

Todd N. Hendrickson
100 S. Brentwood Blvd., Suite 300
Clayton, MO 63105
(314) 721-8833
todd@hendricksonlaw.com
www.hendricksonlaw.com
www.stlpersonalinjury.com

THE PAPERLESS TRIAL

At this point in time, it is not possible to have a paperless trial. You will need to present a hard copy of exhibits to the court. But we all know that the traditional trial consists of many more copies than just those introduced into evidence—there is the copy for opposing counsel, your clean copy, the copy with your notes and maybe multiple copies of the same document to be used with different witnesses. All of those have to be transported and organized. Usually what you end up with is boxes and binders festooned with post it notes, flags, and highlighting. So while a paperless trial isn't possible, a **paperless** trial—one streamlined with less paper, using digital formats to display evidence to the jury—is possible.

Many companies produce trial presentation software for just this purpose. But in reviewing these systems, many seem bloated, complex and difficult to use. I have tried cases where defense counsel has one paralegal that does nothing but operate the trial software system. That simply isn't an option for most solo trial attorneys. Instead, we want simple to use solutions that are easy to operate, easy to duplicate and don't require a steep learning curve. What follows are a few tricks, solutions and suggestions that you may want to try. ¹

Going paperless

The first trick in going **paperless** is, well, less paper. And that requires getting the paper into your computer system. The answer is scanning. Most offices have a scanner now. In fact, if you have a newer dedicated copier, chances are it has scanning capabilities. In fact, it is probably a copier/scanner/printer. Some scan to a dedicated server. Others scan to e-mail. Either way, these high-capacity, high-

¹ I use Apple computers in my law practice. There was a time when that statement was immediately followed by a quick attempt to explain that no, I really didn't need to attend a twelve-step program for those addicted to a little understood operating system. In reality, it has never been a trade-off to get the reliability that goes along with Apple hardware. Most major software is available for the Mac and every solution I'm going to propose is available for PC users. How you get to a particular function may be slightly different, but it's there. Now, why you would want to go on using a PC is beyond me. If you'd like to debate that particular subject, feel free to contact me at todd@hendricksonlaw.com.

speed copier/scanner/printers are, in my opinion, by far the best way to get the paper into your system.

Think of it this way: chances are, at some point, you are going to make one or more copies of almost every piece of paper that comes into your office on a given case. Whether it is to send copies to opposing counsel, your client, expert witnesses, for filing with the court or for use at trial, you are likely going to copy that piece of paper at least once, and with some things, many, many times. By using your copier/scanner to scan it the minute it comes into your office, you never have to “copy” it again. Save the scanned image to a file and you can print out as many copies as you need, whenever you need it, without ever having to locate the document and feed the copier again.

Better yet, the idea of going paperless is to avoid printing whenever you can. By avoiding printing you avoid the cost associated with printing and mailing reams of paper. Instead, you can e-mail documents. Alternatively, you can copy multiple files (like voluminous medical records) to CD and mail the CD to opposing counsel or your expert witness. It’s much less expensive and much more efficient.

If you don’t have a dedicated copier/scanner/printer, there are numerous multi-sheet feed scanners. My personal favorite is the ScanSnap, an easy to use scanner that has a very small footprint and is feature rich. I keep one in my office for small scanning jobs. The ScanSnap can be set to scan both sides of a document automatically. It will feed up to 50 sheets at a time. While I wouldn’t necessarily recommend it for a document intensive practice, it will work for a smaller workload. ScanSnap even makes a portable version that you can take along to trial.

Scanners create what are called .pdf files. PDF stands for Portable Document Format. These digital files are simply digital copies. Every system comes with a .pdf reader—usually Adobe Reader. If not, it is available for free download. While Adobe Reader will work for viewing documents, I would strongly urge you to purchase Adobe Acrobat Professional. This software will allow you to edit, annotate and otherwise work with your digital files. More on this later.

My personal work process is to scan everything that comes into the office as soon as it arrives. Then I know it is in the system. I have digital client files with sub-folders set up in the same basic structure that I used in a paper system—Correspondence, Pleadings, Orders, Discovery, etc. I then “file” each scan into it the appropriate sub-folder. **Tip:** You probably want your digital files in chronological order just like your paper files are (supposed to be). My naming structure is to start every file with the date in this format: YearMonthDate. For example, a set of interrogatories would be labeled 20100426.Defendant.Rogs.1st.pdf for Defendant’s First Interrogatories filed on April 26, 2010. By using this format, your files will stay in chronological order. If you use the MonthDateYear format, things from different years, but in the same month, will get lumped together. Probably not what you want.

I scan all medical records and documents and keep that base file inviolate. If I want to annotate a record by highlighting, etc., I will create a digital copy of that file. My personal practice is rename that file with an * at the beginning of the file. This serves two purposes. First, I can readily identify which are my annotated copies. Second, most computers will “file” these digital files clustered together at the beginning of the folder. That way all my annotated records are clustered together and I know that I never, ever send these files to opposing counsel!

In addition to scanning documents, you can generate .pdfs right on your computer. Almost every program has an option to “print to .pdf.” This option creates a .pdf just as if you’d printed it out and run it through a scanner. You’ll find numerous reasons to use this feature as you move forward as a **paperless** litigator.

Once you commit to the process, you’ll find that the initial investment in time to scan each document that comes into the office will save you time, and money, and not just in the long run. You’ll realize the benefits right away.

Working with digital files

Once you have the document in your computer, you want to be able to do all the things you are accustomed to doing with “real” paper. You want to be able highlight, annotate, and Bates stamp it. You can do all of that with Adobe Acrobat Pro—and much more. Some functions are simple, some take a little “tweaking.” Once you are accustomed to reading and working with .pdfs, you may actually stop printing things out only to highlight and mark them up by hand—that’s the goal.

Highlighting

Some things, like highlighting, can be accomplished natively in Acrobat by first running OCR (optical character recognition) on a .pdf. But, **caution**, OCR changes the basic character of the document so you **do not** want to OCR documents in which you need to maintain all the original attributes. You do not want to OCR things like medical records, police reports, etc. First, OCR simply doesn’t work well on documents that are a mix of printed and hand written material. Second, you want to maintain the integrity of the original document.

Acrobat features like the built-in highlighting only work on documents that Acrobat recognizes as having characters. Things like depositions—no problem. But medical records and other mixed print and hand-written documents take a trick: Adobe has line and rectangle tools. You can set the default properties on each of these tools to your favorite highlighter color—for example, yellow. You then change the opacity setting to 50% and, set the fill color to the same yellow. Finally, for the line tool you can change the font size—10 point usually will create the right size “highlighter” line. You can then use the line tool like you would a real highlighter. If you want to highlight large blocks, use the rectangle tool.

Bates Stamping

Bates stamping is built in to Adobe Acrobat. To this day I still get documents from major law firms with huge IT budgets that have been stamped with a manual Bates stamper. Or some paralegal has printed out sheet after sheet of stick on labels with consecutive numbers to imitate Bates stamping. No one should be using a manual Bates stamp or printing out numbers in 2010!

In the Document Processing toolbar you will find the Bates Stamp option. With this tool you can enter Bates numbers, case information or anything you want. The data is placed into either the document header or footer. You can add information like the case name, the document source, date, and version. The possibilities are absolutely endless.

You can also Bates number multiple sets of documents so that they are consecutively numbered. I routinely batch number large sets of medical records so that records from 10 or more providers are consecutively numbered. You'll do in a few keystrokes what would take a paralegal hours or days to do manually.

Typewriter

Still have that old typewriter sitting around to fill out forms? Throw it out and scan that form. Adobe Acrobat has a Typewriter tool. You can fill in any information, wherever you need to.

Bookmarking

Do you have trial notebooks full of depositions and medical records festooned with post-it notes? Then bookmarking is your digital answer.

Bookmarking is probably one of the most useful features for your trial preparation and presentation. Bookmarking sets an index mark that you can identify with a few words or even a short paragraph. Then, when you click on that bookmark, it will take you to that section of the document.

I use bookmarks extensively when reviewing depositions. By placing a bookmark at each important section of testimony, I can simply look at the bookmarks and click straight to the exact testimony. In fact, bookmarking could replace a traditional deposition summary. If you create sufficiently detailed bookmarks it will, in effect, be your summary.

Bookmarking is also invaluable in reviewing medical records. By attaching a bookmark you can go straight to important entries. Bookmarks are helpful in identifying the few critical pages in a record, such as operative notes, pathology, radiology reports, etc. Bookmarking is also extremely useful in delineating one section of the record from another—nurses assessments, physician orders, vitals, etc.—much in the way you might use tabs in a traditional notebook.

Bookmarking is also a great trial presentation tool. You can have Acrobat set up so that your bookmarks don't project to the court and jury, only the associated pages

do. This way you can have bookmarks set to the pages you need to present. You can quickly dance back and forth between pages as quickly as a witness mentions them.

Redaction

Gone are the days of white out. You can easily use Acrobat's redaction tools to block out information that can't be presented to a jury—such as mentions of insurance or payments on medical bills. Redactions can either be set to leave a blacked out appearance, clearly indicating where something was redacted, or whited out, which is less obvious. And, you can present opposing counsel with a copy that shows the redacted material without the actual redactions—so that there is no question regarding what has been redacted.

At trial

At trial the benefits of going **paperless** are primarily in your organization and speed of presentation. With properly annotated and bookmarked documents, you can click to a specific page in a voluminous record with ease. You aren't required to drag in boxes and boxes of records and spend time digging through them to find the right one. If your opponent hasn't gone **paperless**, you will likely look more organized and more in control. You will have everything at your fingertips with a few clicks. And, if your opponent is using paper copies, no problem. You can still get the same benefits in your part of the case. With a pretrial exchange of documents and references to consistent bates numbers, you can easily bring up any document that your opponent is referencing with a few keystrokes. You can review and highlight while your opponent is on direct or cross and be ready with what you want to talk about when you get your shot at the witness.

There are expensive and complicated integrated document management systems for trial out there. Scores of them. I've seen many of them at work. Some work well, some don't, although I often think the difference is as much the training and experience of the person running the system at trial as opposed to the system itself. However, the simple system I've described is based on widely available software that is not specific to the legal community and is, therefore, almost always less expensive than the alternatives. And most importantly, a solo trial attorney without the aid of an associate or paralegal can use it with just a little practice. In fact, by beginning to utilize the system in your day-to-day practice to maintain your complete client file, you won't need to "practice" with the software. It will be as familiar to you as using your e-mail program. And that will show in your confidence and preparation for trial.