SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NAME: _____ vs. _____
CASE#_____

ADVANCE TRIAL REVIEW ORDER MADE BY DEPARTMENT 72 ON_____
BY THE HONORABLE TIMOTHY B. TAYLOR.

Trial counsel for the parties are ordered to meet in person within the County of San Diego at least three (3) court days before the initial trial call date for the purpose of arriving at stipulations and agreements resulting in the simplification of triable issues. At the meeting, the following information shall be prepared, displayed and/or exchanged:

EVIDENCE/EXHIBITS

____ 1. Counsel shall produce and [pre]mark all exhibits the parties seek leave of Court to introduce at trial. Counsel shall prepare a joint numerical index of all exhibits for submission to the trial judge. There shall be no subparts to an exhibit. Each photograph or document shall be separately numbered. Counsel shall not mark an entire file with one exhibit number. Please refer to the attached articles for further guidance. The index shall indicate: 1) the exhibit number, 2) by whom the exhibit is being offered, 3) a brief description of the exhibit, 4) whether the parties have stipulated to admissibility, and if not, 5) the legal ground(s) for objection(s) that the objecting party intends in good faith to rely on at trial (see the attached exemplar for joint exhibit list). The index shall be submitted in triplicate. Exhibits not included in the index are subject to exclusion at trial, **true** impeachment exhibits excepted. Exhibits tags must be completed and attached on the upper right hand corner of each exhibit. Exhibit tags are available from the clerk.

____ 2. If depositions are intended to be used in lieu of live testimony, counsel shall submit the excerpts to be used to opposing counsel at the above meeting. Proposing and opposing counsel shall make a good faith effort to resolve any objections. Any remaining objections shall be brought to the Court's attention prior to the start of trial. It shall be the responsibility of the proponent of the evidence to prepare clean copies of the excerpts, which shall include the beginning and ending page and line numbers, to be given to the trial judge and placed in the record to eliminate the need of reporting the reading of the testimony. The original transcripts of all depositions which may be used at trial for any purpose shall be made available for use by the Court before the commencement of trial, along with a list of any changes made by the deponent after the taking of the deposition. Any problems in this regard shall be brought to

the Court's attention prior to the start of trial.

____ 3. With regard to any audio or video presentations intended to be used at trial, the proponent shall prepare a written transcript and the procedure set forth in the preceding paragraph shall apply. With regard to video presentations, the same shall be displayed to opposing counsel, and any issues promptly brought to the Court's attention.

____ 4. Each party seeking monetary damages shall prepare a summary of the documentary evidence supporting the damages sought (i.e. medical bills, accounts, etc.), which shall be included in the exhibit summary and submitted at trial in addition to the underlying documentary evidence in accordance with Evidence Code 1521.

VOIR DIRE

____ 5. Counsel shall jointly prepare a brief non-argumentative summary of the factual nature of the case; **including a brief summary of plaintiff's injuries, if applicable;** for submission to the trial judge. The purpose of the summary is to provide an overview of the case for the jury. This statement shall include a **joint** list of the complete names of all witnesses who are likely to be called in alphabetical order. The joint witness list shall be submitted in triplicate.

____ 6. If counsel wish to expand the scope of the judge's initial voir dire beyond the Judicial Council questions found in Standard 3.25 of the Standards of Judicial Administration, they shall prepare written questions for submission to the trial judge. These written questions shall be submitted to opposing counsel not later than the above meeting. Duplicate questions shall be eliminated.

JURY INSTRUCTIONS

____ 7. Counsel shall prepare a **joint** set of jury instructions. This set shall consist of one package of instructions for all parties. Judicial Council Civil Jury Instructions (CACI) are preferred. These instructions are available on www.courtinfo.ca.gov/jury/civiljuryinstructions/index. and in volumes.

The instructions shall be in the order they are to be given. Any objections to instructions shall be identified by a Post-It, which identifies the objecting party. Counsel may propose alternative jury instructions. When alternative instructions are presented, those instructions shall be successive instructions in the joint instruction package. The submission of a list of CACI numbers is not acceptable. Neither are multiple packages of instructions acceptable whether arranged by

parties, objections or some other method. The full text of all proposed instructions must be presented to the trial judge at or before the time of the trial call. If CACI instructions are used, all blanks shall be filled in and all bracketed material that is not applicable shall be deleted.

____ 8. Jury instructions not listed in the parties' Joint Trial Readiness Conference Report and prepared in accordance with the above order are subject to exclusion at trial.

____ 9. _____ [name of party] waived its right to trial by jury by failing to post fees timely. Any other party seeking jury trial must post fees within five (5) calendar days after the Trial Readiness Conference, or jury is waived as to all parties. [CCP 631(b)]

FILING DEADLINES/READINESS

____ 10. Refer to Local Rule 2.1.18. Motions in limine shall be prepared and filed and faxed (in accordance with California Rule of Court 2.306) or personally served at least five **court** days in advance of the trial. The title of each *in limine* motion shall identify the moving party and describe the nature of the motion, and shall be numbered sequentially, indicating the total number of *in limine* motions submitted by the moving party. Example: "Plaintiff JANE DOE's Motion *In Limine* to Exclude the Testimony of Joe Expert [No. 1 of 6]". Written opposition to *in limine* motions, if any, shall be filed and faxed (in accordance with California Rule of Court 2008) or personally served at least three court days in advance of the trial date and shall identify both the party filing the opposition, and the specific motion which is being opposed by name of moving party and motion number. Example: Defendant RICHARD ROE's Opposition to Plaintiff JANE DOE's Motion *In Limine* No. 1". Counsels are urged to file trial briefs according to the same schedule.

WITNESSES/READINESS

____ 11. Trial will not be delayed to accommodate witness scheduling problems. In the absence of extraordinary circumstances, the party will be deemed to have concluded the presentation of his/her case once the examination of available witnesses is concluded.

____ 12. Witnesses not listed on the parties' Joint Trial Readiness Conference Report are subject to exclusion at trial.

____ 13. Each counsel is ordered to telephone Department 72 at (619) 450-7072 prior to 12:00 noon on the day before the initial trial call date to report: 1) their readiness for trial, 2) the estimated trial length and 3) whether a jury will be required.

____ 14. The stipulation for release of exhibits (attached) shall be signed by counsel for all parties and filed with the court at the time of trial call.

____ 15. Counsel may contact the clerk at the phone number above to arrange for delivery of files, easels, projection equipment, etc.

ADDITIONAL ORDERS

_____
_____
_____
_____

_X_ EACH OF THE DOCUMENTS REQUESTED IN THIS TRIAL READINESS CONFERENCE REPORT SHALL BE SUBMITTED TO THE COURT AT THE TRIAL CALL. SEE ATTACHED TRIAL REQUIREMENTS, WHICH ARE PART OF THIS ORDER.

_X_ FAILURE OF COUNSEL FOR ANY PARTY TO COMPLY WITH THE ABOVE ORDERS MAY RESULT IN THE EXCLUSION OF EVIDENCE OR BE CONSIDERED AN ABANDONMENT OR FAILURE TO PROSECUTE OR DEFEND DILIGENTLY. ACCORDINGLY, JUDGMENT MAY BE ENTERED AGAINST THE DEFAULTING PARTY EITHER WITH RESPECT TO A SPECIFIC ISSUE OR ON THE ENTIRE CASE. IF COMPLIANCE WITH ANY PART OF THIS ORDER BECOMES UNDULY BURDENSOME, THAT FACT SHALL BE BROUGHT TO THE JUDGE'S ATTENTION IMMEDIATELY.

_X_ WE THE UNDERSIGNED ATTORNEYS OF RECORD IN THIS CASE, HAVE READ AND UNDERSTAND THE ABOVE ADVANCE TRIAL REVIEW ORDERS:

Signature of counsel: Counsel for [name of client]:

_____ _____

_____ _____

_____ _____

_____ _____

IT IS SO ORDERED:

DATED: _____ _____

TIMOTHY B. TAYLOR
Judge of the Superior Court

Rev: 03/30/2022

JOINT TRIAL EXHIBIT LIST

CASE NO. _____

TITLE: _____v. _____

Ct.'s Exh. No.	Submitted By	Description	Legal Grounds For Objection	(Clerk Entries)	
				Date Identified	Date Admitted

Revised 10/04/2022

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

DEPARTMENT 72 – HON. TIMOTHY B. TAYLOR

TRIAL REQUIREMENTS

The Court requires counsel to <u>bring to the Friday Trial Call</u> a Joint Trial Notebook for the Judge, comprised of the following:

1. Table of contents.
2. Copy of Joint Trial Readiness Report and the operative pleadings.
3. Copies of *In Limine* motions and oppositions, in order (motion followed by opposition).
4. Copy of Joint Witness List with a short sentence describing the witness (i.e., Dr. Steven Smith, an orthopedic surgeon from County Hospital).
5. Copy of Joint Exhibit List. The list shall be carefully reviewed to insure the description of the Exhibit matches the Exhibit. Please refer to attached articles.
6. Copies of Trial Briefs.
7. Joint Statement of the Case, in neutral form suitable to be read to prospective jurors. (Competing versions not acceptable.)
8. Voir Dire questions counsel requests Court to ask (if any).
9. Proposed Jury Instructions, tagged as to any objections, per #7 of order on page 2 above.
10. Special Verdict Form(s) – absent an agreed version, the Court will use a general verdict.

In addition, the following are due the day trial commences:

1. Two exhibit binders (original for the witness, premarked with Court Exhibit tags, and one copy for the Judge – no copy for clerk is needed). Each exhibit shall be marked with a discrete number, and shall be correctly identified. By way of example, it is impermissible to label "Dr. Jones' file" collectively as Exhibit 25. Exhibit tags must be affixed and completed with all information except for date admitted and clerk's initials. Please refer to attached articles.
2. Three copies of the Joint Witness List.
3. Three copies of the Joint Exhibit List.
4. Copies of Deposition Transcripts that will be used during trial.

GUIDELINES FOR REMOTE TRIAL APPEARANCES IN DEPT. 72

To ensure the fair conduct of the trial, and to ensure that the finder of fact can see and hear all witnesses testifying remotely, the following procedures must be followed:

1. With respect to any party or witness who appears at trial via the Court's Microsoft Teams account, no party or witness may testify by audio only, or by telephone, unless all parties stipulate that the testimony may be taken by audio only. In other words, the default requirement is for a video and audio appearance. The Court's goal is that all remote appearances be as close to a personal appearance as possible.

2. Each party or witness testifying remotely must arrange for their own video appearance for each day of trial, and shall be solely responsible for the payment of any fees arising from such appearance. Counsel must apprise witnesses of these requirements.

3. Each party must arrange in advance for the video appearance of any third-party witness appearing remotely it intends to call, and shall be solely responsible for the payment of any fees arising from such appearance. Witnesses who have been properly subpoenaed should cooperate with the parties in the making of these arrangements unless their appearance has been excused by the Court.

4. Each party must assure that the video feed of their witnesses appearing remotely is of sufficient bandwidth, quality and scope so that the Court, the jury, and opposing counsel may see and hear the witness clearly, and be able to assure that no witness is susceptible to coaching or has the ability to rely on any materials out of sight of the Court and/or opposing counsel. **A robust internet connection is essential. The witness must not be back-lit, must use a plain, uniform, neutral background, and must not apply background effects (e.g. blurred / fictitious backgrounds, which negatively affect bandwidth).** The camera must be situated to provide a head and shoulders shot of the witness. Remote appearances via cell phone are strongly discouraged for any but a brief, tangential witness.

5. Any and all materials that any remote witness relies on to refresh recollection or otherwise during the course of his or her testimony must be provided to all counsel upon request.

6. Each party calling a remote witness must send that witness a hard copy of any pre-marked exhibit it intends to use with the witness or offer through the witness one court day preceding the scheduled trial date. Screen sharing is not permitted during trial. Counsel must carefully plan ahead.

7. Parties and counsel must assure that any non-party witness who will testify at trial will not see or hear any of the trial proceedings that occur before they testify, or that occur after they testify and before they are excused from providing further testimony.

Revised 10/04/2022

8. Each party must assure that the proceedings are not being recorded or reported in any manner other than by the duly authorized court reporter. Remote reporting is forbidden by Government Code section 69959(a), and only the duly appointed *pro tem* reporter authorized by the Court (and personally present in the courtroom) is authorized to make a record of the testimony.

9. The Court may exclude any remote witness (or require his/her personal appearance in court) if the Court, in its discretion, determines that a remote appearance violates the foregoing guidelines or otherwise results in unfairness.

LOS ANGELES DAILY JOURNAL

How (not) to handle exhibits

By Kathleen M. White
and Daniel P. Maguire

There comes a moment in every trial or hearing when it is revealed to the judge whether the lawyer is a skilled trial professional or a bumbling tyro. That moment is not in the pretrial motions, the trial brief or the opening statements. It doesn't matter whether the trial is criminal or civil. That moment in all trials is the presentation of the first document as an exhibit. If you already know how to mark, organize and present exhibits, we thank you. Read no further. But if you want to know how to irritate the clerk, frustrate the judge, baffle opposing counsel, muddy the record, delay the process, and exasperate your client, read on:

1. Don't ask the judge or clerk before the hearing how they want exhibits handled. Pay no attention to the court's local rules regarding exhibits, don't ask the clerk if the exhibits can be pre-marked, and above all, appear five minutes before trial with voluminous unmarked exhibits. Be sure they are not in the order you will use them at trial.

2. Don't give the clerk an exhibit log that lists each exhibit in order, has a description of the exhibit, and a column for "marked," "admitted" and "comment." Don't ask if the clerk has a preferred format for the exhibit log. This ensures that the clerk will have difficulty tracking the exhibits and making a clear record. This also ensures that you will not be able to track your exhibits during trial, too.

3. Don't describe each exhibit specifically on the exhibit log, so the clerk cannot discern one exhibit from the other. For example, if you have several deeds of trust, just make multiple entries of "Deed of Trust" on the exhibit log and don't distinguish them by date or other identifier. This ensures a confusing record and extends the examination of witnesses as the judge and other lawyer constantly interrupt you to ask which deed of trust you have placed before the witness. This is especially helpful for muddying the record and lengthening proceedings when there is no court reporter.

4. Aggregate exhibits so there is more than one photograph on a page, or more than one document per exhibit, and be sure to use only one exhibit number for the aggregated exhibit. This guarantees that you will spend lots of time asking the witness to examine the third picture on the fourth row of the second page, and explaining to the judge what document you are using. Do not simplify it by using sub-numbers or sequential page numbers so that each page or image has a unique alphanumeric identifier.

5. When you introduce the exhibit to the witness, do not state on the record the exhibit number, or that it has been marked (or pre-marked) for identification. Do not say "I am presenting what's been (pre)marked as Exhibit A for identification to the witness." Just ask the witness to look at the paper in your hand, without referencing what it is or its exhibit number. This will guarantee that the judge and the other attorney will have no idea what you are talking about, the clerk will not note the introduction of that exhibit, and the record will not reflect what the witness' testimony covers.

6. Do not have your exhibits organized into folders, binders or any system that allows the orderly introduction of exhibits. As the witness examines the original exhibit, do not give the court or opposing counsel copies of the exhibits that you are using on the stand, either beforehand in a binder of pre-marked exhibits, or one exhibit at a time as you introduce them. Don't keep a copy for yourself. Again, this will ensure the ignorance of all in the courtroom as to what your examination covers.

7. If you are using an "elmo" or blow-ups of a document, don't enlarge it enough so that jurors (and judges) who need reading glasses can see it easily. Make them squint.

8. When you are finished using a marked exhibit, don't give it back to the clerk. The clerk is responsible for the safekeeping of all marked exhibits. Once marked, the exhibit must be retained by the clerk for the record. The clerk expects you to return the exhibit to him or her after you finish using the exhibit with each witness. For maximum inefficiency, do not return the marked exhibits to the clerk, and remove them from the courtroom at recesses.

> If you want to know how to irritate the clerk, frustrate the judge, baffle opposing counsel, muddy the record, delay the process, and exasperate your client, read on.

9. At the close of your case in chief (if not earlier), do not review on the record the exhibits that you have introduced and move them into evidence. This should be easy because you did not give the clerk or yourself an exhibit log, so you will not be able to track the exhibits you used anyway, and you will not ensure that the exhibits critical to your case have been admitted.

10. Swap out exhibits during trial. Changing or altering exhibits during trial is a sure-fire way to confuse everyone. So when you discover that your exhibit is missing a page, or contains personal information that should have been redacted, or is a draft rather than the final version, then simply bring the new corrected exhibit to court but continue using the old number. Having two distinct exhibits with the same exhibit number will spur interesting witness examination of the "Who's on First" type, such as "Please review the new version of exhibit 3, which actually pre-dates the old exhibit 3, and tell me which came first?" After all, numbers are scarce and should be recycled rather than wasted by giving each distinct exhibit its own number.

Follow these 10 rules and you will develop a reputation in your local court — just not the one you want.

GUEST COLUMN

Some practical advice for using exhibits at trial

By Judge Robert J. Moss

As my time on the bench is rapidly coming to an end I would like to share with trial lawyers some of the problems I've encountered over the last 20 years in the mechanics of conducting a trial.

One area that comes to mind is the considerable fumbling and bumbling with documents. Perhaps it is because as lawyers we are more focused on what questions we are going to ask live witnesses or what cogent arguments we are going to lavish on the jurors. Whatever the reason, the exhibit list and the documents we plan to use are often relegated to the back seat of trial preparation.

Using documents at trial is not difficult. However, not knowing the routine for marking and admitting documents into evidence can often detract from a smooth presentation and sometimes result in the failure to get a crucial piece of information into evidence. I'm not talking about the rules of authentication or whether a document is inadmissible hearsay or subject to some other evidentiary objection. I'm talking about the practical mechanics of handling exhibits during trial.

The following are some simple techniques which will assist the practitioner in appropriately handling exhibits:

Assign exhibit numbers to each party at the beginning of the case

This is not required by any statute or rule of court, but it is the smart way to go. First of all, remember we don't use letters any more to label exhibits. We use only numbers. At trial there is often confusion when an exhibit is referenced in a deposition as, for example, exhibit 25 or exhibit A, and then at trial it is labeled exhibit 102. I have seen exhibits stamped with two or three exhibit numbers or letters from use at multiple depositions only to be assigned still another number at trial. This is confusing to jurors and witnesses, not to mention counsel and the court.

This problem can be alleviated by agreeing to a group of numbers in the beginning. Say, for example, 1-99 for plaintiff's exhibits and 100 – 199 for defendant. You can usually determine during pre-trial how document intensive your case will be in the beginning. If you're not sure, assign 1 – 999 to plaintiff and assign 1000 – 1999 to defendant, and so on for other parties. Numbers are cheap and you don't have to use all of your assigned numbers. If counsel agree to a protocol in the beginning, it makes the numbering of exhibits simple and avoids confusion. You should talk things like this over in an initial meet and confer with your opponent. If you have not already done so, a good time to make such an arrangement is at the first deposition. A little effort early in the case will make things go much smoother downstream. Keep in mind the court may have a specific procedure for exhibits so be sure to check with the clerk to determine their preference.

Make each exhibit a discreet document

I often see counsel bundling similar or related documents together into one big, multi-page exhibit. For example, 25 photographs of damage to plaintiff's car or an entire medical chart or insurance claim file as one big exhibit. The problem with doing this is at trial, counsel often try to offer only three or four photographs into evidence or a page or two out of the medical chart or claim file. They will say "Your Honor, I would like to offer into evidence photos X, Y and Z out of Exhibit 10 (the whole group of photos) or page 123 and 124 out of exhibit 75 (the medical chart or claim file)."

A problem is created when the whole group has been marked as one exhibit. The clerk has the exhibit list and only has space on the form to check off the entire exhibit as admitted or not. It is very difficult for the clerk to, in effect, re-do the exhibit list on the fly during trial to itemize each individual photo or document in the bundled exhibit and mark whether they are individually

See Page 4 — SOME

Some practical advice for using

Continued from page 1

admitted or not. Most courts won't allow this. If counsel mark each photograph or letter or email or report or invoice or check as a separate exhibit this problem is avoided. It is a little more work up front, but it will pay dividends downstream. Also, by focusing on the evidence you are really interested in, you avoid obscuring important evidence with lots of extraneous material. Do you really want jurors searching through six inches of medical records to get to the one operative report that is central to your issue?

Prepare exhibit binders

Before trial, arrange your exhibits in three-ring binders, tabbed to correspond to the exhibit numbers, with an index in the front listing the description of the exhibit referenced in item 4 below. Use multiple binders if you have numerous exhibits, but clearly label each binder on the front and on the spine with the name of the case, the party who is offering them, the volume number, and the set of exhibits contained therein. It's better to use 3 inch binders and have more volumes than to use one or two huge binders that are hard for people to flip through. Spend a few extra dollars and use sturdy binders so they don't come apart during trial or fail to close easily. You should have one binder (or set of binders) containing the "original" exhibits for the clerk, one for the judge, one for the witness stand, one for yourself, and one for each of your opponents.

If your case is complex or document intensive, think about submitting your exhibits in electronic format. Be certain to check with the court on this approach. Most of us are agreeable and some courts even require it. A flash drive is best since many computers don't have disc players anymore. Also, if you submit exhibits in electronic format, you must provide a device for the jury to view them during deliberations. Use software that is easy to use and have someone available to show the judge and/or jurors how to access the files.

Give each exhibit a clear, concise, meaningful description

On the exhibit list and the index to your exhibit binders, assign a clear, concise, description of the exhibit. For example, "Photograph of plaintiff's vehicle," or "Letter from Jones to Smith 2/30/19," or "Purchase agreement 11/31/18." That enables the judge or witness or jury to easily locate the document they want to peruse. Also, when first referencing the exhibit during trial use that same description when identifying the exhibit. For example, "Mr. Witness, I am now showing you a document that purports to be a letter from Jones to Smith dated 2/30/19 and has been marked for identification as exhibit 25."

Stipulate to the admission of non-controversial documents

In most cases, many exhibits are clearly admissible and we should not waste time authenticating them or establishing a foundation for their admission. Talk to your opponent about exhibits (court rules require this). Try to agree on as many as you can. Jurors do not like all the time wasted on exhibits and want to get to the core issues in the case. Let the court know before trial starts what exhibits will be admitted by stipulation.

Avoid duplication of exhibits

I frequently see opposing counsel having the same separately numbered exhibit on their respective exhibit lists. This is unnecessary and confusing to the jury. Take the time when you meet with your opponent to exchange exhibits to eliminate any duplications. It does not matter whose exhibit it is. The jury is instructed to consider all the evidence no matter who produced it.

Do not include "non-exhibits" in your exhibit list

Frequently, counsel will mark as exhibits pleadings, discovery requests and discovery responses. These are not proper exhibits. The discovery statutes dictate how discovery can be used. For example, you can read interrogatories and their answers into the record, but there is no provision in the code for admitting those writings into evidence. There is no provision in the Code for even reading Requests for Admissions, Requests to Produce Documents or their responses into the record, much less admitting the writings into evidence.

Do not show an exhibit to the jury until it has been admitted into evidence

Very frequently counsel will just

anyway, concluding most of the pro-

; exhibits at trial

place a document on the Elmo during trial or start reading from the document before it has been admitted into evidence. "It says here, Mr. Jones, that the date of the delivery was Sept. 31, 2020, is that right?" Just as frequently, I might add, the opposing lawyer does not object. Technically, it is improper to show the jury any exhibit that has not been admitted into evidence. It is equally improper to read from (or pretend to read from) an exhibit that has not been admitted into evidence.

Be sure that you "offer" the exhibit into evidence on the record

It is very important to make sure that, on the record, you offer the item into evidence. The usual procedure goes something like this: "Mrs. Smith, I show you a document that has been marked as Exhibit 25," or "Mrs. Smith, take a look at exhibit 25 in the binder before you." It is OK to have the witness look at the marked exhibit so you can ask her questions about it. Then, lay the foundation for the exhibit's admission into evidence. After that say "Your Honor, I offer exhibit 25 into evidence." This last step is critical, unless you have stipulated to the admission of an exhibit as discussed in item 5, above. This is the point at which your opponent may object to the exhibit's admission and the judge rules on any objection. The court clerk is waiting for the judge to say "Exhibit 25 is admitted into evidence" until he or she marks it as admitted on the official exhibit list. It is only then the judge admits the item into evidence that it can be shown to jurors. Finally, ask the judge's permission before you put an admitted exhibit on the Elmo or show a copy to the jury. Some judges do not want exhibits shown to the jurors until they are in deliberations as it takes too much time.

There is a difference between having a document "marked" as an exhibit and having a document admitted into evidence

This may seem too elementary for many, but you would be surprised at those who behave as though they don't understand it. Having an exhibit "marked" just means it has been assigned a number on the exhibit list. Court rules now require exhibits to be "pre-marked" before trial starts. However, counsel often want to add an exhibit during trial that was not pre-marked for some reason. If that happens, say something like "Your honor, the document I am holding purports to be a two-page letter from Jones to Smith dated Feb. 29, 2017. I ask that it be marked as next in order." You should be able to tell the court what the next unused number on your exhibit list is. Sometimes the court will let the clerk help you out on this. When the court says "It shall be so marked," the clerk will then add the new exhibit number and description to the exhibit list. Being marked does not mean it is in evidence. You want it marked so that there is a clear record of what you offered into evidence if the judge refuses to admit it. You still have to ask the judge to admit the exhibit into evidence.

Always refer to the exhibit number when referencing that item during questioning

Another elementary mistake I see during trials is counsel referring to exhibits as "that letter we were just talking about" or "that email" or "that photo of the car." This is a rookie error. You need to be precise, so the record is clear. You should always refer to the specific exhibit number when examining witnesses or addressing the court. The reason for this is not so much that the witness or the court doesn't understand what you are referring to, but so that the record is clear if the case is later appealed. When you vaguely refer to a letter or an email or a photo in a case with lots of letters, emails or photos the Court of Appeal may have trouble discerning exactly what you are talking about.

I know these tips are rudimentary. As you read through them, you might say to yourself "I know that." However, I wrote this article for a reason. I see time and time again lawyers making errors like these. If you follow these practical tips it will not only make your life easier, it will make you look like a pro in the eyes of the judge, the jury and your opponent. Now get out there and try some cases.

Judge Robert J. Moss *was appointed by Gov. Gray Davis to the Orange County Superior Court on April 19, 2002.*