

**SUPREME COURT OF PENNSYLVANIA
Custody of Exhibits Workgroup**

NOTICE OF PROPOSED RULEMAKING

Proposed Adoption of Pa.R.J.A. Nos. 5101–5106

The Custody of Exhibits Workgroup is considering proposing to the Supreme Court of Pennsylvania the adoption of Pa.R.J.A. Nos. 5101–5106, establishing statewide standards for the custody and retention of trial exhibits, for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Workgroup for the convenience of those using the rules. They neither will constitute a part of the rules nor be officially adopted by the Supreme Court.

The Workgroup invites all interested persons to submit comments, suggestions, or objections in writing to:

**Pamela S. Walker, Counsel
Custody of Exhibits Workgroup
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9546
RulesCommittees@pacourts.us**

All communications in reference to the proposal should be received by **June 5, 2019**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Workgroup will acknowledge receipt of all submissions.

By the Custody of Exhibits Workgroup,

Honorable John F. Cherry
Chair

[These are entirely new rules.]

CUSTODY OF EXHIBITS IN COURT PROCEEDINGS

Rule 5101. Definitions

“Court” means the Supreme Court, the Superior Court, the Commonwealth Court, or a court of common pleas.

“Court proceeding” means any trial, hearing, argument or similar event before a judge, panel or hearing officer where evidence, if entered, is on the record.

“Custodian” means the person or persons designated by local rule to safeguard and maintain exhibits offered into evidence in a court proceeding. Custodian shall also include the custodian’s designee.

“Exhibit” means a document, record, object, photograph, model, or similar item offered into evidence, whether or not admitted, in a court proceeding.

“Local rule” means a local rule of judicial administration, however titled, adopted by a judicial district or an Internal Operating Procedure adopted by an appellate court.

“Judicial district” means a geographic area established by the General Assembly of Pennsylvania in which a court of common pleas is located.

“Proponent” means a party seeking the admission of an exhibit into the record in a court proceeding.

“Records office” means the entity with the responsibility and function to maintain and retain the official case file and list of docket entries as required by rule or law.

Comment: See *also* definitions in Pa.R.J.A. No. 102 for additional terms used in this chapter. The definition of “court proceeding” includes, but is not limited to, civil and criminal trials, ancillary arguments and hearings, as well as divorce, custody, support, delinquency and dependency hearings before hearing officers and made of record. The definition of “court proceeding” does not include proceedings before a magisterial district court, non-record proceedings before the Philadelphia Municipal Court, judicial arbitration matters pursuant to Pa.R.C.P. Nos. 1301 *et seq.*, or any other matter that is not a record proceeding. A “custodian” will either be a member of court staff who is typically present at court proceedings, such as a court reporter or clerk of court, or the proponent of the exhibit. See Rule 5102. The definition of “exhibit” includes items admitted and rejected by the court after being offered into evidence by a proponent. The definition of “judicial district” is derived from 42 Pa.C.S. § 901. A “records office” includes the prothonotary of

a court, the clerk of courts, the clerk of an orphans' court, or the equivalent office by whatever name known.

Rule 5102. Role of the Custodian

(A) The president judge shall by local rule of judicial administration appoint a custodian to safeguard and maintain exhibits offered into evidence in all court proceedings.

(B) The custodian shall safeguard and maintain all exhibits offered into evidence by a proponent during court proceedings, regardless of whether an exhibit is admitted or rejected by the court.

(C) The custodian shall be responsible for ensuring that all exhibits are filed with the records office and made part of the record on appeal no later than five business days after the conclusion of the court proceeding.

Comment: A local rule of judicial administration will designate a custodian, who will either be a member of court staff who is typically present at court proceedings, such as a court reporter or clerk of court, or the proponent of the exhibit. The local rule will identify the custodian by role in the court proceeding and not by name. “Court reporter” has the meaning set forth in Pa.R.J.A. No. 4002.

Rule 5103. Custody of Exhibits. General Provisions

(A) **During Court Proceedings.** The custodian shall secure and maintain all exhibits during trial or hearing, including breaks and recesses, except as otherwise provided in Rule 5104(D).

(B) **After Court Proceedings.**

(1) The custodian shall return all exhibits to the proponent at the conclusion of the proceeding unless a local rule directs the custodian to ensure that all exhibits are filed with the records office and made part of the record on appeal at the conclusion of the court proceeding or as otherwise directed by the court.

(2) A proponent who takes custody of exhibits at the close of the court proceeding shall:

(a) ensure that all exhibits are filed with the records office in compliance with Rule 5102(C); and

(b) secure and maintain all non-documentary exhibits until:

(i) otherwise directed by the court; or

(ii) in civil matters only, by agreement of the parties.

Comment: The custodian may direct the proponent to secure and maintain exhibits that are bulky, oversized or otherwise physically impractical for the custodian to maintain during court proceedings. See Rule 5104(C)(2).

Paragraph (B) reflects that the local rule may require the filing of exhibits at the close of the proceeding with the records office. Alternatively, the local rule may require that exhibits be returned to the proponent. If so, the proponent must ensure that exhibits are filed with the records office within five business days of the close of the proceeding.

Non-documentary exhibits typically will be returned to the proponent at the conclusion of the court proceeding. See Rule 5104 for special provisions relative to oversized documents, photographs, non-documentary exhibits, and digital media. If the court has concerns about the proponent's ability to retain an exhibit through the exhaustion of all appeals and post-trial actions, the court may direct other provisions for securing the exhibit. The court should take into consideration the possibility that a proponent may be incapable or unable to maintain and secure an exhibit, as well as the possibility that a proponent may tamper with or otherwise permit the degradation of an exhibit.

Use of the phrase “civil matters” in subparagraph (B)(2)(b)(ii) includes matters brought pursuant to the Pennsylvania Rules of Civil Procedure, Pennsylvania Orphans’ Court Rules, dependency actions brought pursuant to the Pennsylvania Rules of Juvenile Court Procedure, and matters brought before an appellate court within its original jurisdiction pursuant to Pa.R.A.P. 106.

Rule 5104. Custody of Exhibits. Special Provisions

(A) Documentary Exhibits

(1) If a proponent offers into evidence an exhibit such as a letter, report, drawing, map, photograph or other document that is larger in size than 8-1/2 x 11 inches, the proponent shall ensure that a copy of the document reduced to 8-1/2 x 11 inches (or smaller) is entered into the record.

(2) A proponent who provides a reduced copy of an oversized exhibit shall be responsible for ensuring that the reproduced document is clear and capable of further reproduction or transfer to digital media.

(B) Photographs.

(1) A proponent who offers into evidence a photograph shall elect to provide the custodian with the original or a copy of the photograph (no larger in size than 8-1/2 x 11 inches) that will be entered into the record.

(2) A proponent who provides a reduced copy of an oversized photograph shall be responsible for ensuring that the reproduced document is clear and capable of further reproduction or transfer to digital media.

(C) Non-documentary Exhibits – Generally.

(1) If a proponent offers into evidence a non-documentary exhibit, the proponent shall ensure that a photograph of the exhibit is entered into the record.

(2) If the exhibit is bulky, oversized or otherwise physically impractical for the custodian to maintain, the custodian may direct the proponent offering the exhibit to maintain custody of it and be responsible for securing it during the court proceeding.

(D) Non-documentary Exhibits – Weapons, Contraband, Hazardous Materials.

(1) In any proceeding in which weapons, cash, other items of value, drugs or other dangerous materials are offered into evidence, such exhibits shall be

(a) secured by the custodian while the court proceeding is in session;

(b) secured during breaks and recesses by the proponent; and

(c) prohibited from viewing in the jury room. The court may direct alternative viewing arrangements for such exhibits upon the request of the jury.

(2) During the proceeding, the custodian shall exercise all appropriate safeguards necessary to protect the public based on the nature of the exhibit.

(E) Use of Digital Media. If a proponent offers into evidence an exhibit in a digital format, it must be transferred to the custodian in a format acceptable to and accessible by the custodian and court.

(F) Duplicates. If the authenticity of an exhibit is at issue, the court may direct that the original item, and not a duplicate, be entered into the record.

Comment: If a local rule designates the proponent as the custodian, the proponent will be responsible for the safekeeping of exhibits during the court proceeding.

When documents and photographs are reduced in size and copied to comply with paragraphs (A)-(B) of this rule, the proponent must ensure that the quality of the document or photograph is not compromised. All documentary exhibits must be capable of clear reproduction. Paragraph (B) recognizes that a proponent may have a sentimental attachment to a photograph and may not want to relinquish it for inclusion in the record.

In paragraph (C), non-documentary exhibits covers a broad spectrum of objects, including, but not limited to, jewelry, clothing, automobiles, furniture, as well as the items listed in paragraph (D).

In paragraph (D), the phrase “weapons, cash, drugs or other dangerous materials” includes, but is not limited to, guns, knives, explosives, controlled substances, narcotics, intoxicants, currency, money, negotiable instruments, toxic materials, and biohazards. For purposes of this rule, “secured” means inaccessible by unauthorized persons. See *UJS Pennsylvania Court Safety Manual* for best practices on firearms handling. Courts should consider additional safety measures if substances likely to cause bodily harm are present in the courtroom, for example, fentanyl and its derivatives, or other substances known to be especially lethal or toxic.

With regard to the use of media in the courtroom, technology is constantly evolving and judicial districts have access to varying levels of technology. As set forth in paragraph (E), a proponent offering an audio, visual, or computer file into evidence is solely responsible for ensuring the court has the means to access it during a court proceeding. Current technology may include the use of portable formats, such as flash drives and compact discs.

With regard to other limitations on the use of duplicates, see Pa.R.E. 1003.

Rule 5105. Local Rules. Prohibition

(A) Content of Local Rules. Every judicial district shall promulgate local rules of judicial administration pursuant to Pa.R.J.A. No. 103(c) establishing the judicial district's policies and procedures for the custody of exhibits in court proceedings. The local rules shall:

(1) designate the custodian to safeguard and maintain exhibits introduced in a court proceeding;

(2) establish standards for the reproduction of oversized or voluminous documentary exhibits; and

(3) establish standards to ensure exhibits are filed with the records office for incorporation into the docket no later than five business days after the end of the court proceeding.

(B) Prohibition. The automated systems of the Unified Judicial System (e.g., Common Pleas Case Management System, Pennsylvania Appellate Court Management System, and PACFile) shall not be used for submitting or storing exhibits as required by this Chapter.

Comment: Local rules include an Internal Operating Procedure adopted by an appellate court. See Rule 5101.

A local rule may designate the proponent as the custodian in court proceedings. When the proponent is designated as the custodian, the proponent will fulfill all the responsibilities of a custodian during the court proceeding and until such time that exhibits are filed with the records office pursuant to these Rules.

The local rule shall designate the filing method, which may include electronic filing, although not via the automated systems of the Unified Judicial System. The designated method of filing exhibits with the records office will depend on the capabilities available to the judicial district. It is anticipated that some judicial districts will require the custodian to file exhibits with the records office immediately following the close of the court proceeding. Other judicial districts may require the proponents to file exhibits with the records office no later than five business days after the close of the court proceeding.

A local court security committee makes recommendations to the president judge on protocols, policies, and procedures that should be implemented to protect the public, court personnel, and court facilities in the event of an emergency. See Pa.R.J.A. No. 1954. The judicial district may consult with the local court security committee to identify best practices for the handling of exhibits.

Rule 5106. Confidentiality. Exhibits Under Seal

(A) If an exhibit offered into evidence contains confidential information or confidential documents as defined in the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* (“Policy”), the proponent shall give a copy of the exhibit and a certification prepared in compliance with the Policy and any related local rules to the records office for inclusion in the record no later than five days after the conclusion of the court proceeding.

(B) Any exhibit sealed by the court during the court proceeding shall not be accessible to the public.

Comment: Paragraph (A) of this Rule relates to the confidentiality of information contained in exhibits. Although the Policy does not apply directly to exhibits, important policy considerations are set forth therein, particularly as it relates to personal identification information, as well as highly sensitive financial, medical, and psychological information. While the Policy does not address the handling of non-documentary exhibits, it is expected that parties will adhere to the policy considerations set forth therein and ensure that otherwise confidential information and documents are not made available through the record. Adhering to the guidance of the Policy will ensure that a protected version of the exhibit is maintained in the record for public viewing.

Paragraph (B) recognizes that some exhibits contain such highly sensitive information or images that they are sealed by the court during the court proceeding.

**SUPREME COURT OF PENNSYLVANIA
CUSTODY OF EXHIBITS WORKGROUP**

EXPLANATORY REPORT

Proposed Adoption of Pa.R.J.A. Nos. 5101–5106

The Custody of Exhibits Workgroup (“Workgroup”) is considering proposing to the Supreme Court of Pennsylvania the adoption of new Rules of Judicial Administration Nos. 5101–5106. These rules will establish statewide standards for the custody and retention of trial exhibits.

The issue of custody of exhibits was initially considered by a Rules Committee following reports of cases where court personnel were found to have misused trial exhibits. The Committee contemplated developing procedural rules that would have prohibited the retention by the court of exhibits consisting of “contraband,” *i.e.*, drugs or weapons. Additionally, the Committee identified issues that could arise from the handling of non-contraband exhibits, such as documentary exhibits that contain confidential information.

The Committee undertook a statewide survey of judicial districts to identify practices relative to custody of trial exhibits. The survey revealed a substantial divergence of practice regarding the custody of exhibits among the judicial districts. Upon review of the survey findings, the Committee realized that there were broader issues related to the custody of exhibits, including the need to retain exhibits for matters on appeal, as well as logistical considerations impacting court administration, such as exhibit storage space. The Supreme Court directed the formation of a workgroup of stakeholders to study local practices and advise whether statewide rules on the custody and retention of exhibits should be promulgated.

A Workgroup was formed, comprised of representatives from stakeholder organizations: the Pennsylvania Conference of State Trial Court Judges, Pennsylvania State Association of Prothonotaries and Clerks of Court, Pennsylvania Court Reporters Association, Pennsylvania Association of Court Managers, Administrative Office of Pennsylvania Courts, and Supreme Court Rules Committees. The Workgroup met several times, developed draft rules, circulated the draft rules to stakeholder groups for review and comment, and is now publishing the draft rules for public comment.

The framework of the proposed rules relies on a custodian of exhibits to safeguard exhibits entered into evidence in a court proceeding. Under the proposed rules, judicial districts will designate a custodian via local rule, who can be a member of court staff (such as a clerk or court reporter) or the proponent of the exhibit. The proposed rules establish statewide guidelines for the handling of exhibits before and after trial, as well as the

handling of documentary exhibits and non-documentary exhibits (e.g., jewelry, clothing, automobiles, furniture, weapons, cash, and contraband.) Special provisions have been proposed for the handling of weapons, cash, items of value, drugs or other dangerous materials. The proposed rules address the use of digital media. Finally, the proposed rules reference the *Case Records Public Access Policy of the Unified Judicial System*, and apply it to exhibits filed with a records office.