

By Michael K. Jeanes, Clerk of the Superior Court

Litigation tip: exhibits

For some reason, exhibits are both the documents that accompany a main document and the evidence offered at trial. Whether you have a brief evidentiary hearing or a lengthy trial, exhibits are part of the process. The Clerk's office has practice tips to remember when hearing exhibits are at issue.

Each judicial officer generally issues a scheduling order that will contain a deadline for submitting hearing exhibits to the courtroom clerk. Because of the court's schedule and the clerk's list of duties, it is important to meet those deadlines. In addition, each county can have local rules detailing procedures by case type. For example, Maricopa County Local Rule 6.4 is specific to family court cases and sets a deadline for presenting exhibits to the clerk for marking by noon on the day before the hearing or trial, unless otherwise ordered by the court.

Maricopa County Local Rule 2.8 has general information about exhibits, including when the Clerk's office receives, holds, returns, and disposes of exhibits. Currently, courtroom exhibits are the physical item marked as an exhibit, not the content on the item. This is logical with items like cash or printed photographs, but gets trickier with digital evidence like a memory card containing photographs. For example, a portable storage device or compact disc is the exhibit, not the audio files of a related 911 call or the body camera video footage that is contained on the device or disc. The Clerk's office maintains the physical item and that item will include the litigant's descriptions of what the item is purported to contain, but the Clerk's office does not access the item to verify its contents.

There is a movement to define and standardize the use and retention of digital evidence, which is already referred to in some rules as electronically stored information. Arizona's Supreme Court has organized groups to consider the rapid use and deployment of electronically stored information in court. Expect new and amended court rules and legislation to address this evolving issue. Today's exhibits will likely be very different from the exhibits clerks and practitioners will commonly encounter ten or even five years from now.

Until the existing authorities are updated, Maricopa County has guiding documents for the use and presentation of electronic exhibits. Maricopa County Administrative Order (AO) 2004-013 contains the local e-exhibit policy, defines the requirements for electronic exhibits, and directs practitioners on how to name and present exhibits. Because not all courtroom clerks' computers have CD burner capability, nor are clerks trained to perform this task, the Clerk's office recommends that litigants create a CD, DVD, or other storage device with only the e-exhibits that are entered in evidence. Litigants should work

together to ensure that only the appropriate e-exhibits are made available to the court or a jury. When applicable, litigants should be prepared to provide the equipment necessary for viewing the exhibits in the jury room.

In addition to electronic exhibits, keep in mind the special handling needed for biohazardous and dangerous items. Maricopa County has administrative orders for handling bloodborne pathogens and hazardous materials (AO2004-089) and for handling dangerous items such as knives and bullets (AO2006-046). See the court's AOs online at <http://www.superiorcourt.maricopa.gov/SuperiorCourt/AdministrativeOrders/Index.aspx>.

Knowing the court and clerk's expectations and procedures in advance saves time and frustration. Courtroom clerks are trained to direct litigants to where to find this information and to explain what the clerk can and cannot do and what the Clerk's office can and cannot provide access to based on court rules and the court's orders. When issues have to be litigated, all parties, the court, and the Clerk's office want things to go as smoothly as possible. The Clerk's office hopes these practice tips help with your exhibits.