

# EVIDENCE in the Courtroom

## I. Premark all Exhibits

- A. Premarking exhibits means identifying what each exhibit is.
- B. You should do this at your leisure, take your time. And I recommend doing this before your opening statement, before the trial really gets rolling.
- C. Say something like:

- *“Your Honor, before the prosecution proceeds with its opening statement, it requests that Exhibits A through E be premarked for identification.”*

Technically, “premarking exhibits for identification” means that you are going to say what Exhibit A is, what Exhibit B is, etc.

- D. You’ll repeat this process for each exhibit you want to use.

## II. Establishing a Foundation for Evidence

- A. Until an exhibit is actually admitted into evidence, a witness **CAN NOT** be asked “*substantive*” (about content, details, explanation, etc.) questions about it.
- B. Prior to an exhibit being admitted, witnesses can be asked “preliminary” (about basic, generic, etc.info) questions to establish the foundation to ask the court to admit it.
- C. These preliminary foundation questions include identifying:
  - What the exhibit is;
  - When the exhibit was created;
  - Who created the exhibit;
  - Whether it would be helpful in supporting the witness’s testimony (as in the case of an expert witnesses).
  - Ask the witness to identify the exhibit.
  - Ask them how they are familiar with the exhibit.
  - Ask the witness to confirm that the exhibit is a true and correct copy, or an accurate representation, of what it’s supposed to be.
- D. Stipulations between the parties before or at the beginning of the Trial material may establish part or all of this foundation – read these stipulations carefully. Here’s the process:

### **III. Be Able to Demonstrate that Your Exhibit is Admissible**

- A. This stage is critically important and requires you knowing exactly what to say.
- B. You need to make sure that your exhibit complies with your Rules of Evidence for your locale and state. Almost always, this means making sure you are able to defeat a hearsay objection.
- C. First, consider whether there is hearsay in your exhibit. That is, does your exhibit contain an out-of-court statement offered for the truth of the matter asserted.
- D. Remember that any statement made out of court can be hearsay. A statement does not need to have been spoken out loud and then re-stated verbally in court to be hearsay. A written statement can be hearsay. A document containing information can be hearsay.
- E. As with any hearsay, think about whether any statement in your exhibit is being offered for the truth of the matter. If so, the statement is hearsay and if you want them admitted, you need to find a hearsay exception. (See list.)

### **IV. Introducing Exhibits: Step-by-Step Process**

- A. Hand copy of exhibit to other party or their attorney counsel while asking permission to approach the bench.  
Say *"I am handing the clerk what has been marked as Exhibit X. I have provided copy to opposing counsel. I request permission to show Exhibit X to witness ."*
- B. Show the exhibit to the witness. *"Can you please identify Exhibit X for the Court?"*
- C. The witness identifies the exhibit.
- D. Offer the exhibit into evidence.  
Say *"Your Honor, we offer exhibit X into evidence at this time. The authenticity of the exhibit has been stipulated."*
- E. The Court says, *"Is there an objection?"*  
If the other party or their attorney counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.
- F. Other party or their attorney says, *"no, your Honor,"* or *"yes, your Honor."* If the response is *"yes,"* the objection will be stated on the record.

- The Court says, *“Is there any response to the objection?”*
- G. Then the Court says, *“Exhibit X is/not admitted.”*  
The other party or their attorney may then proceed to ask questions.
- H. If admitted, Exhibit X becomes a part of the court’s official record and, therefore, is handed over to the clerk after the witness is done testifying. Do not leave the exhibit with the witness or take it back to counsel table.

