

## *Making a Record*

Probably the most important point we can make is that you must create a complete and readable record of your case whenever you are before the court. Everything that supports your position needs to be made a part of the court file.



Making a record is the sum and substance of courthouse procedure. You cannot win without a proper record. Some lawyers think cases are won at trial. In fact, if a case is not won long before trial by putting together a record of facts and law that cannot be refuted, it is *never* a good idea to go ahead to trial. The time for trial is when you're ready for trial ... when you've already made your winning record.

Everything you do in court should be aimed at making an effective record.

Lots of people think winning a lawsuit depends on pleasing the judge. They make the mistake of thinking the judge can rule however he wants to. The fact is that a good lawyer makes the judge rule in favor of his clients by making a record of the case *before* the judge rules, then making certain the judge rules in accordance with the record and the law.

Make your record. Get your truth in the clerk's file.

Win your case on paper. That's how successful lawyers do it.

Losing lawyers try to sway the court with rhetoric. One desperate lawyer was heard saying to the court, "You know judge, we go way back, you and me." That is not the way to win, and a smart litigant can literally steal his silver-tongued opponent's thunder just by making an effective record and demanding that the court rule *on the record before it* and not upon the rhetoric of the other side's desperate lawyer. Judges must decide in accordance with the rules and the law ... if you see to it. That's also the whole point.

- **Make a record.**
- **Put in all the necessary ingredients.**
- **Force the other side to show their hand.**

Then, if the judge refuses to rule in your favor, you can win on appeal by showing that the judge did not follow the rules. This *is* the bottom line, after all. American justice is a system of laws, not men's opinions nor the granting of judicial favors to a privileged few. The record is *everything! everything!*

You must make an effective record ... or there'll be nothing to appeal.

Making a record is easy. Every paper filed in the court file, whether the court ultimately admits it as evidence or not, becomes part of the record. It may be ignored or passed over if it has little or no merit, however anything that is not scandalous or outright nonsense may be filed with the clerk of court and made a part of the case file. Making a record begins by filing papers. Making an effective record means filing the *right* papers,

the papers necessary to prove your facts and establish your legal arguments that tell the court why you – and not the other fellow – should be the winner.

Make no mistake about it, your power over the outcome is your right of appeal. Judges don't like their rulings to be overturned. They particularly do not like to be overturned by non-lawyers. By keeping the judge "fully advised in the premises" as lawyers say, the court will be unwilling to rule against you if you've made a solid record of your cause and clearly presented in the file itself indisputable reasons why you should win instead of your opponent.

Take every opportunity to put your case concisely and effectively on the record.

Do not attend any hearing without an *experienced* and *accurate* court reporter.

Do not go "off the record" with a judge at any time ... unless it's to discuss your golf handicap.

Make certain *everything* that is said or done gets on the record ... in the court file.

In particular, make certain every fact and every law you must establish is established rationally, readably, and conclusively *on the record*.