



The Roger Clemens Perjury Trial: Document Gaffe Highlights Importance of PDF Filings

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May 4, 2012– This week marks the third week of the Roger Clemens perjury trial in the United States District Court for the District of Columbia. Recent events have provided a stark lesson in litigation practice and procedure for both Roger Clemens as well as the legal community at large. That lesson being: Always submit your court filings in portable document format (“PDF”).

On Monday, April 30, 2012, Roger Clemens, filed his response in opposition to the Government’s sealed motion *in limine* regarding the admissibility of certain evidence pertaining to key witness Brian McNamee.[1] However, the defense submitted the motion as a Microsoft Word file, thus failing to properly redact certain confidential portions as described below.

The present situation arises from the original filing of both parties’ motions on March 19, 2012. On that day, the Government filed a motion with the court seeking to exclude certain evidence pertaining to prior bad acts of Brian McNamee.[2] In response, defense counsel submitted its motion in opposition asking for the same evidence to be admitted under Federal Rules of Evidence §403, §404(b) and §608(b).[3] After learning that a portion of the evidence came from a sealed New York State divorce lawsuit filed by McNamee’s ex-wife, Eileen McNamee, Judge Walton ordered both motions sealed and delayed a final ruling on the issue of admissibility until jury selection.[4] After jury selection, Judge Walton ordered both sides to refile its respective motion. The motions were to be unsealed, yet contain redactions concerning all information obtained from the sealed divorce records.[5] According to *Newsday*, the redacted portions of the motion involved, “McNamee’s ex-wife’s accusations that he, ‘secretly gained entry’ into her home, that he had a substance abuse problem at the time he said he was injecting Clemens with steroids and that McNamee was involved in prescription drug fraud and distribution.”[6]

However, since the defense’s motion was not submitted in PDF format, the redacted portions became available to the public online. All one needs to do in order to view the redacted information is copy and paste the motion into a Microsoft Word file. Once the information is copied into a Microsoft Word file, the redactions disappear and the entire motion is available for viewing.[7]

The take away from this incident is a valuable one for attorneys everywhere. It is imperative to ensure that all court documents are meticulously reviewed prior to submission and most of all, submitted in PDF format.

Check back soon as we continue to follow the case and see what ruling if any, Judge Walton makes on this incident as well as other important issues that may arise during the course of the trial.

A special thanks to Jeff Fowler for helping with this post. Jeff is a law clerk awaiting admission to the NY State Bar. You can reach him by email at Jfowler@cullenanddykman.com.

This entry was written by [James G. Ryan](#), posted on May 4, 2012, at 12:15 p.m., filed under E-Discovery. Bookmark the permalink. Follow any comments here with the RSS feed for this post. Both comments and trackbacks are currently closed.

[1] U.S. v. Clemens (Def.'s Opp'n. to Gov't. Mot.) located at <http://legaltimes.typepad.com/files/clemens.pdf>

[2] Frederic J. Frommer, *Clemens Prosecutors Sought to Preclude Evidence*, The Associated Press (April 27, 2012, 9:56 pm), <http://www.statesman.com/sports/clemens-prosecutors-sought-to-preclude-evidence-2329385.html?printArticle=y>

[3] U.S. v. Clemens (Def.'s Opp'n. to Gov't. Mot.) located [here](#).

[4] Michael O'Keefe, *Roger Clemens' Defense Lawyers Want to Share Brian McNamee Prescription Drug Accusations with Jury*, New York Daily News (April 30, 2012, 7:32 pm), <http://www.nydailynews.com/sports/i-team/roger-clemens-defense-lawyers-permission-brian-mcnamee-prescription-drug-probe-jury-article-1.1070143?print>

[5] *Id.* at

[6] Jim Baumbach and Tom Brune, *Attorney: Roger Clemens opted to testify before Congress*, Newsday (April 30, 2012, 1:43 pm), <http://www.newsday.com/sports/baseball/attorney-roger-clemens-opted-to-testify-before-congress-1.3690480>

[7] *Id.* at