

## ENSURING AN ACCURATE TRANSCRIPT

Often, the accuracy of testimony submitted at pre-trial proceedings is critical to winning your case. Errors or omissions in transcripts can be detrimental to the case you are putting together for trial. A word can alter the meaning of a sentence; a misinterpretation of a non-verbal response can become an unforeseen problem. This article will focus on key techniques to help ensure that an accurate transcript is recorded with minimal interruptions and maximum efficiency.

### Before the Deposition Begins

Keep in mind that the reporter has the responsibility of preserving the record and ensuring accuracy in the transcript. Help by providing the reporter with sample court papers, such as a bill of particulars, to record the caption and appearances of counsel. To ensure accuracy, counsel should provide the proper spelling of names, addresses, and other relevant information and confirm whether the attorney is with the firm or “of counsel.” A glossary of terminology, particularly in technical cases, is also helpful. Marking exhibits at this point will also save time.

### Marking Exhibits

To ensure that all the material you want entered on the record is recorded, provide the reporter with a brief description of the item to be entered on the index page; or, if you are going back on the record after the item has been marked, give a brief description in colloquy format for accuracy of the record.

### Starting the Deposition

Witnesses are sworn in by the court reporter and, as a courtesy to counsel, the reporter will ask the witnesses to state their addresses for the record.

### During the Deposition

Many issues can arise that may cause errors in the record during the examination. It is helpful to keep the following in mind:

#### Speed Reading

When a document or statement is read into the record, it is generally at a greater rate of speed than a conversational exchange. Therefore, it is recommended that a copy of the document be provided to the reporter to ensure that the full statement is recorded accurately.

#### Recording Verbatim Testimony

This is easier when parties do not speak over one another. Counsel generally advises the witness to wait until the question is finished before answering. The reverse is also true: counsel should wait until witnesses complete their answer before asking the next question.

#### Interpreters

Depositions of witnesses who speak another language can be among the most difficult testimony to record. Many interpreters take their jobs literally: they interpret the answers as opposed to translating them. This will hamper your examination of the witness and may lead to answers in the record that are not reflective of what was actually said, and may be unfavorable to your case. Counsel must instruct the interpreter to translate everything that is said. Failure to do so may lead to an inaccurate record. Even if the witness answers in English, the interpreter should translate the testimony anyway. This solves the problem of adding long parentheticals and requiring the reporter to process a word that may be said in English but with a heavy accent. Counsel must always remember that he or she is directing questions to the witness through the interpreter, but key to this exchange is being mindful that the interpreter is not the witness.

#### “Also Present” Individuals Speaking on the Record

Although counsel may instruct family members or friends that they may not speak on the record, occasionally they may do so, such as to offer to clarify a date or some other item. When this occurs, bear in mind that the reporter is recording all comments, so advise the reporter whether those comments should be stricken from the record.

#### Error in Names, Dates, and Other Relevant Information

If an incorrect name, date or address is provided by the witness and counsel discovers this and decides it is significant, the request can be made in colloquy format on the record,

but the error is not physically changed. However, if all parties agree, the error can be physically changed throughout the transcript.

#### Nonverbal Responses

In fast-paced exchanges, nonverbal responses often occur. Counsel must be alert to this because the reporter will only record the responses exactly as spoken. When the transcript is read afterwards, the meaning of some responses may be lost or left to the reader to interpret. Avoid this by instructing the witness to verbally respond in all instances.

#### Requesting Documents for Production/Insertions

Be specific: counsel should describe exactly what should be inserted in blanks left in the transcript. Do not let the reporter interpret what it is you are looking for. The same applies for marking questions for a ruling.

#### Off-the-Record Discussions

Court reporters outside the courtroom are trained to go off the record only if all parties agree to do so. When counsel says “off the record,” a reporter will generally look at opposing counsel to determine if there is opposition to the statement; seeing none, the reporter will stop writing until instructed to go back on the record. At that point, anything said in colloquy is not recorded, so if you want to go back on the record, you must direct the reporter accordingly.

#### Questions Withdrawn

Reporters can strike questions that are withdrawn when they are false starts, such as a few words that begin a question before a thought process changes and a new, fully formed question is asked. However, once a question is answered to any extent or there is any colloquy at all in relation to it, the question will remain on the record and withdrawn in colloquy format only. If you wish to have the reporter physically remove the question or comments from the record, you must instruct the reporter accordingly, and all parties must agree to the request. With these considerations in mind, you will ensure a more accurate record of the testimony and avoid unnecessary and sometimes lengthy parentheticals. A “clean” record that is easier to read and understand, and which allows for clearer citations, will help you to better prepare for trial.