

# **DOCUMENT 29**

## **HOW TO PRESERVE THE RECORD LIKE A PROFESSIONAL**

### **PURPOSE**

Many litigants focus entirely on winning at trial and neglect the record. The record is the foundation for post-trial motions, appeals, and extraordinary relief.

### **WHAT IS THE RECORD?**

The record generally consists of filings, motions, exhibits, objections, rulings, transcripts, and other materials that document what occurred during the proceeding.

### **WHY IT MATTERS**

Appellate courts typically review the record. If an issue does not appear in the record, review may be difficult or impossible.

### **EXAMPLE #1 – OBJECTION**

Defendant: 'Your Honor, I respectfully object and request that my objection be noted for the record.'

The purpose is not argument. The purpose is preservation.

### **EXAMPLE #2 – DENIED MOTION**

Court denies motion. Defendant: 'Your Honor, I respectfully request that the motion, ruling, and objection be preserved for the record.'

### **EXAMPLE #3 – LIMITED QUESTIONING**

Court limits questioning. Defendant: 'Your Honor, I respectfully note my objection and request preservation for the record.'

### **COMMON MISTAKE #1**

Assuming the court automatically knows what issue is being preserved.

### **COMMON MISTAKE #2**

Failing to obtain a ruling after making an objection or motion.

### **COMMON MISTAKE #3**

Waiting until appeal to raise an issue that was never presented below.

### **PRACTICAL RULE**

Object. State the issue. Obtain a ruling. Preserve the record. Move on.

### **LD APPLICATION**

The Liberty Dialogues emphasizes documentation and disciplined process. Record preservation is one of the most practical expressions of that principle.

### **FINAL PRINCIPLE**

A preserved issue may be reviewed. An unpreserved issue often disappears. Professionals understand the importance of the record. Students of the Liberty Dialogues should as well.