

However, I can't escape the fact that I am a woman and I have been asked to provide specific advice to new female barristers and, let's face it, as Justice Michael Kirby has said, 'women are not just men who wear skirts... women bring a different perspective to the practice and content of the law'.²

In the same paper Justice Kirby reproduces – from the records kept by the High Court Registry – what can only be described as dismal figures on female appearances in the High Court in 2004 and 2005. I note that I am a statistic as I appeared in an appeal in 2004 and was accordingly one of only seven women (out of a total of 161 = 4.3 per cent) who appeared in appeals in 2004. The figures were somewhat better for 2005 as 70 women (out of a total of 547 = 12.8 per cent) appeared in appeals. As his Honour comments, the figures remain low and the statistics do not reflect 'speaking parts'.

I venture to add that throughout the judicial hierarchy of courts and tribunals in NSW women are not getting the 'speaking parts' that they not just deserve, but need, to develop themselves fully as good advocates and barristers. Until this has been redressed, gender issues will remain on the agenda because the flow on effect is that the Bar has not been able to deliver equal numbers of suitably qualified and experienced men and women for judicial appointment to the intermediate and superior courts.³ The Bar risks being further sidelined by attorneys-general when judicial vacancies arise.

My advice to new women barristers therefore focuses on, not surprisingly, getting themselves into court. If you don't like advocacy then the Bar is not for you. It is important to take every opportunity to get yourself on your feet. Sometimes you will feel somewhat beyond your depth, but seek advice from someone more senior and don't be afraid to take the challenge. Courage is a fundamental quality of a barrister and preparation is the cure for nerves.

Foster contacts with a good silk or senior junior who practices in your area of interest. Bear in mind that the good silks usually have no shortage of people wishing to be their junior. It is highly

competitive but the Bar is highly competitive. If you are willing to make yourself available at short notice, work long hours, and prove to the silk or senior junior that your research and submission writing skills are good and can be relied on, you will be remembered. The silk or senior junior will expose you to good solicitors who may then give you other work either with that silk or junior work that does not need a silk's attention.

Most importantly the silk or senior junior will expose you to interesting cases, exposure which if you have a genuine interest in the law – and I would suggest that if you don't the Bar is not for you – gives you the necessary professional development to transcend to the next level from being a new barrister.

As to personal qualities, I agree with Adamson SC that a certain temperament helps and I would add that you need to have a thick hide to be a barrister, to roll with the punches and not be too sensitive to criticism, but take criticism on board if it is warranted and constructive. I perceive that women often let themselves down in this regard.

Hopefully if you work hard, keep your instructing solicitors and their clients happy, dress appropriately and don't upset the bench too much with your skilful argument, you will then be eligible to apply for silk in about 14 years time, and the appointment of a woman as silk will be so commonplace as to not make a story in the legal affairs sections of the newspapers.

¹ Taken from edited version of speech by Adamson SC 'Equity is equality', *Bar News*, Winter 2004, NSW Bar Association, 2004, Sydney, pages 33-34.

² The Hon Justice Michael Kirby AC CMG, The Dame Ann Ebsworth Memorial Lecture, 'Appellate advocacy – new challenges', delivered in London, 21 February 2006, available at [HYPERLINK "http://www.hcourt.gov.au/"](http://www.hcourt.gov.au/) www.hcourt.gov.au/

³ On the need for greater diversity on the Bench see the speech by Judge Gay Murrell SC 'Judicial appointments – diversity, transparency and quality' delivered to NSW Young Lawyers and NSW WLA, 13 October 2005, available at www.womenlawyersnsw.org.au/

Questions answered – A clerk's perspective

By Paul Daley & Geoff Hull

A key factor to being a good junior barrister is reliability. As a clerk you must know that junior barristers and readers will be there when you need them to be. First thing in the morning before court, you need to see their faces. Last thing in the afternoon after court, they need to at least be contactable. Being contactable is an important part of being able to be briefed. There are generally numerous barristers in chambers practising in the same or similar jurisdictions and those who are contactable at the point in time required will be briefed.

Aside from callovers, mentions and directions, a portion of work that is able to be allocated happens when another barrister becomes jammed. Accepting briefs from the clerk in any jurisdiction and getting on top of the matter in short order is a healthy practice to adopt in one's early years at the Bar. These situations generally occur during the afternoon, when a barrister realises his or her current matter is not going to finish and will run over to the following day. On occasion, a solicitor may overlook a court commitment that will require a barrister to attend on short notice.

Solicitors are appreciative when matters are picked up at the last minute and run well, and are generally happy to brief the junior barrister again. Clerks are also appreciative when matters are picked up by a floor member on short notice, and it serves as a vehicle to promote the floor as a whole.

So, reliability is a key factor that clerks look for. And, while the views of solicitors are set out in a separate article, it is always helpful for juniors to remember that an important communication point between themselves and solicitors will always be the clerk.

Reporting promptly to solicitors and clerks on the outcomes of any appearance that has been attended is a practice management issue that should be religiously adhered to from commencement of practise at the Bar.

Rates are an important factor that solicitors will enquire about. Rates are something to discuss with the clerk. Solicitors' choices as to which counsel to brief are frequently based upon the level of expense the client wishes to engage in. A barrister should make clear whether he or she is willing to accept briefs on a contingency basis.

Especially in building a practice at the Bar, it is imperative to be flexible with rates. In particular, solicitors who are sole practitioners may not have the resources that the larger national or international firms have, and flexibility with rates and payment terms can also be a deciding factor on which barrister they are able to brief.

Rates are determined on the level of experience a barrister has, the level of workload he or she is currently briefed with, and the jurisdiction that the brief will be heard in. A clerk's expertise in this area should be utilised by junior barristers and should the barrister in question not be available at the required point in time to determine a rate for a particular brief, the clerk should be permitted to negotiate a rate on the barrister's behalf.

Reliability, rates, and relations with solicitors are not the only factors which will determine whether a barrister is successful. However, they are each necessary factors to consider, and barristers who don't seek their clerks' advice and input are missing out on expertise in each of these things.

A solicitor's view

By David Ash

In 1992, the Law Society of New South Wales published its excellent *Working with barristers: A Solicitor's Guide to Relations with the Bar*. I understand that an updated version is in the pipeline, and trusting it will be of the same quality, it will be compulsory reading for practitioners of either ilk involved in litigation.

Meanwhile, *Bar News* has relied on its spies among the state's solicitors to pass on what they have found to be the main things a solicitor is looking for, when considering whether to brief a junior barrister. Some other aspects of relationships with solicitors are dealt with through a clerk's eyes, in the article by Paul Daley and Geoff Hull.

From the big firm's point of view, the main role of that species known as 'the junior junior' will be to work on large cases in which one or possibly more are briefed. These firms might not generally use a junior junior for advocacy except in relation to less important interlocutory matters and may shy from briefing a junior junior alone.

Inferentially, a junior junior is likely to be dealing with and writing documents. There is a need to write well and analytically. There is a large role to play in drafting written submissions. Then there is an eye for detail. The junior junior will be involved in reviewing documents and selecting those for tender. That in turn means a thorough grasp of the wider case.

Attitude is important. When big firms are running large and lengthy matters, partners will keep an ear to the attitude of their own employed solicitors to counsel. While acknowledging that the

work barristers are permitted to do is sometimes circumscribed, solicitors in big matters are likely to favour barristers who are happy within those parameters to do whatever needs doing.

Smaller firms in particular will use junior juniors as cost effective representation in civil and criminal litigation in the Local and District courts. Often in commercial litigation, it will be more cost effective to have counsel involved from the outset. In turn, more junior solicitors learn from the experience, ultimately benefiting the client and all involved.

Solicitors, unsurprisingly, will have professional acquaintances and friends at the outset of their careers, and will grow professionally with those people. In the usual way of things, friends who are barristers will move on to become senior members of the outer bar, or take silk, and a litigation solicitor however senior and in whatever area will always welcome the appearance of a good new junior.

Gap years are all the rage, but solicitors will look for someone with a wider experience of life outside the law. Also, while some barristers never practise as a solicitor, such practice can be useful.

There is always a place at the junior bar for a generalist or someone willing to step outside their comfort zone or traditional area of practice, provided that there is a frank exchange of views about the difficulties in the matter. If it is too difficult and too important, the young barrister should indicate their unease.

Ultimately, it is the solicitor who has a direct relationship with the client. A solicitor is looking for someone who they can work with, so that they in turn can bring the best to their own relationship with their client. A junior barrister may have excellent advocacy skills, but he or she must also possess a clear perception of professional obligations and within those obligations a realistic appreciation of the expectations of an instructing solicitor.