

MEMORANDUM AND ORDER

TO: Attorneys and parties appearing in Addison County Family, Probate, Criminal and Civil Divisions

FROM: Judges Carlson, Smith, Teachout and Pacht and Magistrate Lorman

RE: Filing of Exhibits for Hearings

DATE: December 15, 2020

Introduction

The court solicited comments on its thoughts and proposed order regarding electronic filing of exhibits in Odyssey and in the current environment of remote hearings. The response was prompt and thoughtful and we appreciate all of the effort that went into responding. We heard that the proposed requirements are burdensome and unconventional. We heard concern that the court would be too rigid in imposing sanctions for failure to comply. We also heard some questions as to our authority to issue any order across the board in this respect.

This order is intended for the current necessity of remote hearings. Almost all of our hearings are remote now and we expect that to continue through the winter anyway. It is conceivable that we will be able to return to prior practice of real time exhibit filing with the resumption of in-person hearings. That remains a bridge to be crossed.

This order is applicable to self-represented litigants as well as counsel. We will be advising the former on a case by case basis.

As to the court's authority, we look to V.R.E.F. 8 and V.R.E. 611 and have no qualms about proceeding. The Reporter's Notes to Rule 8 expressly contemplate the court ordering pre-filing of exhibits. The suggestion that the court issue case by case orders in this regard does not seem sensible or practical. The problem exists in all kinds of cases. We simply cannot break up and extend every evidentiary hearing to be able to see and consider exhibits.

As to the proposed rule with respect to summary exhibits and filing of back up information, we look to V.R.E. 1006, which expressly contemplates the requirement of making the back up information available for inspection and copying at a reasonable time and place. We do not see the sense in suspending a hearing for that purpose and no new burden on the offering party.

We are aware of the possibility of inconsistent orders by county and that there may end up being a statewide amendment of Rule 8, but we cannot afford to delay. Please keep in mind that we, like you, are simply doing the best we can.

As to the burden of filing each exhibit separately, please know that various attorneys and their staff have already done so without apparent great difficulty. Please also understand that a bulk filing means that staff in the courthouse has to print it out and then rescan each exhibit separately, defeating the whole purpose of e-filing. Most importantly, separate filing with labels allows efficient access and use for everyone in the course of a hearing.

By use of the modifier "generally," this order contemplates a variety of circumstances when "real-time" filing will be appropriate and necessary, including for defendants in criminal cases, genuine

surprise and otherwise for good cause in cross examination, and rebuttal evidence. We chose not to spell out all the possible exceptions, leaving it open somewhat.

Please note that the IT authorities have prohibited us from accepting audio and video exhibits by e-filing or into Odyssey. They will have to be manually filed, just like oversized and other physical exhibits.

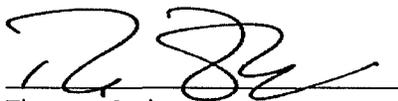
Finally, we understand that a sanction, if any, needs to fit the individual situation. It is not necessarily exclusion. It may mean adjournment of the hearing and delay in rescheduling. It may mean something else tailored to fit. The objective of course remains to have a fair and reasonable hearing.

The Order

1. Generally, exhibits shall be filed at least 48 hours in advance of hearing. Prefiling is also required for audio and video recordings, oversized and physical exhibits that cannot be e-filed, but only 24 hours in advance of hearing.
2. All electronically filed exhibits shall be filed with an exhibit list that identifies each exhibit including a very brief description, as customarily done.
3. All electronically filed exhibits shall be marked by some means, sticker or other label, and shall be filed individually in Odyssey and NOT IN A BUNDLE.
4. All electronically filed exhibits shall be emailed to opposing counsel/party simultaneous with e-filing.
5. Back up to summary exhibits (e.g. collections of bank statements, tax returns, etc.) shall not be filed unless other party objects to the summary and insists on filing at least 24 hours in advance of hearing, or either party expects to need to refer to the particulars in the back up information in testimony. Back up information is presumed to have been provided in discovery in advance. The court *may* exclude a summary if the back-up information was not provided to the other side in advance.
6. If there are a lot of exhibits to be considered, it will still be helpful to provide the court and the other side with a hardcopy notebook of proposed exhibits for ease of reference by all, also in advance of hearing.

This order is effectively immediately.

Signed electronically pursuant to V.R.E.F. 9(d) on December 15, 2020.



Thomas Carlson
Superior Court Judge