

BRIEFS to COUNSEL: the good, the bad & the ugly

Marbury Chambers presentation, 5 November 2017

What is a brief?

- Summary of facts and legal points in a case given to a barrister to argue in court.
- Foundation of a good working relationship with counsel, as a member of the client's legal team.
- Vital communication between legal professionals.

Basics

- Deserves careful preparation.
- Begin with the index. Include:
 - all documents before the court
 - any previous orders
 - list of subpoenas issued
 - material proposed for tender
 - any relevant correspondence/file notes

Good brief:

- Succinct observations
- Instructions as to the client's objectives at least, preferably with a summary of the orders sought
- A summary of the position of the other party or parties
- An index, referable to numbered tabs or dividers
- Legible copies of documents & annexures
- Strong binder(s)

Bad brief:

- Photocopy everything on file
- No index
- No observations
- Drip-fed

Ugly brief

- The entire office file
- Multiple small folders
- Inadequate/insecure binding
- Pages missing – double-sided originals not fully copied

Possible ordering of documents

Cover: Full names of parties, applicant first; client's name in bold caps.

Court & Location

Proceedings number

Court date

Details of firm instructing

Phone, including mobile number for the solicitor with carriage

DX or PO Box

Email address.

Inside: from the top, with numbered index & tabs:

- Observations & instructions; confirmation of court date(s); name of judge if known.
- Any expert report(s)
- Any chronology prepared to date
- Previous orders: latest on top, date order down to earliest.
- Application(s) including amended, interlocutory
- Affidavits filed for Applicant
- Responses/defences
- Affidavits filed for Respondent/defendant
- Any case outline document(s) summaries or argument/submissions filed for other parties.
- Subpoenas and any Notice(s) of Objection

Subpoena served on	Subpoena issued by	Return date on subpoena
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- Notes from inspection of subpoenaed documents.
- Relevant correspondence/emails.

Paperless briefs

Advantages:

- portability
- ease of delivery
- efficient up-dating

Disadvantages:

- IT challenges
- page-turning
- quick access

Hybrids

Best of both worlds?

Emails

'Having trouble reading this email?' – useless subject lines

Time wasters – long winding trails

Attachment indigestion