

# Tips for Preparing and Using Exhibits in Remote Video Depositions

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With remote video depositions becoming the new normal, I thought I would share a few pointers on how I approach the logistics of exhibits during remote video depositions. Below, I walk through my method from initial outline drafting, through sharing exhibits in advance with opposing counsel and the witness, to the use of exhibits on the record.

## The “Tab” Method

Organizing the exhibits for electronic use from the outset can save time and hassle. As I write my outline and consider documents that I may show the witness, I leave highlighted placeholders in the outline for references to those potential exhibits as “Tab \_\_,” followed by the Bates number or other identifying feature. When I am nearly complete, I number the “tab” references in my outline in order of expected use. Our litigation paralegal then creates electronic versions of the exhibits on our firm’s shared drive, using the tab numbers from my outline. The file names typically look like this: “Tab 1 – [Bates No.] – [Date] – [Brief Description].” That way, the outline matches up nicely with our electronic storage of the exhibits. Our client or another attorney on the team can then easily review my outline and the potential exhibits. Our paralegal does not mark the exhibits yet—that comes at the deposition—and I may use only a handful of what I have included in the outline, or use them out of order.

## Provide Exhibits in Advance

A day or two before the deposition, we typically deliver to the opposing counsel and the witness an old-fashioned, printed binder containing the expected exhibits, numbered by the tab in my outline. Sometimes I also send these electronically, but paper tends to work best, particularly for fact witnesses who might only have one monitor. I want them to use the monitor to connect as much as possible with the participants in the deposition, and I do not want screen space taken up by exhibits, unless I want to screen share to highlight a particular passage. In some cases, the parties enter into deposition protocol that *requires* the circulation of potential exhibits one or more days in advance. While that can work well, I typically want to retain the ability to have at least some surprise, to get an authentic, and not rehearsed, reaction to certain documents. In such cases, I would withhold such documents from the binder, or provide the binder day-of. But in almost every deposition, counsel on all sides are aware of the core documents at issue, so there is little benefit, and much to be gained in avoidance of confusion and delay, from all having copies.

## Use Two People

If your case budget supports it, have one person take the deposition and another, such as the paralegal who prepared the electronic potential exhibits, “drive” the electronic exhibit sharing and marking. We tend to set up in a large conference room, socially distanced but within easy voice communication. This is not unlike using electronic exhibits at a trial, where you have an exhibit wizard running the publication of exhibits and screen setups. Most major court reporting services recognize the advantages of a “two-person” approach and build into each license for their exhibit sharing software two users, with only users above that incurring additional costs. Because our paralegal knows which portions of the potential exhibits I may want to highlight, she can seamlessly screen share from her computer, if needed, allowing me to focus on the witness.

## Mention the Tabs on the Record

At the outset of the deposition, I will put on the record that I have provided a tabbed binder of potential exhibits and ask the deponent and other counsel to confirm receipt. Then, when I show an exhibit, I might say, “Ms. Deponent, please turn to Tab 7 in your binder. Ms. Paralegal, please put on screen Tab 7, and mark it as Exhibit 5.” That is, I reference the tab number on the record. The deponent then knows to go to the seventh tab in her binder, and the record is clear that this is Exhibit 5.

When I refer to the exhibit later, I will use the two-number method again: "Let's go back to Tab 7, which has been previously marked as Exhibit 5." For cases with fewer deposition exhibits, I might use letters for the tabs, cutting down on any confusion with the exhibit numbers.

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