how their brief is presented so if you encounter any barristers who request their brief to be collated in a certain way, you should make a record of this for when you brief this barrister in the future.



Finally, you should proofread the brief one last time. Ensure that the Barrister's name is spelt correctly and that they have been addressed using the correct title if they are a Senior Counsel or Queen's Counsel. All parts of the brief should be approved by a solicitor prior to releasing to the barrister.







## UPDATING A BRIEF TO COUNSEL

It is common to receive further documents in a matter which you will be required to provide to the barrister, after you have already completed and released your brief. This could include Court documents that have been filed on behalf of your client or received from the other party. When you are approaching a Court hearing or conference, you should review the file and liaise with your solicitor to ensure that the barrister has all of the documents that they will require.

## ELECTRONIC BRIEFS TO COUNSEL

As firms continue to lead towards a paperless future, some organisations are attempting to roll out electronic briefs to Counsel. This is particularly the case following COVID-19 where working from home arrangements prevent access to files in order to photocopy material and prepare hard copy briefs. This will obviously effect the way that your brief is prepared, and you should consider things such as:

- Will your barrister accept an electronic brief? Many barristers will refuse to accept electronic briefs, so make sure that you check with the clerk before you start working on the electronic brief.
- If the material is voluminous, how will you send your electronic brief to the barrister noting that many email providers only transmit small files. You may need to consider using a file transfer program such as One Drive or Dropbox, or a dedicated electronic brief program such as eBrief Ready.
- If you are using a dedicated program to send your brief, will the barrister be able to use it? You may wish to send detailed instructions to the barrister and their clerk or offer to be available by phone should they require assistance in accessing the material.



# BARRISTER'S FEES

## WHO IS LIABLE?

Unless the solicitor has advised the barrister as to any other arrangement, the law firm will be liable for the barrister's fees, and not the client.

Because the law firm is responsible for the barrister's fees rather than the client, law firms will often require the client to place funds into trust prior to instructing the barrister, in order to ensure that they are not out of pocket if a client does not pay the invoice after it has been issued. If this occurs, you should ensure that the funds are reserved for payment of the barrister's fees as they must not be used for payment of your firm's invoices.



## COSTS DISCLOSURE

A barrister is required to disclose their fees and estimate of costs, prior to acting in a matter. The barrister will usually do this by way of a costs agreement which is provided to the solicitor acting on the matter. There is a legal requirement for the solicitor to then notify the client of this disclosure.

If you receive a costs agreement from a barrister, ensure that you bring this to the attention of the solicitor, and, if required, forward same onto the client, as soon as possible.

## PAYING THE BARRISTER'S INVOICE

As your solicitor or firm will usually have preferred barristers and use them regularly for different matters, it is important that you maintain a good relationship with each barrister that you brief. For this reason, you should prioritise payment of a barrister's invoice as soon as it is received.





## RETURN OF BRIEF

Once the barrister's involvement in the matter is concluded, they will then return their brief to your office. You should check with the solicitor what they would like done with the returned brief. As the brief usually only contains copies of documents that you already have on file, you may be instructed to destroy the documents if the matter has concluded on a final basis. Ensure that you do so in a secure manner as per your firm's secure destruction processes.

If the matter has not finalised, your solicitor may wish to retain the brief files as you can use these documents to prepare a new brief if you are required to brief a barrister again for that matter in the future. If you are briefing a new barrister, you should ensure that none of the documents you will be using for the new brief contain the previous barrister's file notes or personal notations upon the documents.