

PRACTICE DIRECTION NO. 2 OF 2000

Requirement for Counsel to be briefed

Solicitors who cannot themselves attend Court or Chambers must brief another Counsel to appear for them. Presently, Clerks arrive at the Chambers Court, and when one of their principal's cases is called, only then attempt to brief Counsel and at that orally.

Unsurprisingly, and quite often, Counsel misunderstands for which litigant he or she appears, knows nothing of the history of the case or what happened on the last mention date, and can provide no adequate explanation why some pendant matter has not been attended to since the last mention. This reflects badly on Counsel in the Chambers Court. Members of the public or waiting litigants may mistakenly consider such Counsel incompetent, when in fact the blame rests with the briefing principal for lateness and inadequacy of briefing. None of this assists the Court in attempting to make necessary interlocutory orders, fix hearing dates, and move on the litigation. Often new dates, observations or queries from the Court, are not communicated back to the principal.

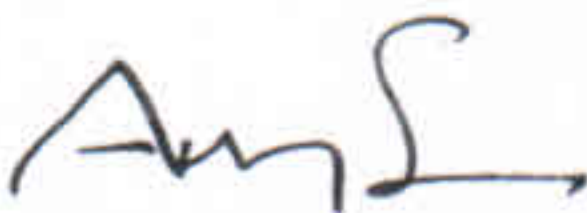
From 3 April 2000 onwards, the Court will expect Counsel to be properly briefed when a case is called on, and that Counsel will not appear in a matter unless properly briefed. "Properly briefed" means that Counsel is the holder of written instructions which as a minimum include :

1. The names of the parties in the entitlement or heading of the case.
2. The case number.
3. The Court, date and time for appearance.
4. The litigant for whom Counsel is briefed to appear, and in what capacity
5. The names of the Solicitors for the other litigants.
6. The nature of the relevant application before the Court, which summons or motion, and its date.
7. What happened on the last Court date and what was ordered.
8. What it is that Counsel is instructed to seek.
9. The available dates of the principal or of Counsel who is to conduct the hearing which is to be fixed.

Counsel briefed should report back to the legal practitioner who briefed him or her by letter with the result, orders, observations, and dates of adjournment. At the moment the uninformed principal telephones the Registry to ask one of the Court Clerks to get out the file and read back what happened. This is a task that should not be burdened routinely on the Registry staff.

If proper minimum briefing and reporting is done, cases which are mentioned time and time again, will not need to be so often mentioned, and the time of the Court (as well as of Counsel and litigants) will not be wasted. Case management is essential in any Court and it is particularly necessary at the Lautoka High Court.

Barristers were not allowed to appear in Court without a brief and it is easy to see why professionally this should have been so, and still is the rule in England. Solicitors are asked to ensure therefore that their clients, the litigants, are represented either by themselves or by Counsel properly and professionally briefed. The Court will decline to hear from Law Clerks or from Counsel who do not hold a proper brief.


ANTHONY GATES
Judge

29 March 2000