When you employ a lawyer, that person is acting as your agent and is under a duty to act according to your instructions. However, lawyers also have a primary duty to the court and cannot do anything which will mislead the court or waste the court’s time.

Understanding the key aspects of the relationship between you and your lawyer can help your lawyer resolve your legal problem quickly and effectively. It can also save you money.

**Lawyer/client relationship**

The basis of the relationship between you and your lawyer is called a retainer. A retainer is an agreement whereby you offer to pay the solicitor and the solicitor agrees to fulfil certain obligations. A retainer need not be in writing, although it is in both your and the lawyer’s interests if the essential terms are in writing. This may be part of a costs agreement.[2]

Under a retainer, the lawyer agrees to use all the relevant information to further your interests. The lawyer has authority to:

- act on your behalf;
- engage other people (eg, accountants, valuers or barristers) to do work on your behalf; and
- accept certain documents.

However, a lawyer always needs to have clear instructions[3] from you before doing any of these things. This may either be set out at the beginning in an agreement or by contacting you as things progress.

You can terminate the retainer at any time, but there are limitations for lawyers. Generally, lawyers are retained to act for a client in a matter until it is completed and the client commits to pay for the services on an ongoing basis or when the matter is completed. If you terminate the retainer before the work is completed, you will be expected to pay for the work done up to that date, perhaps even where the lawyer has agreed to act on a no win/no fee basis. The lawyer has the right to retain your documents or other personal property until the costs are paid. This ‘lawyer’s right’ to retain your property until fees are paid is called a ‘lien’[2].

In ‘no win/no fee’ matters (eg personal injury matters), where costs are usually paid out of settlement or court-awarded money at the conclusion of the case, if you transfer the case to a new solicitor, the former solicitor might release the file to the new solicitor if the new solicitor agrees to pay the former solicitor’s costs as agreed or assessed. In these cases, usually the client has to give the new solicitor an irrevocable authority to pay the former solicitor’s assessed or agreed costs out of any settlement or verdict monies, and to return the file to the former solicitor if the new solicitor’s retainer is terminated.

If a lawyer terminates the retainer before the work is completed they will generally have to return your documents and will not be entitled to payment for work done, unless there is good cause.

Good cause includes:

- if you did not provide funds to pay for expenses which the solicitor has had to pay on your behalf;
- if you request that the lawyer does something illegal or dishonourable;
- if you have demonstrated a serious loss of confidence in the lawyer;
- if you refuse to provide the lawyer with sufficient instructions (see below); or
- if you refuse to accept and follow the lawyer’s advice.

You will still be liable to pay for work done, if the solicitor has terminated the retainer with good cause.
Does the lawyer have to take on the work?

Solicitors

Solicitors are required to take certain matters into consideration before they accept a retainer, including:

- whether they have the time to deal with the matter;
- any potential conflict of interest [4];
- any potential fraud, illegality or anything else which is improper; and
- whether they have the expertise to deal with the matter.

Solicitors are not obliged to act for clients, and do not have to accept work.

Some lawyers, however, believe there is a moral obligation to take on criminal matters in emergency situations or when no other lawyer is available.

Barristers

Generally, members of the public do not deal directly with barristers, although it is not prohibited. Solicitors engage barristers on behalf of clients if they believe it is necessary. When solicitors engage barristers, they brief them on the details of the case and provide all the relevant legal information. The barrister then works as an advocate in the court on the client’s behalf or may provide specialised advice. Barristers have to comply with what is known as the ‘cab rank rule’, where they are under an obligation to act for clients.

A barrister must accept a brief from a solicitor to appear before a court in a field in which the barrister practices if:

- the brief is within the barrister’s capacity, skill and experience;
- the barrister would be available to work at the time required and is not already committed to other work which would prevent them from working in the client’s best interests;
- the fee is acceptable (the barrister is obliged to disclose the proposed fee in the same way as a solicitor); and
- the barrister is not obliged or permitted to refuse the brief. Situations in which a barrister is obliged to refuse a brief include where there is a conflict of interest. [4]

Unlike solicitors, barristers are unable to keep trust accounts and therefore normally do not hold money on behalf of clients.

Hot Tip

A settlement is a compromise of a dispute which is made before or during a court hearing. It cannot occur in criminal matters. Your lawyer may advise you to settle a claim rather than proceed with court action if he or she feels that you are likely to achieve a better outcome by doing so than by going to court. When providing this advice the lawyer will take into account the additional cost of proceeding through the court system and the inherent risk in litigation. While some people are sure that having their ‘day in court’ is the only way to achieve justice, this may not be the most practical way to proceed with some matters.