

JURY EVIDENCE RECORDING SYSTEM (JERS)

1. Introduction to JERS

JERS is a computer system that the jury will use to review exhibits on a wide-screen video monitor, rather than reviewing paper copies. The jury room has the JERS computer, a touch-screen monitor for the jury to pick an exhibit to display, and the wide-screen monitor. JERS can display what otherwise would have been on paper (including photos), and JERS also can play audio and video files.

We're experimenting with this system to start moving toward as much digital presentation as possible, with all of its display and cost-reducing advantages. With JERS, the jury can zoom-in on parts of an exhibit, and for audio and video, there's no need for a party to supply the jury with a laptop for deliberations. We hope that in the future there will be other advantages, such as a text-search function. Thanks in advance for your patience as we continue to learn how best to use JERS.

JERS is not directly used to present evidence in court *during* trial; right now, it's just used to display exhibits during deliberations. But JERS does *indirectly* affect your trial preparation because you must supply your exhibits to the Court in digital format, and you must name your exhibits using a specific convention. This in turn affects your preparation even for the *pretrial conference*, because Judge Kennelly requires that the parties exchange proposed exhibits before the pretrial conference (more on this below, as well as in Judge Kennelly's Standing Order Governing Proposed Pretrial Orders).

2. File types usable with JERS

JERS accepts these common file types:

Documents and Photographs: .pdf, .jpg.

Video and Audio Recordings: .avi, .wmv, .mpg, .mp3, .wma, .wav

JERS does NOT except .xls (excel) file types. Spreadsheets will need to be saved as a PDF or provided as a paper document.

3. Exhibit-naming convention

To use JERS, both sides must use the following exhibit-naming convention, which also will serve as the file name for the digital file: the exhibit number, followed by an underscore, followed, if you wish, by a neutral description of the exhibit (the description is not required; it is optional). The convention is thus:

<exhibit number>__<exhibit description>.<file extension>¹

Examples:

001_Financial Statement 2009 Annual.pdf
002_Contract 2010 Renewal.pdf
003_Photo Front Door.jpg
004_Audio Dec 11 2013 Phone Call.mp3
005_Video Traffic Stop.wmv

It is recommended that plaintiffs use consecutive numbers to designate exhibits and defendants use letters to distinguish exhibits. (However, using consecutive numbers for both parties is acceptable.) In a case in which you will have more than ten exhibits, use leading zeroes when numbering your exhibits (001, 002, etc.). And “exhibit part may be used, such as 001-A. The neutral description cannot be more than 200 characters (hopefully, you'll never come close to that limit). The only exception to this is when there are multiple defendants or multiple plaintiffs. See below for more details during those circumstances.)

If there are **multiple parties** on a particular side, then you must coordinate with your co-plaintiff's or co-defendant's attorney to generate a consecutively numbered set of exhibits. For example, Defendant 1 would be A001, A002, A003, etc.; Defendant 2 would use B001, B002, B003, etc. (In the rare case of dual juries, we'll discuss how to handle the JERS submission.)

Try to avoid "group exhibits." A document with multiple pages cannot be separated into subparts once it is entered into the JERS system. If there is a reasonable chance that you will be offering only part of a multiple-page exhibit, use

¹ The file-type extension (*e.g.*, .pdf, .wmv) is automatically added by your computer; it's included here for completeness.

a separate number for each sub-part that may be offered. The same holds true for redacted exhibits. The JERS system cannot redact exhibits.

If you're using litigation-display software that imprints a "digital" exhibit sticker on documentary exhibits, that's fine, though you should confine the exhibit sticker to the party designation (*e.g.*, Pla or Gov, and Def) and the exhibit number.

One last thing: a physical object, of course, will not be imported into JERS, but you should still assign a consecutively numbered exhibit designation to it, along with a neutral description. Then create a one-page .pdf with the exhibit number and neutral description on it, and submit those exhibits as part of the JERS disc. By creating this stand-in for physical objects, we accomplish two things: (1) we can print a comprehensive exhibit list before the trial for the Court and for the parties, which we all can use to track whether an exhibit is allowed into evidence (including physical objects); and (2) the jury's exhibit list will be complete, and it will serve as a reminder of what physical objects were allowed into evidence.

4. Pretrial conference exhibits

In order to maintain consistency in the record, you must use the JERS exhibit-naming convention even at the pretrial-conference stage (please refer to Judge Kennelly's Standing Order Governing Proposed Pretrial Orders for more detail). At least three business days before the pretrial conference, supply the exhibits to the Court (and to the other side) on a USB drive, DVD, or CD.²

5. Trial exhibits before the trial's start

After the pretrial conference, **do not renumber** the exhibits, even if during the pretrial conference the Court deemed some of them inadmissible. This will preserve consistency of exhibit numbering from the pretrial conference and throughout trial, and the record will be clearer.

At least three business days before the trial, supply the trial exhibits to the courtroom deputy and to the other side, again on a USB drive, DVD, or CD. At this trial stage, you need not include exhibits that have been deemed inadmissible (you may include exhibits that still have a chance of being allowed, *e.g.*, if the other

² Ideally, any exhibit in .pdf format will have undergone Optical Character Recognition (OCR) and be text-searchable.

party opens the door to evidence deemed otherwise inadmissible). Consistent with the Standing Order Governing Proposed Pretrial Orders, you should continue to include even those exhibits that are not likely to be allowed directly into evidence, but to which the Court will likely need to refer (*e.g.* deposition transcripts for impeachment of will-call witnesses). The Court will run a test to ensure that the exhibits are imported correctly into JERS. For now, also supply **one copy of the exhibits in paper form** (hopefully soon we'll be able to dispense with this requirement, when we have increased confidence in JERS). This paper set will serve as the backup to JERS, in the event that JERS suffers a technical failure during deliberations.

6. Trial exhibits newly added during trial

When an exhibit is allowed into evidence during trial and the exhibit was not previously supplied on the JERS disc, not surprisingly the exhibit must follow the same exhibit-naming convention as described above. Counsel for the offering party must supply the exhibit in digital format as soon as possible (a thumb drive comes in handy for this), and the courtroom deputy will import it into JERS.

7. Close of Evidence

Before closing arguments, the lawyers will provide a CD or flash drive containing only the exhibits to be released on JERS to the jury for deliberations. We'll confer on the record to ensure agreement on which exhibits were allowed into evidence during the trial. All parties will sign a "certification" that these exhibits should be released to the jury.

As indicated above, for now, you will need to provide a single hard copy of each exhibit admitted in evidence as a fail-safe to provide to the jury for its use during deliberations. Again, once we are more confident in the reliability of the JERS system, we may dispense with this requirement.

Physical-object exhibits that the Court allows the jury to examine during deliberations will be provided to the jury as usual, via the court security officer.

8. Use of JERS by the jury

At or near the end of the trial, the Court will inform the jury that they will be using the JERS system. At some point at or before the end of the trial, the jury will

watch a video tutorial that explains how to use the system. Judge Kennelly will accompany the jury into the jury room to view the tutorial, but will instruct the jury that, like any other question during deliberations, the jury must ask questions about JERS in writing (and like any other jury question, the Court will share it with counsel before responding). The JERS computer is not equipped to allow the jury to access the internet, or indeed any other program other than JERS.

If JERS fails during deliberations, the jury will ask for help in writing. The systems staff will not be permitted in the jury room without the Court's express permission, and only after the jury has been escorted out of the jury room. If the problem is not fixable in a short time, the Court will provide the jury with the paper-copy backup of the allowed exhibits.