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6 Tips to Manage Your Exhibits in a Virtual Courtroom

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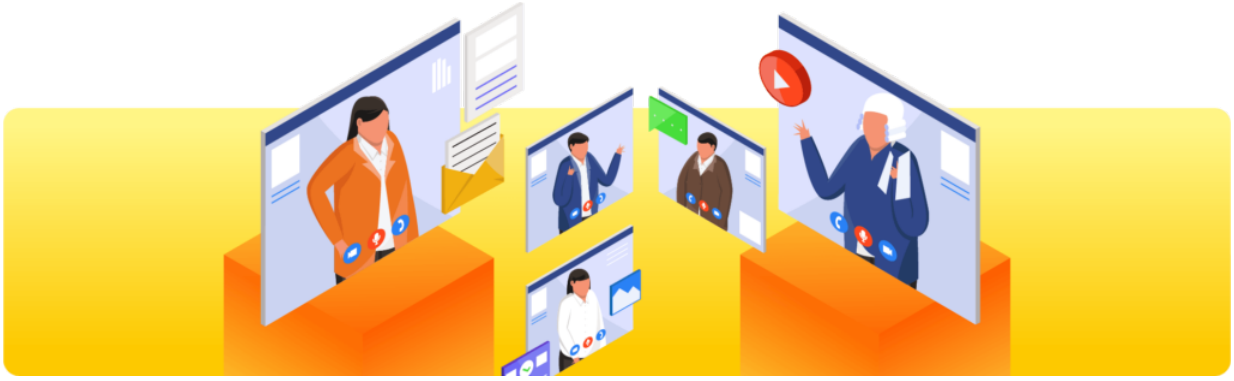
Today's reality looks something like this: we wake up slightly later because the longest commute we now face is walking from our bathrooms to the kitchen. Dogs barking in the background, kids running in the background, and a home office set-up that would make Office Depot proud.

Working from home is our reality and although we have quickly adapted to this change, some industries face hurdles that far outweigh others.

Unfortunately, the legal industry is not exempt from the hardships that work from home has caused. Sure we have telephones and Slack and other means of communication, but by removing the element of face-to-face interactions, we have also removed a certain element of humanity. Your clients are stressed more often than not and now that we are forced apart, how do we bridge that connectivity gap? How do we create an environment of togetherness and empathy even if we are miles away from each other?

This dilemma carries into the courtroom as well. And arguably, it is harder to get away with the virtual nature of the work you conduct because a courtroom relies on this element of connectivity. But if you exchange your courtroom nuances with that of a screen, what do you get? Will the results be the same as they would if you were there in person? The goal is for that answer to be yes. And we are here to help.

So let's talk about one dilemma that many attorneys face and that is "how do we manage exhibits in a virtual courtroom?"



Going to court looks different and because of this, the processes and procedures we may have followed at one point now have changed.

In this virtual world, there are some steps you should follow when moving an exhibit in. Take a look:

1. Know Your Court's Requirements

Each court and each judge has different requirements when it comes to how, **when**, and to whom you need to submit your exhibits.

Most still require you to submit your exhibits to the clerk, but you can guarantee that they will be required to be sent in a virtual format by a specific deadline prior to your hearing or trial.

Some require a courtesy copy of those exhibits to be sent to the judge through the JA. So you want to make sure you know and understand where the exhibits need to go and in what format they need to be in. Do they need to be in a PDF format, do photos need to be JPEGs? You have to make sure you are understanding the requirements.

Some require the exhibits to be submitted through an online portal. Ultimately, you want to make sure that the first thing you know and understand is “how,” to submit exhibits, what format those exhibits are expected to be submitted in, and to whom those exhibits need to be submitted to.

This should go without saying, but do not miss your deadline. If this happens, that could result in a delay of your hearing or trial.

Once you have this covered, guess what? The rest of it is almost the same!

2. Moving an Exhibit In

If you know how to move an exhibit in court, you know how to move an exhibit in on Zoom. That doesn't change. The medium does not change the process for moving in an exhibit. Your exhibit still has to be relevant, related, and right.

Your exhibit needs to be relevant, meaning it proves or disproves a fact of consequence.

They have to be reliable, meaning they are either not hearsay, or there is an applicable hearsay exception.

And they have to be right, meaning as in not prejudicial.

Once those three things exist, you're going to go through the same "do," "how," "what" process.

Do you recognize it? How do you recognize it? What is it?

And then the remainder of the predicate depends on what type of exhibit you are moving in. However, in this virtual world, there are some things you do have to do differently.

3. Verbal Communication Differences

You no longer have to say "I'm showing opposing council, what has been pre-marked as defense exhibit A for identification purposes." Why? Because you're not actually making that movement in the courtroom where you'd need the court reporter to document it.

What you do need to say is "I'm putting up on the screen, what has been pre-marked as defense Exhibit A for identification purposes," so that your court reporter still can take down the exhibit and make sure that it is a part of your record.

When you are doing the logistics of moving the exhibit in, you also do not have to ask to approach the witness. This sounds fundamental, but you will be surprised. Because you have been doing it for so long in a certain manner over and over again, the first time you have to do it in this virtual setting can feel very weird. You're going to want to say, "I'm showing opposing council, what has been pre-marked as defense Exhibit A for identification purposes. Your Honor, may I approach the witness?" You don't have to do any of that. But you do still want to make it clear for your record, what you're doing and what exhibit you're handling. You can ask the witness to go to what's been marked as Exhibit A, and they can now pull it up in whatever format it is that they have it in.

4. Formatting

When it comes to formatting for your witness, your judge, or even the opposing council, we suggest using a PDF document that you can bookmark. And you bookmark it in the order you want to proceed in. In an ideal world, your exhibit list matches the order you intend to introduce your exhibits in trial.

No one lives in that type of ideal world. It almost always gets reordered once you do your trial notebook, and you start doing your questions.

So what you want to do is make sure your final PDF is bookmarked in the order you want to introduce the exhibits in. Doing this will make it easier for your client who is going to be your witness. It also makes it easier for the judge to follow because when it is a bookmarked PDF, the judge can just click on the bookmark and it automatically takes them to that exhibit. It is also recommended to put the exhibit letter, or a virtual exhibit sticker on the appropriate PDF pages themselves to keep them organized. Some ways you can do this include inserting a footer or by using the bate stamps feature that is in PDF.

Your organization is what becomes key in this virtual setting. And as we mentioned before, moving the exhibit in and the trial skills associated have not changed, the process has. Your clerk, your witnesses, and the judge all need to know what you're talking about, so this organization is paramount.

5. Using the Exhibit

When you are getting ready to use the exhibit, you're going to have to share your screen. Prior to doing so, you have to ask the judge's permission to do that. In some cases, the judge will explicitly say that the council has permission to share their screen when necessary.

When getting ready to share your screen, your exhibits should still satisfy the “Billboard Test.” There are a number of ways to be able to use exhibits and do presentations in this virtual setting. Powerpoint is going to be the most common default presentation application for most attorneys. If you choose to operate from PowerPoint, you do not want a million words on each slide. You want to satisfy the Billboard Test. What is the Billboard Test you may ask? When you’re driving down the street and you see a billboard, it has all the information you need, in large print with no clutter. You can understand who the billboard is about, what the contact information is and you’re able to digest that information in the 2.5 seconds you have to look at that billboard.

You want to apply this same test to your exhibits and your presentations. If you’re using your PowerPoint for your opening, or closing statements, or any other kind of demonstrative situation, make sure it is clear. Make sure they can read it, and don’t put any overwhelming amount of information on it. Er on the side of having more slides with fewer words than condensing the quantity and packing everything you have to say on three slides. If the people on the other side of the presentation cannot quickly read or understand what is on the screen, you’re going to lose them.

Because we are in a virtual environment, you must be able to convey the information that you need to convey in a clear and concise manner. When dealing with an actual exhibit, and in this hypothetical case let’s go with medical records. When you are using these documents, unless you need the entire document, it is suggested to do a call-out. This call-out would work similarly to the way you normally would do a call-out if you were standing at trial in person.

Using this call-out draws the attention to wherever it is you need it to be. You still have to use the entire document in order to get it authenticated and introduced, but when you get ready to actually use the actual exhibit, use the pertinent parts! This will work to cut down clutter, and the person not being able to see or understand where it is you’re coming from.

6. Tangible Exhibits

When it comes to physical and tangible exhibits, you need to submit all physical items to the clerk in order to get it entered. Have a photograph of it, so you can use it and talk about it and everyone can see what you’re talking about. If for whatever reason, the court lets you keep this physical exhibit (they really shouldn’t because if you’re entering this piece as evidence, it needs to go into the court’s virtual file), you should still have photos taken of the item to share electronically throughout the Zoom presentation.

Takeaways

Although our world has changed slightly, life still moves forward, even if not in a way we imagined.

When it comes to your exhibits, make sure they are clearly marked and organized and are being presented in a clear and concise manner. Remember, you should be handling them the same way you would handle them in physical court, you're merely adjusting how you submit and introduce them.

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