



Appellate Tips for Trial Counsel

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Make a Good Trial Record

- If it isn't on the record in the trial court, it can't be used on appeal
 - Extra-record material will be stricken from appeal brief or cause entire brief to be stricken
- Keep an accurate listing of all court appearances
 - Helps when ordering transcripts
 - Improves accuracy of estimated retainer and total appeal fees
 - Order transcripts as trial/hearing progresses
- Keep track of, ***and copies of***, all exhibits (yours and theirs)

Preserve Issues of law and fact)

- Don't stipulate away important issues under pressure from trial court or opposing counsel
- File trial/hearing briefs on all key issues of law and fact before the trial/hearing
- Submit written proposed findings of fact/conclusions of law at end of hearing

Understand the “Final Order” Rule - MCR 7.202(6)

- Post-judgment spousal support, child support, property (QDRO, etc.), and parenting time issues ***are not*** appealable by right
- Only post-judgment child custody and attorney fee issues ***are*** appealable by right
 - Custody may include some parenting time, domicile, and school enrollment cases
- Pre-judgment (interlocutory) orders are not appealable by right
- Leaving any issue open in judgment prevents it from being a final order appealable by right ***until that issue is decided***

Go Digital

- Scan all pleadings, papers, exhibits, transcripts into *searchable* PDF *as case progresses*
 - Much easier for you to find
 - Much simpler to send CD/DVD or email attachments to appellate counsel than reams of paper
 - Especially important in appeals by leave
 - Any post-judgment appeal other than custody or attorney fees
 - Time is of essence (just **21 days** to file complete brief with transcript and exhibits)

Don't Oversell Appeal Option to Clients

- Overall family law reversal rate is well under 10%
- Most likely result on appeal is the result at trial
- Appeal may correct trial court errors, will not correct attorney/litigation strategy errors
- Process is expensive (often \$10K +) and time consuming (approx. 2 years)
- Stays pending appeal rarely granted (5 in 30 years covering 100's of appeals)