

ALASKA COURT SYSTEM
OFFICE OF THE ADMINISTRATIVE DIRECTOR
ADMINISTRATIVE BULLETIN NO. 9
(AMENDED EFFECTIVE OCTOBER 15, 2005)

TO: ALL HOLDERS OF ADMINISTRATIVE BULLETIN SETS:

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OTHERS:

In-Court Clerk Supervisors, Anchorage and Fairbanks
Records Division Supervisor, Anchorage

SUBJECT: Exhibit Procedures

This policy is being issued under the authority granted to the administrative director by Civil Rule 43.1 and Criminal Rule 26.1. The procedures described below must be followed in all trials, pretrial hearings and other court hearings in the Alaska trial courts.

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I. DEFINITIONS

- A. **Marked for Identification:** means an exhibit has received an exhibit sticker and exhibit number and has been listed on the exhibit list.
- B. **Offered Into Evidence:** means counsel or a party not represented by counsel has asked the court to admit the exhibit into evidence.
- C. **Admitted:** means the court has determined that the exhibit should be considered as evidence by the trier-of-fact (i.e., the judge or jury).
- D. **Withdrawn:** means the court has allowed the exhibit to be removed from custody of the court either during or after trial.

II. MARKING EXHIBITS

A. When To Mark

1. Civil Cases

a. Formal Civil Trials

In all trials under the formal rules of civil procedure, the parties shall, prior to trial, mark for identification all intended exhibits in the manner prescribed by this bulletin. Parties must obtain standard exhibit stickers and exhibit list forms (forms TF-200 and TF-201) from the in-court clerk or other designated clerk. The parties must type a brief description of the identified exhibits on the exhibit list and must list the exhibits in the order that the party intends to use them at trial. At the beginning of trial the original and one copy of the exhibit list shall be filed with the in-court clerk. (Civil Rule 43.1) Prior to trial, the parties must serve all other parties with a copy of the exhibit list.

b. Other Civil Hearings and Small Claims Trials

In all other hearings and in all trials under the Small Claims rules, exhibits will be marked for identification by the in-court clerk at the time of trial or hearing unless the judge orders pre-marking of the exhibits.

2. Criminal Cases

The procedure described in paragraph 1.a. above may be required in criminal cases at the discretion of the trial judge. If the procedure described in paragraph 1.a. is not required, the in-court clerk shall mark all exhibits at the time of trial or hearing.

B. Exhibit Numbering

The following examples show how exhibits should be numbered:

Single Parties:

Plaintiff State of Alaska:	Exhibits start with 1
Defendant Tom Johnson:	Exhibits start with A

Multiple Parties:

Plaintiff Tom Jones:	Exhibits start with J-1
Plaintiff John Miller:	Exhibits start with M-1
Defendant Sam Smith:	Exhibits start with S-A
Defendant James Orange:	Exhibits start with JO-A
Defendant Mary Orange:	Exhibits start with MO-A

Plaintiff's exhibits must be marked in numerical order starting with 1.
Defendant's exhibits must be marked in alphabetical order starting with A.

If there is more than one plaintiff or more than one defendant, the first letter of the party's last name must precede the number or letter as shown above.

If there is more than one plaintiff or defendant with the same last initial, the initials of both the first and last names must be added to the exhibit number as shown above.

Defendant's exhibits will be marked A through Z in order, then AA, AB, AC, etc., through AZ, then BA, BB, BC, etc. through BZ, and so forth.

In cases with multiple parties and large volumes of exhibits, the court may require alternative exhibit numbering procedures to be used. For example, the court may want to assign each party a block of one thousand numbers.

C. Exhibit Stickers

1. Exhibits must be marked for identification with an exhibit sticker provided by the court before being referred to in court.
2. Exhibit stickers will only be placed on those exhibits intended to be submitted into evidence at a trial or hearing. Exhibit stickers shall not be placed on any other copies of exhibits.
3. Exhibit stickers in all cases must be marked with the full case number and exhibit number or letter and must show whether the exhibit was admitted.
4. Exhibit stickers are color coded as follows:
 - a. Yellow stickers will be used for plaintiffs or petitioners.
 - b. Blue stickers will be used for defendants or respondents.
 - c. Red stickers will be used for grand jury proceedings.
 - d. Red stickers will be used for coroner proceedings.
 - e. Green stickers will be used for miscellaneous parties or proceedings.
5. Placement of Exhibit Stickers:
 - a. Stickers will be placed on the exhibits in a manner which will not interfere with the viewing of the exhibit. If at all possible, exhibit stickers should be placed in the lower right corner of the front side of the first page of documents. If the sticker is placed on the back of a document or photograph, then the sticker should be placed in the lower right corner. Caution: Exhibit stickers will not adhere well to some surfaces, e.g. smooth metal or plastic. In such cases, the sticker must also be securely taped to the exhibit.
 - b. If an exhibit sticker cannot be attached directly to the exhibit, the sticker will be attached to a wired or stringed tag which will then be attached to the exhibit.
 - c. To aid in locating exhibits, exhibit stickers should be visible at all times. However, if this is not possible because the exhibit is stored in a non-transparent container, the container must be labeled with a plain white sticker marked with the following information:

Contains:
Exhibit No.

- d. If an exhibit was marked for a prior court hearing, see section VI on page 8.
6. When the court orders an exhibit admitted into evidence, the clerk shall note on the exhibit sticker and the exhibit list that the exhibit has been admitted.

D. Marking Photographs Substituted for Exhibits

1. If an exhibit is ordered returned to a party and a photograph of the exhibit substituted in its place, an exhibit sticker will be placed on the photograph showing the same exhibit number assigned to the substituted exhibit. A notation will be made on the exhibit list that the exhibit was returned and a photograph substituted in its place.
2. For marking of photographs when a photograph is sent to the jury in place of a physical exhibit but the physical exhibit remains in court custody, see section V.B. on page 8.

III. EXHIBIT LIST

- A. All exhibits marked for identification must be listed on the standard exhibit list, forms TF-200 and TF-201, provided by the court.

Exception: Small Claims and Forcible Entry and Detainer (FED) Cases

The procedure described below may be used in small claims and FED cases if all exhibits in the case are documentary and can be stored in the case file. This procedure is optional and may be used at the discretion of the clerk of court for each court.

1. List exhibits in the log notes.
2. Exhibits need not be listed on an exhibit list.
3. After trial or hearing, place exhibits in an envelope. Note case title, case number and exhibit numbers on outside of envelope.
4. Store envelope of exhibits in the case file.
5. Return of exhibits is governed by Section VIII of this Bulletin.

The above procedure may not be used if any exhibit is stored outside the case file. In that event, all exhibits must be listed on an exhibit list and all exhibits must be stored outside the case file.

- B. The case title, case number, attorney's name and a brief description of each exhibit will be noted on the exhibit list. The in-court clerk will indicate on the exhibit list whether exhibits were offered for admission, admitted or the date they were withdrawn.
- C. See section VI (page 8) for additional information the in-court clerk must write on the exhibit list if an exhibit was previously marked for a prior court hearing and if the exhibit is still in the court's custody.
- D. At the conclusion of each hearing, the original exhibit lists will be filed in the appropriate case file. If the exhibit lists apply to more than one case, photocopies of the exhibit lists must be placed in each case file to which the exhibit lists apply.

IV. PREPARING EXHIBITS FOR COURT

Trial counsel must comply with the following requirements when submitting exhibits.

- A. All ammunition will be submitted in sealable containers.
- B. All clothing, shoes, boots, hats, gloves, jackets or other wearing apparel must be dried to prevent molding and submitted in either clear plastic bags or paper sacks.
- C. Any firearm will have all ammunition removed prior to submission to the court. When submitted, the firearm must be in a condition that will not allow the trigger to be pulled thereby detonating any live ammunition which may be placed in the weapon. For example: firearms must have bolts removed and taped securely to the side or locked to the rear, cylinders swung out, loading gates open, or slides or breeches locked open.
- D. Breakable exhibits must be submitted in protective containers strong enough to prevent breakage and contain spillage.
- E. All perishable exhibits (e.g., food) and those emanating odors (e.g., untanned animal hides) must be submitted in transparent plastic bags or other types of transparent airtight containers. During trial, such exhibits will be stored in a manner and in a place approved by the trial judge. The judge may allow a photograph of such an exhibit to be substituted in place of the physical exhibit.
- F. All drugs must be submitted in clear heavy-duty plastic bags or other types of transparent non-breakable containers. The opening of the bag or other container must be completely sealed with exhibit tape.

- G. Hazardous substances (such as acid, gasoline, explosives, etc.) must be submitted in containers approved for storage of the hazardous substance strong enough to prevent breakage and contain spillage. The outside of the container must clearly a) identify the contents, b) be marked hazardous and c) be labeled as required by city, state and federal regulations.
- H. Multipage documents not securely fastened may be placed in transparent plastic bags to ensure that pages are not lost.
- I. In cases in which counsel anticipate that there will be more than 50 documentary exhibits, the documentary exhibits must be submitted in an organized system which will help in handling and locating the exhibits. For example: documentary exhibits may be placed in 3-ring binders with tab dividers or in file folders marked with the exhibit numbers.

V. SUBMISSION OF CERTAIN EXHIBITS TO JURY

- A. Unless otherwise ordered by the court, all exhibits admitted into evidence shall be given to the jury for deliberation, except the following exhibits will not be given to the jury without a specific court order:
 - 1. live ammunition;
 - 2. firearms;
 - 3. drugs and alcoholic beverages;
 - 4. perishable, flammable or hazardous materials; and
 - 5. money, jewelry or other valuable items.
- B. The court may allow a photograph of an exhibit to be submitted to the jury in place of the physical exhibit. If this is done, an exhibit sticker will be placed on the photograph showing the same exhibit number assigned to the physical exhibit with the words "photo of" noted above the exhibit number. A notation will be made on the exhibit list that a photograph of the exhibit was submitted to the jury. The physical exhibit will remain in court custody, unless otherwise ordered by the court.

VI. EXHIBITS MARKED IN PRIOR HEARINGS OR PRIOR CASES

If counsel wish to use an exhibit which is in court custody because it was offered in a prior court proceeding, the following procedures must be used.

A. Obtaining Exhibit

The in-court clerk, upon request of counsel, shall arrange to have exhibits from prior court hearings available for further hearings in the same case or hearings in a different case.

B. Record of Transfer

1. New Exhibit List

The prior exhibit number and case number must be noted in the exhibit description on the new exhibit list.

2. Prior Exhibit List

The transfer of an exhibit to a new case must also be noted on the exhibit list in the prior case or otherwise documented in the file of the prior case.

C. Exhibit Sticker Placement

A new exhibit sticker will be placed next to the previous sticker. An "X" will be drawn through the previous sticker. The previous exhibit sticker must remain legible. If, however, the court orders the prior exhibit sticker covered or removed, that fact must be noted on the new exhibit list.

VII. SAFEKEEPING EXHIBITS

A. When Clerk Takes Custody of Exhibits

Each exhibit will be placed in the custody of the clerk at the time the exhibit is offered into evidence at a hearing or trial. Counsel/parties will not be allowed to keep exhibits that have been offered into evidence at counsel table during recesses or any other time the exhibits are not in immediate use.

B. Use of Exhibit Tape to Seal Sensitive Exhibits.

1. Certain sensitive exhibits as described below must be sealed.

Sealing means the in-court clerk must place the exhibit in a transparent plastic bag and completely seal the opening of the bag with exhibit tape in such a manner that the bag cannot be opened without destroying the tape or tearing the bag. The in-court clerk must then write on the tape the date of sealing and the clerk's full signature. Taped bags may not be opened without an order from the court.

2. Drugs

At the time of the final check, the in-court clerk shall place any bag or other container holding drugs inside a new transparent bag and seal it.

3. Rolls of Coins

The in-court clerk does not need to open and count the coins contained in a roll of coins offered as an exhibit. However, when a roll of coins is offered into evidence, the in-court clerk shall place the roll of coins in a transparent plastic bag and seal it.

4. All Other Cash

The in-court clerk, in the presence of the party offering the cash as an exhibit, must, at the first available recess, count the cash, place it in a transparent plastic bag and seal it. Both the in-court clerk and the party offering the cash must date and sign the tape sealing the bag. The in-court clerk must note on the exhibit list that the amount of cash was verified and the date. The in-court clerk and submitting party must then initial this note on the exhibit list.

If the bag is opened during trial, the party who opened it and the in-court clerk must recount the cash, reseal it with exhibit tape, note the reverification on the exhibit list, sign and date the tape and exhibit list.

It is not necessary for the clerk in charge of exhibit storage to open a sealed bag to count money when it is turned over to that clerk. However, cash that comes to the exhibit storage clerk unsealed or in a torn bag must be recounted by the exhibit storage clerk in the presence of a witness. After resealing the cash in a new bag, the reverification must be noted on the exhibit list and both the clerk and witness must sign and date the tape and exhibit list. If any money is missing, the procedures for missing exhibits (section G on page 14) must be followed.

5. Jewelry, Loose Gems, Gold Dust, Gold Nuggets, etc.

When jewelry, loose gems, gold dust, gold nuggets and other such valuable exhibits are offered into evidence, the in-court clerk shall place the exhibit in a transparent plastic bag and seal it.

C. When Accounting of Exhibits Is Required

1. After the court has recessed each day, the in-court clerk must check to be sure that all offered or admitted exhibits are in the court's possession. A written inventory is not required.
2. The in-court clerk must complete a final check in accordance with Civil Rule 43.1 and Criminal Rule 26.1 before the case is submitted to the jury or to the court sitting without a jury. The parties are required to participate in the final check. At the time of the final

check, identified exhibits which have not been offered for admission but which the court has previously ordered placed in the clerk's custody shall be returned to the appropriate party, unless otherwise ordered by the court.

3. The exhibits must be delivered to the jury room by the in-court clerk or another court employee. The in-court clerk will then date and sign the Exhibit List certifying which exhibits were delivered to the jury.
4. After a verdict has been returned and accepted, the in-court clerk, in the presence of the bailiff and jury foreperson, must complete an inventory of the exhibits being returned by the jury. After the accounting is completed, the in-court will date and sign the Exhibit List certifying which exhibits were returned from the jury. Upon a showing of good cause in a specific case, the trial judge may relax this requirement. Such a finding must be on the record.
5. Before placing the exhibits in storage, the clerk responsible for exhibit storage (who may be the in-court clerk or a designated exhibits clerk) is required to complete an inventory of the exhibits being received before placing them in storage. After the accounting is completed, the clerk responsible for exhibit storage must date and sign the Exhibit List certifying which exhibits have been placed in storage.

D. Safekeeping of Exhibits During Trial or Hearing

1. During Recesses

During court recesses, sensitive exhibits must be placed in a secure place unless the in-court clerk or another court employee is guarding the exhibits or the courtroom is emptied and the exhibits are locked in the courtroom. For purposes of this paragraph, the term "sensitive exhibits" includes money, drugs, firearms, jewelry and other valuable items.

2. Overnight

Storage of exhibits overnight during a trial must be in either the designated exhibit storage area (described in section F on page 13) or a locked exhibit cabinet in the courtroom. If there are no lockable exhibit storage cabinets in the courtroom, exhibits may be stored in the courtroom overnight only if authorized by the judge. Overnight storage of sensitive exhibits (drugs, firearms, money, etc.) must be in the designated exhibit storage area described in section F on page 13.

E. Safekeeping of Exhibits During Deliberation

1. Jury Deliberation Room

The following requirements apply to any room used as a jury deliberation room, including courtrooms.

- a. For any room which may be used as a jury deliberation room, each court must provide a lock system which will allow only the bailiff and clerk of court to have access to the room when exhibits are stored in the room. This separately keyed lock system should be in addition to the lock system ordinarily used to lock such rooms.
- b. During jury deliberation, no one may enter the jury deliberation room unless authorized by the trial judge while there are jurors, jurors' notes or exhibits in the jury deliberation room. This prohibition includes entry for such housekeeping purposes as cleaning the room, making coffee, etc.

2. Delivery of Exhibits to Jury.

Only court employees may assist in the delivery of exhibits to the jury. During delivery of exhibits to the jury deliberation room, other exhibits left in the courtroom must be placed in a locked exhibit cabinet in the courtroom unless a court employee is guarding the exhibits or the courtroom is emptied and the exhibits are locked in the courtroom. Unless otherwise ordered by the court, exhibits delivered to the jury must remain with the jury until deliberations are concluded.

3. Exhibits Not Given to Jury.

Exhibits in the clerk's custody which are not submitted to the jury must be properly secured in either the designated exhibit storage area (described in section F below) or a locked exhibit cabinet. If the courtroom is used as a jury deliberation room, all exhibits which are not to be submitted to the jury must be removed from the courtroom or locked in exhibit storage cabinets in the courtroom.

4. Safekeeping While Jury Is Absent.

Whenever the jury leaves the jury deliberation room during

deliberations, the bailiff must lock the exhibits in the room with a lock which may be opened only by the bailiff and clerk of court or otherwise secure the exhibits in an area authorized by the court.

F. Required Exhibit Storage

Each court must establish a permanent secure storage area (cabinet, vault, safe or room) specifically designated for the storage of exhibits. The designated exhibit storage area must have a lock system independent of other locks used in the court. Access to the designated exhibit storage area must be limited to the clerk of court or a small number of court personnel designated by the clerk of court.

1. Except during court proceedings or upon order of the court, all exhibits will be stored in the designated exhibit storage area. Exception: In small claims and forcible entry and detainer cases if all exhibits in the case are documentary, exhibits may be stored in an envelope in the case file. The case title, case number, and exhibit numbers must be noted on the outside of the envelope.
2. The designated exhibit storage area will be accessible only to court personnel and will be kept locked at all times except when in use.
3. All exhibits stored in the designated exhibit storage area, except for bulky exhibits, must be stored in envelopes or suitable boxes. The case number and case name shall be noted on the outside of the envelope or box. A list of the exhibit numbers contained in the envelope or box will be noted on or in the envelope or box.
4. Perishable exhibits (e.g. food) or exhibits too large for the court's designated exhibit storage area will be stored in a manner and in a place approved by the trial judge.
5. Before placing in storage, the clerk will insure that exhibits needing special storage containers as required by section IV, pages 6-7, are adequately packaged to prevent odor, breakage and spillage.
6. Before a firearm is placed in storage, it must be checked to be sure that there is no ammunition in it.

G. Missing Exhibits

If an exhibit cannot be located after a thorough search, and in no event longer than 24 hours after an exhibit is found to be missing, the Administrative Staff Counsel must be notified of the loss of the exhibit. All courts will establish in writing a procedure for the systematic and immediate notification of supervisors and the Administrative Staff Counsel if an exhibit is lost.

VIII. RETURN OF EXHIBITS (Civil Rule 74(g))

A. When Exhibits May Be Returned

1. An exhibit which is in the clerk's custody because it has been offered into evidence will be released to the party who submitted the exhibit only when one or more of the following circumstances occur:
 - a. Counsel withdraws the exhibit on the record with the consent of the court.
 - b. The court orders the exhibit returned either on the record or in writing.
 - c. Parties stipulate to the return of exhibits either on the record or in writing.
 - d. Defendant is acquitted in a criminal case. The exhibits will be returned to counsel promptly after the court recesses. Counsel must sign the exhibit list to indicate receipt of the exhibits.
 - e. Final judgment has been entered and the time for appeal has elapsed or the appeal decided and the time for further appeal has elapsed.
2. Exhibits which have not been offered into evidence but which the judge has directed taken into court custody during trial will be returned to counsel at the time of final check, unless the judge orders otherwise.
3. Any exhibit, whether or not it has been offered into evidence, which is in the possession of the clerk following the conclusion of a trial or hearing, will be released only under the circumstances set out in paragraph 1 above.
4. Return of Some Exhibits at Conclusion of Hearing/Trial.

At the conclusion of a hearing or trial, the court shall inquire whether counsel stipulate to the return of any exhibits to counsel for safekeeping pending appeal and to the substitution of photographs for any of the physical (i.e., non-documentary) exhibits. Whether or not counsel stipulate, the court may also order counsel to take custody of the following exhibits, store said exhibits in a safe location and maintain the chain of custody pending appeal:

- a. live ammunition;
- b. firearms;
- c. drugs and alcoholic beverages;
- d. perishable, flammable or hazardous materials;
- e. money, jewelry or other valuable items; and
- f. items which are unwieldy due to bulk and/or weight.

Whenever exhibits are returned to counsel for safekeeping pending appeal, the court may require counsel to submit an affidavit setting forth the specific measures taken to insure safekeeping of the exhibits. (Civil Rule 43.1 and Criminal Rule 26.1.)

B. To Whom Exhibits May Be Returned

Exhibits may be returned only to the submitting party unless otherwise ordered by the court. State, municipal, city or borough exhibits in criminal cases may be returned to the appropriate police agency if there is no resident prosecuting attorney in the court location or the resident prosecuting attorney has directed that exhibits be returned to the appropriate police agency. The party submitting the exhibit is responsible for returning the exhibit to the rightful owner.

C. Grand Jury Exhibits

All exhibits used at grand jury proceedings will be returned to the District Attorney following the conclusion of the grand jury proceeding in which the exhibits were used unless the exhibit is currently in the custody of the clerk on another matter. The District Attorney shall state on the record that he has received the exhibits from the clerk and/or sign the exhibit list and note that the exhibits have been withdrawn.

D. Procedure for Return of Exhibits

1. After the final verdict has been returned and the time for appeal has elapsed or the appeal has been decided and the time for further appeal has elapsed, exhibits still in the court's custody will be returned by one of the methods described in paragraph 2 below. If an exhibit was used in more than one case, the exhibit can only be returned after the time for appeal has elapsed in all cases in which the exhibit was offered into evidence.
2. The clerk shall return all exhibits by one of the following methods:
 - a. Delivery: The clerk may return exhibits together with a copy of the "Inventory and Receipt" form, TF-206, by:

- (1) Certified mail; or
- (2) Personal delivery at the courthouse to the attorney, an employee of the attorney's firm or the attorney's courier service. The person receiving the exhibits must complete and sign the court's copy of the "Inventory and Receipt" form, TF-206.

- b. Notice to Pick Up: The clerk may either telephone the attorney or party or send an "Exhibit Notice Card", form TF-205, by first class mail to the attorney or party indicating that the attorney or party must pick up the exhibits within 33 days from the date the "Exhibit Notice Card" is sent.

If the "Exhibit Notice Card" is returned to the court undelivered, the clerk shall make reasonable attempts to locate the attorney or party through such means as telephoning, contacting the Alaska Bar Association, etc. Upon locating a current address for the attorney or party, the clerk shall then send a supplemental "Exhibit Notice Card" to the attorney or party.

- c. Judgment Stamp: In lieu of the notice to pick up, the final judgment or order may be stamped or printed with a notice notifying counsel that if no appeal is filed they must pick up the exhibits between 31 and 60 days from the date of distribution of the final judgment or order.

If this judgment/order is returned undelivered, the clerk shall follow the procedures in subparagraph b. above to attempt to locate counsel.

E. Procedures for Destruction of Exhibits

1. Prosecution exhibits in criminal cases will not be destroyed unless specifically ordered by the court. If destruction is ordered, notice will be given to the prosecuting attorney and police prior to the destruction of the prosecution's exhibits.
2. If the notice to counsel to pick up exhibits is returned to the court undelivered, and the clerk has not been able to otherwise locate the attorney or party, and 33 days have elapsed since the notice was sent, the clerk shall complete the "Affidavit and Order for Disposal of Exhibits", form TF-209, and submit it to the presiding or trial judge. Upon order of the court, the clerk shall dispose of the exhibits as set forth in subparagraph 3 below.

3. If the attorney or party does not pick up the exhibits after receiving the notice described in paragraph D above (pages 16-17), the clerk shall dispose of the items as follows:
 - a. For items of value, the clerk shall arrange for the sale of such items at public auction. The proceeds will be deposited into the General Fund Revenue Account for the State of Alaska.
 - b. For items of value that cannot be sold, the clerk shall attempt to locate a charitable institution or other public service organization to which such items can be donated.
 - c. For all other items, the clerk shall arrange to have the items appropriately destroyed.
 - d. If exhibits are sold, donated, or destroyed, the clerk must fill out form TF-210, "Affidavit Following Disposal of Exhibits".

IX. EXHIBIT FORMS AND DOCUMENTS

All exhibit forms, certified mail receipts and other documents regarding exhibit control will be filed in the case file.

Dated: August 9, 2005

Stephanie Cole
Administrative Director

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