# ADVOCACY BEFORE THE QB MASTERS

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# SOME **DO'S** AND **DON'TS**

When I first started practice at the Bar in the early 1980s one of the most daunting prospects for a newly qualified barrister was being briefed to attend a hearing before one of the Queen's Bench Masters. Rumour had it that they did not suffer fools gladly and were not averse to launching a copy of the White Book in the direction of any advocate who tried their patience. Little did I suspect then that 30 years later I would find myself located in the corridor off the Bear Garden sitting as a Queen's Bench Master. So what advice can I give the young advocates of today who find themselves attending a hearing before a Master?

## The Master's jurisdiction

One of the basic rules of advocacy is: know your court. So what is a Master and what do they do? The Masters are the junior tier of judiciary in the High Court. They deal with all aspects of an action from issue until it is ready for a trial judge. Trials will usually take place before a High Court Judge or Deputy High Court Judge but may where appropriate take place before a Master. Once an action is concluded a Master will deal with issues such as enforcement and investment of damages for children and protected parties. Although the junior branch of the High Court judiciary, the Master's jurisdiction, with a few exceptions, is same as the judge.

## Masters are experts

Without exception those who are appointed as Masters have had substantial experience of heavy weight litigation, either as barristers or partners in large firms of solicitors; they are experts on procedure and contribute to publications such as the White Book, Green Book and Atkins Court Forms. Some Masters run specialist lists such as the mesothelioma and clinical negligence lists. A Master is therefore unlikely to take kindly to being addressed at length on the correct test for summary judgment or for granting relief from sanction and may in such circumstances experience a (historical) urge to reach for the White Book; have the words 'grandma' and 'eggs' firmly in mind at all times.

## The papers

Procedure in the High Court differs from the District Registries and the County Court in a number of important respects and all advocates should read the relevant sections of the Queen's Bench Guide to fully familiarise themselves with what is required. For example, it often comes as a shock to an advocate appearing in a standard application that the Master does not have a complete set of case papers in front of him. 'Isn't the application notice on file, Master?' 'What file?!' will be the inevitable reply. Unless a hearing bundle has been previously filed at court, it is the parties' responsibility to bring all papers which will be put before the Master at the hearing. So you must ensure that you are properly prepared and have the necessary documents to hand.

The advent of word processing and the formal teaching of advocacy has resulted in an increasing focus on paper advocacy. When I started out at the Bar skeleton arguments were virtually unknown. The Master would look up and say: 'Tell me about it' and you would then give a thumb nail sketch of the proceedings and shortly introduce the application. Today it seems that virtually every advocate feels obliged to produce a skeleton argument regardless of the length or complexity of the application before the court. This simply adds to the reading that has to be undertaken. So think very carefully, is a skeleton argument really required and, if so, what should it contain?

It is more or less standard in modern litigation for the parties to produce case summaries. A case summary should be a concise statement of the facts giving rise to the case followed by a summary of the factual and legal issues

between the parties. If such a document exists, a skeleton argument should not repeat its contents. Many procedural applications turn upon the timing and order of events and in such cases a good detailed chronology is invaluable to the judge. It may be that such a document is all that is required. There will be times when a skeleton argument will be essential particularly in longer hearings which raise substantial issues of law. However, this not an occasion to present a written brief, you are still some distance from the Supreme Court. The clue is in the title 'skeleton argument'; we do not want the entire cadaver.

## Timing

This leads me to one of the most important issues: Time. I am constantly astounded by the fact that even very experienced advocates seem to possess no concept of time when they begin speaking. Every application listed in the Queen's Bench Division will be given a time estimate. The usual time estimates for a hearing before a Master will range from 30 minutes to one day. Any given time estimate also assumes that judgment will be given at the hearing. The maths are simple, if you have a 30-minute application, you speak for 10 minutes, your opponent speaks for 10 minutes and the judge gives judgment and deals with costs issues for 10 minutes.

I would advise any advocate to first think about the time required. If it is obvious that an application cannot be completed within the given time estimate then this should be mentioned at the outset of the hearing so that appropriate time can be found or the application can be transferred to another Master or Deputy if it is urgent. The Masters' lists can be very full and it is always very unsatisfactory to have to adjourn an application part heard to a date many months away. In a potentially difficult application you may ask if the Master intends to give judgment at the hearing or reserve it this may give you more time. I can however guarantee that if the advocates overrun their allotted time the prospect of having to prepare a written judgment will not be welcome. If you think the time estimate is realistic, then keep an eye on time, ideally have a clock in view and keep to the basic rule of using a third of the hearing time available. Understanding and mastering time will improve your advocacy. You will focus on your good points, you will rely more effectively on written material and above all you will prevent the Master from lapsing into historical mode and reaching for that ever thicker volume of the White Book. ■