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Best Practices for Preparing Written Materials on the Commercial List

When it comes to Court materials, form can be just as important as substance. You may have excellent legal arguments, persuasive case law, and McGill-guide footnotes, but if you haven't properly uploaded your materials to Case Center or your materials are voluminous and convoluted, the judge can easily become frustrated when reviewing prior to Court. Here are some tips to keep in mind when preparing written materials for the Commercial List.

Case Center

You must upload all materials for use at a Commercial List hearing to Case Center. The moving party must provide the Case Center invitation for the hearing to all other parties and known stakeholders in the litigation.

The Court creates an individual "bundle" for each court attendance on Case Center, usually a week or so before the hearing. If the Court has not created a bundle when you are ready to upload, reach out to the Court and ask for the bundle to be created.

Make sure you upload all materials to the correct bundle. Hyperlink factums to the evidence, which can be done only if you've uploaded all motion records, joint document books, or other materials into the same bundle.

Case Center assigns each uploaded material a page number, displayed in the top right-hand corner of each page. Most judges on the Commercial List identify documents during the hearing by referring to these Case Center page numbers. Although Case Center offers a "direct" function that allows counsel to pull a document directly onto the judge's screen, judges often prefer to receive the Case Center reference so they can find documents themselves using the search function.

Factums

You must upload factums to Case Center in advance of a hearing and must hyperlink all materials cited in the factum. This requires that you upload all cited materials to the same bundle as the factum.

Factums cannot exceed more than 25 pages, exclusive of

schedules. The Commercial List Office has been instructed to enforce the page limit. A party can file a longer factum only if they have obtained leave from the judge. Parties are also encouraged to seek consent from all other parties before filing a factum that exceeds the 25-page limit, so that everyone has the same opportunity. While it's tempting to request extra pages, Commercial List judges tend to frown upon longer factums, so make your requests sparingly.

Compendiums

In most cases, parties making submissions to a Commercial List judge should prepare a compendium of the key documents or key excerpts they will reference in argument. Compendiums can include affidavits, exhibits, transcript excerpts, correspondence, and cases.

Many judges work primarily from the parties' compendiums so they don't have to navigate between the various other documents in the record. This is especially true for judges who don't like using Case Center. If possible, learn what you can about your judge's preferences before the hearing so you can help them navigate the record effectively. If this is not possible, ask the judge for their preference at the beginning of the hearing.

When assembling your compendium, focus on making it useful to the Court. List documents in the order you will reference them in your submissions, and clearly bookmark your compendiums so the judge can follow along with ease.

Aide Memoires

Aide Memoires are short legal documents, formatted like a factum, that present factual information to the Court in a clear and digestible way. The Commercial List strongly encourages Aide Memoires for all attendances, but they are particularly important for short scheduling appointments, case conferences, and other 9:30 attendances.

Aide Memoires should be direct, neutral, and balanced. They should identify the issues for determination and briefly explain why the Court should grant the requested relief. Aide Memoires may also include schedules with non-controversial facts such as chronologies and cast of characters.

You should provide Aide Memoires to the Court and to all parties in advance of the hearing. Like factums, upload Aide Memoires to Case Center in advance of the hearing and hyperlink to any cited materials.

Blacklines on Model Orders

The Commercial List has several model orders, including Initial

CCAA Orders, Receivership Orders, Discharge Orders, Vesting Orders, and *Anton Piller* Orders. You can find model orders here.

Where available, you're expected to use the Commercial List model orders as templates for the draft orders you put before the Court. Blackline draft orders so the differences between the model order and your draft order are easily visible to the Court.