

BEST PRACTICES FOR EXHIBITS

As you know, neither counsel, nor a witness, may publish an exhibit to the jury until after the exhibit has been **received as evidence** by the Court. This being the case, the Court appreciates counsel identifying early on exhibits to which admission is stipulated, so that they can be admitted into evidence *before* they are used with witnesses. The Court also prefers counsel identify contested exhibits as soon as possible to avoid delays in the presentation of evidence to the jury. Further, only agreed upon demonstrative and substantive exhibits may be used by counsel in opening and closing statements.

All exhibits, **including demonstrative exhibits and powerpoint slides**, must be individually marked for identification and included on the exhibit list that you send to the clerk in the court's electronic format. For the clarity of the record, detailed exhibit descriptions are encouraged. In addition, counsel should work together to ensure their lists do not include duplicative exhibits. Once an exhibit is received as, for example, Exhibit 5, it should be referred to on the record as Exhibit 5; if opposing counsel has marked the identical exhibit a different number, all counsel should still refer to the exhibit by the number of the exhibit as it was first received.

Each page (or slide) of your exhibits should be visibly marked with a trial exhibit number for easy reference in the record, whether or not it is intended that they be admitted into evidence. If any exhibit, substantive or demonstrative, is changed in any way after being pre-marked, the altered exhibit must be given a new exhibit number.

The exhibit number of each page (or slide) should be reflected on the exhibit list. The only exception to this rule is if the entire exhibit is offered and received into evidence prior to being used. For example, at the beginning of the day the party offers and the Court receives exhibit 429, which includes pages 429-1 through 429-100. If the entire exhibit is not received, the clerk will record that only, for example, page 429-4 was received. So, if only part of an exhibit will be offered and/or received, **the hyphenated exhibit number should be reflected on the exhibit list.**

If there are confidential expert exhibits, each page or slide of the expert exhibits should still be visibly pre-marked. An electronic list of these exhibits should be provided to the clerk in the court's format to include on the exhibit list as soon as practicable after the expert's testimony.

In cases with voluminous exhibits, counsel should provide the Court with two sets of exhibits: one original set to be used with the witness and one Court copy. In all cases counsel should be prepared to provide the Court copies of exhibits that are contested.

Finally, the clerk will not hand an exhibit to the witness unless: 1) it has been admitted into evidence; 2) the witness is asked to authenticate the document; or 3) the foundation is laid for the witness to use the document to refresh his/her recollection.