

## SERVICES PROVIDED BY BARRISTERS TO SOLICITORS

The most commonly provided services of barristers to solicitors are:

- Providing advice on evidence required or an opinion on the prospects of success shortly after a solicitor has taken initial instructions from a client.
- Acting as an advocate before Courts, Tribunals and Arbitrators,
- Providing advice – orally in conference or in writing by letter or formal opinion – on all matters which affect rights and obligations.
- Providing advice with respect to the gathering of evidence to be used in Courts, Tribunals, other formal hearings and in informal adjudications of rights.
- Providing advice with respect to the conduct of interlocutory steps in litigation and the conduct of interlocutory applications before Courts and Tribunals.
- Providing advice with respect to the conduct of trial, arbitration and other hearings at which rights are determined.
- Advising with respect to appeals of all kinds and conducting such appeals.
- Settling the precise terms of important letters, commercial documents, applications of all kinds, notices of appeal and other written instruments of all kinds.
- Acting as mediators and arbitrators.

Remember, it is often cheaper to brief a barrister to give advice **before** the problem occurs rather than retain a barrister **after** the problem has occurred!

The collective expertise of the SA Bar Association Inc. members is very wide. If you have a matter outside your own expertise or, if you want additional advice, you can almost certainly find persons with relevant experience and expertise at the Bar. If you need any further assistance, please do not hesitate to contact any of the office bearers of the SA Bar Association.

The information contained on this website will assist you to ascertain the general fields of interest of barristers who are members of the Association.

## INFORMATION SOLICITORS NEED TO KNOW ABOUT USING THE SERVICES OF THE BAR

### FEES

- Barristers' fees are negotiable. The best time to negotiate them is **before** work commences.
- If in doubt as to likely fees, obtain a quotation.

- Payment of barristers' fees is the responsibility of the instructing solicitor. Whether or not the lay client puts the solicitor in funds to pay a barrister's fees, the solicitor is under a professional duty to pay the barrister's account within 30 days of its presentation unless some other arrangement has been previously made.
- Disputes about fees can be resolved by the Adjudication Panel established by the Law Society of SA Inc, pursuant to the Professional Conduct Rules of the Society.

## **ETIQUETTE AND OTHER PRACTICAL MATTERS**

- Where to confer:  
There used to be a rule that all conferences took place in the barristers' chambers. That rule has proved too inflexible and a more practical approach is now taken. Members of the Bar prefer to meet and confer with solicitors, in barristers' chambers except when this is impracticable, having regard to such matters as the convenience of the persons (including lay clients) who will attend the meeting. A major reason for the preference by barristers that they confer in their chambers is that, by so doing, they preserve their independence and the appearance of independence from instructing solicitor and client.
- Availability:  
Before arranging a conference or sending a case for an opinion, it is essential to contact the barrister you have chosen by telephone. This is in order to ensure that the barrister has relevant expertise in the field, has no conflict of interest in the matter and can do the work you want done within the time of your (or your client's) choosing.
- Preparation for conferences:  
When arranging a conference you should inform the barrister of the general nature of the matter. If you are uncertain as to what information the barrister will need in order to give the advice you require then ask, at the time of arranging the conference, what information is required. You should then obtain the relevant instructions and documents, and if possible, forward them to the barrister ahead of the appointed conference time. This will enable your problem to be considered in advance and the advice you require will be available all the sooner.  
  
If you or your client have a particular objective in mind then it is advisable to inform the barrister of that objective in order that it can be considered in advance.
- Who should attend conferences?  
As the instructing solicitor, you should attend any conference because barristers, and the solicitors who instruct them, work as a team acting on behalf of the solicitor's client. Often solicitors require advice which will not necessarily be passed on to the client. At other times the barristers' advice will be of immediate interest to the client. In order to

determine whether or not your client is to attend, or a witness is to attend, the best thing to do is ask the barrister who should attend. You should never send your client or a witness to a conference with a barrister except by prior arrangement with the barrister and then you must also attend.

## **RELATIONSHIP BETWEEN BARRISTER, INSTRUCTING SOLICITOR AND SOLICITOR'S CLIENT**

- The formal relationship between a solicitor and his/her client is different from the relationship between the barrister and the solicitor's client. Whereas a contract exists between the solicitor and client, no such contract exists between the client and the barrister, who is retained by the solicitor. This gives rise to certain practical consequences, one of which is that the solicitor is under a duty to pay the barrister's fees whether or not they have been obtained from the client. But it is important to note that whilst the underlying relationship which the barrister and solicitor have with the client differs, each of them owe the same professional duties to the client in relation to such matter as confidentiality, the avoidance of conflict of interest and the duty to carry out professional work competently and efficiently.
- Solicitors and the barristers whom they retain to act for a client form a team working in the interests of the client subject only to higher duties such as those owed to the Court and those imposed by law. Part of the solicitor's function is to co-ordinate all activity. It is therefore important that the solicitor should be aware of all communications between the lay client and the barrister retained in the matter.

Where the client wishes to communicate with the barrister in writing it is preferable that this should take place through the solicitor. If an oral communication is necessary then it should take place in the presence of the solicitor or someone from the solicitor's office. Solicitors should discourage their clients from having direct contact with the barrister. A barrister will always politely attempt to do the same.

- If a solicitor becomes dissatisfied with the conduct of a barrister and, in particular, with respect to the prompt or competent performance of a barrister's work, then in the first place, the solicitor should bring this dissatisfaction to the attention of the barrister concerned.

If the matter is not satisfactorily resolved, then the solicitor should consider terminating the barrister's retainer in the matter and, depending upon the seriousness of the conduct, consideration should also be given to contacting a member of the executive of the Bar Association.

## **CAB RANK RULE**

- Barristers who are members of the SA Bar Association are obliged to accept any brief for that barrister's normal fee provided that:

- (a) the work is within the capacity, skill and experience of the barrister
- and
- (b) the barrister has no prior professional or personal commitment, interest or disqualification in the matter.

This obligation ensures that every member of the community will be able to obtain representation, irrespective of the nature of the cause or matter involved.

#### THE WORK OF QUEEN'S COUNSEL

- The appointment of a barrister as Queen's Counsel is a formal recognition of the skill and experience of that person. The level of fee paid to Queen's Counsel is generally, but not always, higher than the fee paid to Junior Counsel if engaged on the same work. If you have a matter which is difficult or complex or of such importance to your client that the extra expense is warranted, then you may need to engage Queen's Counsel.
- Queen's Counsel are engaged in precisely the same way as any other barrister retained. The relationship between Queen's Counsel and instructing solicitor is the same as well.
- It was once the case that Queen's Counsel would only appear in a matter if briefed together with a junior barrister. That is no longer so. Queen's Counsel may be briefed without a junior. However, Queen's Counsel are permitted to decline a brief where, in the interests of the client, more than one counsel is considered by Queen's Counsel to be necessary to properly discharge the work involved.
- Queen's Counsel carry out the same range of work as is performed by Junior Counsel, save that it is not usual for Queen's Counsel to be engaged to settle pleadings.

#### MORE INFORMATION

- Further information can be obtained by contacting any member of the executive of the SA Bar Association.
- More information about the relationship between barristers and solicitors can be found in the following publications:
  - The Law Society of SA – Professional Conduct Rules*
  - Uniform Code of Conduct of the Australian Bar Association*

A directory of barristers is provided on this website for the assistance of solicitors. The directory lists those areas of practice in which barristers have indicated they are prepared to accept briefs. No representation or warranty as to expertise or competency of any barrister listed in the directory is given by the SA Bar Association Inc.