

# VIRTUAL TRIALS

## EXHIBITS

Exhibits should be pre-marked, distributed to all counsel, and submitted to the Court in advance of trial, along with an Exhibit list. Exhibits, including pictures, should be submitted as individual pdf files titled, Pet 1, Pet 2 etc. Longer exhibits should be paginated. Some longer records may need to be shared using a flash drive.

Petitioners should use numbers to identify each exhibit; respondents should use letters, the AFC can ask if the court has a preference.

I require each exhibit to have a cover sheet that states, the exhibit number, brief description of the exhibit, and the number of pages included in the exhibit.

PETITIONERS EX. 1  
CERT. MED. RECORDS OF SAM SPADE  
FROM ECMC ON 12/15/2020  
26 PAGES LONG

It is helpful if prior to the trial date, parties discuss if certain documents can be stipulated into evidence.

## WITNESS PREPARATION – in addition to all the usual stuff...

Before the day of trial, have a dry run using the virtual platform with your witness/client. Make sure they know how to sign on, mute and unmute themselves. If at all possible, have them use a video link and ensure they have it situated to show their face. Make sure they have a quiet place to sit during the trial.

Make sure that witnesses have copies of any exhibit they may need to reference during their testimony. if they will be laying the foundation for a document or using it to refresh their recollection they should have a copy in front of them, particularly if it is a longer document.

Make sure witnesses know that as part of making their affirmation, they are affirming that they will not look or review anything unless given permission by the court.

Talk to your client about how you will communicate with them during the trial. If they are appearing from a different location, decide if they will text you if they have questions during the proceedings, have an opportunity to talk to you before you end the examination of witnesses etc. Do not hesitate to ask for an opportunity to speak to your client privately if needed.

## REASONABLE EXPECTATIONS

This is new and uncomfortable for everyone. There will be technical difficulties caused by the equipment and by the people involved. You need to be patient.

The rules of evidence still apply – for the most part. I am not suggesting that parties do not need to lay the proper foundation for exhibits or that evidence should be admitted that is not relevant or reliable, but virtual trials require a little give and take. If you have an objection to a piece of evidence, and the judge is admitting for the convenience of the court or for some other reason related to the virtual nature of the proceedings – don't be afraid to ask for the court to set conditions or parameters for the documents use.

Someone, most likely the judge will be using screen sharing options so that witnesses can view the exhibits. Be prepared to direct that person to specific pages in the exhibit.

Protect your record. I would ALWAYS request a stenographer for trials! Remember that if there is an appeal – everything is going to be submitted in a virtual form. You want to make sure that when anyone is referring to a document it is abundantly clear what exhibit they are looking at, and if possible what part of that exhibit they are referring to, then note some identifying characteristic of that page.