

## **EXHIBITS - MARKING, LISTING AND CUSTODY**

for United States District Court Judge

Roslyn O. Silver

**Judge Code: 7022**

Exhibits shall be prepared by counsel or the parties, if pro se, and delivered to the courtroom deputy **AT LEAST 48 HOURS IN ADVANCE OF TRIAL** or any such time as the court orders. Counsel also shall prepare the exhibit worksheet and witness list and deliver them to the courtroom deputy in triplicate (1 original and 2 copies) along with the exhibits.

### **USE OF LABELS/COVER SHEET**

1. Exhibit cover sheets and labels are divided by color to indicate whether the exhibit is offered by plaintiff (YELLOW) or defendant (BLUE). Cover sheets and labels are provided to counsel by the courtroom deputy for the purpose of numbering and labeling exhibits **PRIOR** to trial.
2. Exhibit cover sheets shall be copied on yellow or blue paper and used in cover sheet fashion to identify standard size paper exhibits. The cover sheet shall be stapled to the top of the original exhibit, and the exhibit shall be placed in a manilla folder numbered to correspond with the exhibit number.
3. If the exhibit is a photo, use adhesive labels on the back of the photo.
4. Large or bulky items may require the use of tie tags with the exhibit label placed on the tag or may be marked in a logical location on the item or on the plastic bag containing the item.
5. Charts used for demonstration should be identified in the lower right hand corner with an exhibit label or on the reverse side of the chart. If the item is an enlargement of another marked exhibit, it should be numbered as a sub-part of the smaller exhibit.
6. During trial, always advise the courtroom deputy **in advance** which exhibits will be needed for each witness.

### **NUMBERING**

1. Blocks of numbers are assigned to each side; plaintiff uses number 1 through the estimated number of exhibits. Defendant is given numbers starting after plaintiff but allowing space for additional exhibits marked during trial (example: Plaintiff 1-80 and Defendant 100- ). **Failure to comply with this directive will result in exhibits being properly remarked by counsel.**
2. Plaintiff and defendant shall consult regarding marking exhibits to **AVOID MARKING DUPLICATES**. If plaintiff marks a document, the defendant should not mark the same document. The exhibits are considered court exhibits, not plaintiff's or defendant's exhibits. Either side may move the other's exhibits into evidence.

3. Use **NUMBERS ONLY** except when identifying sub-parts; i.e., 3a, 3b, 3c. If the sub-parts will be more than a - z, commence with another number; i.e., 4a, 4b, 4c. Categorizing exhibits should be kept as simple and clear as possible. For the most part, **USE NUMBERS**.
4. Multiple page exhibits should have each page marked for easy reference and should be stapled or ACCO fastened; please do not use paper or binder clips. In bulky documents, BATES stamp numbers may be placed on each page, at the bottom right corner, and can be continuous numbering.
5. Blocks of numbers may be used to categorize exhibits; i.e, series 1-99 are Bank Records; series 100-199 are Tax Returns; series 200-299 are photographs; series 300-399 are Miscellaneous. The exhibit list will break down the categories and should be tabbed accordingly.

### **USE OF FOLDERS**

1. Place exhibits loose in folders so that the exhibit may be pulled out of the folder during trial. **DO NOT** attach the exhibit to the file folder. Label the top of the folder to identify the exhibit.
2. If there are many folders, place them in a box in numerical order. Mark the outside of the box with the exhibits contained therein. Leave room in the box for any extra exhibits that may be submitted during trial.
3. **DO NOT PLACE TRIAL EXHIBITS IN BINDERS** except when the binder is considered **ONE** exhibit. Mark the binder with an exhibit label in the lower right hand corner. An extra copy may be provided to the judge in a binder that is tabbed. No exhibit tags are needed on the judge's binders or set of exhibits.

### **EXHIBIT LISTS**

1. Exhibits shall be listed on the exhibit list provided or reproduced on a word processor, so long as it follows the same format. The form is self-explanatory. Be sure to leave enough **SPACE** at the end of the list to add additional exhibits. Each page shall be completed to the end with blank blocks. Extra blank pages are needed for both the exhibit and witness lists. The exhibit number and description should begin at the top of each block.
2. Provide the courtroom deputy with the original and two copies of the exhibit list along with the exhibits.

### **WITNESS LISTS**

1. Witnesses shall be listed on the witness list provided or reproduced on a word processor, so long as it follows the same format. Witnesses should be listed in alphabetical order unless otherwise ordered by the Court. Names should be at the top of the block and extra blank spaces included at

the end--this is helpful when names have to be added that are not on the list.

2. Provide the courtroom deputy with the original and two copies of the witness list along with the exhibit list.

### **SENSITIVE EXHIBITS**

1. Pursuant to General Order 98-07 dated July 30, 1987, "The arresting or investigative agency or designated representative shall retain custody of sensitive exhibits prior to, throughout, and after the trial. Sensitive exhibits shall include drugs and drug paraphernalia, guns and other weapons, money and any other exhibits designated as sensitive by the court."
2. The courtroom deputy will not take custody of any sensitive exhibits. During lengthy breaks and at close of the day, these exhibits are returned to the government (usually the agent) until court resumes.

### **IMPEACHMENT EXHIBITS**

1. Impeachment exhibits are given to the courtroom deputy **the first day of trial**, in a SEALED envelope, not the day a witness testifies. The envelope shall be marked with the caption of the case and plaintiff/defendant impeachment exhibits. If there is more than one exhibit in the envelope, mark each one with a **SEPARATE NUMBER** so you (and the clerk) will be able to identify it. Identify these exhibits with a numbering system of your own for easy retrieval and the courtroom deputy will assign the next available number when the exhibit is used.

### **STIPULATED EXHIBITS**

1. In civil trials, counsel or the parties may agree on most of the exhibits prior to trial and as listed in the pretrial order. Counsel and the parties may give the courtroom deputy a list of the stipulated exhibits to be marked in evidence before moving for their admission.
2. In criminal trials, stipulated exhibits usually are admitted one at a time during the course of trial.

### **DEPOSITIONS**

1. Depositions **ARE NOT** marked as exhibits. Identify them as plaintiff/defendant (so they will be returned to the correct party after trial), place them in alphabetical order and give them to the courtroom deputy the morning of the first day of trial.

## **MEDICAL OR TECHNICAL TERMS**

1. Provide a list of medical or technical or complex terms for the court reporter prior to the trial commencing.

## **RETURN OF EXHIBITS**

1. Pursuant to LRCiv 79.1(a), all exhibits are returned to respective counsel or the parties to keep custody of pending all appeals. If exhibits are not retrieved by counsel or the parties within 30 days of the Notice of Return of Exhibits, LRCiv 79.1(c), the courtroom deputy may destroy or otherwise dispose of them.
2. Usually trial exhibits are returned immediately to counsel or the parties upon conclusion of trial. Counsel or the parties will sign for returned exhibits. When a case is taken under advisement and a verdict or court ruling issues at a later date, a separate order will follow directing counsel or the parties to retrieve exhibits from the courtroom deputy.

If you have any questions or need more exhibit labels, please e-mail [Teddy\\_Bengtson@azd.uscourts.gov](mailto:Teddy_Bengtson@azd.uscourts.gov) or call 602-322-7231.