

Appellate Practice

American Bar Association Litigation Section

Tackling Complex Records on Appeal: Where to Begin?

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The first thing appellate counsel must do when they come into a new case is familiarize themselves with the record. That task, however, can mean very different things in different cases. It might mean reading a complaint and motion-to-dismiss briefing—perhaps just a few dozen pages. Or it might mean catching up on a fraught multi-year district-court record culminating in a 3-week jury trial with thousands of pages of transcripts, pre- and post-trial briefing, and more. In the latter situation, the project is beyond daunting. Where do you even start? Although every case is different, here are some pointers for diving into a new record in a complex case.

The first step is to make sure you have everything you need to get up to speed. Coordinate with trial counsel to get access to the record (all of it). If there are any confidentiality issues in your case, make sure you consult the protective order and proceed accordingly.

Once you have everything you need, work with trial counsel and the client to get their insight about where to start reading. What documents, issues, and arguments are most important? Start making folders that pull out the key documents for each of the issues you are considering for appeal. And start reading.

As you work on getting a handle on the legal issues and the cast of characters from the trial proceedings, tackle the trial transcript. Before you begin, I recommend creating a consolidated copy of the transcript with all the volumes of the transcript in it (district courts typically create a new transcript volume in a separate document for each trial day). That consolidated copy can be searched globally—you can look for testimony relevant to key issues by simply searching for keywords in the document, and thereby search the whole trial record instead of one day's trial volume at a time. The consolidated transcript can also be annotated in your PDF viewer (such as Adobe Acrobat) to add bookmarks to make navigating the document easier, to add highlighting to identify key testimony, or to add comments from your team. Alternatively or additionally, you can copy/paste key sections of the testimony into a document as you go so that you keep track of the critical sections while you are drafting. Either way, you can start by reviewing the openings and

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closings, the parts of the transcript that were cited or discussed in post-trial briefing on the relevant issues, other sections relevant to issues on appeal, and anything else trial counsel recommends you study. As you draft the brief, a deeper dive into the transcript will be necessary. But take it slow to start: You are about to learn a lot of information all at once—identify and prioritize the most important parts first; you can review the rest once you have a more fulsome understanding of the case and the issues.