

## **CUSTODY OF EXHIBITS WORKGROUP ADOPTION REPORT**

### **Adoption of Pa.R.J.A. 5101 – 5105**

On September 11, 2023, the Supreme Court of Pennsylvania adopted Rules 5101 – 5105 of the Pennsylvania Rules of Judicial Administration, pertaining to the custody and retention of trial exhibits. The Custody of Exhibits Workgroup has prepared this Adoption Report describing the rulemaking process as it relates to these changes. An Adoption Report should not be confused with Comments to the rules. See Pa.R.J.A. 103, cmt. The statements contained herein are those of the Workgroup, not the Court.

The issue of custody of exhibits was initially considered by the Criminal Procedural 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 Criminal Procedural Rules 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.

The Custody of Exhibits Workgroup was 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, and circulated the draft rules to stakeholder groups for review and comment. The Workgroup published the proposal for public comment at 49 Pa.B. 1645 (April 6, 2019). The comment period ran through June 5, 2019. Following review and discussion of public comments, the Workgroup made further revisions to the proposal.

The framework of the rules relies on a custodian of exhibits to safeguard exhibits entered into evidence in a court proceeding. A custodian is defined as:

the person or persons designated by local rule of judicial administration to safeguard and maintain exhibits offered into evidence in a court proceeding. The custodian shall either be a member of court staff, *e.g.*, court reporter, clerk of court, hearing officer, or the proponent of the exhibit. Custodian shall also include the custodian's designee.

Pa.R.J.A. 5101(a)(2).

The custody of exhibit rules establish statewide guidelines for the handling of exhibits during and after a court proceeding. See Pa.R.J.A. 5102. Additionally, certain matters, such as designation of the custodian and establishing standards for maintenance and security of bulky or oversized non-documentary exhibits, are left to local rules subject to Pa.R.J.A. 5104.

Pa.R.J.A. 5102(b) provides specific instructions for filing of documentary exhibits and photographs of non-documentary exhibits with the records office within five days of the conclusion of the court proceeding unless otherwise directed by the court. See Pa.R.J.A. 5102(b)(2). These rules are not intended to govern the transmission of records from the trial court to the appellate court. See, *e.g.*, Pa.R.A.P. 1931.

The rules also govern the handling of documentary exhibits and non-documentary exhibits (*e.g.*, jewelry, clothing, automobiles, furniture, weapons, cash, and contraband). See Pa.R.J.A. 5103. Special provisions address the handling of weapons, cash, items of value, drugs, or other dangerous materials. See Pa.R.J.A. 5103(d). Finally, the rules reference the *Case Records Public Access Policy of the Unified Judicial System* and apply it to exhibits filed with a records office. See Pa.R.J.A. 5105.

The rules become effective on April 1, 2024.