



The New South Wales Bar Association

Guidelines to tutors and readers

These guidelines are intended to assist tutors and readers to obtain the maximum benefit from the period of reading which should be a mutually rewarding experience. The suggestions made are not intended to be rigid rules. No uniform prescription can be or should be laid down to govern the discharge of a tutor's responsibilities. Each tutor will have views about the best means of instructing readers and about matters requiring special attention. The experience of reading has always varied according to the temperaments, personalities and inclinations of tutor and reader. The important factor to ensure is that effective and constructive instruction does take place.

Those reading this material are reminded of the New South Wales Barristers' Rules.

Initial explanation of tutor's routine

Tutors and readers need at the outset to establish convenient meeting arrangements.

Areas that should be discussed include:

- Does the tutor prefer not to be disturbed in the period immediately before going to court?
- Should the reader feel free to join a conference already under way?
- Will the tutor make a point of inviting the reader to court and conferences?
- Should the reader remain in the tutor's room when the tutor is attending to chamber work?

These are matters on which the tutor might give direction at the beginning of the reading period.

Expectations of readers: tutors should inquire of their readers what they expect to gain from reading

A reader, particularly one with little or no previous experience, may expect to be given more time than the tutor has ever contemplated providing. Or, a new tutor may not appreciate how much time effective tutelage involves. This mismatch in expectations should be considered and resolved at the earliest possible time.

Again, in some cases the nature of the tutor's practice may not allow for the provision of instruction in a particular field of interest to the reader - another mismatch in expectations. In such cases tutors may be able to (and should) arrange for the reader to attend court with another barrister practising in that area.

These sorts of potential problem areas are more readily addressed if the reader has two tutors. It is recommended that all readers have two tutors.

A tutor may wish to consider whether his or her practice allows time to instruct effectively more than one reader at a time.

Establish a timetable to meet regularly

The New South Wales Barristers' Rules require tutors to be accessible at mutually convenient times and to require readers to attend on them in chambers. Reasonably frequent meetings are essential. Some tutors require that, except when they are interstate or on circuit, the reader should attend at the tutor's chambers at a specified time each day. Others would regard that as a counsel of perfection and, in any event, as something not necessarily to be welcomed by the reader. But the danger is that unless regular meetings are held, the demands of everyday practice may tend to overtake the tutor's responsibilities. Accordingly, meetings at designated times each week will serve to concentrate both minds on the responsibilities of both parties.

Independently of regular meetings, specify a time each day when the reader, if he or she wishes, can consult the tutor

Tutors may be willing for readers to raise matters with them at any time, regardless of other pressures. Often, however, pressures are such that, despite the best intentions, readers may be deterred from interrupting the tutor's work. The most convenient course may be for the tutor to nominate a time - perhaps at the very beginning and/or end of the day - when the reader is to be at liberty to approach the tutor for assistance.

Suggest to the reader a course of essential reading

Many tutors take the view that there are certain texts and materials that every new barrister should be reading during the year of reading, regardless of previous studies of the subject. It may be useful for a tutor to compile a list of leading authorities on basic topics (such as the setting aside of subpoenas and legal professional privilege), which should be read (or re-read). The list of authorities and topics will doubtless depend on the views and fields of practice of the tutor. The important point is that at least the tutor should consider, from the viewpoint of his or her experience, whether it is essential or desirable that the reader undertake some such reading. Readers are advised, in their course notes, of some recommended books available in the Bar Library. Tutors may wish to discuss these books with their readers.

Establish a procedure for the reader to read briefs as they come into chambers

The New South Wales Barristers' Rules contemplate that tutors will require readers to attend upon them and discuss briefs, attend conferences and accompany them to court. If readers are to obtain the maximum benefit from discussions and attendance at court, they must be familiar with the nature of the particular case and have an opportunity to consider the legal, evidentiary and tactical questions that arise. If readers read - even shortly - each brief as it arrives, they will be more likely to understand and more able to participate in, the conferences and court appearances relating to the brief.

Make a point of accompanying your reader to court from time to time

By the end of reading, tutors will have a good idea of their readers' progress and abilities with regard to chamber work. However, without having actually seen their court appearances, tutors will have no idea of the readers' practical advocacy skills. Even those readers who have previous experience in advocacy will benefit enormously from practical advice and encouragement from the tutor's occasionally accompanying them to court. For those readers with little or no previous court experience, the tutors' obligation in this regard becomes obvious. As noted below, just as the reader must see the tutor in court in order to learn from him or her, mere discussion of the readers' court appearances cannot replace the benefit of the tutor's own first hand observations.

Establish a procedure for the preparation of drafts of pleadings, affidavits or advices

A critical part of reading is instruction and practice in the settling of pleadings, affidavits and other litigious documents, in the preparation of written advices, and in 'devilling' generally. It may not be practicable for the reader to prepare a draft in every case, but subject to this limitation it is desirable for the reader to prepare a first draft of those pleadings, affidavits and advices which the tutor is briefed to settle or give. Encouragement to undertake legal research in the preparation of advices and in preparation for the tutor's court appearances should be the order of the day.

The fact that both tutor and reader are contemporaneously concentrating on the same matters means that the reader's draft can be most efficiently assessed by the tutor. It is one thing for readers to be told how to draft something as a theoretical exercise: it is quite another for them to compare their own draft in connection with a current brief with the work of their tutor on the same matter, and to have the benefit of their tutor's comments on the draft. It may be of assistance for readers to maintain diary notes of work exercises undertaken together with a summary of their tutor's comments.

Establish guidelines for payment (if any) to be made by tutors to readers for work performed

Sometimes there are different expectations, as between tutors and readers, as to when, if at all, payment will be made for work performed by readers. This can create tension in the relationship. No rigid rule can be laid down. Readers are not unpaid research assistants. On the other hand, readers must not expect to be paid for all the work which they undertake for their tutors. Whatever approach is adopted, it is better that reader and tutor understand and accept the ground rules at the outset.

In respect of some work which the tutor gives the reader to do, he or she could do it more satisfactorily and in half the time. The work is often given for the reader's benefit, not for that of the tutors. An expectation of payment for all work undertaken will only lead to a 'drying up' of the opportunities to learn from doing work.

Pre-hearing discussions

Ideally, prior to each hearing, reader and tutor should discuss the approach which the tutor plans to take with each witness, whether in chief or in cross-examination.

The benefit to readers of attending court with tutors (which should be encouraged, if not mandatory, at every opportunity) will be increased greatly if the reader understands in advance not only the legal and factual issues in the case, but what the tutor proposes to do, and why. In particular, the more time spent discussing or explaining how the tutor intends to handle the examination in chief and cross-examination of witnesses, the more the reader will gain from the experience. Explanation after the event - although useful - is unlikely to teach the reader as much as contemporaneously following the proceedings with the benefit of prior discussions and an understanding of the strategy and tactics involved. When attending court, tutors should, with the instructing solicitor's permission, announce their reader's appearance as a junior and encourage the reader to take an active role as such.

Frank and direct communication

Communication difficulties can be minimised by tutors being open and direct with readers and, in particular, by explaining what to expect.

For example, it may be appropriate for tutors to offer forthright criticism of their reader's paperwork or of the reader's approach to a particular problem. Tutors should make it clear that such criticism is intended to be helpful, and readers should accept it in that spirit. If there are matters of concern to tutors - even on apparently trivial issues - they should not hesitate to raise them with the reader.

Similarly, readers are encouraged to broach their own concerns about their work or professional relationship to tutors. Unresolved irritants are likely to worsen. Should either party regard the difficulties in the tutor/reader relationship as substantial, the Director, Professional Development should be approached.

Junior work

Traditionally, readers are warned that income in the first year or two may not be high because of the nature of the work available. New barristers are naturally anxious to begin to earn a good income at the earliest possible opportunity. They are, therefore, vulnerable to the lucrative offer of a brief to undertake the task of document discovery. This may take up months, if not all, of the reading year. While it is cost effective for a firm to employ a junior barrister rather than a solicitor for this task, this type of work is not, in the long term, helpful in developing advocacy skills or a practice. It may preclude opportunities for a variety of court experiences and can result in lack of contact between tutor and reader.

Certification by tutors

As noted earlier, at the end of the twelve month reading period, and if all other requirements of reading have been satisfactorily completed, tutors are required to complete a form of certification in which they state whether reading has or has not been satisfactorily served and whether the reader is qualified to practise as a barrister without restriction. Readers and tutors should ensure that regular contact is maintained during the entire period of reading so that tutors are able to certify their true knowledge of the reader's ability at the end of the reading period.