



Topic "The Use of Exhibit Books at Trial"
Opinion by: Justice Doug Campbell

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See also: Practice Tips: Issue No. 1: "Introducing Documentary Exhibits in Court"

This memorandum was prepared by Justice Doug Campbell in reply to the request of ACJ O'Neil as outlined in his Notice to the Bar dated November 6, 2014. It represents Justice Campbell's personal viewpoint and may or may not require some adjustment to conform to the preferences or practices of individual Judges. That will be left up to the Judge and the lawyer, if any, involved. Readers who make use of the within material do so therefore at their own discretion and subject to their own judgment

Formulation:

- *the purpose is to add to Litigation Efficiency;*
- *the books should be organized;*
- *they should be referenced in a way that the witness and the Judge can follow quickly.*

Use of Exhibit Books: (The suggestions in Practice tips – Issue #1 apply here)

1. Books of Exhibits are usually a great idea. Their main function is to assemble documents that are intended to be exhibits at trial with tabs and indices for easy reference by everyone involved. While the book is marked by an Exhibit Number, it is not technically an Exhibit; each Tabbed document is the "Exhibit" to be proved by its authenticator. The Book is a house-keeping tool. (Care should be taken to avoid including documents that will not be used in court).
2. The exhibit book should be organized by subject matter such as a book of "Pleadings", a book of "Expert Reports" a book of "Financial Statements", a book of "Affidavits ", or a book of "Social Worker Recordings", etc. (However, when there is only one book, the "Tabs" could be similarly organized).
3. It is helpful to have these exhibit books marked in advance with exhibit numbers and in a logical order, such as the order in which they are likely to be introduced. Each Book should have a separate Exhibit Number. Duplicate books should be made available to the Judge and marked "Judge's Copy". Duplicate books should also be available to every Counsel or self-represented party.
4. The documents included should be Tabbed and Indexed;
5. There **should be consecutive page numbering for the entire book** as opposed to page numbers for the documents contained in each tab. These consecutive page numbers should be obvious and differentiated from whatever page numbers appear on the documents. Extreme chaos is created when a large volume fails to contain page

numbers. The numbering system should be explained to the witness in advance of any questioning.

6. **Important to Me:** When referring the witness to a particular passage in the exhibit book, **do not start** by referring to a page number, (followed, for example, by the tab number and by the exhibit book number) since the witness or the Judge will need to have the Exhibit Book Number first in order to be able to find the Tab and the Page.

So, instead, do the reverse: direct the witness first to the Exhibit Book Number, then to the Tab Number, then to the Page Number so that everyone, including the Judge, can actually find the passage before the question arrives. Do this slowly. Give the Judge, the witness and the other parties a chance to follow where you are going. Remember, others in the Courtroom are not as familiar with these materials as are you.

7. **Avoid complicated Book Titles.** For example, when a Book of Exhibits is so large that it will be bound into 2 or more Volumes, the practice sometimes is to title them as Volume 1 and Volume 2, etc.

This often causes confusion. Will they be marked as: "Exhibit 5, Volume 1" and "Exhibit 5, Volume 2" (in which case there are 2 Exhibits numbered 5). The witness is usually lost by the concept. In my experience, chaos is markedly reduced by giving the 2 volumes the titles; "Exhibit 5" and Exhibit 6". (Adding Volume numbers gives the 2 books two names).

8. **Avoid "Sub-tabs":** ie **Tab "A"** (often an awkward and different size) followed by Sub-Tab 1,2,3,4 and **Tab 'B'**, Sub-tab 1,2,3,4,etc. This is confusing to a witness since there are multiple "Tabs" Called 1 & 2 & 3 & 4. Instead, Number all Tabs consecutively regardless of subject matter similarity so there is only one tab 3, etc.
9. **Before formulating a question,** identify the relevant passage by a paragraph number or other means slowly so that both the witness and the Judge will be able to find it before the question is asked. (Most Lawyers get to the passage very quickly because of their familiarity and they fail to acknowledge that everyone else in the Courtroom is not travelling at that same speed).
10. **If the questions are going to oscillate** between two separate passages or two separate Books of Exhibits, give the Judge and the witness advance warning of that approach so that he/she can have both passages or both exhibit books open and ready for the questions.
11. **Duplicate use of the word "Exhibit":** Sometimes the document in the Book of Exhibits is also called "exhibit" and identified by a number (or letter). This can be very confusing

to a witness. When this occurs, provide an advance explanation such that the witness will appreciate the duplicate use of the word “exhibit”. Introduce the passage slowly in accordance with that explanation. Make it clear.