

Allegheny County Rules of Judicial Administration. Family Division: Custody of Exhibits in Court Proceedings

Rule 5101.4 Family Division Custody of Exhibits. Definitions.

- (a) The following words and phrases when used in these rules shall have the following meanings, unless the context clearly indicates otherwise, or the particular word or phrase is expressly defined in this chapter:
- (1) “Court proceeding.” Any trial, hearing, argument, or similar event before a judge, panel, or hearing officer where evidence, if entered, is on the record; however, this rule shall not apply to, and thus this definition does not encompass, record hearings that may be appealed *de novo* to a court of common pleas or upon which exceptions or objections can be filed to a court of common pleas. A court proceeding also does not include a proceeding before a magisterial district court, a judicial arbitration matter pursuant to Pa.R.C.P. 1301 et seq., a hearing before a register of wills pursuant to Pa.R.O.C.P. 10.3, or any matter that is not a record proceeding. A court proceeding may occur over more than one day, including non-consecutive days;
 - (2) “Custodian.” The person or persons designated by these rules to safeguard and maintain exhibits offered into evidence in a court proceeding. The custodian shall be either the proponent of the exhibit or a member of court staff. A custodian shall also include that custodian’s designee;
 - (3) “Exhibit.” A document, record, object, photograph, model, or similar item offered into evidence, whether or not admitted, in a court proceeding;
 - (4) “Proponent.” A party seeking the admission of an exhibit into the record in a court proceeding; and
 - (5) “Records office.” The Allegheny County Department of Court Records, Civil/Family Division (“Department of Court Records”) will serve as the records office for purposes of this rule and shall have the responsibility and function to maintain and retain the official case file and list of docket entries as required by rule or law. The records office for purposes of filing under this rule shall not include the automated systems of the Unified Judicial System such as the Common Pleas Case Management System or the Pennsylvania Appellate Case Court Management System, or PACFile.
- (b) For any words and phrases not defined by these rules, a meaning may be discerned through examination of its dictionary definition, and its legal meaning may be gleaned from its use in an applicable body of law.

Comment: This rule as defined in (a)(1) would not apply, for example, to record hearings before hearing officers in divorce, enforcement/contempt, custody, support, delinquency, and dependency matters. Nonetheless, litigants or court personnel who believe that this rule does not apply to a proceeding should independently verify that the proceeding fits the above exception.

Rule 5102.4 Family Division Custody of Exhibits. General Provisions.

(a) **During Court Proceedings.** In all Family Division proceedings, the court may designate a member of the court staff or the proponent of evidence to serve as custodian during and throughout court proceedings, and the custodian's name shall be placed on the record. When a custodian names a designee, the court shall place the name of the designee on the record. In naming a custodian or accepting a custodian's designee, the court shall consider the proponent's capabilities and circumstances as set forth below in (b) of this Subsection. Where these rules would apply in a proceeding before a hearing officer as set forth herein in Subsection 5101.4(a)(1), the hearing officer shall serve as custodian during proceedings.

(1) The custodian shall secure and maintain all exhibits during court proceedings, including during breaks and recesses, unless otherwise provided herein at 5103.4(c)(3) regarding bulky exhibits and 5103.4(d) regarding hazardous exhibits; and

(2) The custodian shall secure all exhibits at the end of each day during the proceeding, unless otherwise provided herein in Subsection 5103.4(c)(3) or 5103.4(d). However, subject to the considerations immediately below at Subsection 5102.4(b), if a proceeding is conducted over nonconsecutive days, the court may designate the proponent of the evidence to serve as custodian on days when court proceedings are not taking place.

(b) **After Court Proceedings.** Unless the court directs otherwise by naming a member of court staff as custodian, at the conclusion of a court proceeding, the custodian shall become the proponent of the evidence that the proponent proffered. The name of all custodians shall be placed on the record. If the court determines that through the exhaustion of post-trial actions and appeals, a *pro se* party is unable to perform the duties of a custodian or that any other party or proponent is unable to maintain and secure an exhibit or that a particular proponent or proponents may tamper with or permit the degradation of any exhibits, the court may designate a court custodian in each such proponent's stead to perform all duties identified in this rule. Where these rules apply in a proceeding before a hearing officer as set forth herein in Subsection 5101.4(a)(1), after proceedings before that hearing officer, the hearing officer may serve as custodian or may designate the hearing officer's staff (such as the hearing officer's clerk) to serve as custodian.

(1) **Custodian.** The custodian shall:

(i) take custody of and secure all documentary exhibits, photographs, and photographs of non-documentary exhibits accepted or rejected into evidence during the court proceeding;

- (ii) file all documentary exhibits, photographs, and photographs of non-documentary exhibits with the Department of Court Records within five business days of the conclusion of the court proceeding unless directed otherwise by the court; and
 - (iii) secure and maintain all other non-documentary exhibits as directed by the court or as agreed to by the parties.
- (2) **Index of Exhibits.** A custodian filing exhibits with the Department of Court Records shall include a list of exhibits using the same numbers used by the proponent during the court proceeding to refer to each exhibit. For each exhibit, the custodian filing the exhibits shall also: identify the proponent; indicate whether the exhibit was admitted into or rejected from evidence; and provide a textual description or identification of the exhibit. Court staff, as designated by the presiding judge and whether serving as custodian or not, shall keep an index of exhibits utilizing substantially the same form set forth at the conclusion of these rules. In proceedings before a hearing officer, the hearing officer shall create and keep the index. A proponent custodian filing exhibits may utilize a copy of the court's completed form for filing.
- (3) **Method of Filing.** For matters on the adult docket, exhibits must be filed electronically utilizing the eFiling and Retrieval System at the Department of Court Records. *Pro se* litigants are encouraged to file electronically as well but the Department of Court Records accepts filing of court documents in person or by other means which may be posted on the Department of Court Records website. Matters on the juvenile docket shall be filed with the Department of Court Records Juvenile Section, which is located at 414 Grant Street, Second Floor City-County Building, Room 229, Pittsburgh, Pennsylvania 15219; unless the court permits otherwise, proponents of exhibits in such matters other than those proceeding *in forma pauperis* shall be responsible for printing exhibits for filing when those exhibits are not contained on a Universal Serial Bus ("USB") flash drive under Subsection 5103.4(a)(3) or other format as the court might allow for digital media under Subsection 5103.4(e).
- (4) **Confirmation.** If exhibits are transferred from a member of the court staff serving as custodian to a proponent custodian, the court custodian shall confirm that the proponent custodian has complied with the filing requirements set forth herein in Subsection (b)(1)(ii). Otherwise, the court custodian shall be responsible for the filing of exhibits in keeping with the requirements of this rule.
- (5) **Relief.** If a custodian does not file the exhibits as required in this Subsection, then a party or proponent not designated as the custodian or in possession of the exhibits may seek appropriate relief from the court.

Comment: The parties are encouraged to work collaboratively prior to trial to stipulate to trial exhibits that they find unobjectionable and file the stipulations and exhibits covered by the stipulations along with an index in substantially the form provided at the end of these rules with the Department of Court Records. In the event of a stipulation, the parties shall notify the court and provide the court with a copy of the exhibits and index of the exhibits filed as soon as such stipulation is reached and the index is completed.

In a court proceeding, there could be multiple parties and multiple proponent custodians each of whom is responsible for the exhibits they proffered. Proponent custodians and/or court custodians should label their exhibits with reference to the party proffering the exhibit and using sequential numbers (for example, “CYF Exhibit 1” and “CYF Exhibit 2” or “Defendant Smith Exhibit 1” and “Defendant Smith Exhibit 2”). If a listed exhibit is withdrawn, the withdrawal may be noted on the index of exhibits. Where an exhibit is withdrawn, the custodian preparing the index and the proffering party should maintain the numbering system in place before withdrawal to avoid confusion from renumbering. This could result in a gap in the numbering of exhibits. A hearing officer who serves as custodian during court proceedings will prepare the index of exhibits.

Under (a)(3), courts and custodians should bear in mind that as of this rules enactment, the eFiling and Retrieval System allows individuals to file documents in a case and see the docket, the official list of documents filed in a case as well as scanned images of the documents filed unless the case or specific item is sealed by order of court or if an applicable statute, local rule, or other source of law prohibits public access. Pertinent information can often be found on the Department of Court Records website as well as the Allegheny County website.

Under (a)(4), proponent custodians should notify the court staff on the same day on which they have filed exhibits to aid the court staff in confirming the proponent custodians’ compliance.

The custodian, if a member of the court staff, may direct the proponent to secure and maintain exhibits that are bulky, oversized, or otherwise physically impractical for the custodian to maintain during the court proceedings. See Subsection 5103.4(c)(3). Typically, non-documentary exhibits will be returned to their respective proponent at the conclusion of a court proceeding.

If a court finds that there is a need to review the exhibits as filed, for example in preparing an opinion for appeal, the court may requisition the file from the department of court records, using any forms or procedures established for such review.

Rule 5103.4 Family Division Custody of Exhibits. Special Provisions.

(a) Documentary Exhibits.

- (1) If a proponent offers into evidence an exhibit such as a letter, report, drawing, map, or other document that exceeds 8 ½ x 11 inches, the proponent shall ensure in advance of the proceeding that a copy of the document is reduced to 8 ½ x 11-inches and is entered into the record.
- (2) A proponent who provides a reduced copy of an oversized exhibit shall ensure that the reproduced document or copy of a photograph, where submitted, is clear and can be further reproduced or transferred to digital media.
- (3) Voluminous documentary exhibits are those where the intended original documentary exhibit exceeds 150 physical pages (whether single- or double-sided). Each proponent of a voluminous documentary exhibit in advance of a proceeding shall have that exhibit placed onto USB flash drive or other format that the court may deem acceptable for entry into the record.

(b) Photographs.

- (1) If a proponent offers into evidence a photograph, the proponent shall ensure in advance of the proceeding that the original or a copy of the photograph instead of the original is no larger than 8 ½ x 11 inches when entered into the record. If the original photograph is in color, any copy placed in the record shall also be in color.
- (2) A proponent who provides a copy of a photograph shall ensure that the reproduced document is clear and can be further reproduced or transferred to digital media.

(c) Non-Documentary Exhibits Generally.

- (1) If a proponent offers into evidence a non-documentary exhibit, the proponent shall ensure in advance of the proceeding that a photograph no larger than 8 ½ x 11 inches of the exhibit is entered into the record instead of the non-documentary exhibit. If the non-documentary exhibit displays color, the copy shall also be in color.
- (2) A proponent who provides a photograph of a non-documentary exhibit shall ensure that the photograph is clear and can be further reproduced or transferred to digital media. If more than one photograph is required to convey a full image of an exhibit (for example, from more than one angle), the proponent shall take as many such additional photographs as are necessary; in this case, the exhibit shall be labeled with subparts under one number (such as Exhibit 1(a), 1(b), etc.).

(3) If the exhibit is bulky, oversized, or otherwise physically impractical for a court staff custodian to maintain, the court may direct the proponent offering the exhibit to maintain custody of it and secure it during the court proceeding.

(d) Non-Documentary Exhibits: Weapons, Contraband, Hazardous Materials.

(1) In any court proceeding in which weapons, cash, other items of value, drugs, or other dangerous materials are offered into evidence, the proponent shall secure the exhibits while the court proceeding is in session as well as during all breaks and recesses.

(2) During the proceeding, the proponent shall exercise all appropriate safeguards necessary to protect the public based on the nature of the exhibit including compliance with any court orders relating to the exhibit.

(e) **Use of Digital Media.** Any media or videos presented at a court proceeding shall be retained by the proponent, but the proponent shall ensure in advance of the court proceeding that an exhibit of this type is placed onto a USB flash drive or other format acceptable to the court for entry into the record. If the court determines that a party lacks the ability to comply with this Subsection, such as those who are *pro se* and/or do not understand the requirement or those who are proceeding *in forma pauperis*, the court shall have court staff assist the proponent in attempting to comply with this rule, including but not limited to supplying a USB flash drive unless another format has been deemed acceptable to the court.

(f) **Duplicates.** The court may direct that the original item, and not a duplicate, be entered into the record.

(g) **Exhibits Under Seal.** If an exhibit offered into evidence contains confidential information or confidential documents as defined by 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 no later than five days after the conclusion of the court proceeding. Any exhibit sealed by the court during the court proceeding shall not be accessible to the public.

(h) **Copies to the Court:** In accordance with each judge's operating procedures, parties shall provide copies of all exhibits proffered to the trial judge before or at the time of the court proceedings and no later than at the time of the proceedings. The Court is not required to maintain the exhibits after court proceedings conclude except for circumstances in which a court custodian is named and must retain the exhibits until filed in compliance with Subsection (g) directly above.

Comment: Subsection (b) recognizes that a proponent may have a sentimental attachment to a photograph and might not want to relinquish it for inclusion in the record if it can be submitted in compliance with this rule.

Regarding the use of media in the courtroom, technology is constantly evolving, and judicial districts have access to varying levels of technology. Accordingly, the rule requires a proponent to provide evidence using USB flash drives but also gives the court discretion to approve alternatives. As set forth in Subsection (e), a proponent offering an audio, visual, or computer file into evidence is solely responsible for ensuring that the court has the means to access it during a court proceeding. This situation may occur in many settings; for example, on occasion, a proponent desires to play a video from a cell phone as evidence. That proponent must first ensure that the media or video can be provided to the court by an acceptable method. Whenever possible, a proponent should provide such evidence to the court prior to the hearing so as not to slow proceedings.

In Subsection (d), the phrase “weapons, cash, other items of value, 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. The court may consider additional safety measures if substances likely to cause bodily harm are present in the courtroom, such as fentanyl and its derivatives or other substances known to be especially lethal or toxic.

Neither documentary exhibits of unusual bulk or weight nor non-documentary exhibits should be transmitted unless authorized by a party or by the prothonotary of the appellate court. See Pa.R.A.P. 1931(c). In the case of exhibits under Subsection (d) of this rule, such exhibits should only be transmitted by law enforcement personnel who are authorized to transport such items to the appellate court.

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

Subsection (g) 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 and 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. Moreover, this Subsection recognizes that some exhibits contain such highly sensitive information or images that they are sealed by the court during the court proceeding.

5102(b)(2) Index of Exhibits – Form Example

INDEX OF EXHIBITS

Case Caption/In Re: _____ Case No.: _____

Party Name: _____ (Plaintiff/Petitioner [] Defendant/Respondent [] GAL [])

Date/Type of Proceeding: _____ Judge/Hearing Officer: _____

***NOTE: Any proposed exhibit of video/audio recordings must be provided to court staff prior to hearing in a physical format acceptable for filing in compliance with the above rules.**

Exhibit #	<u>Description</u>	Admitted / Rejected / Not Offered / Withdrawn	Confidential Certification Yes / No / N/A
	1. Evaluation Report of Dr. Jones of January 1, 2024		
	2. Letter from Dr. J. Smith		
	3. Report Card of J.D.		
	4. Police Report of January 1, 2024		
	5. Forensic Report from [Name Source]		
	6. Photo of house		
	7. Photo of living room		
	8. Order of Court dated Jan. 1, 2024		
	9. Flash drive with video recording of incident [description]		

