

## Appearing in the Commercial List

The following points are derived from observations made by Justice Bergin in her recent CPD presentation in relation to appearances in the Commercial List.

- Preparation is what it is all about.
- My aim is to have trial counsel briefed as early as possible. The reasons for that are obvious. It is good for the case, it is good for the client, it is cheaper, it is more efficient and, obviously, the by-product is better for the Bar.
- If there's slippage in the timetable, reach a new agreement. Do not wait five weeks before you come along to court and then have to file an affidavit saying why you didn't comply with the court's orders. Only request the intervention of the court when there is good reason and agreement has proved to be impossible.
- Do not deliver a monologue. If the judge speaks, make sure you listen carefully. Wait until the judge has finished speaking before you respond. Do not fall into the trap of talking over the top of the judge.
- No jury speeches, except when you are in front of a jury.
- Lectures, personal attacks on opposing counsel or overstatement are very unimpressive. They are counter-productive and should form no part of your armoury of advocacy skills.
- It is extraordinarily difficult for a judge to know the ripe time to refer a matter to mediation. The judge needs your assistance in this regard. If a judge says that the matter should be referred to mediation immediately and you are of the view that it is not appropriate to do so, make sure you say so and provide clear and cogent reasons as to why it should not be referred at that time.
- When you are appearing in the Friday List, make sure you know what the real issues are in the case. Make sure you know the nature of the expert evidence that will be required and be in a position to answer the questions on these topics that the List Judge may ask. Remember that there are many solicitors in court on a Friday and they will be impressed by counsel obviously in command of their brief.
- Set an example in court craft and etiquette. Although the Friday List is less formal, we need to maintain that respectful link between bench and bar, particularly when clients are present.
- Your aim, when you walk into the courtroom, is to feel comfortable and confident. If you are mumbling and fumbling, looking for papers, not knowing where you are in the list, appearing for someone who is not in the list, comfort and confidence will be absent. Preparation, preparation, preparation is the answer.

## Kokoda District Court



These photographs were taken at Kokoda District Court in the PNG Highlands on 23 August 2008. Peter Garling SC and Jeremy Morris walked the Kokoda Track from North to South over 6 days in typical Kokoda conditions - heat, cold, rain, baking sun, mud and dust.