

Reporters' Transcripts on Appeal: Transcript Formatting

By John A. Taylor, Jr., Esq.

This is the second in a series of articles based on comments from appellate practitioners regarding reporters' transcripts on appeal. The comments, which were presented to the "Reporting on the Record Task Force" in December 2002, were gathered from members of the Los Angeles County Bar Appellate Courts Committee and the California Academy of Appellate Lawyers, as well as attorneys at Horvitz & Levy LLP, which specializes exclusively in civil appellate law.

Currently, transcript formats are governed by rules 9 and 129 of the California Rules of Court. Rule 9 prescribes the size, weight, and type of paper, page margins and numbering, line numbering and spacing, cover formatting, and indexing requirements. Rule 129, applicable to appeals to the appellate division of the superior court, incorporates portions of rule 9 and adds certain additional indexing requirements. Because these rules do not cover every aspect of transcript formatting, the Task Force observes that "transcript formats vary county by county," and "there is inconsistency in indentation, margin settings, use of parentheticals, transcript page appearance, and lines per page."

Based on my informal survey, appellate practitioners do not seem overly concerned that rules 9 and 129 allow for minor variations among the various appellate districts. They did, however, point out a few aspects of transcript formatting that could be improved.

First, the majority (although not unanimous) view is that appellate transcripts would be more readable if printed in upper and lower case, rather than in all caps. (Some transcripts have some sections reported in one format, some sections in another.) Locating names and other key terms when visually scanning pages is more difficult when all caps are used. In addition, quoting from an all-caps transcript in an appellate brief requires attorneys to decide whether to transform the text to upper and lower case and, if so, decide which words to capitalize. During Task Force discussion of this point, it was mentioned that some reporters have technological limitations precluding them from producing a transcript in upper and lower case. Perhaps a phased-in rule change could allow for future compliance with an upper/lower case requirement as equipment and software is upgraded.

Second, regarding the format of transcript covers, appellate attorneys appreciate strict compliance with rule 9(c), which requires each volume's cover to display the volume number,

One Reporter's Response

By Paige Moser

Transcript formatting is one of the areas the RRTF is addressing. Mr. Taylor's article lists many areas where certain appeal transcript formatting changes may help appellate attorneys in their work. I too believe there is room for improvement in transcript formatting. I also have concerns, however, that some of the proposals discussed in the article would prove to be unduly burdensome and time-consuming for the already work-overloaded official.

Providing a witness and exhibit index in each volume of the transcript in addition to the master index makes good sense, and yes, the pertinent volume number should appear in the master index for the witnesses and exhibits.

Some attorneys remarked that having on the spine of the transcript the case name, volume, and page numbers might be beneficial when trying to locate a transcript. As reporters do not actually do a "book binding," where a printer could print this information on the spine, this would require manual printing of the information on the spine side by the reporter on the original and all copies.

Headers and footers on each day for the date of the transcript could be rather easily accomplished, but adding the witnesses' names and names of the examining attorneys on each page might prove to be a tricky and time-consuming task.

The issue of indices not clearly identifying where exhibits are marked and admitted is a twofold issue. Of course, when an exhibit is clearly identified as being marked for identification or is admitted into evidence, the page where that occurs should be the page number reflected in the index. This assumes, of course, that it is clear on the record when that occurs. Oftentimes the marking of exhibits is not clearly set forth on the record and the reporter would have to guess if and when it was marked. To achieve a good record and, hence, a good index requires the court and attorneys to clearly indicate on the record the marking and receiving of exhibits, and it is the reporter's responsibility thereafter to make sure the index clearly reflects these actions.

Now, for me, the biggie: Upper- and lower-case text. Hmm. Boy, that would cause myself and many other reporters I know a great amount of grief.

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page number range, and the dates of the proceedings reported in that particular volume. Some appellate attorneys suggested it would be helpful – especially when multiple days of testimony are included in a single volume – if each transcript page also provided header or footer information identifying the date, witness, and questioning attorney. Another suggestion was that the spine of each volume display the case name, volume number, and page number range for that volume, making it easier for attorneys and the court to locate a particular record cite when the transcripts are stored on a shelf.

Third, with respect to transcript indexes, reporters frequently list exhibits and witnesses only in tables contained in the first volume of the transcript or an individual separate volume. While this is all rule 9(b) appears to require in an ordinary appeal, rule 129 (applicable to limited jurisdiction appeals) additionally requires such an index "at the beginning of each volume of [the] transcript." (Emphasis added.) Appellate attorneys agree that the requirements stated in rule 129 should apply in all appeals, since it is cumbersome to have to keep returning to the first volume to find where a witness is questioned or where an exhibit is marked or admitted into evidence in a different volume. In addition, appellate attorneys would like the main index in volume 1 to reflect not just the page number, but also the pertinent volume number where testimony or a document appears.

Finally, there appears to be a fair amount of inaccuracy in appellate transcript indices regarding where exhibits are marked and admitted. Sometimes exhibit numbers are missing altogether from the index. Or, rather than indicating the point during trial when an exhibit was admitted into evidence, the index will cite only to the comprehensive order at the end of trial where the court orders that all exhibits proffered by a party will be admitted or to the point where the parties orally list the exhibits previously admitted during trial. This requires a painstaking search by the attorney through the transcript to determine when the exhibit was identified and the later point when it was admitted (if it was admitted) into evidence. Not surprisingly, during such a search, an appellate attorney will not have the kindest thoughts toward the court reporter(s) who prepared the transcript index.

(John A. Taylor, Jr. is Vice-Chair of the State Bar Appellate Courts Committee, a California State Bar Certified Appellate Specialist, and a partner with the law firm of Horvitz & Levy LLP.)

One Reporter's Response

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Mr. Taylor's article points out that the appellate attorneys often find themselves trying to figure out what words should be quoted in upper and lower case in appellate briefs. It is not just the appellate attorneys who must grapple with this issue; reporters do also. All upper-case text is a tremendous time-saver for reporters and ends the tedious and time-consuming process for reporters of trying to figure out what should be in upper or lower case and trying to ensure it is consistent throughout a transcript.

In terms of the difficulty when visually scanning for names and locations when using all upper case, perhaps reporters offering key-word indexes could mitigate some of those dilemmas. Just a thought. Of course, I do believe that transcripts on appeal when done by multiple reporters should all be in the same case format; namely, all upper case!

The issue of transcript formatting is one which is central to many reporters' hearts and pocketbooks. Court reporter software, the tool used for the production of transcripts, varies in its sophistication (and price—always expensive), and court reporters' software technology expertise varies widely, often a function of funds an individual reporter is able to spend on software training. The issues Mr. Taylor brings up are important ones that reporters must appreciate and be aware of. The question is how best to address the attorneys' concerns while keeping in mind the amount of extra time, effort, and cost these proposals would place on the individual court reporter.

(The above opinions are solely my own and do not necessarily reflect the views of the COCRA Board or its members.)

RAEL/TAOEUM and RAEDBABG

"One word, Two words,
Hyphenated?"

By Mary Louise Gilman

Readback (noun)
Real time (computers)
Real-time (adj.)
Realtime (court reporting)

(You may purchase this great resource through NCRA.)

One
Word,
Two
Words,
Hyphen-
ated?