

Risk management strategies for litigation

- ❑ Before accepting instructions in a matter carefully consider whether you can act:
 - for this client
 - in this matter
 - at this time anddo so bearing in mind the duties you will have to that client and the court and that significant work needs to be done at the start of litigation to ensure a proper case exists
- ❑ Communicate with the client at the very beginning about:
 - who the client(s) is/are
 - who will give you instructions and their authority
 - the facts of the matter
 - what the client wants out of the process
 - what you will require of the client
 - what you can realistically provide
 - how the litigation process works
 - how much it will cost clearly, honestly and accurately (most important)
- ❑ Maintain regular communication with the client throughout the matter and in particular:
 - focus on managing the client's expectations and how best to communicate key issues
 - keep the client informed about the costs incurred
- ❑ Maintain civil and respectful communications with the court and other parties, and in particular:
 - respond to all offers of settlement or requests for negotiations etc
 - advise the court and other parties promptly when you know of issues that may cause delay such as unavailability of counsel
- ❑ Be organised and efficient in the management of your files, including:
 - send a retainer letter that accurately describes the scope of the retainer
 - keep detailed file notes
 - confirm advice in writing
 - keep pleadings separately from correspondence

- Diarise all time limits and court dates where more than one person can see them
- Comply with court timetables and directions
- Brief competent counsel with full briefs
- Communicate effectively with counsel so that all relevant issues are canvassed and deadlines are met
- Maintain objectivity and focus on the issues, not the personalities
- Regularly review your strategy and advice as evidence is obtained and pleadings are changed
- Be conscious of your obligations to the court to facilitate the **just, efficient, timely and cost-effective resolution of the real issues in the dispute** when formulating your pleadings and preparing for trial
- Plead and argue only those points that have a proper basis
- Act decisively when an issue rises that means you should cease acting