

**Rule 4-206. Exhibits.****Intent:**

To establish a uniform procedure for the receipt, maintenance and release of exhibits.

**Applicability:**

This rule shall apply to all trials ~~and court proceedings~~ in courts of record and not of record, except small claims court. In the discretion of the court, this rule may apply to any proceeding in which exhibits are introduced.

**Statement of the Rule:****(1) Marking exhibits**

(1)(A) **Marking Exhibits.** Prior to trial, or at a time specified by the judge, each party must mark all exhibits it intends to introduce by utilizing exhibit labels in the format prescribed by the clerk of court. Labels or tags must include, at a minimum, a case number, exhibit number/letter, and an appropriate party designation. With approval of the court, a photograph may be offered by the submitting party as a representation of the original exhibit. All exhibits offered as evidence shall be marked with a label or tag, which shall contain, at a minimum, the exhibit number or alpha identification, the case number, the date received, and the initials of the clerk who received the exhibit.

(1)(B) **Digital Exhibits.** Digital exhibits must be marked as provided in paragraph (1)(A) and submitted to the court as prescribed by the clerk of court. Exhibits should not be eFiled. The clerk shall designate the source of the exhibit by the letter "P" if it is received from plaintiff and "D" if it is received from defendant. In cases with multiple parties, the label shall further identify the parties, e.g. 1st D is the first named defendant in the pleadings, 3rd D is the third party defendant.

~~(1)(C) The clerk shall secure the label on the item and shall affix more than one identical label when necessary.~~

~~(1)(D) The court may order exhibits to be marked in advance of the date and time of trial or other hearing.~~

(1)(C) **Courts not of record.** Courts not of record may exempt parties from the requirements outlined in paragraphs (1)(A) and (1)(B) and prescribe an alternative process for marking exhibits.

**(2) Exhibit custody during trial and tracking.**

(2)(A) **Custody of the Parties.** During the trial, bulky and sensitive exhibits, and exhibits that require law enforcement chain of custody, will remain in the custody of the party offering the exhibit. Such exhibits include, but are not limited to: biohazards, controlled substances, paraphernalia, firearms, ammunition, explosive devices, pornographic materials, jewelry, poisonous or dangerous chemicals, intoxicating liquors, money or articles of high monetary value, counterfeit money, original digital storage media such as a hard drive or computer, and documents or physical exhibits of unusual bulk or weight. The clerk of court or designee must list these exhibits in the exhibit list and note that the original exhibit is in the custody of the party. The exhibit custody tracking record means the CORIS computer system or a form approved by the Administrative Office of the Courts. If an approved form is used as the exhibit custody tracking record, it shall be placed in the case file.

(2)(B) **Custody of the Court.** Physical exhibits received during trial, other than those in paragraph (2)(A), must be placed in the custody of the clerk of court or designee. Digital exhibits received as evidence by the court during the trial shall be stored

electronically or on digital media such as a thumb drive and stored in accordance with paragraph (2)(C). The clerk of court or designee must list all exhibits in the exhibit list, and the list shall be made a part of the court record. An exhibit list may be the court's designated case management system or a form approved by the Judicial Council. Each person with custody of an exhibit shall identify herself or himself in the exhibit custody tracking record and record changes in the status of the exhibit contemporaneous with the event.

~~(2)(C) **Secured Storage.** Prior to daily adjournment, the clerk, under the direction of the court, shall compare the exhibit custody tracking record with the exhibits in the custody of the clerk. The clerk shall keep the exhibits received at trial in a container. The container shall be numbered and shall identify the case name and number.~~

(2)(C)(i) Upon daily adjournment, the clerk of court or designee must compare the exhibit list with the exhibits received that day. Digital exhibits received under paragraph (2)(B) shall be stored electronically in a manner meeting the requirements outlined in paragraph (3)(A)(ii). Physical exhibits received under paragraph (2)(B) must be stored in an envelope or container, marked with the case number, and stored in a secured storage location that meets the requirements outlined in paragraph (3)(A)(ii).

(2)(C)(ii) Exhibits may be stored in a temporary secured location for no more than 72 hours, provided the temporary location is sufficient to prevent access by unauthorized persons, and the location is secured with a key lock, combination lock, or electronic lock. Access to the temporary storage location shall be limited to the clerk of court, judge, or a designee.

~~(2)(D) Each court location shall provide a locked facility for storing exhibits. The Clerk of the Court shall appoint an exhibit manager with responsibility for the security, maintenance and disposition of exhibits. Access to the exhibit storage area by anyone other than the exhibit manager and the clerk is prohibited without a court order.~~

~~(2)(E) Unless otherwise ordered by the court, at the conclusion of the trial or proceeding, the clerk shall release to the party offering them all exhibits not suitable for filing and transmission to the appellate court as part of a record on appeal. Such exhibits include, but are not be limited to: narcotics and other controlled substances, firearms, ammunition, explosive devices, jewelry, liquor, poisonous or dangerous chemicals, money or articles of high monetary value, counterfeit money, and exhibits of unusual bulk or weight. The clerk shall transfer the remaining exhibits to the exhibit manager. The exhibit manager shall record receipt and location of the exhibits.~~

~~(2)(F) The exhibit manager shall record the date of release of exhibits and to whom released, if applicable.~~

**(3) Exhibit custody prior to disposition** ~~Withdrawal of exhibits.~~

(3)(A) **Pending Disposition.** Exhibits in the court's custody pursuant to paragraph (2)(B) may not be taken from the custody of the clerk of court or designee until final disposition of the case, except upon order of the court and execution of a receipt that identifies the material, the party to whom the exhibit is released, and the date and time of the release. The receipt shall be made a part of the court record. If the time for filing an appeal or requesting a rehearing or new trial has not expired, exhibits may be withdrawn only upon written order of the court.

(3)(A)(i) **Exhibit Manager.** The clerk of court shall appoint an exhibit manager with responsibility for the security, maintenance, documentation of the chain of custody, and disposition of exhibits. The clerk of court may also appoint a person to act as exhibit manager during periods when the primary exhibit manager is absent. Unaccompanied or unauthorized access to secured storage locations by anyone other than the exhibit manager, acting exhibit manager, or

the clerk of court is prohibited without a court order.

(3)(A)(ii) **Secured Storage Location.** Each court must provide physical and electronic secured storage locations within their facility for storing exhibits retained by the court under subsection (2)(B), and shall maintain a current inventory list of all exhibits in the court's custody. The physical secured storage location must be sufficient to prevent access from unauthorized persons, secured with a key lock, combination lock, or electronic lock, and protected from theft or damage. The electronic secured storage location should be sufficient to prevent access from unauthorized persons. Prior to use, physical and electronic secured storage locations must be certified by the Court Security Director. Requests for certification must be made in writing and shall fully describe the secured storage location, local access procedures, and security controls. Any changes to the location, access procedures, or security controls require recertification by the Court Security Director.

(3)(B) **Exhibit custody post disposition.** In courts of record, upon final disposition of the case, exhibits in the court's custody shall be disposed of or returned to the offering parties pursuant to paragraph (5). The clerk of court, exhibit manager, or designee shall execute a receipt identifying the material taken, the party to whom the exhibit is released, and the date and time of the release. The receipt shall be made a part of the court record. In courts not of record, upon final disposition of the case, all exhibits shall be returned to the parties. If the time for filing appeals or requesting a rehearing or new trial has expired, exhibits may be withdrawn by filing a Notice of Intent to Withdraw Exhibits.

(3)(C) **Exhibits in the custody of the parties.** Unless otherwise ordered by the court, exhibits identified in paragraph (2)(A) shall remain in the custody of the parties until they are eligible for disposal pursuant to paragraph (5). Parties are responsible for preserving exhibits in the same condition as when they were first admitted into evidence. The clerk or exhibit manager shall record withdrawal of the exhibits.

(3)(D) **Access to exhibits by parties.** Parties may file a motion requesting access to an exhibit in the custody of the court or another party. Upon order of the court, the clerk of court, exhibit manager or designee, or party with custody of the exhibits shall promptly make available for examination exhibits, or original or true copies of the exhibits.

(4) **Appeals.** Exhibits and exhibit lists shall be provided upon appeal in accordance with the Utah Rules of Appellate Procedure. Disposal of exhibits. After three months have expired from final disposition of the case and no appeals have been filed or requests for new trials or rehearing have been made, the clerk shall dispose of the exhibits as follows:

(4)(A) Property having value shall be returned to its owner or, if unclaimed, shall be given to the sheriff of the county or other law enforcement agency to be sold in accordance with Utah Code Section 24-3-103. The agency receiving the property shall furnish the court with a receipt that may be maintained with the exhibit custody tracking record or noted in the computer record.

(4)(B) Property having no value shall be destroyed by the clerk of the court who shall furnish the court with a certificate of destruction that may be maintained with the exhibit custody tracking record or noted in the computer record.

(4)(C) The exhibit manager shall record disposition of the exhibits.

(5) **Disposal of exhibits.** Parties may dispose of, and exhibit managers, clerks of court, or designees shall dispose of any exhibits in their custody 90 days after the time for appeal has expired, or the statute of limitations for post-conviction relief, including the time for appeal from post-conviction relief has expired, whichever is later. Exhibits in the court's custody shall be

disposed of as follows:

(5)(A) Property having no monetary value shall be destroyed by the exhibit manager, clerk of court, or designee. The exhibit manager shall create a certificate of destruction including a description of the exhibit, the case and exhibit numbers, and the date and time of the destruction. The certificate of destruction shall be made a part of the court record.

(5)(B) Property having monetary value shall be returned to its owner or, if unclaimed, shall be given to the prosecuting agency, sheriff of the county, or other law enforcement agency to be sold in accordance with Utah Code, Title 24, Chapter 3. The receiving agency shall furnish the court with a receipt identifying the receiving agency, the exhibit received, and the date and time the exhibit was received. The receipt shall be made a part of the court record.

*Effective May/November 1, 20\_\_*