

Project Documentation Part One: The “Hows” and “Whys” of Daily Construction Reports

by Bryan L. Jeffries



It is very important for every contractor to produce daily reports on each and every construction project. Ideally, these would be prepared by the superintendent or foreman on the project. The person who prepares daily construction reports will be required to record the facts on a project contemporaneously with the actual time they occur. To do so, little or no time must have passed so as not to dilute or intertwine the items being recorded. This is important because it makes this documentation pure and strong, and can be introduced into evidence if a claim proceeds to litigation or arbitration. Time and time again, the party with the better project documentation prevails at arbitration or trial.

The further away you get from the actual facts and events, the more tainted the records become by one's experiences and feelings, and a recollection of what actually transpired. Facts should stay facts.

Daily Reports and Proper Project Documentation Need to be a Routine Part of a Contractor's Business

The more regularly contractors use these documents to conduct business, the stronger and more accurate these documents become. Field and office personnel must understand that this is part of business and the daily routine. Contractors must train their personnel to create proper contemporaneous documentation so that way it becomes automatic and ingrained.

Contractors should make use of the daily reports to:

1. review important notations in weekly meetings to set up action lists/agendas and improve performance through discussion;
2. compliment good reports that succinctly convey important items;
3. make these reports your working documents;
4. involve the author of the document in the discussions; and
5. make his or her work on these documents feel important.

Offices

Toledo Office:

One Seagate, 24th Floor
P.O. Box 10032
Toledo, Ohio 43699
Phone: 419-241-6000
Fax: 419-247-1777

Columbus Office:

100 East Broad St.
Ste. 2100
Columbus, Ohio 43215
Phone: 614-564-1445
Fax: 614-280-1777

Findlay Office:

510 South Main St.
Findlay, Ohio 45840
Phone: 419-424-5847
Fax: 419-424-9860

Detroit Office:

615 Griswold, Ste. 1305
Detroit, Michigan 48226
Phone: 313-818-3040
Fax: 313-285-9282

A Proper Daily Report Can Be Used in Litigation or Arbitration

The author of the daily report communicates what happened “today.” Yesterday was reported yesterday and tomorrow is at best a forecast without fact. Facts come in varying shapes and sizes. A fact can be something that did happen. Or, it can be something that did not happen (but should have, according to the daily plan). Stick to the facts—do your best to avoid conjecture and opinion. If you must state opinion, identify it as such. Report firsthand information on your report; not conjecture and supposition.

If a claim proceeds to litigation or arbitration, it is important to realize that the daily report, if done properly, is a “document that can testify.” And it may be the best witness of all.

However, daily reports, standing alone are considered hearsay and may not be introduced into evidence. Anything said or written that is not under oath at the time and not subject to cross-examination is hearsay. How then, can the report eventually be used in evidence?

Your daily report can “testify” and be introduced into evidence at a trial or arbitration only if the daily report is properly done and maintained, so that it fits into an exception to the Hearsay Rule of the Rules of Evidence.

The Business Records Exception to the Hearsay Rule

Records that normally are kept in the ordinary business of your company qualify under the Business Records Exception to the Hearsay Rule. Documents and records used in connection with running a business or project are assumed to be credible. After all, what successful businessman or businesswoman would want to use false documents to run his or her business? For that reason, business records are given a shroud of credibility and can be admitted into evidence even though they are technically hearsay.

The “Prior Recollection Recorded” Exception to the Hearsay Rule

It is important the reports are compiled contemporaneous with the recorded facts for another reason. As long as the reports are contemporaneous, then they are considered “Prior Recollection Recorded,” which is another exception to the Hearsay Rule.

How to Get the Daily Reports Admitted as Evidence

One way to ensure that daily reports are admitted as evidence, and considered a business record, is for each contractor to have a written policy addressing its key business records on construction projects, including daily reports, cost reporting, correspondence (e-mail) and other documents. The policy should establish a check and balance system to ensure accuracy. The policy should establish an employee to ensure proper implementation of the policy. All cost documents must have vertical and horizontal accountability. Opposing attorneys often test the accuracy of all detailed and summary documentation, and the accuracy of field and office documentation.

You Can Destroy the Admissibility of Daily Reports as Evidence

As easy as it is to admit daily reports into evidence, it is just as easy to make them inadmissible and subject to challenge. Here is how:

- Inaccuracies
- Entries “in contemplation of litigation”
- Self-serving statements
- Inconsistency in maintaining records
- Loss of some records

Proper Project Documentation Supports Your Claims and Your Attorney's Success in Court

In general, a construction lawyer wants your company's standard-used documents; not ones prepared because of a potential impact or problem. Jobsite documents should use the facts to relay the events and tell the story of what did happen and what did not happen that should have. The records should show a gapless workflow or storyline based on the actual facts so your attorney or forensic expert can show cause and effect. Daily reports should be one such standard document.

For questions related to project documentation, or advice on other construction issues, please contact [Bryan L. Jeffries](#), chair, Construction Law Practice Group, at 614-564-1449, or bljeffries@eastmansmith.com.

Disclaimer

The article in this publication has been prepared by Eastman & Smith Ltd. for informational purposes only and should not be considered legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney/client relationship.