

Magistrates Courts

Practice Direction No. 7 of 2006 (further amended)

DIRECT ACCESS BRIEFING

1. This Practice Direction is to minimise the risk of disruption to litigation and to promote the orderly conduct of cases where a barrister accepts a brief from a person other than a solicitor retained on behalf of a client (“a direct access brief”).
The Practice Direction does not apply where a barrister has accepted a brief from a “government legal officer” as defined in the *Legal Profession Act 2007* (s12).
 2. It is expected that a barrister who accepts a direct access brief will:
 - (a) obtain a detailed understanding of the matter, including the client’s potential case;
 - (b) give consideration to the evidence likely to be required to be called in the case;
 - (c) ascertain the nature and volume of documentary evidence likely to be relevant in the case;
 - (d) ascertain the identity and number of potential witnesses;
 - (e) give detailed consideration to the manner in which the evidence will be collected and prepared for presentation to the Court;
 - (f) give careful consideration to the likely steps to be taken in the matter, including the prospect of interlocutory proceedings;
 - (g) consider whether, having regard to the resources available to the barrister, including the barrister’s experience, general competence, and familiarity with the areas of practice likely to be relevant to the matter, the barrister is satisfied that:
 - (i) the barrister will be able properly to prepare the case for hearing bearing in mind the requirements of ss.77 and 78 of the *2007 Barristers Rule* (see *appendix*), and
 - (ii) the barrister will be able to take all appropriate action on the client’s behalf, in a timely fashion, and in accordance with any rules of practice and procedure, practice directions, or other likely orders or directions made in respect of the conduct of the matter;
 - (h) refuse to accept the direct access brief unless so satisfied.
 3. A barrister who accepts a direct access brief must:
 - (a) comply with the requirements of s.83 of the *2007 Barristers Rule* (see *appendix*)(this requirement applies to all direct access briefs, notwithstanding the brief is provided by a “professional acting as such” within the meaning of s83);
 - (b) cause a document to be prepared which:-
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- (i) sets out each of the matters which the barrister is required to disclose under s.83 of the *2007 Barristers Rule*;
- (ii) includes the written acknowledgement, signed by the prospective client, referred to in s.83(b) of the *2007 Barristers Rule*;
- (iii) contains a certification, signed by the barrister:
 - a. that he or she has complied with paragraph 2 of this Practice Direction; and
 - b. that he or she informed the prospective client that any complaint of professional misconduct, unsatisfactory professional conduct, or of other conduct to which Chapter 3 or 4 of the *Legal Profession Act 2007* applies, may be made to the Legal Services Commissioner (Level 25, 307 Queen Street, Brisbane, Q, 4000);
- (c) at the time at which any Court proceedings are instituted (or if the barrister is retained subsequent to the institution of proceedings, at the time the next document is filed in Court, and in any event before the barrister appears in Court in relation to the matter), cause:
 - (i) the document to be filed in the Registry, and
 - (ii) a copy of the document to be delivered to the Chief Executive of the Bar Association of Queensland.



Judge Brendan Butler AM SC
Chief Magistrate
10 December 2009

APPENDIX

2007 Barrister Rules

BARRISTERS' WORK

77. Barristers' work consists of:

- (a) appearing as an advocate before a Court (including in a mediation);
- (b) preparing to appear as an advocate before a Court (including in a mediation);
- (c) negotiating for the client with an opponent to compromise the case;
- (d) representing the client in a case appraisal;
- (e) giving legal advice;
- (f) preparing or advising on documents to be used by the client or by others in the client's affairs;
- (g) acting as a referee, arbitrator, mediator, member of a tribunal, or member of a panel or committee constituted under the *Legal Profession Act*, or conducting a Commission of Inquiry; and
- (h) carrying out work properly incidental to the kinds of work referred to in (a)-(g).

78. A barrister must not:

- (a) act as a person's general agent or attorney in that person's business or dealings with others;
- (b) conduct contentious correspondence in the barrister's name on behalf of any person with others (including public authorities) with whom that person is dealing, otherwise than the opponent;
- (c) place herself or himself at risk of becoming a witness, by investigating facts for the purposes of appearing as an advocate or giving legal advice, otherwise than by -
 - (i) conferring with the client, the instructing solicitor, prospective witnesses or experts;
 - (ii) examining documents provided by the instructing solicitor or the client, as the case may be, or produced to the court;
 - (iii) viewing a place or things by arrangement with the instructing solicitor or the client, as the case may be; or
 - (iv) library research;
- (d) commence proceedings or file process in any court on behalf of the client in the barrister's name;
- (e) act as a person's only representative in dealings with any court, otherwise than when actually appearing as an advocate;
- (f) serve any process of any court;
- (g) conduct the conveyance of any property for any other person;
- (h) administer any trust estate or fund for any other person;
- (i) obtain probate or letters of administration for any other person;
- (j) incorporate companies or provide shelf companies for any other person;
- (k) prepare or lodge returns for any other person, unless the barrister is registered or accredited to do so under the applicable taxation legislation; or
- (l) hold, invest or disburse any fund for any other person.

Disclosure to direct access client

83. A barrister who proposes to accept instructions directly from a person who is not a solicitor or a professional acting as such must:

- (a) inform the prospective client in writing of:
 - (i) the effect of Rules 77 and 78;
 - (ii) the fact that circumstances may require the client to retain an instructing solicitor at short notice, and possibly during the case;
 - (iii) any other disadvantage which the barrister believes on reasonable grounds may, as a real possibility, be suffered by the client if the client does not retain an instructing solicitor;
 - (iv) the relative capacity of the barrister in performing barristers' work to supply the requested facilities or services to the client compared to the capacity of the barrister together with an instructing solicitor to supply them; and
- (b) obtain a written acknowledgement, signed by the prospective client, that he or she has been informed of the matters in (a) above.