



The exhibit's the thing

A practical guide to organizing your exhibits



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“Playing from the witness’s deposition, page 33 lines 3-22. And while I wait for Mr. Defense to review it, I note that the exhibit referred to as Exhibit 3 is now plaintiff’s trial exhibit 32.

It has also been admitted as defense exhibit J.” The lawyer looked over at the jury, who were taking detailed notes. Unbeknownst to him, the glaze-eyed future foreperson wrote, “witness asked about some exhibit – three or something.”

Use running exhibits

Running exhibits means starting with exhibit 1 as the first exhibit at the first deposition and then adding sequentially through the case. This helps avoid confusion at trial. Trial exhibit references should be tidy – particularly for impeachment. Forcing jurors to work for information means losing the jurors’ attention. Running exhibits also reduce costs and improve efficiency. In order to do this effectively, ask for documents early.

Early and organized

Organized exhibits are easier to use. The traffic collision report, scene photos, damage photos, repair bills – chronologic order helps. Construction site incident? Best to have the safety meetings and progress reports in chronologic order. Request the documents before the first deposition, organize them, and use them. But great is the enemy of good – something additional always shows up. Accept that some out-of-sequence documents will occur. Use a binder for deposition and have an electronic version. Remember to save them as Ex. 001, 002 so that if they are used in trial presentation programs, Ex. 2 doesn’t end up near Ex. 20.

People tend to get lazy with photographs. Make sure the specific photograph is identifiable, even if it is sub-numbered as Ex. 002-3. Pro tip: when using exhibits in presentations (Opening for example), note the exhibit number in the notes field. This makes it easy to know what to admit by trial’s end.

A clerk’s list = a happy clerk

Create an exhibit list to use as an index. You might as well use the clerk’s format so that you can use the same list for trial. Many lawyers show up at trial with a pleading paper exhibit list. The clerk then frowns and asks for a different list – table format with exhibit number, exhibit description, and identified, admitted, withdrawn blocks (each with room for the date it occurs in trial). Starting out with that format saves valuable trial time. Bonus points: put all the lawyers’ contact information – including email and cell phone numbers – on the list and provide a Word version.

In singly-assigned cases, ask the clerk how that clerk prefers

to handle exhibits. A few clerks do not want pre-marked exhibits, they want exhibits marked in the order referred to in trial. In that situation, use the suggestions in this column for other cases – or try to (gently) win over the clerk.

At deposition

Bring binders for the witness and opposing counsel. Explain the process. Then bring the witness copy to every deposition, adding exhibits along the way. Updating the exhibit list after every deposition helps – it prevents the deadly, “whoops – two items, same number,” problem. If one can’t recall the last number (this happens), call the office or sequence jump (i.e., if one is somewhere around 33, jump to 40.) Then use “Intentionally left blank” sheets for the gaps. Stipulate that the exhibits will not be attached – the deposition copy costs then plummet.

Medical records

Organizing medical records poses a unique problem. For trial purposes, assign the medical records a high exhibit number – say 300 – to leave room for the other exhibits to build during discovery. Put the records in chronologic order, each visit a separate exhibit. Don’t forget radiology – identify radiology disks as exhibits and leave space for them. Late additions? Consider sub-numbering (Exhibit 311-1) to keep them in chronologic order. Or accept that the order won’t be perfect.

Experts

Experts cost money. Giving an expert a pile of records or documents gets expensive quickly. With medical records, the medical record review is either pricey (if they organize the records) or disorganized (if they don’t). It costs far less to give them the material in trial order. Medical experts like this too – they didn’t go to medical school to sort documents. Be exceedingly careful to make sure everything is in there though. A cherry-picking-evidence accusation at trial hurts.

Trial approaches

As trial approaches, remove unnecessary exhibits. Replace them with “Intentionally left blank.” Review the exhibits for redactions – insurance references in medical records for example. Add demonstratives – the list should be complete. Suggest to the defense that it be a joint list, with the understanding that joint submission does not mean stipulating to admission. Clerks and judges like this – and cases go in more smoothly when they are happy.

Outro

Our introductory lawyer’s next trial? The next case didn’t try. Nor the one after that. The lawyer was so organized, the witnesses so destroyed at depositions, the carriers so intimidated, that they kept settling for ten times case value. You can trust me on this – because I’m Joe Isuzu.



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