

Tackling Voluminous Records:

Practice Tips for Appellants

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The beginning of an appeal can be intimidating, particularly for Appellants. You receive a written record memorializing years of litigation, and you're tasked with carefully reviewing thousands of pages to identify any errors of fact or law. That is difficult enough for appellate counsel who participated in the district court proceedings below and already have some idea of what may be important for appeal. But it can be especially overwhelming for appellate lawyers who are new to the case and come in with a blank slate. This article provides some practice tips that I've found helpful for effectively and efficiently tackling a voluminous record on appeal ("ROA").

1. Reorganize (and Reduce) the Record.

My first step in every appeal is to organize the record and, to the extent possible, reduce its size. Using the docket sheet as a guide, I go through the entire record to identify and index all of the filings and transcripts in an Excel spreadsheet, noting the date, ROA range, and title for each item. I then reorganize the PDF to make sure everything is in chronological order. This process provides me with an initial, high-level understanding of the proceedings, and it helps facilitate a more systematic review of the record. Once I begin my substantive review of the documents, I often use the same spreadsheet to record descriptions of the documents, summarize testimony and other evidence, and flag potential issues that I see—the goal being to minimize the need to re-read filings and transcripts as much as possible.

In addition to organizing and cataloguing the record, I find it helpful to delete any documents that clearly do not warrant close review. For example, if there are redundant filings or documents that pertain exclusively to other parties in the litigation, I delete those portions before beginning my substantive review. I also remove innocuous filings, such as joint motions, scheduling orders, and other filings that I know will not be relevant to any issue for appeal. By reducing the record in this manner, and ensuring the record is in chronological order, I find it easier to efficiently review and digest the substance of the district court proceedings in a single pass.

2. Transition from General to Specific.

When I start reviewing the substance of a lengthy appellate record, I often find it helpful to begin with a more generalized review and progressively transition to the specifics of the litigation. For example, if the parties litigated a pre-trial motion on the admissibility of certain evidence, I initially take note of the evidence at issue and the basis for seeking its admission or exclusion without delving into the details of the arguments. Similar to the initial cataloguing of the record, this practice helps me maintain perspective throughout my initial reading of the record, thinking about each component in the context of the full proceedings. It can also save time if, as I continue my review, I discover that there is no need to closely review that particular issue—for example, if the

district court ruled in my client's favor on the evidentiary issue, or it ultimately turned out to be inconsequential at trial.

3. Create an Over-Inclusive Issue List.

Another tactic I employ when dealing with a voluminous trial record is creating an over-inclusive list of every possible appellate issue that could even theoretically be viable—including weak, unpreserved, or even foreclosed claims. The longer the record, the greater the risk (and fear) of missing an important issue. Taking a broad approach at the beginning can significantly reduce that risk and accompanying anxiety. It also makes the review process more efficient. It can be counterproductive to try to select your final appellate issues before you have a full understanding of the proceedings, and it can be difficult to complete your review when you keep getting sidetracked researching, evaluating, and trying to make decisions about isolated issues. Throughout my initial review, I keep a completely open mind and will jot down anything that raises questions in my mind. Once I've completed that process, I can systematically review each item in the list to determine the strength of the claim, the error's impact on the proceedings, and the relief available in the event of a favorable appellate ruling. That process helps me proceed to issue selection in a more efficient manner with confidence that I have not overlooked anything of potential importance.

4. Keep the Client's Goals and the Desired Relief in Mind.

Finally, issue selection can be paralyzing in the face of a large and complex appellate record containing numerous potential challenges for appeal. The selection process necessarily involves case-specific strategy decisions that can't be translated into universally applicable rules. However, keeping the client's personal goals and desired relief at the forefront of your mind can often help simplify that process from the outset. For example, in the criminal context, there may be defects in a guilty plea proceeding that do not warrant further attention because the client has no interest in withdrawing his plea. In the civil context, a client may not have the funds or the desire to litigate an entirely new trial, so that may limit the types of claims that the client wants to pursue on appeal. Since the client's personal interests can often dictate the strategic decisions that should be made on appeal, discussing the client's goals before spending significant time researching each of the potential issues can help narrow the focus early on, making issue selection less daunting and more efficient for counsel.