

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
OF FLORIDA

ADMINISTRATIVE ORDER NO.:
24-09 2ND AMENDED
SUPERSEDES 24-09 AMENDED

IN RE: EVIDENCE – CLERK OF COURT’S PROCEDURES HANDLING EVIDENCE

WHEREAS, pursuant to Article V, section 2(d) of the Florida Constitution, and Florida Statute §43.26, the chief judge of each judicial circuit is charged with the authority and the power to do everything necessary to promote the prompt and efficient administration of justice; and

WHEREAS, it has been determined that the Clerk of Court (“Clerk” or “Clerk’s Office”) does not have sufficient storage space, nor the physical conditions conducive to the preservation of certain exhibits submitted as part of court proceedings; and

WHEREAS, it has been determined that the Clerk has sought direction from the Court concerning various evidence handling procedures.

IT IS ORDERED that effective immediately, the Clerk is hereby ordered to adopt the following practices and procedures concerning the storage, handling, preservation, and release of evidence:

1. **STORAGE OF EXHIBITS for Circuit and County Criminal Cases:** The Clerk is directed in all circuit and county criminal cases to only store or hold exhibits entered into evidence.
 - a. Further, the Clerk is directed to no longer store or keep exhibits or potential exhibits that have not been entered into evidence or marked for identification, unless such exhibits are part of a composite or were provided during a virtual hearing.
 - b. At the conclusion of an in-person hearing or trial, any evidence released or not entered into evidence is to be collected by each party, or such exhibits or potential exhibits will be destroyed by the Clerk.

- c. For virtual hearings, exhibits or potential exhibits must be collected from the Clerk within 5 days or they will be destroyed by the Clerk.

2. **STORAGE OF EXHIBITS for Circuit civil and family cases:** The Clerk is directed in all circuit civil and family cases to hold exhibits entered into evidence and premarked for identification for trial or evidentiary hearing.

- a. The Clerk is directed in civil and family cases to only store or keep exhibits entered into evidence or potential exhibits that were marked for identification but were not entered into evidence due to an objection during a trial or evidentiary hearing, for 60 days after the final judgment is entered or the close of the case, whichever is later. This includes whether such exhibits are part of a composite or were provided during a virtual hearing.
- b. Otherwise, at the conclusion of an in-person hearing or trial, any evidence released or not entered into evidence, excluding Section 2a above is to be collected by each party, or such exhibits or potential exhibits will be destroyed by the Clerk.

3. **CLERK NOT TO RELEASE CERTAIN EVIDENCE WITHOUT COURT ORDER:**

The Clerk is directed that certain types of evidence that are in the custody of the Clerk, shall not be viewed and/or copied without a court order (unless specifically noted below).

Such evidence includes:

- a. Pursuant to F.S. § 119.07:
 - i. Any evidence depicting the killing of a law enforcement officer who was acting in accordance with his/her official duties; and
 - ii. Any evidence depicting the killing of a victim of mass violence.
 - iii. NOTE: Pursuant to F.S. § 119.07, the following individuals may have access to such records upon written request to the Clerk, and without court order:
 - Surviving spouse of the decedent;
 - If no surviving spouse, the surviving parent of the decedent;
 - If no surviving parent, the surviving adult children of the decedent;
 - Further, the above-listed deceased's surviving relative may designate, in writing, an agent to obtain such records.
- b. Pursuant to F.S. § 847:
 - i. Any obscene material, defined pursuant to F.S. § 847.001(12) as:
 - (12) "Obscene" means the status of material which:
 - (a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
 - (b) Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and
 - (c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.
- c. A mother's breastfeeding of her baby is not under any circumstance "obscene."

- d. Pursuant to Fla. R. Gen. Prac. & Jud. Admin. 2.420:
 - i. Any document or exhibits deemed to have confidential information as described under this rule.

4. **HEARING REQUIRED FOR INTRODUCING EXHIBITS CONTAINING HIGH-POTENCY NARCOTICS:** In an effort to ensure the health and safety of all persons within each courthouse and to prevent any accidental exposure, this Court has recognized that there is a need to establish a procedure for introducing evidence that contains or may contain high-potency narcotics (“HPN Exhibits”).

- a. HPN Exhibits are those that contain or may contain high-potency narcotics which are highly toxic and may be fatal, including, but not limited to: Fentanyl (Actiq, Fentora, Duragesic, Subsys, Abstral, Lazanda, Ionsys, Onsolis, Duragesic-100, Duragentic-50, Duragentic, Duragentic-75, Sublimaze, Duragentic-25, and Duragentic-12); Carfentanil; Remifentanil; Alfentanil; Sufentanil; and other related high-potency narcotics.
- b. In the event any party intends to introduce evidence that contains or may contain HPN in any court proceeding, the party intending to introduce the evidence must file a notice of its possession of an HPN Exhibit at least five (5) days prior to the pretrial conference in a trial case, and ten (10) days prior to a hearing on a violation of probation.
- c. The court shall conduct a pre-trial hearing to determine if the HPN Exhibits can be introduced by admission, statement of fact, photographs, stipulation and/or certificate of analysis. The court shall not require any party or law enforcement agency to transport or bring the HPN Exhibits to the courthouse for the purpose of the pretrial hearing.
- d. If the parties are unable to reach an agreement or stipulation at the pretrial hearing, the court clerk(s) shall promptly notify a manager in the court clerks’ division of the Clerk’s Office.
- e. In the event that HPN Exhibits are brought into the courthouse for any purpose, including but not limited to trial, HPN Exhibits shall be double-bagged, sealed, and clearly labeled. All HPN Exhibits shall be brought to the Courtroom in a clear, airtight, and waterproof container manufactured by Pelican Brand or other similar manufacturers with appropriate safety features to prevent spillage or airborne release of the HPN Exhibit. Further, HPN Exhibits must be handled, labeled, and packaged in accordance with additional policies that may be established by federal or local law enforcement, which may be amended from time to time to ensure the safety of all court participants. The HPN Exhibit shall not be removed from the clear-container at any time while in the Courthouse. The clear container shall stay with the agent bringing the HPN Exhibit to the Courthouse and shall be removed by the same agent upon completion of testimony regarding the HPN Exhibit.” Under no circumstance will the item be admitted into the Clerk’s evidence vault or kept by the Clerk in any way. Photographs of the item that show initials and chain of custody evidence shall be admitted in lieu of the HPN Exhibit.

- f. At the pretrial conference, if the parties are unable to stipulate to alternative presentations of the evidence and an HPN Exhibit is to be introduced into evidence, the court shall discuss and decide upon the protective gear that may be worn by trial participants, including but not limited to, attorneys, court deputies, court reporters, court clerks, and the court. Under no circumstances shall the jury handle the HPN Exhibit.
- g. The court clerk(s) shall promptly mark photographs of and HPN exhibit to later be viewed by the jury.

5. **DIGITAL EVIDENCE:** Digital evidence is evidence in an electronic format. Digital evidence is fragile by its very nature, and can degrade over time. Due to the fragility of digital evidence, the Clerk is directed as follows:

- a. The Clerk shall receive and safely hold as evidence in custody for the court all evidence (including digital evidence) as directed by any judge of this circuit.
- b. Such digital evidence may be contained in a physical form which can include, but is not limited to: CDs, CD-RWs, DVDs, Blu-Ray Discs, floppy discs, zip discs, magnetic tapes, jump/flash drives, hard drives (whether SSD, HDD or other kind), memory cards (i.e. SD, CompactFlash, Multimedia Cards, etc), or any other kind of digital storage device.
- c. The Clerk's obligation in maintaining digital evidence shall be strictly limited to the preservation of the physical form or device which contains the digital evidence (i.e. the Clerk shall only be responsible for maintaining the physical CD, the physical floppy disc, the physical jump/flash drive etc). The Clerk shall not be required to ensure that the digital evidence on such physical form or device is maintained and/or preserved.

6. **RELEASING EVIDENCE:** The Clerk is directed to only release evidence, including to an opposing party, upon receipt of a court order. Firearms, ammunition, and/or any weapons as defined by F.S. § 790.001 (any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon), shall not be released to any party without a court order and shall only be released in the presence of a Sheriff's Office deputy, or other sworn law enforcement officer.

7. **ACCESS TO CONFIDENTIAL EVIDENCE:** Pursuant to Florida Rule of General Practice and Judicial Administration 2.420(j), the Clerk is directed to allow access to confidential court records to persons authorized by law, or any person authorized by a court order.

- a. The Clerk is directed to follow the Florida Supreme Court's Access Security Matrix in determining which persons are authorized by law to access records without a court order.
- b. Should a court order be required in order to view confidential court records, any order granting access to confidential court records must:

- i. describe the confidential information with as much specificity as possible without revealing the confidential information, including specifying the precise location of the information within the court records;
- ii. identify the persons who are permitted to view the confidential information in the court records;
- iii. identify any person who is permitted to obtain copies of the confidential court records; and
- iv. state the time limits imposed on such access, if any, and any other applicable terms or limitations to such access.

DONE AND ORDERED this 18th day of July, 2024.

CHARLIE CRAWFORD
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CHIEF JUDGE

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