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The 9:30: Effective Chambers Advocacy

The Commercial List's unique daily chambers appointments, commonly referred to as "9:30s", are a powerful opportunity for lawyers to advance their client's case efficiently. Here are some tips and tricks for making the best use of this important feature of the Commercial List.

What can I use a 9:30 for?

9:30s are primarily used for scheduling and consent matters.

You may often be able to obtain motion and application dates from the Commercial List office staff directly. But you may also be directed by staff that they cannot book a particular matter except with the direction of a judge, for which you will likely need to attend at a 9:30. Trials and trials of issues require a judge's direction to book any date, again, for which a 9:30 can be used.

9:30s can also be used for opposed urgent and/or *ex parte* matters on substantive issues. Examples of situations in which you may wish to obtain substantive relief in chambers include initial orders in insolvency proceedings, *Mareva*, *Anton Piller* or *Norwich* orders or other matters where time is of the essence. If proceeding on short notice, expect opposing counsel to argue that more time is necessary for responding evidence, cross-examinations and/or other procedural steps before substantive relief can be granted.

If seeking substantive relief on a motion returnable at a 9:30, make sure any materials are filed in advance and are as concise as possible. Submitting a draft order in advance of the 9:30 can be helpful.

If you are proceeding *ex parte*, be prepared to justify to the judge why notice has not been given. As the Practice Direction points out "In most cases, notice shall be required, particularly if the matter is part of an ongoing dispute and there are solicitors known to be representing the respondents, even if in respect of other matters."

9:30s are often used to deal with narrow issues of procedural disagreement between the parties to an ongoing matter, including settling an order, setting a timetable, dealing with issues arising from the conduct of a cross-examination. Where a commercial list judge formally determines a contested issue after a hearing, he or she may leave one or two narrow issues to be addressed by counsel in chambers at a 9:30, possibly after further submissions.

How do I book a 9:30?

9:30s are booked through the Commercial List office by submitting a 9:30 request form by email. Dates can be obtained from the office and up to three can be listed on the form.

The request forms contemplate that all parties will cooperate in agreeing to 9:30 appointment.

But if opposing counsel is not cooperative, after you have given them reasonable opportunity to do so, you may submit a form to the Commercial List office making it clear that the opposing party does not consent.

How long is a 9:30?

The Practice Direction makes clear that 9:30 matters are to take no more than 10 minutes. The notion is that judges will be able to begin hearing cases in open court by 10:00 a.m. each day.

While you should not plan for any judge to hear you for more than 10 minutes, some matters inevitably run long and most judges are accommodating. Don't be surprised if 10:00 a.m. hearings start later to accommodate a long list of 9:30 appointments that go longer.

What materials should I file/bring?

Judges receive materials for 9:30s in advance but may not have the practical ability to read material in detail particularly if voluminous. If voluminous materials are necessary, the matter is probably not one that can be dealt with in 10 minutes.

Consider agreeing with counsel that each party may set out their positions on the issues in advance in a brief

letter or other form of written correspondence to the judge. This may allow the parties to get to the heart of the issue quickly.

Bring draft orders sought to a 9:30 or, if possible, provide them in advance. If there is a dispute as to a narrow issue in the wording of an order between the two parties, provide a blackline.

What do I do when I get to a 9:30?

As with all scheduled matters, counsel should complete the sign-in sheets. Arrive before 9:30.

Tell the Registrar once all counsel have signed in.

The Registrar will call your matter when ready. A court services officer (“CSO”) will lead counsel to chambers.

Particularly if you intend to make submissions, sit in the row of chairs closest to the judge’s desk. The exact location (left /right) is unimportant.

What is “hallway litigation”?

“Hallway litigation” is an important aspect of the culture of the Commercial List, including at 9:30s.

Judges expect parties to, where possible, resolve or narrow their disputes before attending on contested matters, particularly at 9:30s. Many see this as an aspect of the “three Cs” – common sense, cooperation and communication.

You should communicate with your opponents to try to define and narrow the issues where possible. You should of course do this before the 9:30 attendance itself if possible, but the time spent before you go into a 9:30 chambers appointment, whether literally in the hallway or in the courtroom (which will usually be full of other counsel waiting to be let in to 9:30s on other matters), is a good time for this.

Make sure you have clear instructions from your client as the scope of your authority to come to a resolution before attending, or have him or her available by phone. Expect that the chambers judge may push the parties towards a resolution of unresolved issues in chambers.

What do I say?

9:30 attendances are less formal than court proceedings, but businesslike.

Introduce yourself and opposing counsel, and any students.

If you are seeking some kind of relief, speak first. Be concise and clear about the relief you want and your reasons for it. Opposing counsel will be given an opportunity to respond.

Unlike an in-court hearing, don't be surprised if what follows is more of a conversation between each party and the judge, who is likely to be active. Several "rounds" of submissions may be necessary.

What do judges expect?

Judges will expect that counsel will be knowledgeable about the issues and prepared to deal with a matter quickly. They will also expect that parties will have attempted to resolve the issues before coming to the 9:30. Whether you are seeking or opposing relief, you may wish to highlight to the Court attempts to narrow the issues.

If the issues is scheduling, make sure you have spoken with the Commercial List office to get available dates for the motion or other steps you want to book. If other dates are necessary, judges may call to the office themselves to obtain alternative dates during a 9:30 attendance.

You should be listening carefully to a judge's reaction to your position and that of your opponent. His or her comments in chambers may give you valuable insight into each party's chance of success. That being said, comments by judges in chambers are usually limited and made without the benefit of reviewing the full record. They may also be designed to encourage settlement between the parties and may not be a good predictor of the outcome if litigated.

The preference of judges of the Commercial List is towards resolution. Judges may encourage resolution in chambers. Make sure you are clear as to your client's position and the scope of your authority to agree to a

resolution before going into chambers.

How does a 9:30 conclude?

The 9:30 attendance will usually conclude with the judge signing an endorsement as to the outcome and any order (if one was sought).

The judge will usually hand counsel the endorsement, any order signed, and any materials to be given back to the judge's CSO or the registrar. When leaving chambers, you should provide these materials to the judge's CSO or the Registrar in the courtroom. The CSO will lead you back to the courtroom.

At least one counsel should remain in the courtroom to await copies to be made of any endorsement or order. If you are waiting on behalf of all counsel, you should promptly scan and email a copy to all counsel after you get back to your office.