

# Working With The Court Reporter To Preserve Your Appellate Record

Presented by:

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# Get To Know Your Court Reporter

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- The record is blind
- Always state your appearance on the record at the beginning of a hearing/proceeding, even when everyone in the room knows you

# Do Not Assume That Because The Court Reporter Is In The Courtroom, A Record Is Being Built

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- Use the phrase “Judge, I would like to put this on the record, please,” to ensure the court reporter is being asked to capture your record
- Make eye contact with the court reporter or let her/him know ahead of time if there is any question

# Video Depositions And Deposition Transcripts

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- Court reporters routinely do not transcribe video depositions and other taped recordings at trial
- Reconstructing precisely which portions of the video were played at trial and how the court ruled on any objections can result in a costly (and contentious) ordeal when preparing an appellate record

# Video Depositions And Deposition Transcripts

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- Better than nothing option: Detailed pre-trial order that designates the portions of video testimony to be played during trial
  - Problem 1: Pretrial designations only list what counsel intends to introduce at trial and often change based on real-time modifications to trial strategy or on rulings by the trial tribunal
  - Problem 2: Separate live-testimony and video-testimony transcripts can be confusing and time-consuming for appellate courts

# Video Depositions And Deposition Transcripts

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- Best Option : Ask the court reporter to transcribe the testimony being offered by video (or deposition transcript) into the actual trial transcript as though the witness was present
  - Discuss (and clear) this option with the court reporter ahead of time
  - Offer written deposition transcripts or copies of video depositions for the court reporter to cross-reference when transcribing the testimony presented by video

# First Question To A Witness

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“Please state and spell your name for the record”

# Court Reporters Capture What Is Being Spoken, Not What Is Being Done

- “um-hum” and “uh-huh”
- Pointing, shrugging of shoulders, air quotes are indicated in the record parenthetically as (indicates) or (indicating)
- Head nods and shakes are shown in the record as (No verbal response)
- Ask the witness to answer “yes” or “no” instead of shaking or nodding his/her head



# The Consequences Of Interrupting

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- Court reporter may interrupt to ask that everyone speak one at a time
- Transcripts cost more when there are interruptions

# Exhibit Notebooks

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- Best practice is to compile and mark all your exhibits prior to trial or hearing
  - Copies, copies, copies: Support the paper mill industry
    - Extra copies for the deputy clerk and court reporter are usually appreciated
    - Keep a copy for the file

# Exhibit Notebooks

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- Tabbed notebooks: Great organizational tool for trial, but useless in an appellate record
  - Supplement tabs with (1) physical exhibit stickers on first page of a document or (2) cover page for each exhibit (with description)
  - Index the exhibits or legal authorities submitted

# Exhibit Notebooks

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- Index's descriptions of exhibits *usually* will find their way into the transcript and the exhibit logs
  - Attorney's preferred index descriptions are guaranteed when spoken into the record
- Descriptive trial indices become descriptive appellate indices
- North Carolina's trial court judges are presumptive speed readers

# Non-Documentary And Oversized Exhibits

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- 8 ½ x 11 duplicate of oversized documents
- Use your iPhone to build an appellate record
  - Photos of posters or non-documentary exhibits
  - Take videos of live demonstrations

# Questions?

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