Advocacy tips for ancillary relief hearings

Q. I am a specialist family law solicitor. I normally instruct counsel to carry out my clients' ancillary relief advocacy work. My senior partner thinks I should undertake some of the advocacy work myself. I am worried that if my opponent is a barrister, my client will be disadvantaged. How can I make sure I give my client and the judge the right impression?

A. Your fears are misplaced. Many clients like to have their solicitor representing them at court because they feel it provides continuity and saves them having to recount personal and traumatic facts to a professional they haven't met before. In order to impress a judge, you can "walk the walk and talk the talk" by observing a few simple points:

What (not) to wear – most counsel wear smart black suits. As a solicitor it will be a dead give away if you arrive at court in colourful attire. You should always dress to impress, so choose a black/dark suit.

No Scripts – Nothing looks worse than seeing an advocate flicking furiously through a file on a simple point such as ages of dependent children or property valuations. There is no need to prepare long notes for opening speeches. For example at a FDA, on a single page of A4 set out the following details for the opening note:

- Marriage history
- Children
- Litigation history (date of separation, decree nisi)
- Asset pot
- Disclosure
- Valuation

A useful tip is to colour code what you write down for each party e.g. red for your client, blue for your opponent and black for all joint facts. This information should obviously be taken from the Financial Statements of the parties. Basically, th**e** judge wants to know what's in the asset pot and what the issues are.

Clarity and Persuasion - one of the most powerful ways to be persuasive is to maintain good eye contact with the judge and watch the judge's posture. You will soon observe when the judge is with or against you. If the judge isn't with you on an important point, deliver your submissions from a different or new perspective. If it isn't your best point, move on. By narrowing the issues wherever possible you will increase opportunities for negotiation with the judge and your opponent.

Structure and signposting – It really helps judges if you can order your submissions. You can do this by telling him/her what you are going to address next and then signposting them to the next point. For example 'Madam turning first to the issue of the property valuation… moving on, I wish to outline the position in relation to my client's entitlement to the pension share…'

Q. I am not quite sure how long an opening speech for an FDR should last or what I need to include at this stage. What do you suggest is appropriate?

A. At FDR hearings the opening is very brief. By this stage, the judge will be aware of the issues. If you are opening, state which party you represent and tell the judge the name of the advocate representing the opponent. Following this, you should tell the judge briefly about the:

- Marriage history
- Litigation history
- Asset pot (hopefully without too much doubt)

- The offers made to date (including without prejudice or Calderbank offers). It is useful to refer to percentages in reality. Be aware of the real cost of percentage differences.

Another tip when preparing for a FDR is to prepare a schedule of assets/ liabilities on an excel spreadsheet. In a column to the side of each item you can write your comments in relation to each separate item. This makes it easy to refer to the points when addressing the judge and enables you to start 'poisoning the mind of the tribunal' by laying emphasis in relation to the contested assets.

Q. How should I approach my preparation for a final hearing?

A. Around 80% of cases settle at an FDR. If this cannot be achieved the matter will be laid down for final hearing. It is necessary prior to the FDR to have considered what evidence is required for the final hearing. In general, think about the following:

a) Themes
b) What do I need to prove – how can I prove it?
c) Disclosure – production appointments
d) Clarity
e) Dealing with the other side's case
f) Proportionality

To focus your thoughts you can draw up a table with three columns headed 'What is my case?', 'What is their case?', 'How do I prove my case?'. In each box analyse the evidence you will need to present in the course of your examination in chief or cross examination.

Next, look at each statement and analyse each one under three headings: What is our case? What is their case? What is the evidence in this statement? Again this can be drawn up in a tabular form.

When opening, some judges like to have an opening note, some don't. Skeleton arguments should be prepared on any unusual areas of law and sent to the court in advance. You should give your opponent a copy of the skeleton with copies of authorities printed out. In your opening make sure the judge has seen the bundles and state the position of the parties. This is also an opportunity to flush out the issues.

The golden rule for an examination in chief is that you should not rehash what is already in the statement. You shouldn't lead your witness but you should seek to insulate them from attack. You must not assume any facts not yet in evidence. Confine your questions to What? Why? How? Where? Who? Describe? Avoid Did you? Was it? Were you? You should use transitions with your witness. For example "can we deal now with the property valuation…"

For the cross examination you should put to the witness the following: points where your case differs; your case; undermine their case; the poisoned question; questions which elicit yes or no responses; and inconsistencies in the evidence/oral evidence. Throughout you must control the witness and watch the judge. Remember to be likeable. Most judges are unimpressed by advocates who harangue the witnesses.

Re-examination should only cover material that arose in cross-examination, it is a damage limitation exercise. Finally the closing speech must pull together the strands of evidence, inconsistencies, comments on the quality of the witnesses, concessions and opening positions. Use percentages and calculations throughout and finally you should present points in relation to s25 MCA 1973.

Prepared by Yvonne Spencer on behalf of SAHCA