

Briefcase: Tips for briefing counsel



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Briefing competent, experienced counsel can be crucial to a client's case. This article provides tips for choosing the right barristers for cases and ensuring they are properly briefed.

For young lawyers, briefing counsel can be daunting. Many young lawyers won't have had the opportunity to prepare briefs or to work closely with counsel. Many will not know which members of counsel are most experienced and well regarded in their practice areas or most suitable for particular cases. This article aims to provide essential tips for briefing counsel, including selecting the right barrister and preparing briefs.

Why choosing the right barrister is important for your clients

It can be crucial to the outcomes of clients' cases that they are represented by appropriately experienced barristers with skills and expertise in the relevant area of law. Even strong cases can be jeopardised by not being properly presented to the court. Poor advocacy, failure to abide by the rules of evidence and the relevant rules of court, failure to make relevant legal arguments and failure to present cases in a cohesive, cogent and persuasive manner can all have adverse consequences for clients' prospects of success.

Cases not being properly presented in court can lead to poor outcomes, wasted hard work on the part of solicitors, and complaints being made by disgruntled clients.

Why choosing the right barrister is important for your reputation

It is also important for the reputation of the solicitor and the firm that their cases are presented in a competent and ethical manner. Being linked to disastrous court experiences and meritless applications can have an adverse impact on solicitors' professional reputations and career prospects. While the presentation of cases in court is affected by the quality of the brief prepared by the solicitor, the choice of counsel is also crucial.

Important factors when choosing a barrister

A good starting point when choosing the right barrister is to consider the complexity of the case and the seniority of counsel required. It is unwise to brief very junior counsel for complex matters that are likely to be beyond their level of experience and knowledge. It is likewise a mistake to brief senior counsel in very simple matters, unless specifically instructed to do so, if a junior barrister could provide excellent representation at less than half the fee.

Another important consideration is counsel's level of expertise in the particular area of law. Although many barristers accept briefs in a wide range of areas, clients are likely to receive better representation from barristers whose main area of practice and experience is in the area of law to which the case relates than from barristers who dabble.

Other factors to take into account:

- the legal issues in the case;
- the factual circumstances of the case;
- counsel's reputation;
- counsel's personality;
- your client's personality;
- your client's budget; and
- availability.

Finding the right person for the job

It is important to book counsel as early as possible to avoid being left with limited options. Finding the right barrister should not be left to guesswork or random choices made from lists of available counsel. It should also be remembered that barristers' clerks, while a helpful source of information, are not impartial, and their role is to secure work for the barristers on their lists.

Many firms have (written or unwritten) lists of trusted and respected barristers who take briefs in the area(s) of law in which the firm practices. As such, senior lawyers within the firm should be the first port of call when seeking advice on finding the right barrister for a particular case.

However, there may be times when those barristers are unavailable, the case is outside their areas of expertise, or help from more senior solicitors within the firm is not available.

In these circumstances, it is helpful for solicitors to have personal connections with trusted barristers who can be relied on either to provide competent representation or to provide advice as to appropriate alternatives. Many barristers will not mind providing guidance to solicitors with whom they have ongoing professional relationships, so it can be important to start building those relationships early in your career.

Contacts from other firms, particularly within the same practice area, can also be an invaluable source of information and guidance. More senior solicitors are likely to have knowledge of the skills and experience of the barristers in their practice areas. Other young lawyers may have had positive or negative experiences that can help guide your decision-making.

Consider whether anyone in your network of contacts may be able to assist and don't be afraid to ask. Most people will happily answer a quick query, and informed decision-making can lead to significant benefits to your client and to your own reputation and experience.

Making and maintaining connections with barristers

Contact barristers directly to discuss your cases. This can build mutual trust and confidence over time and will help you to make yourself known to members of counsel in your field.

Attend networking functions in order to maintain existing contacts and meet new barristers.

If your regular barristers are unavailable, ask them for recommendations.

Get to know junior barristers, so that as you and they become more senior, you will have trusted contacts that you know well, that you work well with, and who can discuss ideas with you.

Preparing a good brief for counsel

A barrister's ability to present a case well is affected by the quality of the brief. When preparing the brief, consider its purpose. Set out clearly what it is that you want counsel to do. This may be providing advice on a specific legal or evidentiary issue, settling documents, or representing your client at a hearing.

Although different barristers like briefs to be prepared in different ways, and it is worth checking with the individual barrister, the following is a general list of things to include in the brief:

- a backsheet (including the parties' names, the court date, time and place, what counsel is briefed to do, and the fee);
- a memorandum setting out counsel's instructions and a summary of the material facts and issues;
- an index of documents; and
- all relevant documents, including all court documents, presented in a logical order; documents unrelated to counsel's task should not be included.

Finally, be sure to deliver briefs in time to allow the barristers to undertake adequate preparation, and call them to discuss the cases before they commence work.

Conclusion

Your choice of counsel and the steps you take to enable counsel to best present your clients' cases can have a significant impact on the outcomes of cases. These steps should be taken seriously to ensure that your clients are provided with the best available representation and the greatest prospect of success.