

CLERK'S CORNER

U.S. District Court, Eastern District of Louisiana

Trial Exhibits In CM/ECF

By Carol Michel, Chief Deputy Clerk

The district court's preparation of the record, including exhibits admitted or proffered in court during trials or hearings, for submission to the appellate court for appellate review has evolved with the advent of CM/ECF (Case Management/Electronic Case Files) in federal courts.

Until a few years ago, if they were paper documents, the original exhibits admitted or proffered in open court during trial or an evidentiary hearing were physically delivered to the Fifth Circuit after an appeal was filed and the appellate court requested the exhibits. Physical exhibits would generally remain in the custody of the district court Clerk's Office or, if they were firearms or narcotics, in the custody of the law enforcement agency for safety reasons. If the appellant or the appellee needed access to the trial exhibits for briefing purposes and the trial exhibits had been transmitted to the Fifth Circuit, counsel or the pro se party would be required to obtain the exhibits from the Fifth Circuit Clerk's Office.

Within the last three years, the Eastern District of Louisiana has provided copies of trial exhibits in PDF format to the Fifth Circuit on disk. At the conclusion of a trial or an evidentiary hearing, the Court required each party to provide a scanned PDF version of all admitted or proffered exhibits on disk to the judge's case manager. When the case was appealed, the appeals clerk provided the disk with the electronic copy of the exhibits in PDF format to the Fifth Circuit. The original paper documents remained with the district court clerk's office.

Now that the Fifth Circuit utilizes an "Electronic Record on Appeal" program or "EROA" which creates the Record on Appeal electronically through CM/ECF, the submission of

trial exhibits to the appellate court during the appellate process will be through CM/ECF. The Fifth Circuit has requested that, if a notice of appeal is filed, the district court file and docket all trial and evidentiary hearing exhibits into CM/ECF so that the exhibits can become part of the EROA and accessible by the appellate court electronically. Beginning in June, 2016, the Clerk's Office for the Eastern District of Louisiana is implementing the following procedures for filing and docketing trial and evidentiary hearing exhibits into CM/ECF. These procedures have been approved by the judges at an en banc meeting.

- 1) When a Notice of Appeal is filed, trial and evidentiary hearing exhibits capable of being converted to PDF documents which were admitted into evidence or proffered will be filed and docketed into CM/ECF.
- 2) An Eastern District of Louisiana judge has the discretion to exempt any case from filing and docketing exhibits into CM/ECF.
- 3) Immediately after a trial or evidentiary hearing concludes, the district judge will issue an order directing the parties to submit a disk containing one PDF copy of each exhibit admitted into evidence or proffered.
- 4) If a Notice of Appeal is filed, the judge's case manager will send a Notice of Redaction Responsibility for Trial Exhibits to all counsel of record and pro se parties advising that trial and evidentiary hearing exhibits not admitted under seal will be filed and docketed into CM/ECF. The Notice will advise that it is the responsibility of all counsel of record and pro se parties to review all trial and evidentiary hearing exhibits to determine if they should be redacted in accordance with all applicable Federal Rules of Civil, Criminal, Appellate, and Bankruptcy Procedures.

- 5) The Notice of Redaction Responsibility will also advise that the party has 14 days from the date of the filing of the Notice of Appeal to provide a redacted version of the trial or evidentiary hearing exhibits which complies with applicable Federal Rules (i.e., Federal Rule of Appellate Procedure 25(a)(5), Federal Rule of Civil Procedure 5.2, Federal Rule of Criminal Procedure 49.1, or Federal Rule of Bankruptcy Procedure 9037).
- 6) In addition, if the admitted or proffered exhibit contains sensitive information, but the trial exhibit was not received under seal, counsel of record or the pro se party may file a motion seeking to redact the sensitive information and, if granted, counsel or the pro se party shall provide to the Clerk's Office through the judge's case manager a redacted version of the trial exhibit in PDF format on a disk marked "Redacted Exhibits" for filing and docketing in CM/ECF.
- 7) If, within 14 days after the filing of a Notice of Appeal, the parties do not file a redacted version of a trial or evidentiary hearing exhibit which complies with applicable Federal Rules indicated above, or do not file a motion to submit a redacted version of an exhibit containing information the party considers sensitive, the district court Clerk's Office will file and docket the unredacted exhibit into CM/ECF.
- 8) The parties are advised that the duty to review trial exhibits for sensitive information and to redact information from the exhibits in accordance with the Federal Rules of Appellate, Civil, Criminal and Bankruptcy Rules is that of counsel and the pro se parties. The Court and the Clerk's Office have no responsibility to review trial exhibits for redaction purposes.

- 9) Unless an exhibit is admitted under seal or a redacted version is provided in accordance with these procedures, the trial exhibit will be filed and docketed into CM/ECF and accessible by court users and case participants. Upon request, remote public access will be provided to all non-sealed exhibits or exhibits redacted in accordance with these procedures.
- 10) On appeal, trial and evidentiary hearing exhibits will be available to the parties in accordance with the Fifth Circuit's EROA rules and procedures.
- 11) If the trial exhibit was admitted under seal, the party to an appeal may obtain access to the sealed exhibits and any sealed documents by filing a motion with the Fifth Circuit requesting access to the sealed documents and exhibits. If the Fifth Circuit grants this request, the Eastern District of Louisiana's Clerk's Office will provide the party with a PDF copy of the sealed documents and exhibits on a disk.

If you have questions regarding the district court's procedures for filing trial exhibits in CM/ECF, please contact the judge's case manager, James Crull, the case manager supervisor, Bonnie Catalanotto, the docketing supervisor, or me, and we will assist you.