



# COURT REPORTERS BOARD OF CALIFORNIA



## Best Practice Pointer No. 13 Exhibit Handling for Depositions

### PHYSICALLY MARKING THE EXHIBIT

- The object is to make it easy for someone looking through exhibits to find the identifying label.
- Confirm the use of this procedure with counsel before proceeding begins.
  - The exhibit is provided to the court reporter.
  - The reporter ensures that exhibits are marked accurately.
  - The court reporter announces the number of the exhibit (“Exhibit 1 is marked for identification” or “This is being marked as Exhibit 1”).
- Labels
  - Information on the exhibit label should include:
    - » Exhibit number/letter.
    - » Witness last name.
    - » Court reporter’s license number and/or name.
    - » Date of proceeding.
  - Label placement:
    - » Place labels on the right side of the exhibit, when possible. Take care that nothing on the page is obstructed. Keep consistency in mind when choosing the location for the label.
    - » If there is no blank space available on an exhibit for placement of a label, place the label on the back of the exhibit in the center.

- » For objects other than paper, offer to place the label where it can be easily seen, but confirm with counsel before affixing the label. For objects where affixing a label is impossible, affix the label to a string tag and tie it on the object. Small items may be placed in an envelope and affix the exhibit label to the envelope.

- » A photograph may be marked on the back.

### TRACKING

- It is the responsibility of the court reporter to keep track of exhibits and exhibit numbers.

### CUSTODY

- Original exhibits are to remain in the custody and control of the court reporter unless there is a stipulation otherwise by counsel because the original exhibits (or what was marked at the deposition) must be attached to the original transcript.
- If an exhibit is to be retained by counsel or the witness providing it, a stipulation should be placed on the record and reflected in the Index of Exhibits.
- If counsel requests the court reporter retain custody of an unusual or bulky item, the court reporter should ask for a stipulation from all parties that there must be notification to all parties if any party requests to view the exhibit in the reporter’s presence. The stipulation should clarify to whom the item should be returned once the case has concluded and how to return the item.

### USE OF PREVIOUSLY MARKED EXHIBITS

- If counsel shows the witness an exhibit that was previously marked at another deposition, the court reporter should clarify if the exhibit is being offered for the physical record of the present deposition or simply used for reference by the witness.

# BEST PRACTICE POINTER EXHIBIT HANDLING FOR DEPOSITIONS

## OBJECTION TO EXHIBIT

- The court reporter is not the finder of fact and may not make a determination as to admissibility of an exhibit. If there is an objection to an exhibit being offered, the court reporter takes the exhibit and labels it. If the reporter does not receive within ten days from the date of the deposition a protective order issued by the Court regarding the disposition of the exhibit, include the exhibit with the transcript as usual.

## CONFIDENTIAL EXHIBITS

- Parties need to stipulate at each deposition whether an exhibit is confidential and/or provide to the reporter a copy of any confidentiality agreement between parties with explicit instructions on how to handle a confidential exhibit.

## PARENTHETICALS

- Per [California Code of Regulations Title 16, Division 24, Article 8, section 2473](#), parentheticals and exhibit markings of two lines or more shall contain no less than 35 characters per line.
- The language of the parenthetical should be kept as simple as possible.

Example: (Exhibit 1 was marked for identification.)

## SUBSTITUTION OF DOCUMENTS

- If counsel wishes to substitute or replace a previously marked exhibit, the substitution should be clearly stated on the record.

## INDEX

- The exhibit index should simply be entitled Exhibit Index or Deposition Exhibit Index unless other exhibits were specifically marked, i.e., plaintiff's or defendant's exhibits.
- The index should identify each exhibit number with a brief description of the exhibit, i.e., the type of document, date, Bates range, and the page at which it was marked.
- If the exhibit is retained by counsel or the witness, that information should be noted on the index.

- A separate index should be created for previously marked exhibits, including the exhibit number. No description is required. The page number at which it was first referenced may be included. Note whether an exhibit is confidential but only describe confidential exhibits in the confidential transcript.
- In the case of confidential exhibits or any type of sealed exhibits, the full description of the document should be omitted from the open portion of the transcript. The full description should be included only in the confidential portion of the transcript. Confidential exhibits are included only with the confidential portion of the transcript. A secure server or FTP repository should be set up to electronically transmit exhibits containing confidential information.

## SCENARIOS

- If an attorney leaves the deposition while the remaining attorney continues with a record, exhibits offered to the court reporter after another attorney leaves the room are to be accepted and attached to the deposition transcript.
- If the attorneys stipulate to no transcription of the stenographic/voice notes of a deposition, any exhibits marked must be retained by the court reporter along with the stenographic/voice notes so that in the event of a future order, the transcript will be complete with exhibits. Such exhibits may be scanned for storage if the attorneys so stipulate.
- If a case settles before the transcript is produced, the exhibits may be scanned and retained by the court reporter and the original(s) returned to the noticing party.
- If a court reporting firm is utilized, the court reporter should send the original exhibits to the firm as quickly as possible via a reliable source which offers a tracing or tracking service. Delivery confirmation is recommended. Scanned exhibits are acceptable in cases of expedited orders, but original transcripts should contain original exhibits (or what was marked at the deposition).

# BEST PRACTICE POINTER EXHIBIT HANDLING FOR DEPOSITIONS

- If a request is received to add an exhibit subsequent to the conclusion of the deposition, the court reporter may do so only with written stipulation of all parties.
- If a witness refuses to release a document which has been marked as an exhibit, it should be noted in the record and reflected in the exhibit index that the exhibit provided to the court reporter will be a copy of that document.
- If an exhibit which was to be provided to the court reporter after the conclusion of the deposition but was never provided, the court reporter should email the parties letting them know that the exhibit has not been received and that the transcript will be held until a date certain, after which time the transcript will be delivered. If the transcript goes out without such an exhibit, the reporter should indicate in the index that the document was never provided.

***Best practice pointers are not regulations or statutorily mandated. They are a way for the Board to provide guidance on situations not expressly set out in statute or regulation. Although the pointers may be used by licensees as a guide, the Board will not use them as a basis for discipline or enforcement of any type.***



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