

The Ideal Barristers Brief

The following is a list of those matters which I consider essential, highly desirable and ideal for any brief delivered to Counsel. It is written for the solicitor who is keen to ensure the best results for their client and the most cost effective litigation.

A more detailed and thorough description of what should be included and why along with examples, is contained on the NSW Law Society at www.lawsociety.com.au/idc/groups/public/documents/internetcontent/026515.pdf

Why?

If the matter is not worth this level of preparation then it is probably not worth litigation. Or it is not worth involving Counsel.

If the matter is worth litigation and Counsel is thought necessary or desirable then that extra expense is likely to be wasted or not used most effectively unless all of the following steps are undertaken.

Essential

1. **Delivered on time to enable proper preparation.** While Counsel are used to getting up to speed at the last minute, sufficient time to consider and research material and formulate arguments is essential.
2. **A signed statement of the client.** It is highly desirable that it be typed. It may be in the form of the affidavit material. Instructions should also contain details of the client's general attitude to settlement or compromise or the action generally. Failure to include such observations is usually an indication that sufficient regard has not been paid to these issues already.
3. **Clear reference to any time limitations or fixed dates by which the work is required.** Even if you cannot establish the precise time limit, mention if one might be in play. You should also clearly state the time by which you require settled material back at your office in order to take instructions and file it on time.
4. **The time, date and place for any appearance required.** Include the street address of any location as well as the floor, court and room number if applicable.
5. **Your contact details.** These should be on the front cover as should your name, the matter name and your firm name. It is sometimes not easy to see which party has delivered some briefs.
6. **Index.** This will not only help Counsel find the material but will serve as a checklist for you and Counsel for what is (and is not) in the brief. You should have included every relevant document from the eCourts site.
7. **Observations to Counsel** which at a minimum will tell what you are asking Counsel to do. Barristers work is quite specific and limited in range. You should be able to specify what it is you are asking and paying for. It is not very helpful to say 'advise generally'.
8. **Contains clean, clear copies** with all the pages present in the correct order and fully legible. If the copy you have is not, get another one. If you think the judge would complain about the state of the document you will need a better copy eventually so do it now.
9. **Fits comfortably in the folder or folder.** Counsel cannot conduct effective research or litigation if the folder is jammed so tight they can't turn the page. Break the brief into parts. Mark their volume numbers on the front e.g. *1 of 2 – Statements*.
10. **Contains explicit reference to any matter relating to fees.** Unless clearly stated you should not expect Counsel to accept a brief that is speculative, involves any deferment of payment after the work is completed

or is subject to a scale. It is highly desirable that you have already discussed fees with Counsel and indicated that and any agreements reached in your observations.

Desirable

11. Nearly any legible format is sufficient but the most efficient is usually an A4 hard backed ring bound folder, with single sided copies attached via a 2 hole punch. This allows papers to be added or rearranged.
12. **Pagination.** This is essential on longer briefs. The requirement for pagination of each exhibit and statement separately already exists under UCPR 435 but should apply to the brief as a whole too. Consider different numbering schemes for different volumes or parts.
13. **Tabbed.** The brief should contain tabs between either all documents or at least all sections.
14. **Contain original photographs.** Black and white photocopies are next to useless. Either colour photocopy any photographs or scan them in colour and attach the scans on a CDROM or USB key.

Ideal

15. **Contains a chronology of key events.**
16. **Contains drafts of any documents which are to be settled.** You've already spent your client's money to know you want assistance. The client will get the most benefit if the fruits of your work give Counsel a head start. Time spent downloading and filling in fields on Court Forms is best spent by your support staff.
17. **Is accompanied by an electronic copy in Word or PDF on CD.** This applies both to the drafts and the brief itself. It preserves a clean copy for Counsel to print out if needed and can be searched electronically.

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