

R. DOCUMENTS

OVERVIEW:

If the parties have not agreed to stipulate all, or a portion, of the exhibits for the trial, the Trial Attorney is responsible for ensuring that all GC exhibits are properly introduced and received into the record. (See [Fed. R. Evid. 1002-1004](#)).

OBJECTIVE:

To provide guidance to the Trial Attorney concerning the procedural steps involved in introducing a document into evidence and in the **voir dire** of a witness.

1. STEPS INVOLVED IN INTRODUCING A DOCUMENT:

- Generally, before the hearing, the Trial Attorney marks the documents for identification with the GC Exhibit Number located in the bottom right hand corner of all documents. This is normally done in conjunction with the creation of an exhibit list. Documents can, of course, be marked at the hearing and the court reporter can be requested to mark the exhibits. The Trial Attorney needs to be flexible;
- Copies go to:
 - The ALJ (to go to the court reporter at end of hearing);
 - The court reporter;
 - Respondent's counsel; and
 - Other parties.
- Authentication of a document by the testimony of the witness;

- Offering of document into evidence;
- Respondent's counsel is permitted to examine document and to make any objections to the document. ALJ may allow **voir dire** of the witness at this time;
- Trial Attorney's response to any objection to the introduction of the document into the record. See [Part 2, Chapter Z](#) concerning Objections;
- ALJ rules on admissibility of document;
- If admitted into evidence, continue questioning witness on direct examination. See [Part 2, Chapters S](#) and [BB](#) concerning Direct and Cross-Examination; and
- If document is rejected, request that it be placed in the rejected exhibit file.

2. AUTHENTICATION:


Before any writing (document) may be received in evidence, it must be "authenticated"--a foundation sufficient to support a finding that the document is genuine and what it purports to be must first be laid. [Fed. R. Evid. 901](#).

3. CONTROL OF DOCUMENTS- -THE TRIAL ATTORNEY:

- Maintains control of documents at all times during the hearing.*
- Routinely follows a method with regard to the offering of documents into evidence to avoid confusion and uncertainty including use of the GC Exhibit List that is furnished to the parties at the beginning of the trial or FLRA Form 56, Exhibits Introduced In Evidence (ATTACHMENT 2R), to track the introduction and admission of exhibits during the trial.*
- Ensures that adequate numbers of legible copies of documents are available as needed.*

4. REJECTED EXHIBITS:

- a. *Are placed in a rejected exhibit file.*
- b. *Two copies of such documents are also given to the court reporter, who sends the rejected exhibit file with the documents received into evidence and the transcript to the Region.*

 *In order to persuade the ALJ to reverse his/her decision and to allow a document into evidence, or to argue before the Authority that the document should have been entered into the record, the document itself is necessary. Do not withdraw the request to enter the document; rather, it should always be placed in the rejected exhibit file. If the ALJ does not do this automatically, the Trial Attorney requests that the document be placed in the rejected exhibit file.*

5. USE OF DOCUMENTS OR TESTIMONY AND BEST EVIDENCE RULE:

If available, it is generally better to use the document itself rather than testimony about the document. Once the document is received into the record, the witness is not asked to read the document. ALJs will routinely sustain objections to these types of questions because the document is already in the record and speaks for itself. This does not mean, of course, that a witness cannot be questioned about the document, such as purposes of the document, its relationship to other correspondence and the sequence of events at issue.

6. EXAMPLE OF INTRODUCTION OF DOCUMENT:

Trial Attorney: Let me show you what has been marked for identification as GC Exhibit 10. Do you recognize this document?

Witness: Yes.

Trial Attorney: Please state the circumstances when you first saw GC Exhibit 10.

Witness: It came in the regular mail delivery at the union office. We date stamp everything that is delivered to the union office; this is our date stamp and it says January 2, 1997.

Trial Attorney: Do you know who sent it to you?

Witness: Yes. This is from the Commander; this is his signature. I get documents from him all the time. Also, we had discussed this issue over the holidays and he told me he was sending a letter.

Trial Attorney: I would like to enter this document into the record as GC Exhibit 10.

L To avoid confusion in the record, remember to refer to Exhibits by their correct identification, such as GC Exhibit 10; Joint Exhibit 2; or Respondent's Exhibit 4 during any examination of a witness with regard to the document.

7. VOIR DIRE:

Is often used with expert testimony as a tool to cast doubt on the witness' opinion testimony. Parties most often use **voir dire** in administrative hearings with regard to the introduction of documents where there is doubt as to the existence of facts supporting the foundation for admission of evidence.

If a Respondent has not laid a proper foundation, the Trial Attorney has two alternative approaches:

- Object to the admission of any document on the basis that a proper foundation has not been laid, or
- Request ALJ's permission to **voir dire** the witness. With an objection, Respondent's counsel and the witness may be able to rephrase their questions and responses to develop the specific information needed to meet the objections and allow the

document into evidence. Responses under **voir dire** may elicit more specific information for the basis of any objection. Even if the document is admitted into evidence, the response to **voir dire** may present adequate information to argue on brief the credibility and usefulness of such evidence.

Another use of **voir dire** is when, after a break in Respondent's direct examination, the Trial Attorney **voir dire**s the witness concerning a possible breach of a sequestration order (see section 9 below for an example).

8. EXAMPLE OF VOIR DIRE:

Trial Attorney: Your Honor, I request permission to **voir dire** the witness.

ALJ: Granted.

L Respondent's counsel may object; be prepared to state basis of your request for voir dire, such as to examine this witness regarding his specific knowledge of how the document was created.

Trial Attorney: Let me show you what has been marked for identification as Respondent's Exhibit 5. Did you prepare this document?

Witness: No, but I told the Agency at the Headquarters level that we would need a document to show the bargaining history. I know that they assigned John Lewis to look through the copies of the handwritten notes that the former Labor Relations Director took during the 1982 negotiations.

Trial Attorney: Do you know how this document was created?

Witness: I know I told them to look through the Director's notes and to compile this data based on that.

Trial Attorney: Did you look at the notes yourself?

Witness: Yes, but I couldn't read the Director's handwriting. Mr. Lewis has had much more experience than me with reading bad handwriting and I know that he didn't have any trouble.

Trial Attorney: So, you didn't look at the documents that were the basis of this exhibit?

Witness: No.

Trial Attorney: And were you present at the 1982 negotiations?

Witness: No.

Trial Attorney: Did you talk to the Director about these 1992 negotiations or his handwritten notes?

Witness: No. He has been dead for 6 years and we didn't talk that much before he died.

Trial Attorney: Do you know what this exhibit actually says?

Witness: All I know is that I needed something that would help me and I got it.

Trial Attorney: Your Honor, I object to the introduction of this document. The Respondent has failed to adequately authenticate this document. This witness has no personal knowledge of the creation of this document and cannot vouch for its accuracy.

ALJ: Objection sustained. Exhibit rejected.

9. EXAMPLE OF VOIR DIRE TO EXAMINE A WITNESS AFTER A BREAK IN RESPONDENT'S DIRECT EXAMINATION, CONCERNING A POSSIBLE BREACH OF THE SEQUESTRATION ORDER:

Trial Attorney: Your Honor, without attempting to impugn the integrity of Respondent's counsel, a question has arisen concerning a breach of the sequestration order during the break. Therefore, I request that I be allowed to examine this witness under **voir dire** with regard to actions that occurred during the break.

ALJ: Granted.

Trial Attorney: Were you present in the sequestration room during this last break?

Witness: Yes.

Trial Attorney: Were witnesses for both the Activity and the Union present in the break room?

Witness: Yes, at first--but then our lawyer asked all the Union witnesses to leave. And they did.

Trial Attorney: Was Mr. Smooth, the Activity's representative, also present in the sequestration room?

Witness: Yes.

Trial Attorney: Did he give a rendition of the individual testimony that had been presented by witnesses in this proceeding?

Witness: Yes.

Trial Attorney: Did he ask you specific questions relating to the earlier testimony?

Witness: Yes.

Trial Attorney: Did you answer his questions?

Witness: Yes.

Trial Attorney: Did other witnesses also answer his questions?

Witness: Yes.

Trial Attorney: So all five witnesses for the Activity were present in this room and all five heard the Activity's lawyer discuss previous testimony and participated in the discussion.

Witness: Yes.

Trial Attorney: Your Honor, based on this information, it appears that the Respondent has violated the sequestration rule. Therefore, I request that this be considered in determining the credibility of the testimony presented by Respondent.

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[Part 2, Chapter H](#) concerning Motions and Sequestration of Witnesses; and

[Part 2, Chapter Z](#) concerning Objections.