

## Will County Civil Committee

### By-Stander's Reports

In Cook County, proceedings are not recorded and parties must provide their own court reporters. On occasion in Will County, a transcript may be unavailable because the recording system was not activated for a portion of a trial or hearing. In the event a transcript cannot be obtained, a bystander's report is commonly used.

The appellant has a responsibility to furnish a sufficiently complete record on appeal to permit appellate review. *In re Marriage of Kimberly Abu-Hashim*, 2014 IL App (1st) 122997, ¶15. Any doubt arising from incompleteness of the record will be resolved against the appellant. *Haudrich v. Howmedica, Inc.*, 169 Ill.2d 525 (1996.)

In *Foutch v. O'Bryant*, 99 Ill.2d 389 (1984), the appellant failed to provide a transcript of proceedings when appealing the trial court's denial of a motion to vacate an *ex parte* judgment. No court reporter was present at the hearing on the motion to vacate. Absent a transcript of the hearing where evidence was heard, and absent specific reasons by the trial court for the denial of the motion in its order, review of the decision for an abuse of discretion was foreclosed. *Id.* at 393-394. It was, therefore, presumed that the evidence presented supported the judgment, and the judgment was affirmed. *Id.*

When conducting a hearing or trial where there is some chance of appeal, the best, easiest practice, obviously, is to have a court reporter transcribe the proceedings so that a report of proceedings can be filed with the appellate court. Other options are, however, identified if no transcript is available.

Under Rule 323, a reporter's transcript, a bystander's report, or an agreed statement of facts can be used so that "evidence, oral rulings of the trial judge, a brief statement of the trial

judge of the reasons for his decision” and other proceedings are incorporated in the Record on Appeal. Supreme Court Rule 323(a). Under the Rule, for example, a trial judge’s order which details the evidence and grants directed verdict, and other summaries, are insufficient under Supreme Court Rule 323.

If no verbatim transcript of the proceedings is obtainable, the appellant may compile a proposed report of proceedings from the best available sources, including recollection. Supreme Court Rule 323(c). The time limits are short:

The proposed report shall be served on all parties within 28 days after the notice of appeal is filed. Within 14 days after service of the proposed report of proceedings, any other party may serve proposed amendments or an alternative proposed report of proceedings. Within 7 days thereafter, the appellant shall, upon notice, present the proposed report or reports and any proposed amendments to the trial court for settlement and approval. The court, holding hearings if necessary, shall promptly settle, certify, and order filed an accurate report of proceedings. Absent stipulation, only the report of proceedings so certified shall be included in the record on appeal.

Preparation of a bystander’s report or agreed statement of facts can be time-consuming and is best avoided.

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