



National Conference of Appellate Court Clerks
51st Annual Meeting · August 4 - 8, 2024 · Burlington, Vermont

Both Sides Now

The Honorable Beth Robinson, 2nd Circuit Court of Appeals

Access to Justice: A Democratic Imperative

Chantal Carbonneau, Registrar Supreme Court of Canada

Civility Today (and Tomorrow)

Justice Harold E. Eaton, Jr., Vermont Supreme Court

Judge Thomas A. Zonay, Vermont Chief Superior Judge

Ethics For Clerks

Justice Daniel Crothers, North Dakota Supreme Court

Tom Hall, Clerk of Court (retired), Florida Supreme Court

Digital Exhibit Management Panel

Tristen Worthen, Clerk of Court/Court Administrator Division III Wash Court of Appeals

-Lon Weissblum, Clerk of Court, Florida Fourth District Court of Appeals

-Nathan Wilson, Clerk of the Alabama Court of Civil Appeals

-Amy Wood, Clerk of Court for the Arizona Court Appeals, Division One

-Emily Wetherell, Deputy Clerk of the Vermont Supreme Court

Wellbeing in the Appellate Courts

-Douglas T. Shima, Clerk of the Kansas Supreme Court and Court of Appeals

-Gary L. Chambon, Jr., District Clerk of the Michigan Court of Appeals

-Tiffany N. Mortier, Motions and Jurisdiction Counsel, Colorado Court of Appeals

AI Basics for Courts

Jannet Okazaki, National Center for State Courts

Implementing AI in Courts

-Justice Daniel Crothers, North Dakota Supreme Court

-Jannet Okazaki, National Center for State Courts

-Cindy Guerra, Miami-Dad Public Defender's Office

Plain Language, Part II

Julie Clement – Deputy Clerk, Michigan Supreme Court

What's Bugging You and Shared Learning

-Tracie K. Linderman, Clerk of Court, Arizona Supreme Court

-Polly Brock, Clerk of Court and Court Executive, Colorado Court of Appeals

Working with Non-Binary Staff and Litigants

Hayden DePorter, Law Clerk to Honorable Jacki Brown, Colorado Court of Appeals

Tech Committee Communications Project

Larry Roster, Clerk of Court, Michigan Supreme Court


Jon Tomasino, Clerk of Court, Florida Supreme Court



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Saturday, August 3, 2024

	9:30 AM – 12:00 PM	Executive Committee Meeting & Breakfast	VALCOUR
	2:00 – 5:00 PM	Registration	PROMENADE

Sunday, August 4, 2024

	9:30 AM. – 12:30 PM	Registration	PROMENADE
	12:30 – 1:00 PM	New Members and First Time Attendees Orientation	VALCOUR
	12:30 – 1:00 PM	Family and Guest Orientation	WILLSBORO
	1:15 – 3:00 PM	Roll Call of the States and Business Meeting (Session I) (MEMBERS ONLY)	Emerald III Ballroom
	BREAK: 15 MINUTES		
75	3:15 – 4:30 PM	Both Sides Now Judge Beth Robinson, U.S. Court of Appeals for the Second Circuit	Emerald III Ballroom
	BREAK: 60 MINUTES		
	5:30 – 7:30 PM	Reception & Morgan Thomas Slideshow	ATRIUM
	7:30 – 8:30 PM	Education Fund Auction	EMERALD III BALLROOM
	9:00 PM – 12:00 AM	Hospitality Room Opening Night – State Pride Night	JR SUITE

Monday, August 5, 2024

	7:00 – 8:15 AM	Breakfast (MEMBERS ONLY)	PROMENADE
	8:20 – 8:30 AM	Morning Announcements	EMERALD III BALLROOM
90	8:30 – 10:00 AM	Access to Justice: A Democratic Imperative Chantal Carbonneau, Registrar Supreme Court of Canada	EMERALD III BALLROOM
	BREAK: 15 MINUTES		
75	10:15 – 11:30 AM	Civility Today (and Tomorrow) Justice Harold E. Eaton, Jr., Vermont Supreme Court Judge Thomas A. Zonay, Vermont Chief Superior Judge	EMERALD III BALLROOM
	11:45 AM – 1:00 PM	Lunch (MEMBERS ONLY) – Provided by Conference	ATRIUM
90	1:15 – 2:45 p.m.	Ethics for Clerks Justice Daniel Crothers, North Dakota Supreme Court Tom Hall, Clerk of Court (retired), Florida Supreme Court	EMERALD III BALLROOM
	BREAK: 15 MINUTES		
90	3:00 – 4:30 PM	Digital Exhibit Management Panel Tristen Worthen, Clerk of Court/Court Administrator Division III Washington Court of Appeals; Lon Weissblum, Clerk of Court, Florida Fourth District Court of Appeals; Nathan Wilson, Clerk of the Alabama Court of Civil Appeals; Amy Wood, Clerk of Court for the Arizona Court Appeals, Division One; and Emily Wetherell, Deputy Clerk of the Vermont Supreme Court	EMERALD III BALLROOM
	BREAK: 75 MINUTES		
	5:45 – 9:00 PM	Lake Champlain dinner & cruise aboard the Spirit of Ethan Allen: <i>First buses leave hotel at 5:15 p.m.</i> Sponsored by Thomson Reuters	
	9:00 PM – 12:00 AM	Hospitality Room – Ben & Jerry's Ice Cream Night	JR SUITE

 Educational Session  Business Session  Vendor Show  Vendor Supported or Sponsored

Tuesday, August 6, 2024

	7:00 – 8:15 AM	Breakfast (MEMBERS ONLY)	PROMENADE
	7:00 – 8:50 AM	Past President's Breakfast	VALCOUR
	8:20 – 8:30 AM	Morning Announcements	EMERALD III BALLROOM
75	8:30 – 9:45 AM	Wellbeing in the Appellate Courts Douglas T. Shima, Clerk of the Kansas Supreme Court and Court of Appeals; Gary L. Chambon, Jr., District Clerk of the Michigan Court of Appeals; and Tiffany N. Mortier, Motions and Jurisdiction Counsel, Colorado Court of Appeals	EMERALD III BALLROOM
	BREAK: 10 MINUTES		
60	9:55 – 10:55 AM	AI - The Basics for Courts Jannet Okazaki, National Center for State Courts	EMERALD III BALLROOM
	BREAK: 5 MINUTES		
20	11:00 – 11:20 AM	Vendor Introductions & Opening of Vendor Show	EMERALD III BALLROOM
	BREAK: 15 MINUTES		
30	11:35 AM – 12:05 PM	Vendor Showcase I i3Verticals LexisNexis Thomson Reuters: GenAI for Courts: Using Professional Grade AI with CoCounsel and Westlaw	EMERALD I EMERALD II AMPHITHEATRE
	12:05 – 1:20 PM	Vendor Box Lunch and Chats with Vendors	ATRIUM
	12:20 – 1:20 PM	C-Track Users Group Meeting	AMPHITHEATRE
30	1:20 – 1:50 PM	Vendor Showcase II National Center for State Courts LexisNexis Thomson Reuters: GenAI for Courts: Legal Drafting at the Speed of Thought with CoCounsel	EMERALD I EMERALD II AMPHITHEATRE
	BREAK: 15 MINUTES		
30	2:05 – 2:35 PM	Vendor Showcase III National Center for State Courts LexisNexis Thomson Reuters: C-Track – Court Case Management System	EMERALD I EMERALD II AMPHITHEATRE
	BREAK: 10 MINUTES		
90	2:45 – 4:15 PM	Implementing AI in Courts Justice Daniel Crothers, North Dakota Supreme Court Jannet Okazaki, National Center for State Courts Cindy Guerra, Miami-Dade Public Defender's Office	EMERALD III BALLROOM
	BREAK: 120 MINUTES		
	6:30 – 9:30 PM	ECHO Leahy Center for Lake Champlain First buses leave hotel at 6:15 p.m. Sponsored by LexisNexis	
	9:00 PM – 12:00 AM	Hospitality Room – Hawaiian Luau Night	JR. SUITE

Educational Session

Business Session

Vendor Show

Vendor Supported or Sponsored

Wednesday, August 7, 2024

7:00 – 8:15 AM	Breakfast (MEMBERS ONLY)	PROMENADE	
	8:20 – 8:30 AM	Morning Announcements	EMERALD III BALLROOM
75	8:30 – 9:45 AM	Plain Language, Part II Julie Clement – Deputy Clerk, Michigan Supreme Court	EMERALD III BALLROOM
	BREAK: 10 MINUTES		
60	9:55 AM – 12:00 PM	What's Bugging You and Shared Learning Tracie K. Linderman, Clerk of Court, Arizona Supreme Court Polly Brock, Clerk of Court and Court Executive, Colorado Court of Appeals	EMERALD III BALLROOM
	LUNCH AND AFTERNOON ON YOUR OWN		
	2:00 – 7:00 PM	Joseph Lane Memorial Golf Tournament	
	9:00 PM – 12:00 AM	Hospitality Room – Olympic Torch Night	JR. SUITE

Thursday, August 8, 2024

	6:30 – 7:30 AM	Fun Run/Walk	
7:00 – 8:15 AM	Breakfast (MEMBERS ONLY)	PROMENADE	
	8:20 – 8:30 AM	Morning Announcements	EMERALD III BALLROOM
75	8:30 – 9:45 AM	Working with Non-Binary Staff and Litigants Hayden DePorter, Appellate Law Clerk to the Honorable Jacki Brown, Colorado Court of Appeals	EMERALD III BALLROOM
	BREAK: 15 MINUTES		
	10:00 -11: AM	Tech Committee Communications Project Update Larry Royster, Clerk of Court, Michigan Supreme Court John Tomasino, Clerk of Court, Florida Supreme Court	AMPHITHEATRE
	11:15 AM – 12:00 PM	Business Meeting (Session II) (MEMBERS ONLY)	AMPHITHEATRE
	12:00 – 1:30 PM	Awards Luncheon	EMERALD III BALLROOM
60	2:30 – 3:30 PM	Critique Session	EMERALD III BALLROOM
	9:00 PM – 12:30 AM	Hospitality Room	JR. SUITE

The NCACC annual conference is paid for with NCACC funds, most of which are derived from non-vendor sources, such as dues, registration fees and member contributions to the Education Fund. All the educational sessions are supported entirely by non-vendor funds. Some conference events, particularly social activities, are paid for, directly or indirectly, by vendors who do business with courts. Programs and events that are supported, in whole or in part, with vendor funds are clearly identified on the conference schedule.

Members are urged to review the ethics rules of their jurisdictions to determine whether they may participate in the events supported by vendors. An advisory opinion prepared by the Judicial Conference of the United States Committee on Codes of Conduct, Advisory Opinion No. 91, Solicitation and Acceptance of Funds from Persons Doing Business with the Courts, June 2009, discusses some of the issues related to the use of vendor funds for conferences involving federal court personnel.

A “buy-out” option has been implemented which may enable members who would otherwise be ethically unable to participate in a vendor-sponsored event to do so. Members have the option of paying for a vendor-supported activity themselves. Members who wish to exercise this option should contact the conference host about the cost of the event and the procedure for payment.

Beth Robinson was appointed to the U.S. Court of Appeals for the Second Circuit in November 2021. Before that, she served on the Vermont Supreme Court for nearly a decade. Beginning in 1993, Robinson practiced law at Langrock Sperry & Wool in Middlebury and Burlington, Vermont for eighteen years. Her practice included workers' compensation, personal injury, family, and employment matters. She is best known for her leadership in the litigation and then legislative effort that led to Vermont's passage of a first-in-the-nation civil union law, and then legislation including same-sex couples in civil marriage. Before she was appointed to the Vermont Supreme Court, Robinson also served as Counsel to Governor Peter Shumlin for nearly a year.



Photo:

Biden Judges Making an Impact: Beth Robinson

REPORT | [Vermont](#) | November 4, 2023



United States Court of Appeals for the Second Circuit
Confirmed November 1, 2021

[Judge Beth Robinson](#) was confirmed to the U.S. Court of Appeals for the Second Circuit on November 1, 2021. A tireless champion for equal rights and equal justice, she served as an Associate Justice on the Vermont Supreme Court for nearly a decade prior to her appointment to the Second Circuit. Judge Robinson was born in Karachi, Pakistan, where her father served as a doctor for the local community, and grew up in Indiana. In 1986, Judge Robinson graduated *summa cum laude* from Dartmouth College and earned her J.D. from the University of Chicago Law School in 1989. After law school, Judge Robinson clerked for Judge

David B. Sentelle of the U.S. Court of Appeals for the D.C. Circuit. Afterward, Judge Robinson spent one year at Skadden, Arps, Slate, Meagher & Flom in Washington, D.C., before joining Langrock Sperry & Wool in Middlebury, Vermont, where she worked for eighteen years. During her time there, she represented workers, families, and persons with disabilities, including serving as co-counsel in *Baker v. State*, the landmark 1999 decision that led to Vermont becoming the first state to allow same-sex civil unions. Judge Robinson's work on this case remains a blueprint for LGBTQ+ advocacy across the nation.

On the federal bench, Judge Robinson is a champion of equitable justice. For example, in *Laguerre v. Nat'l Grid USA*, she allowed the plaintiff, who was suing her employer for disability discrimination, to proceed after the district court granted summary judgment for the defendant. The case began after the plaintiff's employer denied their request to work remotely and to be transferred to a less-stressful position due to her chronic illness. The plaintiff claimed that by refusing her request, the corporation violated the Americans with Disabilities Act (ADA). Upon review, Judge Robinson, along with other panelists, determined that the plaintiff did not meet the burden of proof required under the ADA because she did not identify a less-stressful open position. However, the court also found that the plaintiff's request to work from home was a reasonable accommodation and remanded the case back to the district court for further proceedings. Thanks to Judge Robinson, the plaintiff's right to pursue justice and fair treatment in the workplace was protected.

“

“[Judge Robinson's] confirmation began a shift within the federal judiciary, where LGBTQ+ Americans are drastically underrepresented.”

Judge Beth Robinson's appointment demonstrates President Biden is making good on his promise to ensure that the nation's courts reflect the diversity of our nation—both in terms of personal and professional backgrounds. She is the first LGBTQ+ woman to serve on any federal court. Her confirmation began a shift within the federal judiciary, where LGBTQ+ Americans are drastically underrepresented. When the federal bench reflects the diversity of our nation, it

gives legitimacy to an important institution and increases public confidence and trust.



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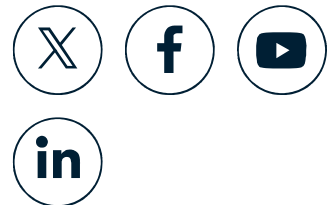
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The Latest

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Registrar of the Supreme Court of Canada

Chantal Carbonneau



« Access to justice is not only a fundamental right, it is also a basic human need, crucial for our democracy and the rule of law. It is therefore in that spirit that employees of the Court work with passion to provide and enhance access to justice and judicial information for all Canadians »

Ms. Carbonneau started her career in private practice to then move on to collective management and intellectual property. Director, Legal Affairs and Intellectual Property at the Canadian Broadcasting Corporation for more than 10 years, she then pursued her career with Courts Administration Service. Then Deputy Chief Administrator, Judicial and Registry Services, she gained extensive experience in a variety of areas including strategic planning and management of judicial programs.

The Office of the Registrar of the Supreme Court of Canada provides all necessary services and support for the Supreme Court of Canada to process, hear and decide cases, as well as serving as the interface between litigants and the Court.

The duties of Ms. Carbonneau include the appointment and management of employees, administration of the Library, the Registry and the publication of the Canada Supreme Courts Reports. She exercises the quasi-judicial powers conferred on her by the *Supreme Court Act* and *Rules* and administers the *Judges Act* in regard to its application to the Judges of the Court. The Registrar represents the Court in selected outreach activities, including SCC delegations in regard to the activities and meetings of various international associations of supreme courts from numerous countries.

In her capacity as Registrar, she is also a member of the Heads of Court Administration (HoCA), a national committee which brings together the lead government officials responsible for court services in all Canadian jurisdictions.

Education

- Law Degree, Sherbrooke University
- Master Program in Public Administration, École nationale d'administration publique

Title of the presentation : Access to Justice: A Democratic Imperative

Synopsis: Defining access to justice and its relation to democracy. How can we protect our values and democratic principles from misinformation.

Learning Objective: Understanding the role of the Supreme Court of Canada and how its initiatives have an impact on access to justice.

Honorable Harold E. Eaton, Jr.

Associate Justice

Biography:

Justice Eaton of Woodstock, Windsor County, was born in Windsor, Vermont, on August 25, 1955. He attended schools in Woodstock before graduating from the University of Vermont (BSEd, 1977) and Vermont Law School (JD, cum laude, 1980). He was a deputy state's attorney (1980–1982) and chief deputy state's attorney for Chittenden County (1982–1983), then entered the private practice of law in Rutland (1983–1991). He was a partner in the Woodstock firm of Eaton & Hayes from 1991 to 2004. He is a member of the American Law Institute. On April 16, 2004, he was appointed to the Superior Court by Governor James Douglas. On October 27, 2014, he was sworn in as an associate justice of the Vermont Supreme Court by Governor Peter Shumlin.

Education:

University of Vermont (BSEd, 1977)

Vermont Law School (JD, 1980)

Division:

Supreme Court

Judge Thomas A. Zonay is the Chief Superior Judge for the State of Vermont. He was appointed to the bench by Governor James Douglas in 2007 and appointed as Chief Judge in 2021. Prior to his appointment to the bench, he was an attorney in private practice and before that he was a police officer in Woodstock, VT. Judge Zonay received a bachelor's degree in Food Industry from Delaware Valley College and a Juris Doctor from Vermont Law School.

Judge Zonay currently serves on the Vermont Sentencing Commission (Chair), the Vermont Coordinated Justice Reform Advisory Council (Chair), the Vermont Judiciary Commission on Mental Health and the Courts (Chair of the Education Committee), the Vermont Judiciary Change Advisory Board (Co-chair), the Vermont Judiciary Standard Practices Committee, the Vermont Judiciary Commission on Diversity, Equity and Inclusion, the Vermont Judiciary Committee on Artificial Intelligence and the Courts, the Vermont Prison Research and Innovation Network Executive Committee, the Vermont Treatment Docket Executive Oversight Committee, the Vermont Juvenile Justice Stakeholders Group, the Vermont Judicial Workload Study Advisory Executive Committee, the Vermont FTAP Management Team, the Vermont Justice Reinvestment Initiative Domestic Violence Executive Working Group, and the Act 250 Steering Committee. He also serves as a member on the Vermont Civil, Criminal, Family, and Probate Oversight Committees, as well as the Vermont Judicial Education Committee.

Judge Zonay has served on the Vermont Criminal Rules Committee (Chair), the Vermont Public Access to Court records Committee (Chair), the Vermont Judiciary Advisory Council (Chair of Budget Committee), the Vermont Judicial Conduct Board, the New England RJOI Committee (Co-chair Education Committee), the Vermont Racial Disparities Advisory Panel, and the H. 533 Forfeiture Working Group. He has served on the Vermont Bar Association Board of Managers (President, 2005); was a director of the Vermont Bar Foundation; and is past president of the New England Bar Association. He is currently a member and past president of the Vermont Trial Judge's Association.

At the time of his appointment to the bench, Judge Zonay was Chair of the Vermont Human Rights Commission and had previously served on other judicial and community boards and committees. He is also a U.S.C.G. licensed Master Captain.

Judge Zonay is an alumnus of the National Judicial College (NJC) having joined its faculty in 2012. He is currently serving his second term on the NJC Faculty Council representing General Jurisdiction and served as the Chair in 2022. He was a 2023 recipient of the NJC's *Making the World a More Just Place* award.

Daniel J. Crothers

Personal

Born in January 1957 and raised in Fargo, American Samoa, and Albuquerque, New Mexico; has two children.

Education

Graduated from University of North Dakota, 1979 with studies in Political Science, Journalism and Early American History. Earned a Juris Doctorate from the University of North Dakota School of Law, 1982.

Professional Experience

Law Clerk, New Mexico Court of Appeals, Santa Fe, New Mexico, 1982 to 1983; Assistant State's Attorney, Walsh County, ND, 1983 to 1984; private practice: 1983 to 1986 in Santa Fe, Grafton, and Fargo; member and partner with the Nilles Law Firm, Fargo, 1987 to 2005; appointed June 2005 to the North Dakota Supreme Court and elected to unexpired four-year term November 2008 and 10-year term in 2012.

Memberships and Committees

President of the State Bar Association of North Dakota from 2001 to 2002 and served as a member and Chair of several Bar Association and Court committees relating to lawyer and judicial ethics and professional conduct.



Currently serves as Chair of North Dakota's Committee on Judiciary Standards. Past Chair of the North Dakota Judicial Conference. Current Chair of the American Bar Association Standing Committee on Professional Responsibility. Past member of ABA Standing Committee on Ethics and Professional Responsibility; past Chair of the ABA Standing Committee on Client Protection, and past Chair of the ABA Center for Professional Responsibility Policy Implementation Committee. Adjunct faculty at National Judicial College, Reno NV, and regular worldwide presenter on seminars for judges and lawyers on ethics, technology, and evidence.



Tom Hall joined the firm of Bishop, Page & Mills in 2014, after retiring as Clerk of Court of the Florida Supreme Court. The son of a steel worker and stay at home mom, Tom grew up in southwest Ohio. He became the first in his extended family to attend college when he enrolled at Ohio University. His studies were interrupted when he served four years in the United States Navy as a naval photographer during the Vietnam War. After his service, Tom ultimately completed his undergraduate studies in Florida, graduating in 1976 from the University of West Florida. He earned his law degree in 1980 from the University of Miami School of Law. While at Miami he was active in moot court and mock trial competitions, winning every competition he entered at the law school and representing the school in numerous regional and national competitions. He was Chair of the Moot Court Board.

After graduation Tom served as a law clerk for the Honorable Daniel S. Pearson at Florida's Third District Court of Appeal in Miami. After an 18-month stint at the court, Tom went to work for a small firm in Miami – Schoniger and Siegfried, where he focused on construction litigation and representing numerous homeowner's associations. He left that firm after about two years and joined another Miami firm now known as the Kenny Nachwalter. While there he handled trial and appellate litigation, primarily involving construction and banking disputes in state and federal court.

NATIONAL CONFERENCE OF APPELLATE COURT CLERKS CODE OF PROFESSIONAL CONDUCT

Preface

This Code of Professional Conduct was adopted by the National Conference of Appellate Court Clerks on August 11, 1983, at its annual meeting in New Orleans, Louisiana, and amended on August 6, 1992, at the twentieth annual meeting in Washington, D.C., on August 5, 1993, at the twenty-first annual meeting in Nashville, Tennessee, and on August 6, 2009, at the thirty-sixth annual meeting in Sacramento, California.

Preamble

The National Conference of Appellate Court Clerks, mindful that the character and conduct of its members should never be objects of indifference, and that declared ethical standards should become habits of life, adopts these principles which should govern the personal practice of appellate court clerks. The administration of justice requires appellate court clerks to adhere to the highest ideals of personal and official conduct.

The members of the National Conference of Appellate Court Clerks are dedicated to the highest standards of personal integrity and professional conduct. Their role in appellate courts casts upon them duties concerning their relationship to the other branches of government, the citizenry and all who come in contact with him or her. Therefore, the National Conference of Appellate Court Clerks adopts this Code of Professional Conduct as a guide of appropriate professional conduct and to promote the development and application of education, professional judgment and skill within the judiciary they serve. The provisions of this code should be construed and applied to further these objectives.

Where any state or federal statutory requirements or court rules and policies address the same areas, they will take precedence over this code.

CANON I

Members of the National Conference of Appellate Court Clerks Should Maintain the Highest Standard of Professional Conduct in the Performance of their Duties

An independent and honorable judiciary is indispensable to justice in our society. Members of the National Conference of Appellate Court Clerks participate in establishing, maintaining, and enforcing the law, and should themselves observe high standards of conduct so that the integrity, impartiality and independence of the judiciary may be preserved.

Adopted effective August 11, 1983. Amended effective August 6, 1992; amended effective August 5, 1993; amended effective August 6, 2009.

CANON II

Members of the National Conference of Appellate Court Clerks Should Avoid Impropriety and the Appearance of Impropriety in all Activities

(A) A member should respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(B) A member should not allow family, social, or other relationships to influence his or her official conduct or the conduct of his or her office. A member should not lend the prestige of his or her office to advance the private interests of others; nor should a member convey or permit others to convey the impression that they are in a special position to exert such influence.

(C) A member may accept a gift donated to a group of employees. e.g. all the employees of an office or unit of the court system, provided that the value and circumstances of the gift are such that it could not be reasonably inferred that the gift would influence the employees in the performance of their official duties or that such influence was the purpose of the donor, and provided that any employee accepting such a gift promptly reports the gift to the supervisor, who shall be responsible for its proper distribution. Gifts received with the understanding that they will influence employees' official actions, decisions, or judgments are prohibited.

Adopted effective August 11, 1983. Amended effective August 6, 1992; amended effective August 5, 1993, amended effective August 6, 2009.

CANON III

Members of the Conference of Appellate Court Clerks Should Perform the Duties of Office Impartially and Diligently

(A) A member should be patient, dignified and courteous to litigants, lawyers, and others with whom he or she deals in an official capacity, and should require similar conduct by staff and others subject to their direction and control.

(B) A member should exercise great care and discretion in initiating or considering ex parte or other communications concerning a pending or impending proceeding. However, a member may be called upon in the course of his or her duties to explain to litigants and their counsel the rules, operating procedures, and other practices of the court. Such explanations should always be rendered in an impartial manner, so as not to advantage or disadvantage any litigant. A member should never offer explanations to one party that the member would not share with the opposing party.

(C) A member should not disclose to any unauthorized person or persons any confidential information concerning authorship of pending opinions, internal calendar memos, internal discussions relating to pending decisions, content of proposed opinions, or any other information designated by the court as confidential.

(D) A member should abstain from public comment on the merits of a pending or impending proceeding in any court, and should require similar abstention on the part of all court personnel subject to his or her direction and control. This subsection does not prohibit members from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(E) A member should support the reputation and integrity of the judicial system and, because statements of a member may carry considerable weight with the public, should not make derogatory comments that would undermine public confidence in or promote disrespect for the judicial system.

(F) A member should maintain the files and other records of the court in a conscientious and accurate manner and continue to develop policies and procedures for reducing time delay and improving efficiency of the appellate process.

(G) A member should diligently discharge responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the responsibilities of other courts and court officials.

(H) A member should require staff and other personnel subject to his or her direction and control to observe the standards of fidelity and diligence that apply to the member.

Adopted effective August 11, 1983. Amended effective August 6, 1992; amended effective August 5, 1993, amended effective August 6, 2009.

CANON IV

Members of the National Conference of Appellate Court Clerks Should Engage in Activities to Improve the Law, the Legal System and the Administration of Justice

(A) A member should encourage dialogue between his or her's office and bar associations, judges, legal secretary associations, trial court and appellate court clerk associations and court reporters in an effort to promote better understanding of the court's processes. The member may participate in or conduct educational seminars for the benefit of those doing business with the office.

(B) A member should be alert to the need for improvements in the rules, court procedures and administrative functions of the court and offer suggestions for appropriate changes and improvements of the appellate process.

Adopted effective August 11, 1983. Amended effective August 6, 1992, amended effective August 6, 2009.

CANON V

Members of the National Conference of Appellate Court Clerks Should Regulate Outside Activities to Minimize Risk of Conflict With Court Related Duties

(A) Avocational Activities. A member may engage in avocational activities as long as they do not take undue advantage of their position, demean their office or interfere with the performance of their duties.

(B) Civic and Charitable Activities. A member may participate in civic and charitable activities that do not reflect adversely upon their impartiality or interfere with the performance of their duties. A member may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization except that a member should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the member's court or will be regularly engaged in adversary proceedings in any court.

(C) Financial Activities.

(1) A member should refrain from financial and business dealings that tend to reflect adversely on his or her impartiality, interfere with the performance of the member's duties, or exploit the member's position.

(2) Subject to the requirements of subsection (1), a member may hold and manage investments, including real estate, and engage in other remunerative activities, but should not participate in nor permit his or her name to be used in connection with any business venture or commercial advertising program, with or without compensation, in such a way as would justify a reasonable inference that the power or prestige of the member's office is being utilized to promote business or commercial product.

(3) A member should not request or accept any remuneration, gift, bequest, favor, or loan that is made with the intent to influence or that creates an appearance of influencing the member in the exercise of court related duties.

(4) Acceptance by members who are elected of campaign contributions should be governed by any applicable state laws or court rules.

Adopted effective August 11, 1983. Amended effective August 6, 1992; amended effective August 5, 1993, amended effective August 6, 2009.

CANON VI

Members of the National Conference of Appellate Court Clerks Should Avoid Political Activities Which May Give the Appearance of Bias or Impropriety

A member is entitled to entertain personal views on political questions and is not required to surrender rights or opinions as a citizen. Many jurisdictions expressly prohibit political activity on the part of employees of the judicial branch of government. To the extent that political activity is not expressly prohibited, a member should avoid political activity which may give rise to a suspicion of bias or impropriety in any matter pending or impending before his or her court.

Adopted effective August 11, 1983. Amended effective August 6, 1992, amended effective August 6, 2009.

CANON VII

Members of the National Conference of Appellate Court Clerks Should Seek To Improve His or Her Professional Competence and That of His or Her Staff

(A) A member should seek to improve his or her professional competence and that of his or her staff by participating in educational programs and seminars such as those provided by the Conference, reading profession-related materials, and attending and participating in other activities likely to enhance the level of competence of the member and his or her staff.

(B) A member should participate actively in the exchange of ideas for rule change and improvement in appellate court programs and procedures with other appellate courts in the United States and with other national organizations focused on court management.

Adopted effective August 11, 1983. Amended effective August 6, 1992, amended effective August 6, 2009.

CANON VIII

A Member of the National Conference of Appellate Courts Should Not Engage in Discrimination Based on Race, Sex, Religion or Political Affiliation

(A) A member should not discriminate based on race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or political affiliation in dealing with attorneys, secretaries, paralegals, court reporters, their staffs, other court related personnel, or others doing business with the court or in hiring practices.

(B) A member should not discriminate in the hiring or the promotion of personnel based on sexual or other favors.

Adopted effective August 11, 1983. Amended effective August 6, 1992, amended effective August 6, 2009.

Emily Wetherell, Esq., has worked at the Vermont Supreme Court as first a staff attorney and then the Deputy Clerk of the Court since 2006. Her current responsibilities include supervising the Court's administrative and legal staff, overseeing facilities and administrative systems, supporting various rules committees, researching legal issues, and drafting opinions. Previously, Emily was an Associate Professor of Legal Writing at Vermont Law School, clerked for Associate Justice John A. Dooley, and served as a Peace Corps volunteer in Ukraine. She regularly testifies before the Legislative Committee on Judicial Rules and has presented educational sessions on appellate practice and rules requirements to the bar and to judges. She has a J.D. from Vermont Law School and a B.Sc. in chemistry and biology from Queen's University in Kingston, Ontario.

Lonn Weissblum was appointed Clerk of the Fourth District Court of Appeal effective April 7, 2014. Before becoming the Clerk of the Court, Mr. Weissblum served as a career staff attorney to the Honorable Jonathan D. Gerber of the Fourth District Court of Appeal. Mr. Weissblum also served as a law clerk to the Honorable David L. Levy of the Third District Court of Appeal, and was in private practice.

Mr. Weissblum received his B.A. in Psychology with Highest Honors from the University of North Carolina at Chapel Hill in 1997, and his J.D. with Honors from the University of Florida in 2001. Mr. Weissblum has been a member of the Commission on District Court of Appeal Performance and Accountability and the Florida Courts Technology Commission. Mr. Weissblum also has achieved the Certified Court Manager and Certified Court Executive credentials from the National Center for State Courts' Institute for Court Management.

Mr. Weissblum has been a member of the National Conference of Appellate Court Clerks ("NCACC") since 2014. He has served on the conference's Membership, Technology, and Scholarship committees, and currently serves on the Conference's Executive Committee.

Nathan Wilson was appointed as the Clerk of the Alabama Court of Civil Appeals effective January 1, 2022. Nathan grew up in Mobile, Alabama. He graduated from Birmingham-Southern College in 2000 with a B.A. in History and earned a J.D. from the University of Memphis Cecil C. Humphreys School of Law in 2003.

Nathan has served in various roles in the Alabama judicial system, including law clerk for Hon. Tennant M. Smallwood, Jr., in Birmingham, staff attorney at the Alabama Administrative Office of Courts, senior staff attorney for Hon. Scott Donaldson of the Alabama Court of Civil Appeals, the Assistant Administrative Director of Courts and Legal Director of the Alabama Administrative Office of Courts, and senior staff attorney for Hon. Sarah H. Stewart of the Supreme Court of Alabama.

Nathan has been a member of several legislative, judicial, and state bar committees and task forces, including the Supreme Court Standing Committee on the Alabama Rules of Judicial Administration, which he currently chairs. Nathan was a member of the Alabama State Bar Leadership Forum, Class 9.

Nathan resides in Montgomery, AL, with his wife, Anna, and their two children.



Amy Wood was appointed the Clerk of the Court for the Court of Appeals, Division One in August of 2016 and joined NCACC soon thereafter. Division One handles civil, criminal, juvenile, family, mental health, and probate appeals for eight of Arizona's fifteen counties. Additionally, the court reviews tax cases statewide and decisions made by the Industrial Commission, Arizona Corporation Commission, Arizona Department of Economic Security as well as special action petitions seeking pre-judgment and emergency relief and post-conviction relief matters. The role of the Clerk also encompasses administrative responsibilities related to human resources, technology and budgeting.

Prior to her time as Clerk, Amy was the manager of the Caseflow Management Unit in the Court Services Division of the Administrative Office of the Courts (AOC). The unit she managed was responsible for oversight of statewide programs and projects such as grants, statistics, the Commission on Victims in the Courts, DUI case processing improvement, interpreting program, CourTools, Time Standards, and the business side of the statewide e-filing amongst other projects.

Ms. Wood began her judicial system career with the Hawaii Judiciary, initially as a caseflow manager and then as a project manager before moving to Arizona in 2001.

Amy has a Master's Degree in Human and Animal Cognition, and is a Fellow with the Institute for Court Management.



Tristen Worthen is the Court Clerk/Court Administrator for the Court of Appeals, Division III located in Spokane, Washington. In her almost 34 years of court service, she has served as the elected Clerk of Douglas County, Court Administrator for the City of Chelan Municipal Court and various deputy clerk positions in the municipal and superior court levels of Washington State.

Ms. Worthen has served on many committees, including various association's Court Education Committee and Executive Boards. She currently sits on the WA State Court of Appeals Executive Board, Court Management Council, and several committees for the National Conference of Appellate Court Clerks. Her motto – get involved to stay informed.

Ms. Worthen holds a B.A in Public Administration. She is a multi-crafter who enjoys quilting, knitting and other general fiber crafting. She is a mother of two grown men and currently resides in Cheney, Washington with her husband, Ed, and Border Collie, Bo.

Florida Fourth District Court of Appeal Electronic Exhibits Project



Lon Weissblum, Clerk of the Court
Fourth District Court of Appeal, West Palm Beach, Florida

2024 NCACC Annual Meeting - Burlington, Vermont

“Old” Process

- County clerks send exhibits on digital media storage devices, such as CDs, DVDs, and flash drives.
- Digital media catalogued and placed in an envelope.
- Court staff would come to the Clerk’s Office, sign out envelope, and returned envelope when finished.

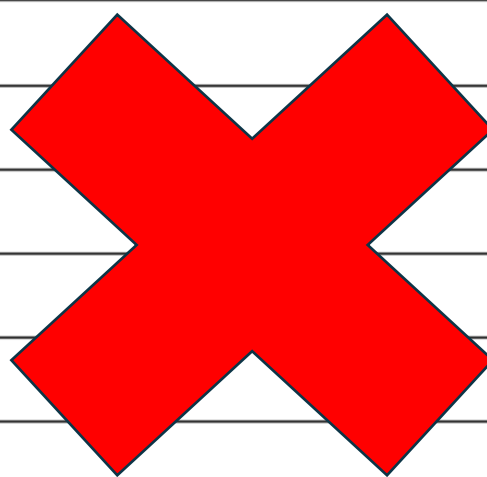


Issues With “Old Process”

- Judges and staff began to work more remotely.
- Increased demand for these materials to be made available electronically so it wouldn't be necessary to retrieve them from the Clerk's Office.
- Temporary solution of having IT staff uploading to a cloud drive was less than ideal, mostly due to last-minute requests.

ANY EXHIBITS TAKEN MUST BE SIGNED OUT.

CASE NUMBER	STYLE	JA SIGNATURE



Who Was Involved

State Courts
Administrator
IT Staff

Court IT Staff

Appellate Court
Clerk's Office
Personnel

County Court
Clerk's Office
Personnel

Changes to Rules or Administrative Orders

No rule changes made
or administrative orders
issued.

Everything done
informally through
communications with
six county clerks.

Changes to Rules or Administrative Orders

Florida Rule of Appellate Procedure 9.200(a)(1): “In criminal cases, when any exhibit, including physical evidence, is to be included in the record, the clerk of the lower tribunal must not, unless ordered by the court, transmit the original and, if capable of reproduction, must transmit a copy, including but not limited to copies of any tapes, CDs, DVDs, or similar electronically recorded evidence.”

Refocus rule to the contents of the media storage devices, not the media storage devices themselves.

Process of Sending/Receiving Electronic Exhibits

Step 1: County Clerk Uploads Files Via FTP and Files a Notice of Electronic Transmission With the Court

Filing # 196947687 E-Filed 04/25/2024 08:53:54 AM

IN THE FOURTH DISTRICT COURT OF APPEAL
IN AND FOR THE STATE OF FLORIDA

L.T. CASE NO: 502023MM010631AXXXMB
4D CASE NO: 4D24-0624

BENNY SAINTIL
Appellant


VS.

STATE OF FLORIDA
Appellee

NOTICE OF ELECTRONIC TRANSMISSION

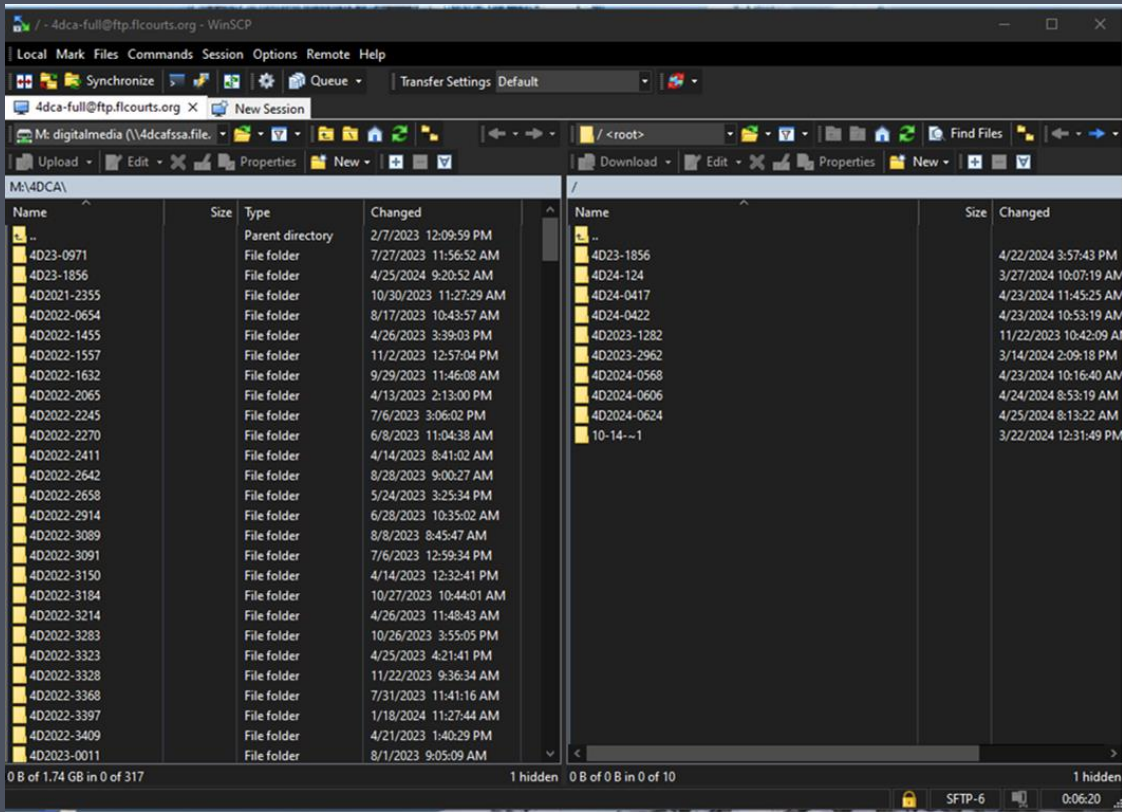
The Clerk of the Circuit Court & Comptroller of Palm Beach County, hereby electronically transmits to the Fourth District Court of Appeal the following exhibits via FTP for the Record on Appeal filed on April 25, 2024:

<u>File Name</u>	<u>Description of File</u>
STEV 01A	BWC OFC. HALL
STEV 01B	BWC OFC. TRUE

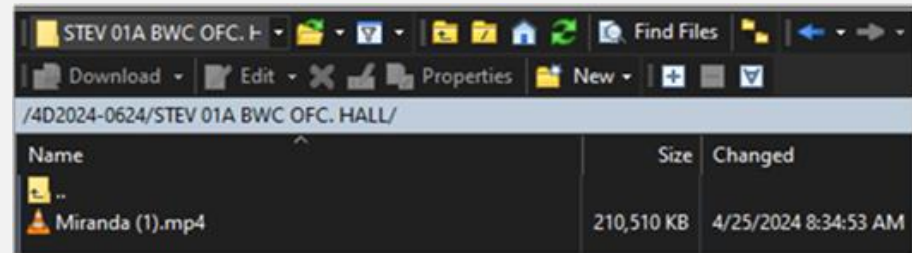
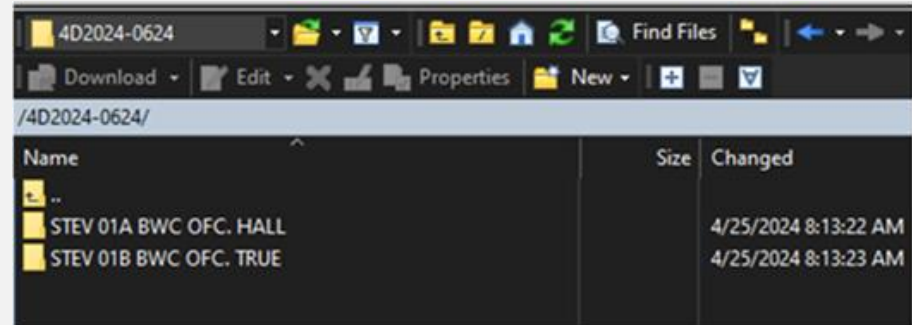

Deputy Clerk

4/25/2024
Date





Step 2: Using an FTP Client, Court Transfers Files to a Folder on a Microsoft Azure Files Server



Files can be accessed as a drive via the Court's network.

One folder for each case, using a standard naming convention.

Name	Date modified	type
STATE EVIDENCE #2, 1-31-2024, BWC OFF...	3/18/2024 12:47 PM	
STATE EXHIBIT #1, 1-31-2024, 911 AUDIO...	3/18/2024 12:47 PM	CDA Audio File
STATE EXHIBIT #4, 1-31-2024, BWC.mp4	3/18/2024 12:48 PM	MP4

Step 3: Court Staff Accesses the Files on the Court's Network

STATE EXHIBIT #4, 1-31-2024, BWC.mp4 - VLC media player



4D23-0971	4D2023-0289	4D2023-0972	4D2023-1311	4D2023-1633	4D2023-1972
4D23-1856	4D2023-0320	4D2023-0975	4D2023-1333	4D2023-1634	4D2023-1979 Confiden
4D2021-2355	4D2023-0354	4D2023-0978	4D2023-1352	4D2023-1647	4D2023-2007
4D2022-0654	4D2023-0356	4D2023-0987	4D2023-1353	4D2023-1663	4D2023-2008
4D2022-1455	4D2023-0425 CONFIDENTIAL	4D2023-1009	4D2023-1359	4D2023-1664	4D2023-2023
4D2022-1557	4D2023-0448	4D2023-1035	4D2023-1368	4D2023-1665	4D2023-2041
4D2022-1632	4D2023-0452	4D2023-1041	4D2023-1381	4D2023-1669	4D2023-2063
4D2022-2065	4D2023-0485	4D2023-1056	4D2023-1404	4D2023-1679	4D2023-2078
4D2022-2245	4D2023-0508	4D2023-1063	4D2023-1408	4D2023-1682	4D2023-2080
4D2022-2270	4D2023-0582	4D2023-1075	4D2023-1413	4D2023-1714	4D2023-2101
4D2022-2411	4D2023-0634	4D2023-1077	4D2023-1420	4D2023-1718 CONFIDENTIAL	4D2023-2118
4D2022-2642	4D2023-0653	4D2023-1091	4D2023-1423	4D2023-1726	4D2023-2121
4D2022-2658	4D2023-0654	4D2023-1105	4D2023-1424	4D2023-1753	4D2023-2150
4D2022-2914	4D2023-0672	4D2023-1108	4D2023-1433	4D2023-1778	4D2023-2151
4D2022-3089	4D2023-0675	4D2023-1112	4D2023-1441	4D2023-1786	4D2023-2166
4D2022-3091	4D2023-0688	4D2023-1156	4D2023-1454	4D2023-1790	4D2023-2167
4D2022-3150	4D2023-0714	4D2023-1172	4D2023-1460	4D2023-1816	4D2023-2171
4D2022-3184	4D2023-0805	4D2023-1178	4D2023-1488	4D2023-1837	4D2023-2177
4D2022-3214	4D2023-0813	4D2023-1185	4D2023-1500	4D2023-1844	4D2023-2183
4D2022-3283	4D2023-0819	4D2023-1187	4D2023-1503	4D2023-1854	4D2023-2188
4D2022-3323	4D2023-0855	4D2023-1188	4D2023-1515	4D2023-1856	4D2023-2191
4D2022-3328	4D2023-0856	4D2023-1196	4D2023-1519	4D2023-1860	4D2023-2193
4D2022-3368	4D2023-0860	4D2023-1208	4D2023-1520	4D2023-1888	4D2023-2212
4D2022-3397	4D2023-0865	4D2023-1221	4D2023-1523	4D2023-1890	4D2023-2220
4D2022-3409	4D2023-0874	4D2023-1226	4D2023-1530	4D2023-1917	4D2023-2232
4D2023-0011	4D2023-0891	4D2023-1231	4D2023-1546	4D2023-1920	4D2023-2238
4D2023-0088	4D2023-0916	4D2023-1232	4D2023-1549	4D2023-1925	4D2023-2239
4D2023-0106	4D2023-0917	4D2023-1264	4D2023-1550	4D2023-1940	4D2023-2240
4D2023-0166	4D2023-0933	4D2023-1268	4D2023-1565	4D2023-1948	4D2023-2253
4D2023-0208	4D2023-0949	4D2023-1282	4D2023-1567	4D2023-1952	4D2023-2272
4D2023-0216	4D2023-0969	4D2023-1296	4D2023-1614	4D2023-1954	4D2023-2283
4D2023-0270	4D2023-0971	4D2023-1303	4D2023-1630	4D2023-1963	4D2023-2283

Pros and Cons

1

Proprietary players – Especially as it relates to surveillance video, some electronic media files require a proprietary player. These videos can't simply be played using a standard player like you can with an MP4 or MOV file. When this occurs, court staff still needs assistance from the IT staff. Even so, they can usually provide remote assistance.

2

Very large files – It takes a long time for the county clerks to upload large files, sometimes hours, and the upload often fails. In this scenario, we ask them to send the files on a storage device, and then we upload them to the Azure drive.

3

Although this is rudimentary, it does meet our needs, so long as everyone follows the process. We're not getting ripped off by a vendor.

4

Would like a way for the parties to access the information too, but we do have a way to send them a download if necessary.



Thank You!





Alabama Exhibit Module

Nathan Wilson, Alabama Court of Civil Appeals

Authority – Rule 44, Alabama Rules of Judicial Administration

“Any document electronically filed in a circuit court, district court, or juvenile court case shall be accepted by the clerk of that court, except that the Administrative Director of Courts (‘the ADC’) shall have the discretion to determine the types of documents that are not available for electronic filing”

Scope of Exhibit Module

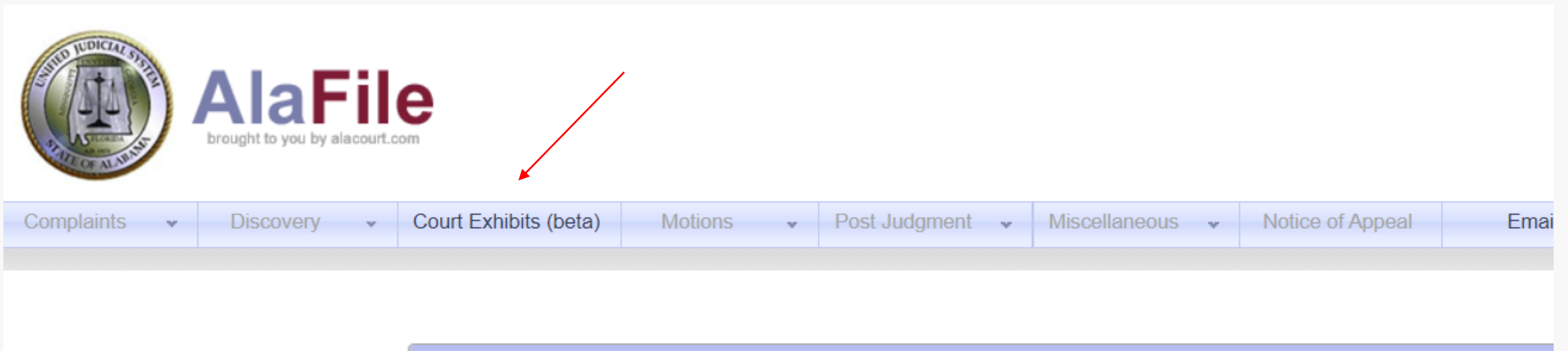
- The new Trial Court Exhibits menu allows Attorneys of Record and Pro Se litigants who have registered to electronically file on AlaFile to upload Trial Court Exhibits into cases that have hearing dates set (in court hearings or virtual hearings).
- The module also allows the Judge hearing the case to admit, preserve, withdraw, or deny exhibits

Pilot Project

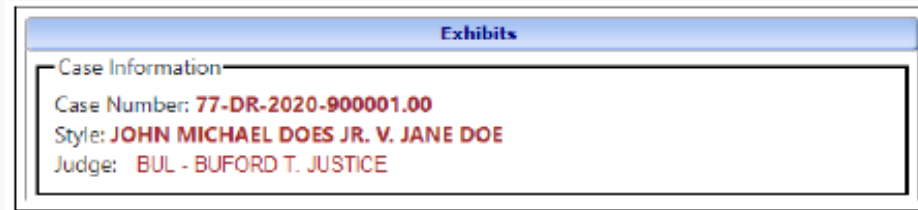
- Available only in 8 counties as a pilot project:
 - Baldwin
 - Cherokee
 - Jefferson – Bessemer Division
 - Mobile
 - Montgomery
 - Morgan
 - Russell
 - Shelby

How it works

- Attorneys and approved pro se parties efile all electronic documents through AlaFile, a web-based application.
- The main menu includes an option for filing Court Exhibits.



Adding Exhibits to the Module



The screenshot shows a window titled "Exhibits" with a "Case Information" section. The information displayed is:

Case Information
Case Number: 77-DR-2020-900001.00
Style: JOHN MICHAEL DOES JR. V. JANE DOE
Judge: BUL - BUFORD T. JUSTICE

- After typing in the trial-court case number, the filer will see a display of upcoming hearings in that case and all previous hearings held by the trial court
- The filer has the option of uploading new exhibits, selecting from existing exhibits that have been uploaded to the case but not associated with a hearing, and selecting exhibits from documents that have been filed in the case.

Adding Exhibits to the Module

- The filer can upload exhibits to a previously held hearing (e.g, an exhibit that had not previously been uploaded through the module was introduced in open court)
- The filer may also upload the documents as exhibits even where no hearing has bene scheduled and associate them with a hearing later.

File Types

- Only the following file types may be uploaded through the module:
 - .pdf (Adobe Reader document file)
 - .jpeg (image file)
 - .jpg (image file)
 - .gif (image file)
 - .png (image file)
 - .mp4 (video file)
 - .m4a (audio file)
 - .mp3 (audio file)

Opposing counsel can indicate whether they plan to stipulate or plan to object

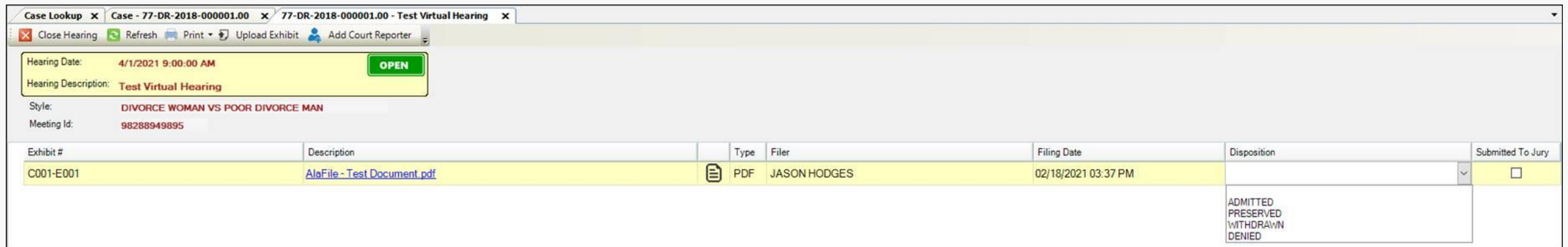
Double click the 'Edit' column to edit the exhibit order.

Edit	Exhibit #	Description	Ext...	Filed	Reviewed	Plan to Stipulate	Plan to Object	Disposition	Filing Date	Remove
1	C001 - E001	Surveillance Footage...	MP4	Matt Lock	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		06/04/2020 12:45 PM	
2	C001 - E002	Contract	PDF	Matt Lock	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		06/04/2020 12:46 PM	
3	C001 - E003	Phone Recording	MP3	Matt Lock	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		06/04/2020 12:46 PM	
4	C001 - E004	#117 - ORDER - E-FILE ...	PDF	Matt Lock	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		06/04/2020 12:47 PM	
5	D001 - E001	#136 - GARNISHEE REL...	PDF	Perry Ma...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		06/04/2020 02:08 PM	<input checked="" type="checkbox"/>
6	D001 - E002	Contract	PDF	Perry Ma...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		06/04/2020 02:09 PM	<input checked="" type="checkbox"/>

Save changes Cancel changes

What the Trial Judge Sees

- The trial-court judge has the option to mark each exhibit as it is presented in the hearing as:
 - a. Admitted – Exhibits were admitted into the case.
 - b. Preserved – Exhibits weren't admitted into the case, but the filing party requested the items be preserved in the event of a possible appeal.
 - c. Denied – Denied.
 - d. Withdrawn – Withdrawn.



The screenshot shows a web application interface for a virtual hearing. At the top, there are tabs for 'Case Lookup', 'Case - 77-DR-2018-000001.00', and '77-DR-2018-000001.00 - Test Virtual Hearing'. Below the tabs, there are navigation buttons: 'Close Hearing', 'Refresh', 'Print', 'Upload Exhibit', and 'Add Court Reporter'. A yellow box contains the following information: 'Hearing Date: 4/1/2021 9:00:00 AM' with an 'OPEN' button, 'Hearing Description: Test Virtual Hearing', 'Style: DIVORCE WOMAN VS POOR DIVORCE MAN', and 'Meeting Id: 98288949895'. Below this is a table with the following columns: Exhibit #, Description, Type, Filer, Filing Date, Disposition, and Submitted To Jury. The table contains one row: Exhibit # C001-E001, Description AlaFile - Test Document.pdf, Type PDF, Filer JASON HODGES, Filing Date 02/18/2021 03:37 PM, Disposition (dropdown menu), and Submitted To Jury (checkbox). A legend on the right side of the table lists the disposition options: ADMITTED, PRESERVED, WITHDRAWN, and DENIED.

Exhibit #	Description	Type	Filer	Filing Date	Disposition	Submitted To Jury
C001-E001	AlaFile - Test Document.pdf	PDF	JASON HODGES	02/18/2021 03:37 PM	<input type="checkbox"/>	<input type="checkbox"/>

What the Trial Judge Sees

77-08-2020-90001.00 - Exhibit Review

Close Hearing Refresh Print Upload Exhibit Add Court Reporter

Hearing Date: 7/16/2020 9:06:09 AM **OPEN**

Hearing Description: Exhibit Review

Style: JOHN MICHAEL DOES JR. V. JANE DOE

Meeting ID: 95261345894

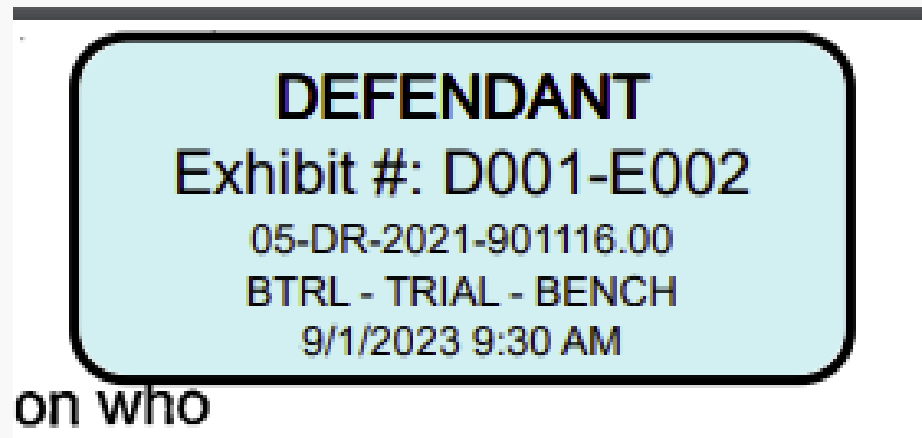
Exhibit#	Description	Typ	File	Filing Date	Disposition	Submitted to Jury
001-E001	COMPLAINT	P.	Test Plaintiff Attorney	07/06/2020 01:17 PM	ADMITTED	<input checked="" type="checkbox"/>
001-E002	Test Scanned.pdf-3	P.	Test Defense Attorney	07/06/2020 01:18 PM	PRESERVED	<input type="checkbox"/>
001	Test Defense Attorney				<input checked="" type="checkbox"/>	07/07/2020 01:42 PM
Exhibit#	Description	Typ	File	Filing Date	Disposition	Submitted to Jury
001-E003	Jail Test Exhibit	P.	Test Plaintiff Attorney	07/06/2020 01:21 PM	ADMITTED	<input checked="" type="checkbox"/>
001	Test Defense Attorney				<input type="checkbox"/>	07/07/2020 01:41 PM
Exhibit#	Description	Typ	File	Filing Date	Disposition	Submitted to Jury
001-E004	COMPLAINT - SUMMONS - E- NOTICE TRANSMI	P.	Test Plaintiff Attorney	07/06/2020 02:03 PM	ADMITTED	<input checked="" type="checkbox"/>
001-E005	AOC Log Exhibit	P.	Test Plaintiff Attorney	07/07/2020 11:07 AM	WITHDRAWN	<input type="checkbox"/>
001-E001	TEST EXHIBIT 1	P.	Test Defense Attorney	07/07/2020 01:40 PM	ADMITTED	<input checked="" type="checkbox"/>
001-E002	TEST PDF EXHIBIT 1	P.	Test Defense Attorney	07/07/2020 01:50 PM	DENIED	<input type="checkbox"/>

Closing the hearing

- Once the trial-court judge “closes” the hearing on the court side of the module, the attorneys and parties no longer can add cases to the hearing. Only the judge or the court reporter may do so.
 - a. Admitted – Exhibits were admitted into the case.
 - b. Preserved – Exhibits weren’t admitted into the case, but the filing party requested the items be preserved in the event of a possible appeal.
 - c. Denied – Denied.
 - d. Withdrawn – Withdrawn.
- The trial-court judge also has the ability to upload an exhibit that was admitted in open court

Exhibit Sticker

- Once the Hearing has been closed by the Judge, the exhibits that have been admitted or preserved will have an exhibit sticker affixed to the document.
- For media files, the exhibit sticker will be affixed to a blank PDF



The Appellate Record

- In Alabama, the trial courts and the appellate courts are not on the same systems.
 - Different case-management system
 - Separate IT departments
 - Separate networks

E-Appellate

- E-Appellate is an application developed by the Alabama AOC for transmitting the record to the appellate courts.
- Developed in the early 2000's and was way ahead of its time.
- Trial courts have been using this application ever since to send the records to the appellate courts. Appellate court clerk staff access the system to download records.
- If exhibits could not be included in the electronic record, the trial-court clerk would be required to send them by mail

Transmitting Exhibits through E-Appellate

- Exhibits admitted by the trial court using the module automatically come through to the appellate courts on E-Appellate when the trial-court clerk submits the record.

Downloaded Records on Appeal





Case Search: <input type="text" value="CL-2024-0233"/>						
Cases	Trial Court Case #	Style	Appellate Case #	ROA	Pages	Multi Appeal
	05-DR-2022-900363.00	KAREN RENEE BRYARS V. NEIL D BRYARS	CL-2024-0233	 ROA	369	No

Page 1 of 1 (1 items)

Exhibits are Available for Download

DOWNLOAD

05-DR-2022-900363.00

Volume Number	Pages	Date Modified	TIFF	PDF
1	200	5/28/2024 1:23:36 PM		
2	169	5/28/2024 4:17:32 PM		

Page 1 of 1 (2 items)

Exhibit Number	Description	Exhibit Date	Stamped	Original
C001-E014	Regions Checking - Closed 04/06/22	10/25/2023 2:08:08 PM	Download	Download
C001-E013	Regions Savings closed	10/25/2023 2:08:08 PM	Download	Download
C001-E001	2021 Tax Defendant Filed Single	10/25/2023 1:33:05 PM	Download	Download
D001-E001	Photos of Residence	10/25/2023 7:41:18 AM	Download	Download
D001-E002	Plaintiff 2018 W2	10/25/2023 7:42:45 AM	Download	Download
D001-E003	Defendant 2019 W2	10/25/2023 7:43:18 AM	Download	Download
D001-E004	Parties W2 2020	10/25/2023 7:46:33 AM	Download	Download
D001-E005	Plaintiff 2021 W2	10/25/2023 7:47:17 AM	Download	Download
D001-E006	Mortgage	10/25/2023 7:47:59 AM	Download	Download
D001-E007	Plaintiff IRA	10/25/2023 7:49:16 AM	Download	Download





Page 1 of 3 (29 items)

Downloading Exhibits on E-Appellate

- The appellate staff downloads each exhibit from E-Appellate

DOWNLOAD

05-DR-2022-900363.00

Volume Number	Pages	Date Modified	TIFF	PDF
1	200	5/28/2024 1:23:36 PM		
2	169	5/28/2024 4:17:32 PM		

Page 1 of 1 (2 items)

Exhibit Number	Description	Exhibit Date	Stamped	Original
C001-E014	Regions Checking - Closed 04/06/22	10/25/2023 2:08:08 PM	Download	Download
C001-E013	Regions Savings closed	10/25/2023 2:08:08 PM	Download	Download
C001-E001	2021 Tax Defendant Filed Single	10/25/2023 1:33:05 PM	Download	Download
D001-E001	Photos of Residence	10/25/2023 7:41:18 AM	Download	Download
D001-E002	Plaintiff 2018 W2	10/25/2023 7:42:45 AM	Download	Download
D001-E003	Defendant 2019 W2	10/25/2023 7:43:18 AM	Download	Download
D001-E004	Parties W2 2020	10/25/2023 7:46:33 AM	Download	Download
D001-E005	Plaintiff 2021 W2	10/25/2023 7:47:17 AM	Download	Download
D001-E006	Mortgage	10/25/2023 7:47:59 AM	Download	Download
D001-E007	Plaintiff IRA	10/25/2023 7:49:16 AM	Download	Download

Page 1 of 3 (29 items)

Uploading to the Appellate Court CMS

- Alabama Appellate Courts use C-Track
- The exhibits submitted by the attorney through the module, admitted by the trial court through the module, downloaded through E-Appellate by the appellate-court staff are uploaded into a docket entry in C-Track
- The exhibits are accessible to the appellate-court judges and their staffs.

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
POLICIES FOR THE SUBMISSION AND) Administrative Order
MANAGEMENT OF EXHIBITS) No. 2021 - 142
SUBMITTED THROUGH THE DIGITAL)
EVIDENCE PORTAL)
_____)

The third goal in the Strategic Agenda for Arizona’s Courts, Justice for the Future, is Promoting Judicial Branch Excellence and Innovation. In furtherance of that goal and in response to recommendations of the Task Force on Court Management of Digital Evidence (Administrative Order No. 2016-129), the Administrative Office of the Courts (“AOC”) is implementing a statewide web-based digital evidence portal (Portal). Because of the increase in digital evidence, and the need to be able to store, retrieve, and display this digital evidence in the future, and the large number of courts conducting virtual hearings, a digital evidence portal is not only an innovation, but it is now a critically important tool for courts.

Due to advances in electronic record storage technology, appellate courts, clerks of the superior court, and judges of the justice and municipal courts can now maintain custody of digital records, including digital evidence, offsite from a court facility, while remaining the custodian of record.

Therefore, pursuant to Article VI, Section 3 of the Arizona Constitution,

IT IS ORDERED authorizing Arizona Appellate Courts, the Superior Court, Superior Court Clerk Offices, and limited jurisdiction courts to utilize the statewide web-based digital evidence portal to accept, process, store, retrieve, and review digital evidence.

IT IS FURTHER ORDERED excluding from this order any alleged visual depiction of a minor engaged in exploitive exhibition or other sexual conduct as described in Chapter 35.1, Title 13, Arizona Revised Statutes. Such evidence shall not be submitted through the Portal.

IT IS FURTHER ORDERED that the following definitions, policies, and procedures for using the digital evidence portal be adopted.

1. Definitions

- a. “Confidential” means any information that is not open to the public pursuant to law and Arizona Supreme Court Rule 123.

- b. “Digital evidence” means any exhibit (e.g., document, photo, audio, video) that is submitted through the digital evidence portal for consideration in any court proceeding in an Arizona court.
- c. “Digital evidence portal” (Portal) means the web-based application and cloud storage service authorized by the AOC that provides for the submission of digital evidence to a court, storage of digital evidence after submission to a court, and access to digital evidence by a court and litigants.
- d. “Offeror” means an individual who submits any digital evidence to a court through the digital evidence portal.

2. **Digital Evidence Portal**

- a. Except as excluded above, attorneys shall submit all exhibits that are in digital format or that can be converted to digital format through the Portal in cases in which the clerk or court initiates the use of the Portal.
- b. Except as excluded above, self-represented litigants may submit all exhibits that are in digital format or that can be converted to digital format, including all documents, through the Portal in cases in which the clerk or court initiates the use of the Portal.
- c. An offeror shall submit digital evidence through the Portal before the hearing or trial date, and in accordance with local court rules or court order.
- d. An offeror shall submit digital evidence to the specific storage location designated by the clerk or court, as applicable, for the relevant case or proceeding.
- e. An offeror may not submit as digital evidence a hyperlink to a third-party digital evidence storage repository or portal.
- f. Digital evidence shall conform to the specific format requirements supported by the Portal.
- g. All digital evidence shall be scanned for the presence of viruses or malicious code prior to being stored through the Portal. Courts and clerks of court reserve the right to prevent the submission of, or to delete, any digital evidence that the Portal, court’s or clerk of court’s anti-virus software has determined to include a virus, malicious code, or otherwise corrupted data. If any digital evidence is deleted because it is determined it may include a virus, malicious code, or corrupted data the clerk or court shall notify the offeror and provide the offeror an option to provide a clean version.
- h. The custodian of digital evidence is the same person as the custodian of any other type of evidence received by the court pursuant to statute or rule.

- i. To ensure a chain of custody, at the time a court proceeding begins or when the clerk or court updates the access permissions to prevent editing, whichever is earlier, the clerk or court shall secure all submitted digital evidence in conformance with policies and protocols that are applicable to evidence submitted in tangible form.
- j. All digital evidence submitted through the Portal is subject to the provisions of record retention orders, rules, and statutes pertaining to exhibits. Notwithstanding Arizona Code of Judicial Administration §§ 3-402 and 4-302, the clerk or court records manager shall remove and dispose of digital evidence, without notice, at the end of applicable records retention periods upon notice from the AOC that the functionality is available in the Portal. Digital evidence will not be returned to the offeror.
- k. In the event of a malfunction or error occurring in the Portal that prevents the offeror from meeting a submission deadline, the offeror, after consultation with the court, may submit digital evidence after that deadline or in a tangible medium.
- l. Attorneys, self-represented litigants and offerors are responsible for identifying any digital evidence submitted through the Portal that may need to be treated as confidential by indicating the security of the exhibit as restricted upon submission.
- m. The clerk or court is not responsible for reviewing digital evidence to determine whether it contains content that is considered to be confidential. However, the clerk or court has discretion to change the security of the exhibit consistent with Supreme Court Rule 123.
- n. The clerk or court shall manage digital evidence submitted through the Portal throughout the lifecycle of a case, including:
 - i. Opening a case in the Portal and inviting parties to participate.
 - ii. Updating access permissions to prevent adding, modifying, or deleting submitted digital evidence at or before the court proceeding.
 - iii. Maintaining an index of exhibits throughout a case.
 - iv. In transmitting designated exhibits on appeal, ensuring the following:
 1. The appropriate superior court or appellate clerk's office staff is timely invited to a case with the following permissions: view, download, add notes, invite others;
 2. The exhibit list included in the index of record contains a Portal case link;
 3. That exhibits are made available to the appellate court; and,
 4. That access to digital evidence is provided consistent with timeframes for physical evidence.
 - v. While an appellate court has jurisdiction over the case, the appellate court clerk shall be responsible for extending access to the Portal as needed, including to appellate counsel.

- vi. If a court provides remote online access to admitted exhibits through the Portal, it shall be done through the secure sharing feature.

IT IS FURTHER ORDERED that an implementation schedule will be set by the Administrative Director.

IT IS FURTHER ORDERED that any clerk or court participating in the statewide digital evidence program shall make digital evidence available to the public in accordance with Supreme Court Rule 123 and local fee schedules after completion of any hearing or trial for which the evidence was submitted.

IT IS FURTHER ORDERED the presiding judge of the court and the clerk or local court, in consultation with the Administrative Director, may create additional administrative policies for implementing this order.

Dated this 25th day of August, 2021.

FOR THE COURT:

ROBERT BRUTINEL
Chief Justice



Arizona Digital Evidence Portal

Amy Wood, Clerk of the Court, Arizona Court of Appeals, Division One

How did we get there?

Appellate Focus

After trial court pilot started, work began on how exhibits would be shared with the record.

Trial Focus

Initial work with trial courts to determine how exhibits would be entered, stored and tracked.

RFP and Contract

AOC went to RFP to contract with a vendor for a statewide portal

Statewide Committee

Statewide committee studied issues related to digital evidence and storage. Made recommendations including a central portal.

Case Center (FKA: CASELINES): A portal for digital exhibits



Clerk's Office Processes



A Bit of Arizona Context

- Prior to the digital exhibit project, digital exhibits came on jump drives, CDs, Paper, etc.
- The majority of the rest of the record was already transmitted electronically through a home grown system called “Court to Court”
- All court staff have access to electronic records

1 CA: CV-23-0422

Motion Brief/Petition Search Motion Event Agenda

All Record Transcript Order Decision Notice/Letter

89 Documents for: AGREE V. IL Z

Any Date Any Date Type Show All Find Next

Date	Title
7-Jul-2023	INDEX OF RECORD 1 CA
7-Jul-2023	COMPLAINT 1 CA - MAR; 1 - COSC-A CV-Civil; 07-08-2020
	CERTIFICATE ON COMPULSORY ARBITRATION 1 CA - MAR; 2 - COSC-A CV-Civil; 07-08-2020
	CIVIL COVERSHEET 1 CA - MAR; 3 - COSC-A CV-Civil; 07-08-2020
	WAIVER AND ACCEPTANCE OF SERVICE 1 CA - MAR; 4 - COSC-A CV-Civil; 07-10-2020
	CERTIFICATE OF SERVICE OF PROCESS BY PRIVATE PERSON 1 CA - MAR; 5 - COSC-A CV-Civil; 07-27-2020
	CERTIFICATE OF SERVICE OF PROCESS BY PRIVATE PERSON 1 CA - MAR; 6 - COSC-A CV-Civil; 07-27-2020
	CERTIFICATE OF SERVICE OF PROCESS BY PRIVATE PERSON 1 CA - MAR; 7 - COSC-A CV-Civil; 07-27-2020
	ANSWER 1 CA - MAR; 8 - COSC-A CV-Civil; 08-12-2020
	DEMAND FOR JURY TRIAL 1 CA - MAR; 9 - COSC-A CV-Civil; 08-12-2020
	DEFENDANTS' CERTIFICATE RE COMPULSORY ARBITRATION 1 CA - MAR; 10 - COSC-A CV-Civil; 08-12-2020
	APPLICATION FOR ENTRY OF DEFAULT 1 CA - MAR; 11 - COSC-A CV-Civil; 08-24-2020
	AFFIDAVIT ON DEFAULT AND ENTRY OF DEFAULT 1 CA - MAR; 12 - COSC-A CV-Civil; 08-24-2020
	ME: ORDER ENTERED BY COURT [08/27/2020] 1 CA - MAR; 13 - COSC-A CV-Civil; 08-31-2020
	MOTION & AFFIDAVIT FOR ENTRY OF JUDGMENT BY DEFAULT 1 CA - MAR; 14 - COSC-A CV-Civil; 10-08-2020

FILED

The Record

- The trial court enters a document into the record, “Digital Exhibit List Cover Sheet”
- Contains a link to the Case Center case, which holds the exhibits
- Lists the exhibits included on cover sheet
- Document is transmitted to the appellate court with the rest of the record
- Following the link will only work for people who have been invited to the case in Case Center
- Case Center cases only reflect the trial court case number (currently no field for appellate case number)

Blending Digital Exhibits

- Prior to the digital exhibit project, digital exhibits came on jump drives, CDs, Paper, etc.
- The majority of the rest of the record was already transmitted electronically through a home grown system called “Court to Court”

<input type="checkbox"/>	[PART 4 OF 7] DEFENDANTS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW 1 CA - MAR; 63 - COSC-A CV-Civil; 12-23-2022
<input type="checkbox"/>	[PART 5 OF 7] DEFENDANTS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW 1 CA - MAR; 64 - COSC-A CV-Civil; 12-23-2022
<input type="checkbox"/>	[PART 6 OF 7] DEFENDANTS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW 1 CA - MAR; 65 - COSC-A CV-Civil; 12-23-2022
<input type="checkbox"/>	[PART 7 OF 7] DEFENDANTS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW 1 CA - MAR; 66 - COSC-A CV-Civil; 12-23-2022
<input type="checkbox"/>	ME: UNDER ADVISEMENT RULING [02/22/2023] 1 CA - MAR; 67 - COSC-A CV-Civil; 02-23-2023
<input type="checkbox"/>	DIGITAL EXHIBIT LIST COVERSHEET HD 09/27/2022 1 CA - MAR; 68 - COSC-A CV-Civil; 02-23-2023
<input type="checkbox"/>	APPLICATION FOR ATTORNEYS' FEES 1 CA - MAR; 69 - COSC-A CV-Civil; 03-03-2023

Digital Exhibit Coversheet

Clerk of the Superior Court
FILED
2/23/2023 8:13 AM
A. Storlid

EXHIBIT LIST COVERSHEET

<https://digitalevidence.azcourts.gov/s/s/87ba1>

AGREE LIMITED PARTNERSHIP

V

IL, Z CORRAL LLC, ET AL.

CASE NUMBER: CV2020-054234

HEARING DATE: SEPTEMBER 27, 2022

HEARING TYPE: BENCH TRIAL

JUDICIAL OFFICER: HONORABLE MELISSA IYER JULIAN

Digital Exhibit Coversheet

A: Plaintiff Exhibits

Index	Name	Date	Offered	Shown to Jury	Admitted for Appeal Purposes	Admitted
0001	Exhibit 1					STIP 1 09/27/2022
0002	Exhibit 2	September 06, 2013				STIP 2 09/27/2022
0003	Exhibit 3	September 04, 2018				STIP 3 09/27/2022
0004	Exhibit 4	November 18, 2020				STIP 4 09/27/2022
0005	Exhibit 5	April 09, 2020				STIP 5 09/27/2022
0006	Exhibit 6	May 08, 2020				STIP 6 09/27/2022
0007	Exhibit 7	May 14, 2020				STIP 7 09/27/2022
0008	Exhibit 8	June 10, 2020				
0009	Exhibit 9	July 10, 2020				PLF 9 09/27/2022
0010	Exhibit 10	August 11, 2020				PLF 10 09/27/2022
0011	Exhibit 11	September 15, 2020				PLF 11 09/27/2022
0012	Exhibit 12					
0013	Exhibit 13					
0014	Exhibit 14	April 20, 2020				PLF 14 09/27/2022
0015	Exhibit 15	June 22, 2020				PLF 15 09/27/2022
0016	Exhibit 16	August 31, 2020				PLF 16 09/27/2022
0017	Exhibit 17	May 19, 2020				PLF 17 09/27/2022

Clerk's Office Process

- Receive record, including the digital coversheet
- Open coversheet, ensure link works, exhibits are there
- “Invite” the rest of the court using an invite list in Caselines

Home Invite Lists View Case List View Hearings Admin Support

Invite Lists

Create New Invite List

Name	Change	Remove	Share	View Invitees	Shared By
23-24 LawClerks (Del. 8-23)	Change	Remove	Share	View Invitees	Shared By ...
COA1 Clerks	Change	Remove	Share	View Invitees	Shared By ...
COA1 Clerk's Office List	Change	Remove	Share	View Invitees	Shared By ...
COA1 Full Court List	Change	Remove	Share	View Invitees	Shared By ...
COA2 Clerk's Office	Change	Remove	Share	View Invitees	Shared By ...
COA2 IT	Change	Remove	Share	View Invitees	Shared By ...

Accessing Case Exhibits

- Court Staff can access exhibits by clicking on the link in the coversheet or by searching for the Trial Court case number in the portal.
- Layer of tools for notes, comments, marking places in video/audio, etc.

Example

Home Find View Present Notes Download People Public Markup Ms. Amy Woc

Admitted STIP PLF 1 (0001): 001 E-mail

Page: 1 of 3

Case Name

Ad-01: Admitted

A: Plaintiff Exhibits

B: Defendant Exhibits

ADMITTED STIP PLF 1
Deputy Clerk J. Holguin
Clerk

Current: 1

Exhibits Rolled Up by
Side of Case

Example

The screenshot shows a legal case document viewer interface. On the left, a sidebar titled "Case Name" contains a list of exhibits under the heading "A: Plaintiff Exhibits". The list includes items 1 through 7, with item 1 being "001 E-mail from [redacted] (Jan. 30, 2019) (October 06, 2022) 1 - 3". The main document area displays "Page: 1 of 3" at the top right and "Current: 1" at the bottom right. A green box highlights the text "ADMITTED STIP PLF 1 Deputy Clerk J. Holguin Clerk". A red arrow points from the text "Electronic Tag from Superior Court" to this green box. Another red arrow points from the text "Expanded list of Plaintiff Exhibits" to the exhibit list in the sidebar.

Case Name

Page: 1 of 3

Current: 1

Ad-01: Admitted

A: Plaintiff Exhibits

- 1: 001 E-mail from [redacted] (Jan. 30, 2019) (October 06, 2022) 1 - 3
- 2: 002 Texts between [redacted]
- 3: 003 E-mail from [redacted] (Mar. 31, 2019)
- 4: 004 E-mail [redacted]
- 5: 005 E-mail to [redacted]
- 6: 006 E-mail [redacted]
- 7: 007 [redacted]

ADMITTED STIP PLF 1
Deputy Clerk J. Holguin
Clerk

Electronic Tag
from Superior
Court

Expanded list of Plaintiff Exhibits

Case List

Name	Reference	Listing Number	Next Hearing Date	Last Updated	Created By		
* [REDACTED]	CV2018-009387 - JURY TRIAL			March 14, 2024 04:46 PM	Superior Court in Maricopa	Review Evidence	Update Case
* [REDACTED]	CV2020-054234 - Bench Trial			March 14, 2024 04:46 PM	Superior Court in Maricopa	Review Evidence	Update Case
* [REDACTED]	FC2023-050572 - Evidentiary Hearing			March 06, 2024 04:34 PM	Superior Court in Maricopa	Review Evidence	Update Case
* [REDACTED]	FC2020-002283 Trial			March 06, 2024 04:37 PM	Superior Court in Maricopa	Review Evidence	Update Case
* [REDACTED]	[REDACTED]			March 04, 2024 12:44 PM	Superior Court in Mohave County	Review Evidence	Update Case
* [REDACTED]	[REDACTED]			February 26, 2024 09:05 AM	Superior Court in Mohave County	Review Evidence	Update Case
* B8015JD202004032	[REDACTED]			March 04, 2024 12:45 PM	Superior Court in Mohave County	Review Evidence	Update Case
* B8015JD202004046	[REDACTED]			March 04, 2024 12:45 PM	Superior Court in Mohave County	Review Evidence	Update Case
* B8015JD202004059	[REDACTED]			March 04, 2024 12:45 PM	Superior Court in Mohave County	Review Evidence	Update Case
* B8015JD202104043	[REDACTED]			March 04, 2024 12:44 PM	Superior Court in Mohave County	Review Evidence	Update Case
* B8015JD202104045	[REDACTED]			February 26, 2024 09:05 AM	Superior Court in Mohave County	Review Evidence	Update Case

Video Tools

1: Exhibit 8 (March

MT)

ADMITTED JM

Edit Page Note

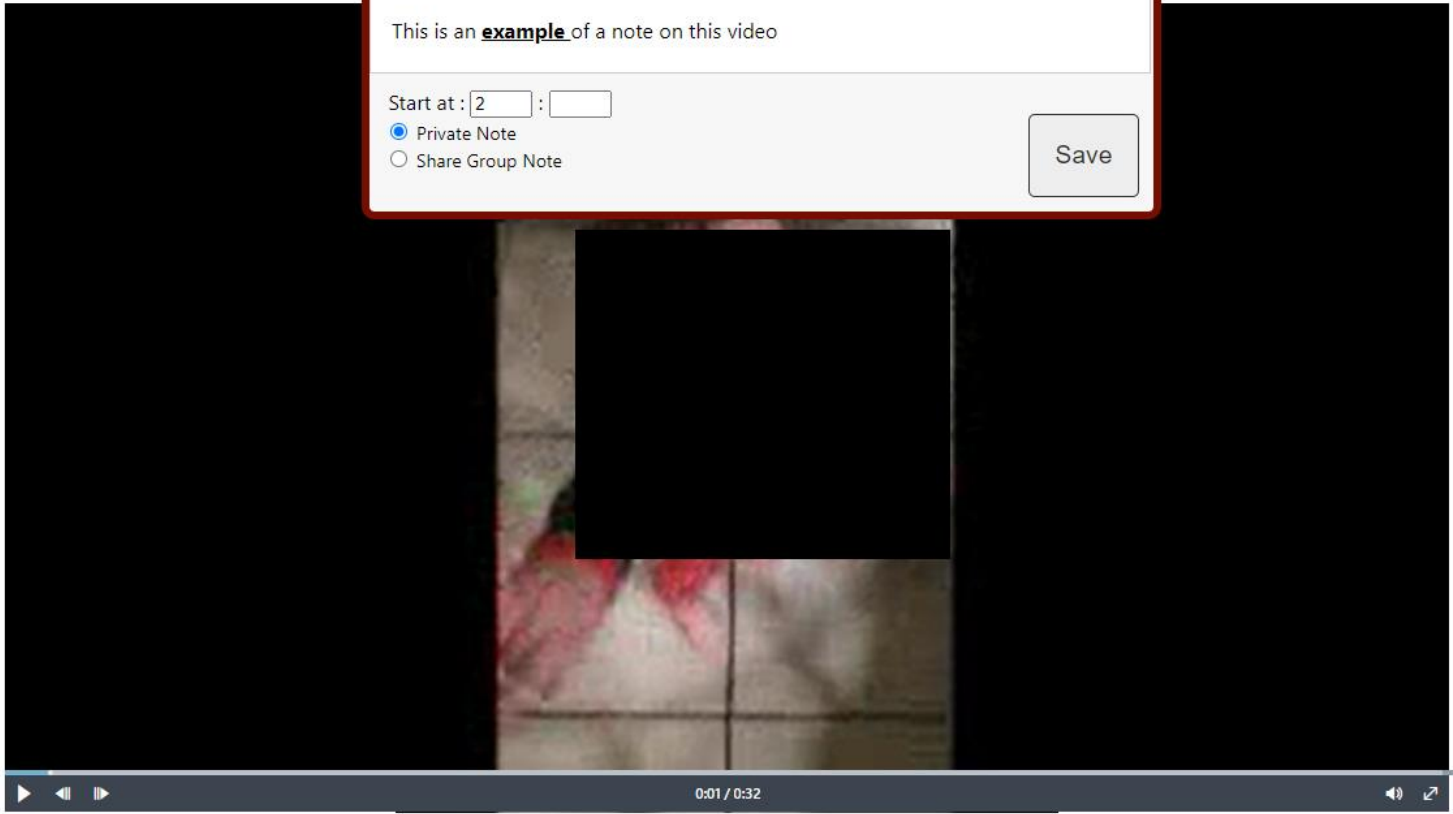
B *I* U

This is an **example** of a note on this video

Start at: :

Private Note
 Share Group Note

Save



Many Other Tools

Home Find View Present Notes Download People Public Markup

Case List Update Bundle Case Information Case Hearings

Home Find View Present Notes Download People Public Markup

Previous Document Next Document Show the Previous Page Viewing History Lawyers, Judges, Court Staff Witness Jury Direct Others to Page Page Directions Auto Direction Search Case Search Help Find Page

Home Find View Present Notes Download People Public Markup

Zoom In Zoom Out Pan & Zoom Display Metadata Rotate Left Rotate Right Upside Down Open In New Tab Copy Link Reset Panes

Home Find View Present Notes Download People Public Markup

Choose Color Add a Case Note Add a Page Note Add Pen Notes Copy Text Show Notes Find Page

Attorney access

- Trial courts initially invite participating attorneys to the trial court case
- When a case is appealed, those attorneys retain access
- If a new attorney makes an appearance at the appellate level, they are “invited” to the Case Center case by the appellate court

Arizona Supreme Court A.O. 2021-142



Attorneys
must use if Trial
Court invites



Custodian
same as
custodian of
other files



Offeror
Responsible for
Identifying
Confidentiality



Malfunction
Exception



Management
and Retention

Benefits

Digital Storage

One central copy used by attorneys/parties/courts.

Mandate

Less work to return exhibits at the time of mandate or case transfer

Technology

Reduction in time spent figuring out how to play different formats

Access

Multiple chambers can access and share exhibits at the same time.

Struggles



**Case
Number**

Only the trial court number appears in the portal, making searching laborious for appellate court users

Downloads

Users tempted to download their own copy, defeating the purpose

Considerations for an Implementation

Resources



Report and Recommendations of the Arizona Task Force on Court Management of Digital Evidence

October 1, 2017

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Arizona Task Force on Court Management of Digital Evidence

MEMBERS

Honorable Samuel A. Thumma, Chair

Chief Judge, Arizona Court of Appeals, Division One

Mike Baumstark

Deputy Administrative Director
Administrative Office of the Courts

Jeff Fine

Court Administrator
Maricopa County Justice Courts

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Federal Public Defender

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Presiding Judge
Superior Court in Pima County

Honorable Charles Gurtler

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Mohave County Superior Court

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Senior Counsel
Arizona Voice for Crime Victims

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Superior Court in Maricopa County

Honorable David Cunanan

Superior Court in Maricopa County

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Jennifer Thorson

Law Clerk
Superior Court in Pima County



Report and Recommendations of the Arizona Task Force on Court Management of Digital Evidence

October 1, 2017

EXECUTIVE SUMMARY

Creation and Charge of the Task Force

Arizona Supreme Court Chief Justice Scott Bales issued Administrative Order No. 2016-129, establishing the Arizona Task Force on Court Management of Digital Evidence, on December 6, 2016. The administrative order is the result, in no small part, of the recent exponential growth of digital evidence used in court, from devices such as smart-device cameras, body-worn cameras, and other public and private surveillance equipment. The administrative order created the task force to address the unique challenges faced by courts in receiving, retrieving, accessing, formatting, converting, and retaining digital evidence.

The administrative order cites to the [Joint Technology Committee Resource Bulletin: Managing Digital Evidence in the Courts](#) as providing “a good framework for discussion and relevant policy development.” The bulletin is a February 2016 publication of the Joint Technology Committee established by the Conference of State Court Administrators, the National Association for Court Management, and the National Center for State Courts. The administrative order established the task force to review and make recommendations on five policy questions posed in the bulletin:

“Court management systems are not currently designed to manage large quantities of digital evidence, which means that courts and industry must find creative ways to deal immediately with the dramatically increasing volume of digital evidence, while planning for and developing new capabilities.”

Joint Technology
Committee Resource
Bulletin: Managing Digital
Evidence in the Courts at 1.



- Should standardized acceptable formats, viewing, storage, preservation, and conversion formats or technical protocols for digital evidence be adopted for all courts?
- Should court digital evidence be stored locally, offsite, or using cloud services and how long and in what manner should such evidence be retained?
- Should management of court digital evidence be centralized or decentralized considering technology costs, expertise, and infrastructure necessary to manage it?
- Should court rules governing public records be revised to address access and privacy concerns, including for victims, non-victim witnesses, and other identifying information often included in video evidence?
- Should new or amended rules on chain of custody evidence be developed for handling court digital evidence?

The administrative order further directed the task force to review the Bulletin for additional information on these and other policy issues, as well as any other relevant journals, publications, and other research related to the topic, and make recommendations as deemed appropriate. The administrative order directed the task force to submit this report and recommendations to the Arizona Judicial Council (AJC) by October 1, 2017, and to file any rule change petition not later than January 10, 2018, with respect to any proposed rule changes.

Overview of this Report

This report begins with a summary of the membership of the task force, the processes used to develop the recommendations, and a summary of the recommendations themselves. The report then discusses court management of digital evidence, starting with a background discussion providing context for the issues explored. This background is followed by a discussion of the evolving court record format and the truly digital evidence concept. The report then provides a summary of each task force meeting, with additional detail available on the task force's [website](#). Detailed workgroup reports providing the core foundation for the recommendations round out the body of the report. The report includes appendices containing reference documents and recommended rule changes.

The Task Force and the Task Force Process

Members of the task force were selected, quite intentionally, to represent a wide variety of different perspectives in dealing with court management of digital evidence. Members include rural and urban superior court and city court judges; a justice of the peace; lawyers in private practice; a county prosecutor; an assistant Arizona Attorney



General; state and federal criminal defense attorneys; a victims rights advocate; an electronic discovery expert; representatives of the Arizona Department of Public Safety and the City of Phoenix Police Department; the Maricopa County Clerk of Court; rural and urban justice and municipal court administrators; an electronic records archivist from the Arizona State Library, Archives and Public Records, as well as experts from the Arizona Administrative Office of the Courts (AOC). The intention was to make sure the task force included all perspectives in its work while keeping the number of members manageable. The task force also undertook various outreach efforts and solicited and encouraged input from the public in general and a variety of stakeholders interested in the effort.

Starting in January 2017, the task force met approximately monthly, learning about and discussing various issues and technology related to digital evidence formats, storage, and management, considering the approaches to use and recommendations to make, and then preparing and refining this report. The task force heard from speakers, both nationally and locally, in the private and public sectors, and within and outside of the courts, addressing various topics relevant to the effort. These discussions were interactive and included demonstrations of past, current, and emerging technology.

Early in the effort, the task force formed three workgroups: (1) digital formats, (2) storage and management, and (3) court rules. Each task force member was affiliated with one workgroup. In between task force meetings, task force members met with their workgroups to investigate, develop, and refine recommendations addressing these key components of the task force's work. Task force meetings included presentations by the workgroups, along with questions from and feedback by all task force members about the efforts of the individual workgroups. This facilitated input from different perspectives, avoided communication gaps, accounted for overlap among workgroups, ensured the workgroups were not working in isolation, and recognized that members of one workgroup may have substantial interest in and knowledge that would help the efforts of another workgroup.

Summary of Task Force Recommendations and Ongoing Efforts

Through the work of the members, including its workgroups, the task force developed a strong consensus on the following recommendations for court management of digital evidence, in response to the policy questions posed in the administrative order, addressing: (1) digital formats, (2) storage and management, and (3) court rules.



- 1. A standardized set of formats and technical protocols should be identified, adopted, and set forth in the relevant sections of the [Arizona Code of Judicial Administration](#) (ACJA) for all courts for the submission, viewing, storage, and archival preservation of digital evidence. Standardization requirements should account for five interdependent principles: (1) efficient handling of digital evidence at all phases—from submission of the evidence to the court through viewing, storage, and archival preservation; (2) rapidly changing technologies; (3) flexibility to account for technology in a specific case to ensure the just resolution of the case; (4) maintaining the integrity of the evidence; and (5) reasonable access to the parties and the public.
- 2. An amendment should be made to the ACJA requiring digital evidence to be submitted in a standard format, unless a court makes a specific finding that the admission of evidence in a non-standardized format is necessary in the interests of justice. The recommended exception should include a requirement that the party submitting digital evidence in a non-standardized format provide technology to allow the evidence to be played or otherwise used in court. Training for judicial officers is also recommended to assist the court in determining whether non-standardized formats are necessary.
- 3. Deciding whether digital evidence should be stored locally, off-site, using cloud services, or some combination or alternative, as well as whether storage and management should be centralized or decentralized, should be guided by a set of minimum technical requirements. Local courts should include specific considerations in their decision-making, including the capacity to afford and maintain the necessary technology, availability of adequate bandwidth, storage capacity expansion, and integration capabilities with other existing or future software applications.
- 4. Courts should take measures to enhance the use and presentation of digital evidence in the courtroom, including the use of technology to accept digital evidence in the courtroom, how parties can submit and present digital evidence from personal devices (including necessary conversion and redaction), and staff training for the acquisition, storage, and management of digital evidence. These measures should include guidance for self-represented litigants.



-
5. The Arizona Administrative Office of the Courts (AOC) should develop best practices as well as policies and procedures to increase the success of digital evidence management solutions adopted. The AOC should also work with local courts on developing a means to offset the costs associated with technology needs created by the increased receipt and storage of digital evidence.
-
6. Arizona Supreme Court Rules 122 and 123 govern public access to court records. The rights and privacy of victims and non-victim witnesses can be at opposition with the right of the public to access evidence admitted into the court record. Rule 123 should be amended to ensure that it addresses digital evidence, including exhibits, and that the portions of the rule that govern public access, particularly remote electronic access, be amended to ensure sufficient protection of victims' rights and privacy concerns. The Arizona Supreme Court should work with local courts, prosecuting and defending agencies, law enforcement groups, media organizations, and other interested individuals and organizations to develop consistent policies around the issue of non-victim witnesses. In addition, consideration should be given to management of digital evidence introduced by self-represented litigants that may not be redacted to protect victim and non-victim witness privacy rights upon submission to the court.
-
7. Amendments should be made to the Arizona Rules of Evidence to expressly address digital evidence, including adding a definition of "video" to Rule 1001 and adding references to "video" in Rules 1002, 1004, 1007, and 1008.
-
8. Amendments should be made to the Arizona Rules of Criminal Procedure, the Arizona Rules of Family Law Procedure, the Arizona Rules of Protective Order Procedure, the Arizona Juvenile Court Rules, and the Arizona Rules for Eviction Actions to modernize the rules to include references to digital evidence and electronically stored information, as has already occurred in other rule sets such as the Arizona Rules of Civil Procedure.
-
9. A standard definition of digital evidence should be added to the various procedural rule sets where not otherwise included. The recommended



definition is “Digital evidence, also known as electronic evidence, is any information created, stored, or transmitted in digital format.”

-
- 10.** Education and training, on both legal and technical competence, should be developed and implemented to facilitate and advance court management of digital evidence, for attorneys, parties (including self-represented persons), court staff, and judicial officers. The AOC should develop resource guides for self-represented litigants as well as templates for local court use that include information on requirements surrounding redaction, standardized formats, converting, submitting, and using digital evidence in the court.

A more detailed description of the background and reasoning supporting these recommendations follows in the section on Workgroup Reports.

Although this report is now finalized, the task force continues in other ongoing efforts. The task force continues to solicit input on proposed rule changes identified by the Rules Workgroup, endorsed by the task force and attached in current form as Appendices G – L to this report. The hope is to file a rule change petition with final versions of those proposed rule changes not later than January 10, 2018. In addition, on August 31, 2017, the Arizona Supreme Court referred Petition R-17-0027 (which seeks to provide an express procedure for the disclosure of video from officer body-worn cameras in the Arizona Rules of Criminal Procedure 15.1 and 15.4) to the task force for consideration. That consideration is a work in progress, with comments to be provided after the completion of this report. Task force members also are continuing their outreach efforts.



MANAGEMENT OF DIGITAL EVIDENCE

Background

For centuries, the court has been the keeper of the record for court cases. Until recently, this court record could be categorized as having three components, each consisting of paper documents or paper documents and things: (1) written filings made by the parties; (2) a written word-by-word transcript of what was said at hearings; and (3) exhibits used at hearings consisting of documents, pictures, and things, such as guns, drugs, etc. Although complicated and important, keeping this court record involved making sure paper filings were in the physical file, transcripts were included in or accounted for in that physical file, and exhibits received by the court (be they paper documents or things) were accounted for in the physical file, an exhibit locker, or a storage location.

These documents and things were expected to follow the case wherever it went and to be preserved for the applicable retention period for the case. In a case originating in the Arizona Superior Court, for example, the case might be resolved with no appeal; these documents and things in the court record would then be physically transferred to storage to be held for the appropriate retention period. On the other hand, if there was an appeal, these documents and things (or at least many of them) in the

court record would be physically transferred to the Arizona Court of Appeals, then perhaps to the Arizona Supreme Court, and then perhaps to the United States Supreme Court. And in a criminal case, there could be a second round of litigation through post-conviction relief proceedings following a similar path, and a third round of litigation in habeas corpus proceedings in federal court. For each round, these paper documents and things in the court record would physically follow the case wherever it went.

A common characteristic of these written filings, written transcripts, and written or physical exhibits in the court record was that they could be touched, physically delivered, received and returned, accounted for by sight, found, stored, and, on occasion, lost. They were physical things that could be observed by a person with their senses.

The Evolving Court Record Format

Technology advancements outside of the court system have resulted in profound changes to the nature of the court record.

In summarizing court systems in a somewhat different context, “these paper-based institutions appear increasingly outmoded in a society in which so much daily activity is enabled by the internet and advanced technology.”¹ Relatively recently,

¹ Ethan Katsch & Ornal Rabinovich-Einy, DIGITAL JUSTICE TECHNOLOGY AND THE INTERNET OF

DISPUTES, Forward by Richard Susskind at xiii (2017).



the computer age has substantially changed filings and transcripts, two of the three key components of the court record. These changes, in turn, altered the very nature of the court record and how that court record is kept.

Filings by the parties are now, quite often, electronic filings, not in paper form, and may include materials that never existed in paper form. In many court systems, electronic filing of pleadings is required, absent leave of court to make such filings in paper form. For electronic filings, there is literally no physical thing provided to the court where the filing is made. Rather than a physical thing moving from a party to the court, a digital file crosses that threshold. The party making the filing submits to the court and the other parties in the case a digital file containing the filing. That filing is then kept by the court as a digital file in the court record that follows the case wherever it goes.

Similarly, today the transcript of court proceedings is frequently provided in a digital file or may, at times, be in the form of a digital audio or audio-video recording. The digital transcript then may become part of the court record to be kept by the court (or submitted to the court on appeal), with the digital file following the case wherever it goes. As with electronic filings, such a digital transcript is kept by the court in a digital file, not a physical paper-based file.

By contrast, how exhibits are handled in the court record has changed very little. Exhibits continue to be offered, received, handled, held, and transported by the court in physical form in much the same way they

have been for decades. A party wishing to offer an exhibit has the clerk of court mark a physical exhibit (be it a document, a picture, a disc, a tape containing a video, a gun, etc.) for identification. For evidence stored digitally, this typically requires transferring that digital file to a physical thing like a disc so that the physical thing can be marked by the clerk of court as an exhibit for identification. Even if a digital file can be submitted to the court on a Universal Serial Bus (USB) drive, it is the USB as a thing that is received and used by the court (as opposed to the file on the USB being transferred to a court computer to be received and used by the court).

If admitted into evidence, the physical exhibit is then received by the court, used by witnesses, counsel, parties, the court, and jurors and then safely held by the clerk of court. That physical exhibit then becomes a tangible part of what until recently was a paper court record, including the paper filings and paper transcript. More and more often, however, other than exhibits, there is no longer a paper component of the court record. Thus, exhibits have become outliers; often they are the only tangible, non-digital part of the court record.

Given the technology-driven changes to the first two key components of the record (resulting in electronic filings and electronic transcripts) but not the third (exhibits), and the increasing instances of exhibits originating in digital form, the task force looked to see how the process might change if exhibits were treated more like electronic filings and electronic transcripts.



The need to consider allowing digital evidence to cross the threshold from party to the court in digital form was further enhanced by the increase in technology used in capturing and storing digital evidence and the increase in the use of such digital evidence at trial.

Recently, body-worn camera use has expanded at an almost algebraic rate, and its use promises to continue to expand.² Current technology allows body-worn camera images to be captured and stored in digital files. Those files are digital when created and remain digital from the time of creation through the eve of trial (from creation, to capture, to disclosure by a law enforcement agency to a prosecutor, to disclosure by a prosecutor to a defense attorney, to use by all throughout) and can be only viewed electronically. The issue, then, is whether there is a way for these digital images to cross the threshold from a party to the court as an exhibit to be used in court without having to transfer the evidence—digital images—onto a physical disc or similar thing that is then marked as a physical exhibit.

Given the change to digital form for filings and transcripts (but not exhibits), coupled

with the proliferation of evidence in digital form (including digital body-worn camera video), the task force addressed issues surrounding the submission and use of digital exhibits in purely digital form. For example, is there a way that an exhibit, such as an electronic recording that exists only in digital format, can be submitted to the court in that digital format, instead of having to be transferred to a physical format like a disc before being marked as an exhibit for use in court? If so, what additional issues would such a transfer in digital form create?

The Truly Digital Evidence Concept

One charge of the task force was to analyze the implications of allowing exhibits to cross the threshold from party to the court in digital form and then be used, going forward, in digital form. This truly digital concept would apply to exhibits that exist only in digital format and to those that can easily be converted into or scanned into digital format. The task force also considered the resulting impact on court operations, and on management and retention of that digital evidence over its life within the courts.

² See, e.g., Kami N. Chavis, *Body-Worn Cameras: Exploring the Unintentional Consequences of Technological Advances and Ensuring a Role for Community Consultation*, 51 Wake Forest L. Rev. 985, 987 (Winter 2016) (“Currently, one-third of the nation’s 18,000 local and state police departments use body-worn cameras, but these numbers are growing rapidly, with the federal government’s support encouraging this effort.”) (footnotes omitted); Kyle J. Maury, Note, *Police Body-Worn Camera Policy: Balancing the Tension Between Privacy*

and Public Access in State Laws, 92 Notre Dame L. Rev. 479, 486 (2016) (“Body camera implementation is a tidal wave that cannot be stopped.”); Kelly Freund, *When Cameras are Rolling: Privacy Implications of Body-Mounted Cameras on Police*, 49 Colum. J.L. & Soc. Probs. 91, 94 (Fall 2015) (citing October 2012 survey for the proposition that “[a]pproximately a quarter of the country’s police departments use body-mounted cameras, and 80% are evaluating their possible use”).



To build on this issue, the task force discussed technology that would facilitate a trial with truly digital evidence. Not a trial using technology to present evidence in the courtroom or what is needed in a “high tech” courtroom, but a truly digital trial.³ Focusing on court management of digital evidence, the task force looked at functionality and related issues of an electronic portal to an electronic data repository that could be populated and used by all in final trial preparation, at trial, and beyond (with the same concept applying to non-trial evidentiary hearings).

The concept would be court-driven, confirming the critical aspect of the clerk of court in receiving, managing, and securing evidence for use before, during, and after trial. The concept could consist of an electronic portal where electronic exhibits could be submitted to the clerk of court, in digital form, in advance of or at a hearing or trial. This concept is akin, in the paper world, to having paper exhibits marked for identification by a clerk for use at a hearing or trial. The difference, however, is that the portal concept would (1) allow exhibits to cross the threshold from party to the court in digital form and (2) allow electronic submission and marking of potential exhibits by a party to the case outside of normal court business hours.

Looking to electronic filings as a guide, the task force discussed a possible user fee (perhaps per exhibit or per case) to help offset the cost of technology. In doing so, the task

force recognized statutory restrictions on fees, fee waiver requirements, and other issues that govern the collection of fees in various case types and that allow for court access regardless of financial resources. Any user fee concept would need to account for those issues and restrictions.

By submitting such exhibits to the clerk in digital form, just as with a paper exhibit marked by a clerk but not yet received, the exhibits would be ready to use in court at the appropriate time. Instead of physical items being held by the clerk, however, digital exhibits would reside in digital form in an electronic repository managed by the clerk. At the appropriate time, the digital exhibits marked for identification in a case could be accessed in court by the parties, counsel, the court, witnesses, and the clerk using courtroom monitors or on a network allowing such access on monitors provided by the parties.

Many courts currently have monitors in at least some courtrooms. Others have “technology carts” that can be moved from courtroom to courtroom as needed. For courts that have some form of such technology in the courtroom, this electronic repository concept would facilitate the use of such technology; for those that do not, it would necessitate acquiring or accounting for such technology.

If a digital exhibit was admitted into evidence, this electronic portal concept would allow the clerk to mark the exhibit as having

³ Perhaps the closest example of a paperless trial in the United States in the sense of what the task force considered is described in Leonard Polyakov,

Paperless Trials Are The New Litigation Reality, 57 Orange County Lawyer 36 (Sept. 2015).



been admitted in the electronic repository. As in the paper world, this would allow the participants to use the exhibit for proper purposes, including viewing the exhibit on courtroom monitors. Similarly, a digital exhibit marked but not received in evidence would be treated in the same manner as such an exhibit is treated in the paper world. Applying the concept to deliberations, the jurors could access the admitted exhibits in digital form using technology in the deliberation room.

After the trial ended, the admitted exhibits would be preserved for future reference; exhibits not admitted would be deleted (or retained, if necessary for subsequent proceedings), akin to what happens with paper exhibits. Again, however, given that the exhibits are in digital format, and are not physical things, there would be no need to store them in a physical location. Adequate server space, however, would be required.

Admitted exhibits then would be included in the record on appeal and transmitted electronically. The courts on appeal (and, for subsequent or collateral proceedings, other state or federal courts) could then access the admitted exhibits as needed for years to come.

It is this electronic portal and electronic repository concept, and various related issues,

that the task force contemplated in addressing court management of digital evidence.

In its work, the task force looked to see whether any other court system in the United States is using this electronic portal and electronic repository digital evidence concept for truly digital trials. For decades, there has been a good deal of helpful information about how to conduct a trial by using exhibits in electronic form in the courtroom *after* exhibits are submitted to the clerk in paper form or on disc.⁴ But the focus of the task force was different: a truly digital trial where trial exhibits cross the threshold from party to court in digital form and remain in digital form thereafter.

The task force contacted many groups to see if such a concept is being used anywhere in the United States, including the Federal Judicial Center, the United States Administrative Office of the Courts, the National Center for State Courts (NCSC), The Sedona Conference, private sector entities, other state court systems, and many other entities and individuals. The task force found no court in the United States that currently uses this concept. As such, the hope that the task force could follow in the wake of work done by others or adapt in Arizona what was being done elsewhere in the United States did not prove to be fruitful. As a result, the task

⁴ See, e.g., David L. Masters, *How to Conduct a Paperless Trial*, Vol. 39, No. 3 *Litigation* 52 (Summer 2013); Thomas E. Littler, *Litigation Trends in 2013*, 49 *Arizona Attorney* 30 (June 2013); Thomas I. Vanaskie, *The United States Courts' Case Management/Electronic Case Filing System: Perspectives of a District Judge*, Vol. 8, No. 3 *e-Filing*

Report 1 (April 2007) (predicting, in discussing "The Paperless Trial Court Record," that "[a]s use of evidence presentation technology expands, it may be that the actual exhibits introduced at trial will be the digital version that counsel utilize in their presentation."); Carl B. Rubin, *A Paperless Trial*, Vol. 19, No. 3 *Litigation* 5 (Spring 1993).



force contemplated the electronic portal and electronic repository concept in addressing court management of digital evidence without the benefit of best practices and lessons learned by other courts in the United States.⁵

Task Force Meetings

The task force as a whole met seven times. The initial meetings involved many educational presentations from a variety of different perspectives.

The first meeting in January 2017 began with introductions and an overview of the background and substance of the JTC Resource Bulletin by Paul S. Embley, Chief Information Officer, Technology, National Center for State Courts. That first meeting also included presentations on digital evidence from a variety of different perspectives, including prosecutors, defenders, victims' rights advocates, and law enforcement as well as information about the exhibit workflow process and procedure currently used in Arizona Superior Court.

The February 2017 task force meeting continued with this educational focus, starting with a presentation on court use of cloud technology from the perspective of the Arizona Administrative Office of the Courts. This meeting also included a presentation from the perspective of the Arizona State

Library, Archives and Public Records on hurdles and challenges with permanent storage of digital records and a demonstration of body-worn camera data storage and use. At this meeting, the task force first began discussing the effort in three workgroups: (1) digital formats, (2) storage and management, and (3) court rules, discussed in more detail below.

The March 2017 task force meeting continued the educational approach of the prior meetings. Presentations included discussion and demonstration of the Integrated Court Information Systems Next Generation case management system used by the Arizona Superior Court in Maricopa County, and the amount of physical storage space needed for digital evidence in physical form as currently required. A Maricopa County justice court also provided insight into that court's creative solution for capturing digital evidence submitted by self-represented litigants in various types of cases, including order of protection hearings, injunctions against harassment, eviction actions, and small claims matters. Time was then provided for workgroups to break out to continue discussion on related topics and subsequently report back to the task force as a whole.

The April 2017 task force meeting primarily involved reports from the

⁵ Very recently, the task force learned of a London-based entity that has launched a system in British courts that appears to have some similarities to the truly digital evidence concept the task force considered. See www.caselines.com. It does not appear that any court in the United States has adopted that technology as of the date of this

report. See <http://caselines.com/caselines-uk-leader-digital-court-solutions-beacon-british-exports-usa> (September 8, 2017, press release noting an intention to provide a preview of the technology in the United States at the CTC 2017 Court Technology Conference in Salt Lake City later that month).



workgroups, but it also included an overview of the Arizona Commission on Technology (COT) and the OnBase technology used for electronic storage of filings in Arizona courts.

By the June 2017 task force meeting, the workgroups had prepared their first draft written reports. The task force spent much of that meeting discussing those draft reports, asking questions, and providing feedback. The workgroups then met and prepared revised reports for consideration before and during the August and September 2017 task force meetings. Considerable time was spent discussing various aspects of the workgroup

reports and making revisions based on the consensus of the task force members during those meetings. Similar feedback and revisions were made to each version of the draft report. Consistent with prior practice, the workgroups also met separately during each meeting and reported back to and took questions from the task force as a whole.

The ultimate product of those workgroups (and, more broadly, the task force as a whole) is set forth in the workgroup reports. The workgroup reports, in their entirety, including reasoning for the individual recommendations, follow.



WORKGROUP REPORTS

Digital Formats Workgroup Report

Policy Question

- Should standardized acceptable formats, viewing, storage, preservation, and conversion formats or technical protocols for digital evidence be adopted for all courts?

Summary

The Digital Formats Workgroup was tasked with addressing the following policy question: “Should standardized acceptable formats, viewing, storage, preservation, and conversion formats or technical protocols for digital evidence be adopted for all courts?” Guided by this question, the workgroup performed its investigation, analysis, and due diligence, which included discussions, debates, and research, before formulating a response.

Ultimately, the workgroup concluded that standardized formats and technical protocols for the viewing, storage, and preservation of digital evidence should be adopted for all courts. Further, the workgroup concluded that standardization requirements should reflect and account for five interdependent principles: (1) the requirements must promote the efficient handling of digital evidence at all

phases—from submission of the evidence to the court through viewing, storage, and archival preservation; (2) the requirements must account for rapidly changing technologies; (3) the requirements must be flexible enough to account for technology in a specific case to ensure the just resolution of the case; (4) the requirements must maintain the integrity of the evidence; and (5) the requirements must permit reasonable access by the parties and the public. Consistent with these general principles, the Arizona Supreme Court has already promulgated rules that provide a useful framework for standardization of digital evidence. These rules can be found in the [Arizona Code of Judicial Administration](#) (ACJA), particularly Chapters 5 (Automation) and 6 (Records).

The ACJA, however, expressly applies to the court and to court records, and thus, it applies only to digital evidence that qualifies as a court record and ultimately places the burden for compliance on the court. Section 1-507 of the ACJA includes administrative, case, electronic, and online records within the definition of court records. It broadly defines each type of record to encompass a wide range of content. The definitions do not require the material to be admitted in evidence as a court record and do not require the material to be created by the court. The definitions contemplate and include material created outside the court and offered to the court in an official manner, such as a filing or a marked exhibit.



Application of the current ACJA to digital evidence and ideas for amendments to the current ACJA to encompass digital evidence format requirements are discussed below. It is important, however, to recognize that because of the rapidly changing pace of technology, the ACJA's technical regulations should be reviewed and updated at least every other year to ensure consistency with current technology.

Conversion

By adopting a policy that requires court records to comply with standard formats, the ACJA implies that a record that does not comply with the standard formats must be converted to one that is compliant.

Section 1-507(D)(1)(a) of the ACJA provides: "Courts shall not create or store electronic records using systems that employ proprietary designs, formats, software, or media or that require use of non-standard devices to access records, in accordance with ACJA § 1-504(C)(1)." Thus, this provision sets forth the requirement that court records must comply with standard formats and be accessible with standard devices.

Similarly, ACJA § 1-507(D)(1)(b) specifically addresses conversion and preservation by requiring courts to "preserve all electronic documents so that the content of the original document is not altered in any way and the appearance of the document when displayed or printed closely resembles the original paper without any material alteration, in accordance with ACJA § 1-506(D)(1)." This requirement applies only to electronic documents, and is easily met via conversion to a portable document format (PDF) or other comparable

standardized file format for electronic documents.

At the same time, § 1-507(D)(1)(c) states: "Courts shall preserve evidence and fingerprints in their submitted format—hardcopy items shall not be converted to electronic records for the purpose of storage and electronically submitted items shall not be converted to hardcopy for the purpose of storage." This section contemplates that a court may receive evidence electronically or physically and specifically prohibits the court from altering the evidence from its submitted format. In other words, it prohibits conversion of hardcopy or electronically submitted items for storage. This provision also may conflict with the § 1-507(D)(1) prohibition on using proprietary designs, formats, devices, etc., when creating or storing electronic records.

Lastly, the ACJA contemplates the handling of digital files beyond just documents. Section § 1-506(D)(5)(b) states: "Graphics, multimedia and other non-text documents may be permitted as follows: Other multimedia files (for example, video or audio files) shall adhere to established industry standards and shall be in a non-proprietary format (for example, MPEG, AVI, and WAV)."

The desirability of standard or non-proprietary file formats for court records applies equally to digital evidence received by the court and may necessitate conversion (by a party before offering the evidence) from an original, proprietary or non-standard format to a standardized or non-proprietary format. Additionally, changes to software and digital devices may necessitate conversion by the



courts during viewing, storage, or preservation.

Standardization requirements favoring conversion of digital evidence from non-standard or proprietary formats must, however, allow for exceptions when the interests of justice cannot be met through strict compliance with the requirement. First, standardization requirements must provide for exceptions when conversion will compromise the integrity of the evidence as determined by the purpose for which the evidence is submitted. For example, a video introduced at trial to prove the exact moment a gun was fired may lose its evidentiary value if converted to a standardized format that alters the frame rate such that the exact moment of firing is no longer discernable. On the other hand, if that same video was introduced to prove only that a person was at a specific location when the gun was fired, minor alterations that result from conversion would not appear to impact its evidentiary value.

Standardization requirements must also provide for an exception to accommodate the resource limitations of the parties when necessary to effectuate the just resolution of a case. Litigants, particularly self-represented litigants, may lack the technological tools necessary to convert digital evidence and may be unable to acquire such tools without undue hardship. For example, if critical evidence of an event was captured on a surveillance camera that used a proprietary video format, and this video could not be converted to a standardized format without significant costs to the party, a court may determine that

admission of the non-standard digital format is necessary to ensure justice.

For the reasons stated above, there was a consensus that the ACJA and any rules of procedure dictating standardized digital evidence formats must allow for reasonable exceptions when required to serve the interests of justice. As such, the workgroup recommends an amendment to the ACJA defining the criteria a court must use in deciding when an exception to the standardized format requirement is warranted and the conditions that the party must meet in order to submit the evidence in question in non-standard or proprietary format.

Additionally, judges should make specific findings and create a record to document why a non-standard or proprietary format is necessary. Judges should also ensure the clerk of court is notified that additional measures may be needed for proper use, retention and preservation of evidence admitted in a non-standard or proprietary format. Finally, training for judges to aid them in recognizing, evaluating, and analyzing whether an exception to the rule requiring digital evidence to be submitted in a standard format is necessary. When non-standard or proprietary formats must be used, it should generally be the party offering the non-conforming digital evidence that has the responsibility to ensure the court is provided with the necessary technology (“native player”) to allow viewing of the evidence both during the proceedings and after the matter has concluded.



Viewing and Presentation

The viewing and presentation of court records typically contemplates two scenarios. One scenario is the litigation of a case or controversy in a court. In this scenario, digital evidence is likely offered by a party to or participant in the litigation, and it becomes a court record when it is filed, marked as an exhibit, or otherwise offered to or received by the court. The primary concern in this scenario is the ability of the court and the parties to view and present the digital evidence at court proceedings.

The second scenario is public access to court records, which can include media requests. In this scenario, a person who is interested in the litigation, but not involved in it, seeks to access the digital evidence in a case or controversy. The primary concern in this scenario is the ability of persons unrelated to cases to view the digital evidence.

Adopting standard formats for digital evidence will likely maximize the ability of litigants and the public to access court records whether it is before, during, or after litigation is resolved. The ACJA accomplishes this by addressing these scenarios in separate sections as discussed above. In addition, the rules of court for the various types of cases (civil, criminal, family, juvenile, etc.) are consistent with the ACJA in that they govern the nature of the material that might become a court record at the request of a party to the case. When a litigant complies with both the rules and the ACJA, it maximizes the probability that the record will be accessible in the present and the future.

Storage

The ACJA also contains requirements for the storage of court records in § 1-507(D)(3). This section addresses primary and secondary electronic storage and sets forth specific hardware, power supply, and redundancy requirements for court records. “Storage” is specifically defined in § 1-507(D)(3) as “a permanent repository for holding digital data that retains its content until purposely erased, even when electrical power is removed” and applies “to electronic case records, administrative records and regulatory case records in the custody of judicial entities in Arizona, as defined by Supreme Court Rule 123.” Section 1-507(H) also contains a section that addresses the electronic archives of closed cases in limited jurisdiction courts in recognition of the challenges unique to those courts, given the types of records and the more limited resources of those courts.

The workgroup concluded that the current language of the ACJA as to storage requirements sufficiently addresses the policy questions it was charged with answering. The ACJA sections reviewed here are flexible enough to account for new and existing technologies and the ever-increasing volume of digital evidence that will need to be stored. There is nothing in the storage-related provision of the ACJA, or any other provision of the sections cited herein, that would prevent a court from accepting evidence electronically submitted, regardless of whether it was submitted on a compact disc, by email, or through information sharing on the cloud. The workgroup recommends however, that once received by the court, digital evidence should be stored in the format



in which it was received, unless it is an electronic document. *See* ACJA § 1-507(D)(1).

Preservation

The ACJA does not clearly distinguish between storage and preservation, and while it defines the former, it does not define the latter. Storage requirements are set forth in ACJA § 1-507(D)(3), which does not discuss preservation. Preservation is directly addressed in ACJA § 1-507(D)(5)(c) and (f). Subsection (c) addresses preservation of records primarily by referencing the state retention schedules, specifically stating:

“Records generated by or received by courts shall be preserved in accordance with the applicable records retention schedule. Case records required to be submitted to Arizona State Library, Archives, and Public Records (ASLAPR) shall meet the submittal requirements specified by ASLAPR at the time of submittal, regardless of storage medium. Records destruction is subject to the notification requirements of ASLAPR.”

Collectively, subsections (d), (e), and (f) require the courts to employ various procedures, including refreshing electronic records, replacing or upgrading systems to ensure records do not become “obsolete,” and using backward-compatible software to

address the challenge of providing access to electronic records over a long period of time.

Thus, it is likely that the distinction between storage and preservation in the ACJA is that the term “storage” suggests a shorter and more immediate time frame, while the term “preservation” suggests a longer and more enduring time frame.

Regardless of the time frame involved, the storage and preservation processes are compatible. The main challenge of preservation is maintaining the accessibility of records, including digital evidence, with minimal alteration, over a long period of time. The workgroup determined these challenges were more closely aligned with the policy questions addressed by the Storage and Management Workgroup. Through workgroup meetings and full task force meetings, this overlap was discussed broadly with the task force and with the Storage and Management Workgroup. The Formats Workgroup supports the recommendations of the Storage and Management Workgroup as to the setting of minimum requirements for any digital evidence storage and management solution adopted by the AOC or a local court.



Storage and Management Workgroup Report

Policy Questions

- Should digital evidence be stored locally, offsite, or using cloud services and how long and in what manner should such evidence be retained?
- Should management of digital evidence possessed by courts be centralized or decentralized considering technology costs, expertise, and infrastructure necessary to manage it?

Summary

The Storage and Management Workgroup was tasked with addressing the following policy questions:

- “Should digital evidence be stored locally, offsite, or using cloud services and how long and in what manner should such evidence be retained?”
- “Should management of digital evidence possessed by courts be centralized or decentralized considering technology costs, expertise, and infrastructure necessary to manage it?”

The digital world is not new to courts. For nearly a generation, courts have used and managed digital documents, digital recordings, e-filing, and, to a much lesser degree, digital evidence. Currently in Arizona, digital evidence is offered into evidence in a physical form, such as a photo, a smart phone screen shot transferred to paper, or a document or video captured on a compact disc or other electronic media storage device. In Arizona, judges, clerks of court, and court administrators apply existing rules addressing technology to constantly evolving technology. For the most part, it works. However, the rapid increase in offering digital evidence in court is very real, particularly given the exponential growth in law enforcement body-worn cameras, digital video captured by cell phones, security cameras, and other digital media generated from Amazon Echo, Google Home, traffic control systems, and other devices that make up the Internet of Things.

The workgroup recognizes most courts are just beginning to experience the increase in the volume and types of digital evidence they are required to manage. Fortunately, for planning purposes, courts are at the bottom of the evidence screening funnel. For example, in criminal cases, law enforcement, prosecutors, and defense attorneys must review and manage many times the volume of digital evidence than ultimately is deemed to be



relevant and admissible in a case, or even that is marked as an exhibit in a case. There is, however, a rapid increase in the submission of digital evidence in court, requiring courts to implement policy and technical standards that are flexible enough to accommodate storage needs tomorrow that are not measurable or predictable today.

The workgroup concluded that the policy decisions regarding whether management of digital evidence should be centralized or decentralized and whether storage should be local, off-site, or in the cloud should be guided by a set of technical requirements and policy considerations discussed in this workgroup report.

Arizona establishes technical requirements and policy through the Arizona Code of Judicial Administration (ACJA). For example, the ACJA establishes minimum technical requirements for Electronic Reproduction and Imaging of Court Records (Section 1-504); Enterprise Architectural Standards (Section 1-505); Filing and Management of Electronic Court Documents (Section 1-506); and Protection of Electronic Case Records in Paperless Court Operations (Section 1-507). The workgroup was not tasked with establishing and did not establish, technical requirements, per se, for the storage and management of digital evidence; however, below is a list of suggested minimum requirements to consider in addressing those issues.

Suggested Requirements

The workgroup recommends the following set of minimum technology requirements for any digital evidence storage and management solution used by Arizona courts—centralized or decentralized.

1. Single Solution. Whenever possible, a single-source solution for the storage and management of all digital material acquired by, generated by, and stored with the judiciary should be acquired.

2. Solution Integration. Whenever a single solution is not available or cannot be feasibly acquired, the solutions adopted must have the ability to integrate with other software solutions to reduce the need for numerous applications to store and manage not just digital evidence, but all digital material.

3. Media Type. Any storage and management solution adopted must be able to accept all types of digital media and files. The portion of this report that details the input of the Digital Formats Workgroup thoroughly discusses the current ACJA requirements related to standardized formats for all digital evidence submitted to a court. This workgroup supports the recommendation of the Digital Formats Workgroup regarding standardized formats as a default requirement, with courts having discretion to allow submissions of digital evidence in a non-standard, proprietary form when the interest of justice requires,



as long as a native player is provided with the submission of the digital evidence.

The adoption of new digital evidence storage and management solutions will likely require changes to the rules surrounding what types of content a court is required to store as well as how that content is to be received by a court (e.g., admitted versus tendered evidence or redacted versus un-redacted versions of digital evidence). Such issues must be considered and resolved parallel to the decision-making process for adopting a new solution.

4. Sealing, Restricting, and Redacting.

Any software solution for the storage and management of digital evidence must be able to mark digital evidence as sealed or restricted from general access to account for redaction or other protection of confidential or sensitive information. Further, any solution must have capabilities for redaction in the rare circumstances a court orders the clerk of court to redact a copy of digital evidence before making a copy of the evidence available for general viewing. These capabilities are imperative to meeting the requirements of protecting evidence not available for general viewing in accordance with law.

5. Security. Any hardware and software solutions adopted to store and manage digital evidence must meet the most current cyber security requirements as set forth in the ACJA for all types of digital

evidence. Those solutions must also be capable of meeting ever-evolving cyber security standards.

6. Data Backup and Recovery. All hardware and software solutions must meet the data backup and recovery requirements set forth in the ACJA.

7. Authentication and Audit Trails.

Software solutions must be able to provide the necessary metadata to authenticate the digital media and establish an audit trail for purposes of authenticating and establishing the reliability of the evidence. In considering whether a software solution meets this requirement, the deciding authority must take into consideration the requirements of rules of procedure and rules of evidence to ensure the software does not alter the digital evidence in the mechanics of uploading, retrieving, viewing, or retaining the material.

8. Retention. All hardware and software solutions must be capable of storing and preserving digital evidence in the format submitted for the applicable retention periods as established by ACJA §§ 2-101, 2-201, 3-402, 4-301, and 6-115, and any other retention schedules applicable to court records.

9. “Physical Digital” Security. Currently, digital evidence submitted to a court via a physical format, such as a CD, cannot be connected to network computers (e.g., Arizona Justice Information Network



(AJIN) or Criminal Justice Information Systems (CJIS) computers). This currently prevents such evidence from being uploaded to case management systems for storage and for use in court hearings and trials. Any digital evidence storage and management solution should include a safe pathway to eliminate the need to store digital evidence in physical formats instead of electronically.

10. Public Access. All software solutions must meet the requirements for user access as set forth in Rule 123, Arizona Rules of Supreme Court, and ACJA § 1-604, if the application will be accessible via remote electronic access. This includes protections afforded to media designated as confidential, sealed, or otherwise restricted from public access.

11. Viewing. Any software solution adopted for the storage and management of digital evidence must allow a user to preview the content of the evidence in the application while searching or indexing. As an alternative, the software solution must allow for some type of description of the evidence beyond what a file name provides. Such functionality is for the purposes of ease of searching for and indexing digital evidence.

Additional Considerations

The workgroup is aware that economies of scale and the limited capacity of many courts to store and manage digital evidence locally may necessitate that digital evidence storage

and management solutions be centralized versus decentralized. However, who should store and manage digital evidence—local courts or more globally as part of a centralized solution—is not the whole of the question. There is not a one-size-fits-all solution to the question of digital evidence storage and management. Any court that can meet the minimum technical requirements set forth in the ACJA should be able to store and manage its digital evidence locally if it wishes to do so.

The workgroup further recommends that the following additional considerations be a part of a local court’s analysis of whether to be a part of a centralized solution or to adopt a decentralized storage and management solution:

- **Capacity to Manage Locally (Cost and Technology).** The fiscal challenges and technical abilities of local courts must be considered. Even with a centralized system, local courts will be required to have the operating power and equipment to connect with the centralized system. Such needs ultimately will require budget increases that often are difficult to acquire from local funding sources. Moreover, local court staff will need to quickly acquire and constantly update the skills to enter and retrieve digital material from the centralized system throughout the time a legal matter is pending and retained with the court.
- **Bandwidth.** Changes and improvements to digital evidence storage and management solutions likely will come



with a greater need for bandwidth, particularly when the storage and management system is centralized at an off-site location or in the cloud. Bandwidth issues continue to be a hurdle for local courts, even in the most urban areas. In making decisions about storage and management solutions, it is imperative that the solution adopted will be functional in each court. Limited or insufficient bandwidth that impedes the ability to upload and retrieve digital evidence so that it can be used quickly and effectively will be a detriment to day-to-day court proceedings as well as public access.

- **Resource Capabilities.** Assessment of the magnitude of the impact of electronically storing digital evidence is imperative. Moreover, adoption of a storage and management solution that is capable of expansion, can remain integrated with new versions of other software, and that will integrate with later-acquired software is necessary for local courts to effectively serve the parties and the public.
- **Self-Represented Litigants.** For some time, courts, counsel, and prosecution and defense agencies have dealt with redaction of confidential or otherwise restricted information in evidence offered in court of all types. This may not be true, however, for self-represented litigants, who may lack the knowledge of the legal requirements or lack the tools and abilities to comply with redaction requirements.

Courts are increasingly facing issues related to the submission of digital media-based evidence by self-represented litigants who lack the knowledge, tools or ability to comply with redaction requirements. It may be that future technology advances will help resolve these important issues. For now, however, the AOC should look to determine what efforts for self-represented litigants may be appropriate to ensure that they do not submit digital evidence containing confidential or otherwise restricted information, recognizing such efforts should not place court personnel in a position of providing legal advice or improperly assisting a specific party. At a minimum, the workgroup recommends the AOC develop resource guides for self-represented litigants or templates for local court use that include information on requirements surrounding redaction, standardized formats, converting, submitting, and using digital evidence in the court.

Other Issues

The workgroup was charged with policy questions that focus on what to do once digital evidence is received by the court—what could be referred to as the “back end” of the process of digital evidence after it crosses the threshold from party to the court. Limited jurisdiction courts are seeing self-represented litigants in small claims, eviction, debt collection, or other cases where the amount in controversy may be modest (although critically important to the parties) who wish to



offer in evidence smart phone photos, recordings, or other digital evidence from portable or home devices that are not reformatted and submitted via a CD. It was noted that the Superior Court also faces the same challenges in certain case types. Guidance should be developed for litigants presenting and courts managing this type of evidence.

The workgroup recommends that the AOC work with local courts in developing policies and procedures and, where feasible, implementing technological solutions, for cases in limited jurisdiction courts to account for the specific needs in such cases. In particular, the following areas were identified for consideration:

- **Courtroom recordings.** Many courtrooms are equipped with digital recording devices used to record audio, video, or both. Ideally, digital evidence played in limited jurisdiction courts would be captured and preserved by the court's digital recording device. Rule changes allowing this in certain cases may be needed.
- **Courtroom presentation.** There needs to be a manner of connecting litigant technology to courtroom technology or

otherwise using courtroom technology to capture presentation of digital evidence presented in court by litigants, particularly self-represented litigants, for admission into the record and meeting evidence retention requirements.

- **Transition to a new digital solution.** The implementation of storage and management solutions for digital evidence will require time for acquisition, implementation, and training on its use. The difficulty will be compounded by the need to timely tackle a fast-approaching problem using new, emerging, and constantly-evolving technology and training court staff and judges on how to use that technology. Information on submitting and presenting digital evidence for litigants, particularly self-represented litigants, is also necessary.
- **Cost recovery.** The cost of new technology is always present in this discussion. The workgroup recommends establishing a fee, where appropriate and permissible, for submission of digital exhibits. Such a fee could offset the financial impact associated with digital evidence storage and management solutions.



Rules Workgroup Report

Policy Questions

- Should court rules governing public records be revised to address access and privacy concerns, including for victims, non-victim witnesses, and other identifying information often included in video evidence?
- Should new or amended rules on chain of custody evidence be developed for handling court digital evidence?

Discussion

The Rules Workgroup was tasked with addressing the following policy questions:

- “Should court rules governing public records be revised to address access and privacy concerns, including for victims, non-victim witnesses, and other identifying information often included in video evidence?”
- “Should new or amended rules on chain of custody evidence be developed for handling court digital evidence?”

The Rules Workgroup was guided by these questions and, by definition, built on the work of the Formats and Storage and Management Workgroups.

In substance, digital evidence is not new or different evidence. Digital evidence involves the same types of evidence courts, attorneys, and parties have always handled. It is the form of the evidence and media the evidence is produced on that has changed; for instance, reports are no longer printed on paper, photos are no longer chronicled on film, videos are no longer recorded on a Video Home System (VHS) tape or digital video disc (DVD), and audio recordings are no longer captured on an audio tape or compact disc (CD). Instead, this evidence is saved and stored in some type of digital format, often a format that is stored on a portable device or on a server, either locally or in the cloud.

The most significant issue regarding digital evidence that may necessitate rule changes is volume. The volume of digital evidence will create the need for a significant increase in digital storage capacity and require additional time for redactions, such as that created by body-worn cameras and other footage captured on digital recording devices to protect victims’ rights and privacy interests of citizens.

Among others, the Rules Workgroup reviewed the Arizona Rules of Evidence, Arizona Rules of Civil Procedure, Arizona Rules of Criminal Procedure, Arizona Rules of Family Law Procedure, Arizona Rules of Protective Order Procedure, Arizona Juvenile Court Rules, Arizona Rules for Eviction Actions, Arizona Rules of Probate Procedure,



Arizona Justice Court Rules of Civil Procedure, Arizona Supreme Court Rule 123, and rules, statutes, and constitutional provisions involving victims' rights. The workgroup also reviewed relevant portions of the Arizona Code of Judicial Administration (ACJA).

The workgroup's review of the various rules of procedure revealed that current rules overall appear to be working when it comes to disclosure and submission of digital evidence for use at a hearing or trial. As such, the procedural rules do not need wholesale substantive revision to address the increasing use of digital evidence, although a few areas where revisions are necessary were identified and are discussed below. In addition, although the current rules are working, the workgroup believes that the rules need modernization to use language that includes digital media types of today and the future.

The following is a summary of the rule changes recommended by the workgroup:

1. Defining "Digital Evidence." The workgroup first proposes that there be a definition for the phrase *digital evidence*. The following definition of *digital evidence* is proposed: "Digital evidence, also known as electronic evidence, is any information created, stored, or transmitted in digital format." The workgroup recommends that this definition be added to the appropriate definition sections of the procedural rule sets.

2. Arizona Rules of Evidence. The workgroup focused its review of the Arizona Rules of

Evidence on the rules on authentication and identification (Article IX) and the rules on the contents of writings, recordings, and photographs (Article X). The workgroup concluded that the Arizona Rules of Evidence do not require any amendments, changes or additions to authenticate or identify digital evidence for use in court proceedings.

Conversely, the language and concepts in Rules 1001 through 1008 do need modernization. In particular, Rule 1001(b) limits the definition of the term "recording" to "letters, words, numbers, or their equivalent recorded in any manner." Although the workgroup recognized that the phrase "their equivalent" currently is applied to digital images and video that involve non-verbal action not involving any "letters, words, [or] numbers," it recommends the rules be updated to include the term *video* and that a definition of the term *video* be added to the rule. The workgroup considered various definitions of the term and considered the variety of digital evidence that is not a still image as contemplated by the term *photograph* defined in Rule 1001(c) and suggests as a definition: "*Video is an electronic visual medium for the recording, copying, playback, broadcasting, or displaying of audio or moving images.*" The workgroup further recommends that Rules 1002, 1004, 1007, and 1008 be amended to insert the newly defined term *video*. (See Appendix G.)

3. Arizona Rules of Civil Procedure. The workgroup notes that the Arizona Rules of Civil Procedure underwent a comprehensive



restyling in 2016, with the restyled rules taking effect January 1, 2017. *See* September 2, 2016 [Order](#) adopting Petition R-16-0010. Moreover, during the workgroup’s consideration, a rule petition was pending before the Supreme Court that would significantly change many of the civil rules surrounding discovery and disclosure. After review of the rules in place and the pending rule petition, other than perhaps to expressly use the phrase “digital evidence” and the corresponding definition, the workgroup determined that the Arizona Rules of Civil Procedure thoroughly address digital evidence head on, particularly the disclosure rules in Article V (Rules 26 through 37). Moreover, unlike the Arizona Rules of Evidence, the Arizona Rules of Civil Procedure do not address the admission of digital evidence into evidence in court.

4. Arizona Rules of Criminal Procedure. The workgroup closely reviewed the Arizona Rules of Criminal Procedure, including Rules 15.1, 15.2, 15.4, 15.5 (the disclosure rules), and Rule 22.2 (materials used during jury deliberation) to determine if any changes were needed to address the handling of digital evidence. Currently, the disclosure rules do not appear to be causing any challenges in relation to the disclosure of digital evidence, despite there not being language that specifically includes disclosure of materials or information that exists in a purely digital

format. Despite the lack of current issues, as digital evidence increases, its disclosure via electronic means is increasing versus disclosure after transfer to a tangible item such as a disc or onto a physical format like paper. The workgroup notes that Rules 15.1 and 15.2 do not contain language that includes video, digital evidence, or other electronically stored information. As such the workgroup recommends that Rules 15.1 and 15.2 be amended to include language specifically identifying disclosure of digital evidence.

In particular, the workgroup reviewed language that requires disclosure of “a list of all papers, documents, photographs and other tangible objects.”⁶ The increase in digital evidence, such as body-worn camera video and digital video, images, or other content from smart phones or other personal recording devices, are not accounted for in the specific language of the rules. The workgroup notes that, particularly as disclosure of the evidence moves more and more toward a cloud-based model, there is a need for modernization of the rules. (See Appendix H.)

Rule 22.2 addresses materials that may be used during jury deliberations. The rule refers to “tangible evidence as the court directs,” with no mention of evidence that is in a purely digital form, such as admitted evidence that has not been transferred to a tangible physical thing like a disc. Currently, in Arizona, digital

⁶ Rules 15.1(b)(5), (i)(3)(c) and 15.2(c)(3), (h)(1)(d) of the Arizona Rules of Criminal Procedure in place as of the date of this report, before the January 1, 2018 effective date of amendments to these rules.

See <http://www.azcourts.gov/rules/Rule-Amendments-from-Recent-Rules-Agenda-s> (August 31, 2017 Order adopting Petition R-17-0002).



evidence is submitted and admitted for trial after being transferred to tangible item. However, digital evidence is increasingly cloud-based, and disclosure of that evidence is increasingly becoming possible via cloud-based file sharing.

For example, prosecutors and law enforcement officers in some locations use a digital drop-box to transfer or disclose digital evidence to the defense. Another example is body-worn camera manufacturer Axon's (formerly Taser International) deployment of a cloud-based portal (evidence.com) to allow cloud sharing between law enforcement agencies and prosecutors and its ongoing development of cloud-based disclosure between prosecutors and defense counsel. This expansion of cloud-based sharing of digital evidence is quickly coming to courts. If Arizona were to adopt rules and procedures for allowing cloud-based submission and admission of digital evidence, then Rule 22.2(d)⁷ would require amendment to account for both tangible and cloud-based evidence.

The workgroup finally concluded that the above-referenced definition of digital evidence would be a benefit to the Arizona Rules of Criminal Procedure and recommends addition of that definition in Rule 1.4.

5. Arizona Rules of Family Law Procedure.

The workgroup reviewed the disclosure and

discovery rules of family law procedure. The workgroup recommends that a change be made to Rule 49 to include a subsection on electronically stored information. Several subsections of Rule 49 refer to disclosure and discovery of such information, but the rule does not currently provide guidance for parties in relation to a duty to confer regarding the form in which the information will be produced or resolution of disputes related to electronically stored information. As property records and financial records are increasingly available via the Internet and as more and more people manage finances electronically, having guidelines and procedures for managing this type of discovery will be increasingly beneficial to parties and the courts. (See Appendix I.)

The workgroup also understands that, pursuant to [Administrative Order No. 2016-131](#), the Arizona Supreme Court established a task force to “review the Arizona Rules of Family Law Procedure to identify possible changes to conform to modern usage and to clarify and simplify language . . . with the goal of submitting a rule petition by January 10, 2018, with respect to any proposed rule changes.” The Arizona Rules of Family Law Procedure are based on the Arizona Rules of Civil Procedure, but “as they existed before the 2016 amendments” effective January 1, 2017. Ariz. R. Fam. L.P. 2(A). Accordingly, the workgroup would encourage the task force

⁷ Amendments to the Arizona Rules of Criminal Procedure were adopted, effective January 1, 2018, which change Rule 22 to Rule 22.2, specifically Rule 22.2(a)(4). See <http://www.azcourts.gov/rules/>

[Rule-Amendments-from-Recent-Rules-Agenda-s](#) (August 31, 2017 Order adopting Petition R-17-0002).



addressing the Arizona Rules of Family Law Procedure to, in its work, not only consider the amendments to the updated Arizona Rules of Civil Procedure but also ensure digital evidence is expressly addressed.

6. Arizona Rules of Protective Order Procedure. Increasingly, persons seeking orders of protection and injunctions against harassment come to court with some form of digital evidence to demonstrate to the court the need for the protective order. The workgroup recommends that Rule 36 of the Arizona Rules of Protective Order Procedure, addressing admissible evidence in contested protective order hearings, be modernized to include digital and electronic evidence specifically. (See Appendix J.)

7. Arizona Rules of Probate Procedure. The workgroup noted that the Arizona Rules of Probate Procedure incorporate by reference Rules 26-37 of the Arizona Rules of Civil Procedure. As such, the rules address electronically stored information; therefore, no amendments are recommended. The Arizona Rules of Probate Procedure are heavily driven by statutory requirements. The workgroup notes that, if statutory changes occur in the future, then rule changes would need to follow. Future rule changes should keep in mind the changing landscape of digital evidence and its role in legal proceedings.

8. Arizona Rules of Juvenile Court. The current disclosure and discovery rules, Rule 16 (for delinquency and incorrigibility proceedings); Rule 44 (for dependency,

guardianship and termination of parental right proceedings); and Rule 73 (for adoption proceedings), do not include any reference to digital or electronic evidence. The workgroup acknowledges that, despite the lack of such specificity, the rules currently appear to work. However, considering the increasing volume of digital evidence, including in delinquency matters like adult criminal matters, a technical amendment that would modernize the language of the rule is recommended.

For these reasons, the workgroup recommends that a technical change be made to Rule 16(B)(1)(d) and 16(C)(3)(c) of the Rules of Juvenile Court to include reference to digital and electronic evidence. (See Appendix K.) For similar reasons, the workgroup also recommends similar technical changes to include digital evidence and electronically stored information be made to Rules 44 and 73. (See Appendix K.)

9. Arizona Justice Court Rules of Civil Procedure. The workgroup's review of the Arizona Justice Court Rules of Civil Procedure, particularly Rules 121-127, demonstrated that electronically stored information and digital evidence are adequately addressed. This rule set both directly addresses electronically stored information and incorporates some of the Arizona Rules of Civil Procedure that similarly address disclosure and discovery of such information. Moreover, Rule 125(a) contains language that includes digital evidence. The workgroup has no



recommendation for amendments or a new rule in this rule set.

10. Arizona Rules on Eviction Actions. Like the Arizona Rules of Protective Order Procedure, the Arizona Rules on Eviction Actions do not need substantive changes to address digital evidence. However, the workgroup recommends a technical amendment to include digital evidence or electronically stored information in Rule 10, which addresses the types of content that must be disclosed. (See Appendix L.)

The ACJA.

The workgroup reviewed several sections of the ACJA and concluded the code currently is an excellent framework for requirements pertaining to digital evidence. The Digital Formats and Storage and Management Workgroups were tasked with policy questions more directly aligned with the ACJA provisions that address digital evidence. Throughout its review, the Rules Workgroup provided input and feedback to those workgroups as they reviewed ACJA sections. The Rules Workgroup has no recommendations beyond those made by the Digital Formats and Storage and Management Workgroups. The following describes the thought processes regarding relevant ACJA sections and any overlap with procedural rules discussed above.

Section 1-504 provides standards that apply to all records imaged by courts, including the methods used to create or reproduce records electronically. In particular, § 1-504 designates the methods and formats that must be used to

maintain and preserve electronically stored and archived records and the reproduction of such records. This section also covers general requirements for security to ensure evidence is not destroyed or altered. In addition, § 1-504 addresses accessibility. Courts must ensure that the public is afforded reasonable access to records, consistent with Arizona Supreme Court Rule 123, via the public access portal managed by the Arizona Administrative Office of the Courts, at a minimum. Further, courts are required to ensure records sealed or designated confidential by rule, law, or court order contain appropriate metadata to enable any electronic document management system (EDMS) in which they reside to protect them from inappropriate access.

Section 1-506 provides standards for the filing and management of electronic court documents. Subsection B provides the purpose as follows: “This section provides administrative requirements, standards and guidelines to enable Arizona courts to implement a uniform, statewide, electronic filing system and to achieve the reliable, electronic exchange of documents within the court system as well as between the court and court users.” In addition, ACJA § 1-507 provides standards for the protection of electronic case records. These provisions address most types of digital evidence, including the formatting and authentication of such evidence.

Sections 1-604 and 1-606 provide standards addressing the accessibility to digital court records, which would include digital



evidence. Both code sections address the ability to access court records remotely.

In summary, the Rules Workgroup does not have recommendations, independent from those of the other workgroups, regarding changes to the ACJA.

Privacy and Digital Evidence.

Victims have concerns regarding their privacy in the digital age that differ significantly from the issues faced by courts and attorneys. Crime victims are pulled into the inner workings of the criminal justice system by the unlawful acts, often physically and emotionally harmful, of others. In addition, understandably, victims' knowledge of the criminal justice system and the courts may be limited. It is not uncommon for victims to become increasingly concerned with privacy, especially as it related to images and information captured via digital devices like body-worn cameras, cell phone video, digital photographs of their injuries, crime scenes, and autopsies. Particular sensitivity surrounds the ability of the public to obtain this digital evidence through court filings, evidence received in court, and the record of court proceedings more generally.

Arizona's Victims' Bill of Rights guarantees crime victims a right to justice, due process, and to be treated with fairness, respect, dignity, as well as to be free from intimidation, harassment, and abuse. Ariz. Const. art. II § 2.1(A)(1). The workgroup also recognizes that the open records policies applicable in Arizona's courts may cause victims concerns.

The Arizona Supreme Court has enacted rules related to victims' rights. For example, Rule 39 of the Arizona Rules of Criminal Procedure provides an avenue for victims to seek protection of their identity and location. Rule 39 is cross-referenced in several rules related to discovery and disclosure. Arizona Supreme Court Rule 122 includes consideration of victim's rights in relation to broadcasting of trials. And Arizona Supreme Court Rule 123 limits public access to court records when confidential or sensitive information is involved and where access is otherwise restricted by statute.

It may be that an increased use of digital evidence may result in an increase in public requests, including media requests, for access to such digital evidence which, in turn, may implicated victims' rights and privacy concerns. In addition, the workgroup recognizes that although the various rules mentioned above currently work to protect victims' rights, victims continue to advocate for additional protections.

The workgroup was charged in part with reviewing rules governing public records to determine if changes were warranted to address access and privacy concerns. Based on its work, the workgroup determined generally that Arizona courts treat digital evidence like traditional evidence and that current policies and procedures applicable to all types of evidence (including digital evidence) are working. However, the workgroup notes that Arizona Supreme Court Rule 123 does not consistently address digital evidence,



including exhibits, received by a court. The workgroup recommends that Rule 123 be amended to ensure that it addresses digital evidence, including exhibits, and that the portions of the rule that govern public access, particularly remote electronic access, be amended to ensure sufficient protection of victims' rights and privacy concerns.

A related issue is that digital evidence regularly (but incidentally) captures images of individuals and their property, including personal identifying information. Often this information and these images are captured in public places where individuals do not have privacy rights as parties or as victims. The ease of using facial recognition software or access to databases that may lead to identification of these individuals may create concerns

regarding expectations of reasonable anonymity. Moreover, often this information and these images are not relevant to why the digital evidence is being offered in a specific matter and may be concerning to bystanders, given issues of safety, identity, contact information, etc. Therefore, the workgroup also recommends that the AOC (a) work with local courts, prosecuting and defending agencies, law enforcement groups, media organizations, and other interested individuals and organizations to develop consistent policies and approaches addressing these issues, and (b) consider how to handle digital evidence being introduced in evidence by self-represented litigants that may not be redacted.



APPENDIX A—Administrative Orders

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
ESTABLISHMENT OF THE TASK)	Administrative Order
FORCE ON COURT MANAGEMENT)	No. 2016 - <u>129</u>
OF DIGITAL EVIDENCE AND)	
APPOINTMENT OF MEMBERS)	
_____)	

Litigation increasingly involves digital evidence, particularly from audio and video recording devices. Technology used to create, store, and display information has changed dramatically over the years and will continue to do so in the future. More recently, the creation of digital video evidence through the use of smart-device cameras, body-worn cameras, and other public and private surveillance equipment has grown exponentially. Courts responsible for managing digital evidence face unique challenges related to receiving, retrieving, accessing, formatting, converting, and retaining digital evidence as well as protection and disposition issues.

Earlier this year, the Joint Technology Committee (JTC) of the Conference of State Court Administrators, the National Center for State Courts, and the National Association for Court Management published the “JTC Resource Bulletin: Managing Digital Evidence in the Courts.” The JTC Resource Bulletin recommends that state court leadership develop policies for court management of digital evidence. This Bulletin provides a good framework for discussion and relevant policy development.

Policy questions described in and suggested by the Bulletin include:

1. Should court digital evidence be stored locally, offsite, or using cloud services and how long and in what manner should such evidence be retained?
2. Should management of court digital evidence be centralized or decentralized considering technology costs, expertise, and infrastructure necessary to manage it?
3. Should court rules governing public records be revised to address access and privacy concerns, including for victims, non-victim witnesses, and other identifying information often included in video evidence?
4. Should new or amended rules on chain of custody evidence be developed for handling court digital evidence?
5. Should standardized acceptable formats, viewing, storage, preservation, and conversion formats or technical protocols for digital evidence be adopted for all courts?



Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that:

ESTABLISHMENT: The Task Force on Court Management of Digital Evidence is established.

1. PURPOSE: The Task Force shall review the questions presented above and make recommendations on each. The Task Force shall review the JTC Resource Bulletin for additional information on these and other policy issues, as well as any other relevant journals, publications, or other research related to this topic and make recommendations as it deems appropriate.

The Task Force shall submit its report and recommendations to the Arizona Judicial Council not later than October 1, 2017, and file a rule change petition not later than January 10, 2018, with respect to any proposed rule changes.

2. MEMBERSHIP: The individuals listed in Appendix A are appointed as members of the Task Force effective immediately, and ending July 31, 2018. The Chief Justice may appoint additional members as may be necessary.

3. MEETINGS: Task Force meetings shall be scheduled at the discretion of the Chair. All meetings shall comply with the Arizona Code of Judicial Administration § 1-202: Public Meetings.

4. STAFF: The Administrative Office of the Courts shall provide staff for the Task Force and shall assist the Task Force in developing recommendations and preparing any necessary reports and petitions.

Dated this 6th day of December, 2016.

SCOTT BALES
Chief Justice

Attachment: Appendix A



Appendix A

Membership List Task Force on Court Management of Digital Evidence

Chair

Vice Chief Judge Samuel A. Thumma
Arizona Court of Appeals, Division One

Members

Mike Baumstark
Deputy Administrative Director
Arizona Supreme Court
Administrative Office of the Courts

David Bodney, Partner
Ballard Spahr

Judge Kyle Bryson
Presiding Judge
Superior Court in Pima County

Colleen Clase
Senior Counsel
Arizona Voice for Crime Victims

Jessica Cortes
Court Administrator
City of Flagstaff Municipal Court

Judge David Cunanan
Superior Court in Maricopa County

Karen Emmerson
Deputy Public Defender
Maricopa County

Judge Maria Felix
Justice of the Peace
Pima County Consolidated Court

Jeff Fine
Justice Court Administrator
Maricopa County Justice Courts

Jennifer Garcia
Assistant Federal Defender
Federal Public Defender
District of Arizona

Judge Charles Gurtler
Presiding Judge
Mohave County Superior Court

Aaron Harder
Bureau Chief - Vehicular Crimes
Maricopa County Attorney's Office

Hon. Michael Jeanes
Clerk of Court
Superior Court in Maricopa County

Michael Kurtenbach
Executive Assistant Chief
Community Services Division
City of Phoenix Police Department

Zora Manjencich
Assistant Attorney General
Office of the Attorney General



James Melendres, Partner
Snell & Wilmer

Michael Mitchell
Special Assistant to the Chief Deputy
Maricopa County Attorney's Office

Jamie Sheppard
Senior Project Manager
E-Discovery Services & Strategy
Perkins Coie

Lt. Col. Heston Silbert
Deputy Director
Department of Public Safety

Judge Don Taylor
Chief Presiding Judge
City of Phoenix Municipal Court



IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
APPOINTMENT OF MEMBERS TO)	Administrative Order
THE TASK FORCE ON COURT)	No. 2017 - <u>27</u>
MANAGEMENT OF DIGITAL)	(Affecting Administrative
EVIDENCE)	Order No. 2016-129)
_____)	

Administrative Order No. 2016-129 established the Task Force on Court Management of Digital Evidence. The Order provides that the Chief Justice may appoint additional members as may be necessary. Therefore, after due consideration,

IT IS ORDERED that Inspector William Long, Department of Public Safety, and Laura Keller, Arizona State Library, Archives and Public Records, be appointed as members of the Task Force on Court Management of Digital Evidence for a term beginning upon signature of this Order, and ending July 31, 2018.

Dated this 9th day of March, 2017.

SCOTT BALES
Chief Justice



APPENDIX B-Arizona Code of Judicial Administration § 1-504

ARIZONA CODE OF JUDICIAL ADMINISTRATION

Part 1: Judicial Branch Administration

Chapter 5: Automation

Section 1-504: Electronic Reproduction and Imaging of Court Records

A. Definitions. In this section, the following definitions apply:

“ANSI/AIIM” means the American National Standards Institute and the Association for Information and Image Management. These two organizations are responsible for promoting and facilitating voluntary consensus standards and conformity assessment systems and promoting their integrity.

“Archival” means that point in the electronic document management process when the subject matter (for example, a case) associated with a document is no longer subject to modification, related documents are purged and the long-term or permanent copy of the document is created and maintained so as to reasonably ensure its preservation according to approved records retention schedules.

“Backward compatible” means that a document storage system is compatible with earlier models or versions of the same product. Software is backward compatible if it can use files and data created with an older version of the same software program. Hardware is backward compatible if it can run the same software as the previous model.

“Consultative Committee on International Telegraphy and Telephony” (CCITT) means an organization that sets international communications standards.

“Electronic Document Management

System” (EDMS) means a collection of computer software application programs and hardware devices that provide a means of organizing and controlling the creation, management and retrieval of documents through their life cycle. It may include workflow software which enables organizations to define routing and processing schemes to automate the business processes for document handling. It may also include imaging and optical character recognition (OCR) software and devices to support the capture, storage, and retrieval of document images from paper (“imaging”).

“Electronic record” means any record that requires the aid of a computer to read the record.

“Imaging” means the process of creating electronic copies by electronically photographing a document, photograph, color slide or other material using a scanner. Scanners record images digitally rather than on paper or film.

“Imaging system” means the collection of computer software application programs and hardware devices that provides a means to capture, store, and retrieve document images from paper. An imaging system is often a part of an EDMS.

“Index” means descriptive locator information about a digital document that allows the user to accurately identify it on electronic storage media. An index in an EDMS is an electronic file distinct from



the collection of documents it catalogues. The act of providing the descriptive locator information is referred to as “indexing.” For example, a document might be “indexed” by its case number, party names, document type and date filed.

“Media” means physical devices for storing data and images. It includes write once/read many (WORM) compact discs, compact disc-read only memory (CD-ROM), and digital video disc (DVD).

“Metadata” means descriptive information about a document that is not displayed within the viewable content of the document but is an inherent part of the document. Document management systems rely on metadata for search indexes.

“Migration” means the process of upgrading to new technologies while preserving accessibility to existing records. It includes translating one electronic data format to another when a new computer or data management system is incompatible with the existing system. It also means the process of moving electronic data from one storage device or media to another.

“Non-proprietary” means material (particularly software) that is not subject to ownership and control by a third party. “Proprietary,” on the other hand, generally refers to vendor-owned material whose specifications are not public.

“Open system standard” means a published and commonly available interface specification that describes services provided by a software product. As a result, the specification is available to anyone and evolves through a consensus process that is open to the entire industry.

“Pixel” means picture element and is the smallest element of a display surface that can be independently assigned color or intensity. The number of pixels determines the sharpness or clarity of an image and in imaging is often expressed in dots per inch (dpi).

“Records” means the electronic or imaged documents and files in an EDMS.

“Refresh” means the copying of an image or a whole storage medium for the purpose of preserving or enhancing the quality of the images.

“Reproduction” means the process of making an identical copy from an existing document on the same or different media.

“Structured query language” (SQL) means a standardized query language for requesting information from a database.

“Tagged image file format” (TIFF) means a format for storing images on computers. It includes a standardized header or tag that defines the exact data structure of the associated image.

B. Applicability. These standards shall apply to all records imaged by courts, including the methods used to electronically reproduce or create records and also the methods and formats used to electronically store, archive and reproduce records for the purpose of maintenance and preservation.

C. General Requirements

- 1 Courts shall use the Commission on Technology-approved EDMS or one approved by COT as an exception. Exception EDMSs shall not employ proprietary designs, formats, software or media or require use of non-standard devices to access records.



2. Courts shall employ indexing procedures and security procedures that prevent unauthorized modification or deletion of records.
3. Courts shall establish written procedures to ensure imaged records accurately replicate the source document.

D. Imaging and Indexing Requirements

1. The imaging system shall output Portable Document Format (PDF) or TIFF.
2. The imaging system shall support scanning densities of 200 to 600 pixels (dots) per inch or higher.
3. Scanning quality must adhere to the standards presented in *Recommended Practices for Quality Control of Image Scanners* (ANSI/AIIM MS44-1988 (R1993)).
4. The imaging system must support the current CCITT image compression/decompression Group 3 or Group 4 techniques without proprietary alterations to the algorithm. If the use of a proprietary compression algorithm is unavoidable, the system must provide a gateway to either Group 3 or Group 4 standards (or to a compression standard subsequently adopted by ANSI/AIIM).
5. The imaging system shall use standard relational database technology to store the index and provide access using ANSI SQL.
6. Image processing procedures shall include population of an index as well as an index entry verification step, to ensure that each image is easily and accurately retrievable.

7. Image processing procedures shall include a quality assurance step to ensure each scanned image contains high fidelity to the paper original. Documents that become unreadable as a result of the scanning process shall be re-scanned immediately.
8. The indexing process shall also identify documents which are subject to approved criteria for purging in ACJA § 3-402 prior to performing any conversion to a permanent archival format.
9. Courts shall meet the requirements of ACJA § 1-507 prior to destroying any paper document associated with an image.

E. Accessibility. Courts shall ensure that the public is afforded reasonable access to records, consistent with Supreme Court Rule 123 via the public access portal managed by the Administrative Office of the Courts, at a minimum. Courts shall ensure that records that are sealed or confidential by rule or law contain appropriate metadata to enable any EDMS in which they reside to protect them from inappropriate access.

F. Migration Requirements for Courts Having Standalone or Exception EDMSs

1. Courts shall ensure accessibility with a planned migration path so devices, media and technologies used to store and retrieve records are not allowed to become obsolete and are promptly replaced or upgraded.
2. Courts shall ensure that any new equipment or software for an existing imaging system is backward compatible and shall obtain a vendor certification that the system will



convert 100% of the image and index data to the new system so access to existing records is never impeded.

3. Courts shall periodically refresh electronic images in order to ensure their accessibility for as long as the applicable record retention schedules require. These procedures may require recopying of images to new media.

G. Retention and Storage Requirements

1. All media used for storing records must comply with accepted computer industry standards.
2. The manufacturer's recommendation for storage and use of storage media shall dictate the criteria for storing and using such media.
3. Courts shall annually inspect and test a random sampling of media used for storing records to verify its good condition.
4. Courts shall use only non-reusable media for storing records for archival purposes.
5. Courts shall ensure that records generated by or received for the courts are preserved in accordance with the

applicable records retention schedules and security requirements.

H. Disconnected Scanning Requirements for Limited Jurisdiction Courts

1. Courts shall complete the necessary index and quality assurance steps, including verification of each document's legibility and appropriateness of metadata, required to commit the scanned document to the central EDMS maintained by the AOC.
2. Courts shall change the case status code for each active case that becomes subject to no further action to "Completed" within any case management system that is integrated with the central EDMS maintained by the AOC.
3. Courts shall use the AOC's designated event code when scanning closed records for archival purposes on the central EDMS maintained by the AOC. All documents associated with a closed case in a limited jurisdiction court shall be scanned as a single, multi-image file.

Adopted by Administrative Order 2001-11 effective January 11, 2001. Amended by Administrative Order 2012-05, effective January 11, 2012.



APPENDIX C-Arizona Code of Judicial Administration § 1-506

ARIZONA CODE OF JUDICIAL ADMINISTRATION

Part 1: Judicial Branch Administration

Chapter 5: Automation

Section 1-506: Filing and Management of Electronic Court Documents

A. Definitions. In this section the following definitions apply:

“Browser” means a computer application that interprets hypertext markup language (HTML), the programming language of the Internet, into the words and graphics that are viewed on a web page.

“Electronic document management system (EDMS)” means a collection of computer software application programs and hardware devices that provides a means of organizing and controlling the creation, management and retrieval of documents through their life cycle. It may include workflow software which enables organizations to define routing and processing schemes to automate the business processes for document handling. It may also include imaging and optical character recognition (OCR) software and devices to support the capture, storage, and retrieval of document images from paper (“imaging”).

“Electronic filing (e-Filing) system” means a collection of software application programs used to transmit documents and other court information to the court through an electronic medium, rather than on paper, most notably AZTurboCourt, but including local pilot systems being superseded by AZTurboCourt. An electronic filing system includes functions to send and review filings, pay filing fees, and receive court notices and information.

“Graphics document” means a picture or image (even of text) processed by a computer only as a single entity. Graphics files are not searchable by computers.

“IEC” means the International Electrotechnical Commission, an international organization that sets standards for electronics, headquartered in Geneva, Switzerland.

“ISO” means the International Organization for Standardization, a network of the national standards institutes of more than 150 countries coordinated by a central secretariat.

“Non-proprietary” means material (particularly software) that is not subject to ownership and control by a third party. “Proprietary” generally refers to vendor-owned material whose specifications are not public.

“Render” means to convert digital data from an image or text file to the required format for display or printing.

“Text-based document” means a collection of characters or symbols that can be individually manipulated but are processed collectively to comprise a document. Text-based documents are searchable by computers.

B. Purpose. This section provides administrative requirements, standards and guidelines to enable Arizona courts to implement a uniform, statewide, electronic filing system and to achieve the



reliable, electronic exchange of documents within the court system as well as between the court and court users.

C. Authority. Consistent with Rule 124, Rules of the Supreme Court of Arizona and related administrative orders, electronic filing is authorized as part of a uniform, statewide approach. All pre-existing, local electronic filing systems shall be transitioned into the statewide system, AZTurboCourt, using a timetable ordered by the supreme court in specific administrative orders.

D. Document Specifications. Documents filed or delivered electronically shall comply with the following:

1. All documents shall be preserved so that the content of the original document is rendered without any material alteration.
2. Text-based documents shall be in a format that provides for browser accessibility and high fidelity to the original and should be searchable. Documents shall be formatted in either:
 - a. PDF (Portable Document Format) version 2.x or higher;
 - b. Open Document Format for Office Applications, ISO/IEC 26300:2006 or subsequent; or
 - c. Open Office XML (OOXML), ISO/IEC 29500-1, -2, -3, -4:2008, or subsequent.
3. Hyperlinks to static, textual information or documents may be included within a document solely for the convenience of judicial officers, attorneys, and pro se litigants. Materials accessed via hyperlinks are not part of the original record since

they could become unavailable during the retention period of the document.

4. Bookmarks are allowed in documents. A bookmark shall only be used to direct the reader to another page within the same document. When multiple documents are contained within a single submittal, a separate bookmarked entry for each appended document shall be included in a table of contents.
5. Graphics, multimedia and other non-text documents may be permitted as follows:
 - a. Documents in imaged or graphic formats (for example, pictures or maps) shall be in a non-proprietary file format (for example, TIFF, GIF, or JPEG) and shall comply with ACJA § 1-504.
 - b. Other multimedia files (for example, video or audio files) shall adhere to established industry standards and shall be in a non-proprietary format (for example, MPEG, AVI, and WAV).
6. E-mail communications may be used for receipt, confirmation, and notification correspondence.
7. An electronic filing system, such as AZTurboCourt, may provide fill-in forms for routine matters. Courts may accept electronically-filed Arizona traffic ticket and complaint forms from law enforcement agencies or affidavit of service forms from process servers. The forms-based electronic filing system shall be capable of reproducing or printing the form with the data supplied by the filer, however, courts are not required



to preserve the form's text and data together in PDF. The forms-based electronic filing system shall comply with all other requirements of this section.

8. In accordance with Supreme Court Rule 124 and related administrative orders, electronic, case-related documents shall be submitted exclusively through the statewide electronic filing portal, AZTurboCourt.gov.

E. Authentication.

1. Authentication of document source. AZTurboCourt shall contain a registration system having sufficient security to verify and authenticate the source of electronically filed documents and maintain current contact information for filers.
2. Authentication of documents. AZTurboCourt shall indicate the date and time when submittal of each electronic filing occurred.
3. Maintenance of electronic documents. Any individual court maintaining electronic records shall employ local security procedures that prevent unauthorized access to, modification of, or deletion of the records. These procedures shall include all of the following:
 - a. Establishing written procedures to ensure the integrity of electronic documents, so that any copies produced may be regarded as true and correct copies of the original document;
 - b. Performing virus checking to ensure documents are free from viruses prior to storage on any

device attached to the court's data network;

- c. Employing procedures that insure the availability of at least one other copy of the electronically filed document at all times;
- d. Performing system backups at least daily;
- e. Using recording media for storing electronic records that comply with industry standards; and
- f. Using non-reusable media for archiving court records electronically.

Courts placing case documents in an EDMS controlled by the AOC meet the above maintenance requirements.

4. Filing of confidential and sealed documents. Courts shall employ standard keywords or metadata, as determined by the Commission on Technology's Technical Advisory Council, with associated security procedures to protect electronically filed or scanned confidential and sealed documents from unauthorized access.

F. Communications. The statewide electronic filing system shall:

1. Provide for electronic filing via the Internet and
2. Provide for appropriate party, attorney, arbitrator, public, and governmental entity access, in accordance with Supreme Court Rule 123, using standard browser technology.

G. Processing.



1. The statewide electronic filing system shall generate an acknowledgment receipt for electronically filed documents.
2. All case management and document management systems used by courts shall have automated interfaces with the statewide electronic filing system that will:
 - a. Provide and validate case management data;
 - b. Automatically docket e-filed documents; and
 - c. Automatically index documents as required for locating the document and facilitating integration with the case and document management systems. Indexing elements shall include, at a minimum:
 - (1) Full case number;
 - (2) Document storage identifier;
 - (3) Restricted security indicator; and
 - (4) Sealed security indicator.
3. The official court record shall be the one stored by the clerk's or court's EDMS, whether in native electronic format or scanned into the system from paper. Unless otherwise directed by the Supreme Court, each standalone EDMS shall communicate case-related documents stored locally to the AOC's central document repository and receive documents from the statewide electronic filing system, prior to implementing electronic filing in the court.
 - a. Each court imaging paper documents shall comply with ACJA § 1-504 (C) and (D) to ensure usefulness of those documents for public access.
 - b. Each court having or implementing an EDMS shall coordinate the transfer of case-related electronic documents to and from the AOC's central document repository and electronic filing portal, respectively.

H. Periodic Review. These requirements are designed to be flexible to allow for technical innovations and shall be reviewed biennially by the Commission on Technology and updated to adapt to technological changes or changes in e-filing strategy.

Adopted by Administrative Order 2001-116 effective December 7, 2001. Amended by Administrative Order 2012-06, effective January 11, 2012.



APPENDIX D-Arizona Code of Judicial Administration § 1-507

ARIZONA CODE OF JUDICIAL ADMINISTRATION

Part 1: Judicial Branch Administration

Chapter 5: Automation

Section 1-507: Protection of Electronic Records in Paperless Court Operations

A. Definitions. In this section, the definitions set out in section 1-504 apply. In addition:

“Administrative record” means any record created or received by a court that does not pertain to a particular case or controversy filed with a court.

Administrative records include any record maintained by any board, committee, commission, council, or regulatory body, including records of the regulation and discipline of attorneys.

“Case management system” (CMS) means the information system that captures, maintains and provides access to data related to court cases over time, enabling systematic control of records through their lifecycle. It is often connected to a document management system that stores case-related documents electronically.

“Case record” means any record pertaining to a particular case or controversy.

“Closed case” means any case file record that is no longer subject to modification.

“Courts” means courts or clerks of court.

“Electronic record” means any record that requires the aid of a computer to be read, including imaged documents and files, whether stored in an EDMS or a CMS.

“Electronic Archive” means an electronic document repository consisting of imaged

or e-filed documents associated only with closed cases.

“Offsite” means a temperature-controlled storage location physically located sufficient distance away from the main storage environment that an adverse event that affects the one does not affect the other.

“Online” means the storage of digital data on magnetic disks (such as hard drives) to make it directly and quickly accessible on the network using the application associated with the data.

“RAID” means Redundant Array of Independent Disks, a data storage system made of two or more ordinary hard disks and a special disk controller. Various RAID levels exist including RAID 1 which mirrors disks for fault tolerance and RAID 5 which stripes a set of disks for increased performance with fault tolerance.

“Regulatory case record” means any record that pertains to the regulation of a particular professional or business registered, licensed or certified pursuant to rules adopted by the supreme court.

“Storage” means a permanent repository for holding digital data that retains its content until purposely erased, even when electrical power is removed.

B. Applicability. This section is applicable



to electronic case records, administrative records and regulatory case records in the custody of judicial entities in Arizona, as defined by Supreme Court Rule 123.

C. Purpose. This section provides minimum technical and document management prerequisites for destruction of paper records for which equivalent electronic records exist.

D. Requirements Applicable to Case Records.

1. General Requirements.

- a. Courts shall not create or store electronic records using systems that employ proprietary designs, formats, software, or media or that require use of non-standard devices to access records, in accordance with ACJA § 1-504(C)(1).
- b. Courts shall preserve all electronic documents so that the content of the original document is not altered in any way and the appearance of the document when displayed or printed closely resembles the original paper without any material alteration, in accordance with ACJA § 1-506(D)(1).
- c. Courts shall preserve evidence and fingerprints in their submitted format – hardcopy items shall not be converted to electronic records for the purpose of storage and electronically submitted items shall not be converted to hardcopy for the purpose of storage.
- d. Printouts of electronic records

shall be provided to other courts, as needed, unless arrangements have been made for those courts to receive electronic documents in lieu of paper.

2. Document Management Requirements.

- a. Courts shall use an electronic document management system (EDMS) that complies with ACJA § 1-505, or be granted an exception by Commission on Technology to use a non-conforming system.
- b. The EDMS application shall reside on two physically separate servers each using separate internal storage, structured query language (SQL) databases, and backup software. Log shipping shall be employed not less than daily to maintain synchronization of the two EDMSs for disaster recovery.
- c. At least six months of full-time production use of an EDMS is required before a court may request authorization to begin destroying the paper records corresponding to electronic records stored on the system, as required by subsection (F) of this section.

3. Storage Requirements.

- a. Courts shall maintain primary and secondary copies of records online at all times using at least two physically separate storage arrays configured to assure the failure of a single component of the array will not impact the integrity of the



- data. New records shall be written simultaneously to all disk arrays.
- b. Primary and secondary storage shall be attached only to servers having redundant power supplies, network interface cards, and controller cards or to virtual servers having automatic failover hosts. Use of personal computers containing extra hard drives or attached storage devices is prohibited.
 - c. Courts shall use redundant network paths to connect workstations and imaging devices to EDMS application servers.
 - d. Courts shall employ uninterruptable power supplies and software that ensure a controlled shutdown of servers after batteries have been in use for at least five minutes.
 - e. Courts shall store a tertiary copy of records on highly-secured backup media. The tertiary copy shall only be accessed through a gateway technology that prevents direct access to the storage media from the system(s) being backed up. Manufacturer's usage specifications and backup system media replacement guidelines shall be followed at all times, in accordance with ACJA § 1-504(G)(2).
 - f. Backup media shall be stored in a secure, environmentally controlled, offsite location and retained a minimum of 28 days offsite before reuse. Full backups shall be made not less than weekly and retained a minimum of 28 days offsite before reuse.
 - g. Backup and restoration procedures shall be documented and tested for effectiveness.
 - h. Scanned records shall appear on the backup media as well as primary and secondary storage before corresponding paper is destroyed.
4. Imaging and Indexing Requirements.
 - a. Scanning quality must comply with *Recommended Practices for Quality Control of Image Scanners* (ANSI/AIIM MS44-1988 (R1993)), in accordance with ACJA § 1-504(D)(3).
 - b. The EDMS shall be integrated with the CMS or the following categories of metadata (as a minimum) shall be recorded in the EDMS:
 - Case number (including type code),
 - Party names,
 - Standard document type identifier,
 - Date of filing, and,
 - Citing agency number, where applicable.
 - c. Index entries shall be verified to ensure records are accurately retrieved prior to destruction of any corresponding paper originals. Un-retrievable records shall be rescanned and re-indexed until they prove to be accurately



retrieved from the EDMS.

5. Support and Maintenance Requirements.

a. Court personnel or contractors must be certified in the following areas required to proficiently operate and maintain the records management system:

- (1) Microsoft Certified Systems Administrator
- (2) Microsoft Certified Database Administrator
- (3) OnBase Certified Advanced System Administrator or equivalent for any approved, non-conforming EDMS.

b. When any system outage occurs, all records must be available not later than the end of the following business day. If lost, redundancy must be re-established as quickly as is practicable, even if records remain fully available in the non-redundant state.

c. Records generated by or received by courts shall be preserved in accordance with the applicable records retention schedule. Case records required to be submitted to Arizona State Library, Archives, and Public Records (ASLAPR) shall meet the submittal requirements specified by ASLAPR at the time of submittal, regardless of storage medium. Records destruction is subject to the notification requirements of ASLAPR.

d. In accordance with ACJA § 1-

504(F)(3), courts shall periodically refresh electronic records in order to ensure their accessibility for as long as the applicable records retention schedule requires.

Refresh procedures may require recopying of files to new media or storage arrays over time.

e. Courts shall ensure continued accessibility via a planned migration path so devices, media, and technologies used to store and retrieve records are not allowed to become obsolete and are promptly replaced or upgraded, in accordance with ACJA § 1-504(F)(1).

f. Courts shall ensure that any new equipment or software replacing that used in an existing system is backward compatible and shall obtain a vendor certification that the system will convert 100 percent of the images and index data to the new system so access to existing electronic records is never impeded, in accordance with ACJA § 1-504(F)(2).

E. Requirements Applicable to Administrative and Regulatory Case Records. Requirements applicable to case records apply to administrative and regulatory case records with the following modifications.

1. The EDMS application may reside on one server, rather than two separate servers.

2. Copies of the records may be limited to one primary copy and one backup copy. The primary copy of all electronic records shall be maintained



online at all times using at least one RAID Level 5 disk or storage array.

3. The server on which the EDMS application and records reside shall, at a minimum, be attached to or contain magnetic storage in a RAID Level 1 configuration.
4. Servers used for an electronic archive shall be installed in a rack or other fixture located in a secure, environmentally controlled area.
5. The backup copy of the records shall be stored on highly-secured backup media. The tertiary copy shall only be accessed through a gateway technology that prevents direct access to the storage media from the system(s) being backed up. Manufacturer's usage specifications and backup system media replacement guidelines shall be followed at all times, in accordance with ACJA § 1-504(G)(2).
6. A daily, incremental backup of the primary copy of records added to the archive shall be made using automated backup software.
7. When any system outage occurs, all records must be available not later than the end of the tenth business day.

F. Authorization to Destroy Paper Case Records. Any court desiring to implement a paperless case record operation shall obtain advance written approval of its operational policies and EDMS infrastructure as described herein from the Administrative Office of the Courts (AOC). The AOC shall provide a form for courts to use to request approval. The form shall include a checklist of audit

criteria for electronic records management practices and infrastructure.

1. Courts not using an EDMS on the effective date of this section shall complete and submit a written notice of intent to comply with the requirements of this section prior to purchasing an electronic records management system. The court shall submit the AOC request form after not less than six months of full-time production use of an EDMS.
2. Courts already using an EDMS on the effective date of this section shall submit the AOC request form and indicate the date on which full-scale production use of the installed EDMS commenced.
3. The presiding judge of the county, presiding judge of the court, and, elected clerk of court, if any, shall sign the AOC request form prior to submittal to the AOC.
4. The AOC shall formally review each request, working with court representatives to ensure that all requirements of this section are satisfied and electronic records are adequately safeguarded.
5. The AOC shall notify the court in writing of the authorization to destroy paper records. The authorization shall contain an effective date and a reminder of the audit criteria.
6. Court operational review evaluations shall include management of electronic records at courts granted authority to



destroy paper records.

7. Authorization is not needed to destroy paper case records maintained in the central document repository supported by the AOC or other document repository approved by the Arizona Judicial Council or the Commission on Technology, provided the court complies with subsections (D)(1)(c)&(d), (D)(4)(b)&(c), and (D)(5)(c) of this section and all related operational requirements of ACJA §§ 1-504 and 1-506.

G. Authorization to Destroy Paper Administrative and Regulatory Case Records. The presiding judge of the county is authorized to approve destruction of paper administrative and regulatory case records maintained by the courts under the presiding judge’s supervision. The administrative director is authorized to approve destruction of paper administrative and regulatory case records maintained by the AOC. They shall ensure that the applicable standards and protocols established by subsection (E) have been met before approving destruction of paper records. Superior court clerks who meet the requirements of subsection (E) are authorized to destroy the paper administrative and regulatory records they maintain without prior approval of the presiding judge.

H. Electronic Archives of Closed Cases in Limited Jurisdiction Courts. Justice and municipal courts that wish to create an electronic archive of closed case files and destroy the corresponding paper records

prior to the applicable retention and destruction date shall meet all standards and protocols established by this section, with the following modifications:

1. Copies of the archived records can be limited to one primary copy and one backup copy. The primary copy of all electronic records in the archive shall be maintained online at all times using at least one RAID Level 5 disk or storage array.
2. The EDMS application, SQL database, and backup software for the archive may reside on internal magnetic storage in a RAID Level 1 configuration, if these applications are not stored on the RAID Level 5 disk or storage array.
3. Servers used for an electronic archive shall be installed in a rack or other fixture located in a secure, environmentally controlled area.
4. The backup copy of the archive shall meet the requirements of subsection (D)(3)(e).
5. A daily, incremental backup of the primary copy of records added to the archive shall be made using automated backup software.
6. Courts are not required to comply with subsection (D)(3)(c).
7. When any system outage occurs, all archived records must be available not later than the end of the fifth business day.

Adopted by Administrative Order 2008-99, effective December 10, 2008. Amended by Administrative Order 2012-07, effective January 11, 2012. Amended by Administrative Order 2016-113, effective November 2, 2016.



APPENDIX E-Arizona Code of Judicial Administration § 1-604

ARIZONA CODE OF JUDICIAL ADMINISTRATION

Part 1: Judicial Branch Administration

Chapter 6: Records

Section 1-604: Remote Electronic Access to Case Records

A. Purpose. Rule 123, Rules of the Supreme Court of Arizona (“Rule 123”) authorizes courts to provide remote electronic access to case records. This code section sets forth the procedure for providing that access. The public’s right of access to all non-sealed, non-confidential case records at a court facility, whether in paper or electronic format, shall not be limited by this section.

B. Definitions. In addition to the definitions found in Rule 123, the following definitions apply to this section.

“Authentication” means the security measures designed to verify a person’s identity or authority to receive a specific category of remote electronic access to case records pursuant to Rule 123, Rules of the Supreme Court of Arizona.

“Registration” means the act of enrolling to receive remote electronic access to case records.

C. Remote Electronic Access to Case Records.

1. Access. Remote electronic access to case records in the judiciary is governed by Rule 123, this section, and all other applicable rules and laws.

2. Registration and Authentication.

a. Registration is required for remote electronic access to case records

other than the records identified in Rule 123(g)(1)(D)(ii). The following information must be provided by the potential registrant:

(1) Attorneys, including attorney arbitrators, must provide their name; address; e-mail address; telephone number; date of birth; bar number or pro hoc vice number; bar number state; firm or agency name; credit card type, number, security code, and expiration date; username and password; and any additional information as determined by the supreme court.

(2) Parties, non-attorney arbitrators, and general public users must provide their name; address; e-mail address; telephone number; date of birth; either Arizona driver license number or nonoperating identification license number; credit card type, number, security code, and expiration date; username and password; and any additional information as determined by the supreme court.

b. Authentication of a potential registrant for remote electronic access to case records is required.



- Authentication shall be carried out by the court submitting the potential registrant’s name and Arizona driver license number or nonoperating identification license number to the Arizona Motor Vehicle Division (MVD), or by providing another acceptable form of identification, as determined by the supreme court, when both an Arizona driver license and nonoperating identification license are unavailable.
- c. All information provided by a potential user for authentication and registration shall be closed to the public.
 - d. Remote access by government entities or public purpose organizations shall be governed by Rule 123(g)(1)(B).
3. User Agreement. All users shall accept a User Agreement in a form determined by the supreme court before remote electronic access to case records is granted.
4. Fees and Revenue for Remote Electronic Access.
- a. The fee to print case records from a public terminal at a court facility shall be the same as for a copy of a paper record as provided in A.R.S. §§ 12-119.01, 12-120.31, 12-284, 22-281, and 22-404.
 - b. In accordance with Rule 123(g), the Arizona Judicial Council (“Council”) shall periodically make recommendations to the supreme court with regard to the establishment of fees and disbursement of revenue generated for remote electronic access to case records.
 - (1) The Commission on Technology shall make recommendations to the Council on all matters pertaining to the establishment of fees and disbursement of revenue.
 - (2) Recommended fees for remote electronic access to case records shall be in an amount that allows development, implementation, maintenance, and enhancement of the remote electronic access to case records system.
 - (3) To assist the Council in recommending fees and disbursing revenue, upon request, a court shall submit the percentage of cost and comparable dollar amount incurred by the court associated with the supreme court’s remote electronic access to case records system.
 - c. Any revenue generated by the fees for remote electronic access to case records shall be disbursed to each court that incurs the cost of operating a system for remote electronic access to case records based on the volume of requests for records of those courts. Monies received under this paragraph shall be deposited as described below:
 - (1) A division of the court of appeals shall deposit all monies received under this paragraph pursuant to A.R.S. §



- 12-120.31.
- (2) A superior court shall send all monies received under this paragraph to the county treasurer for deposit in the clerk's document storage and retrieval conversion fund established by A.R.S. § 12-284.01.
- (3) A justice court shall send all monies received under this paragraph to the county treasurer for deposit in an account designated for improving access to justice court records, as provided in A.R.S. § 22-284.
- (4) A municipal court shall send all monies received under this paragraph to the city treasurer for deposit in an account designated for improving access to municipal court records, as provided in A.R.S. § 22-408.

Adopted by Administrative Order 2009-132, effective January 1, 2010.



APPENDIX F-Arizona Code of Judicial Administration § 1-606

ARIZONA CODE OF JUDICIAL ADMINISTRATION

Part 1: Judicial Branch Administration

Chapter 6: Records

Section 1-606: Providing Case Record Access to Public Agencies or to Serve a Public Purpose

A. Purpose. This section establishes minimum standards for a custodian or the administrative director to follow in providing case records or data to federal, state, tribal, and local government agencies and private organizations, the objective of which is to serve a public purpose, such as criminal justice, child welfare, licensing, mental health treatment, or research for scholarly or governmental purposes.

In accordance with this section, the local court's custodian of case records or the administrative director may provide specialized access to case records or data that may exceed the access available to the general public provided by Rule 123. Access to case records or data provided under this section shall be limited to those records necessary for the recipient's intended purpose.

B. Applicability. This section applies to requests from public agencies and private organizations identified in subsection (A) for one-time, periodic, or on-going access to electronic or paper case records in bulk, which may include requests for access by remote electronic means or by an application-to-application transmission of records. This section does not apply to requests from persons or entities governed by ACJA § 1-605, nor does it apply to any requests for one-time access to case records on a case-by-case basis.

C. Record Access Agreement. Before providing access to case records or data under this section, the custodian shall execute a record access agreement with the recipient that identifies the records or data to be provided and permissible uses. The local court's records custodian shall execute a record access agreement for any access to the local court's case management system data. The administrative director shall execute a record access agreement for any access to the statewide repository of aggregated case management system data maintained by the Administrative Office of the Courts. No record access agreement is needed for sharing or exchange of case records with other courts established pursuant to Article VI, Section 1 of the Arizona Constitution or with the Administrative Office of the Courts.

The record access agreement shall include the following terms and conditions:

1. Recipient shall protect the records and data from unauthorized access and misuse.
2. Recipient shall ensure the security and confidentiality of any records or data provided by the custodian that are sealed or closed by Rule 123 or any other rule or law.
3. Recipient will not copy or re-disseminate any records or data closed



by Rule 123 other than for the stated purposes.

concerns the same individual or organization.

4. Recipient will not use the records or data to sell a product or service to an individual or the general public.
 5. Recipient will inform its employees of the requirements imposed by applicable federal and state laws, rules, and terms of the record access agreement.
 6. If requested by the individual who is the subject of a record, recipient will cooperate in correcting any inaccurate or incomplete records provided by the custodian.
 7. A recipient will consult with the custodian prior to releasing any records or data provided under the record access agreement in response to a public records request.
 8. Prior to merging any records or data obtained from the custodian with other records or data concerning an individual or organization, recipient will ensure there is sufficient identifying information to reasonably conclude that the record or data
 9. Recipient will notify the custodian of any record or data inaccuracies discovered by the recipient.
 10. Recipient will permit the custodian to audit recipient's use of and access to the records or data provided.
 11. The parties shall agree on how the records or data will be exchanged, and if done so electronically, the format, timing, and frequency of exchanges.
 12. The parties shall agree on a change management process and allocation of responsibilities for ensuring any unilateral software modifications do not disrupt the on-going exchange of electronic case record information.
 13. All applicable rules and laws pertaining to the release of the records and data have been disclosed by the parties.
- D. Court Order.** The custodian or administrative director shall not release confidential records unless ordered by a court.

Adopted by Administrative Order 2009-130, effective January 1, 2010. Amended by Administrative Order 2011-92, effective August 31, 2011.



APPENDIX G— Proposed Amendments to the Arizona Rules of Evidence

Rule 1001. Definitions That Apply to This Article

In this article:

(a) A “writing” consists of letters, words, numbers, or their equivalent set down in any form.

(b) A “recording” consists of letters, words, numbers, or their equivalent recorded in any manner.

(c) A “photograph” means a photographic image or its equivalent stored in any form.

(d) A “video” is an electronic visual medium for the recording, copying, playback, broadcasting, or displaying of audio or moving images.

~~(d)~~(e) An “original” of a writing, ~~or~~ recording, or video means the writing, ~~or~~ recording, or video itself or any counterpart intended to have the same effect by the person who executed, ~~or~~ issued, or created it. For electronically stored information, “original” means any printout--or other output ~~readable~~ perceived by sight--if it accurately reflects the information. An “original” of a photograph includes the negative or a print from it.

~~(e)~~(f) A “duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

Rule 1002. Requirement of the Original

An original writing, recording, or photograph, or video is required in order to prove its content unless these rules or an applicable statute provides otherwise.

Rule 1004. Admissibility of Other Evidence of Contents

An original is not required and other evidence of the content of a writing, recording, ~~or~~ photograph, or video is admissible if:

(a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;

(b) an original cannot be obtained by any available judicial process;

(c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or

(d) the writing, recording, ~~or~~ photograph, or video is not closely related to a controlling issue.

Rule 1006. Summaries to Prove Content

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, ~~or~~ photographs, or video that cannot be conveniently examined in court.

The proponent must make the originals or duplicates available for examination or copying, or



both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

Rule 1008. Functions of the Court and Jury

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines--in accordance with Rule 104(b)--any issue about whether:

- (a) an asserted writing, recording, ~~or~~ photograph, or video ever existed;
- (b) another one produced at the trial or hearing is the original; or
- (c) other evidence of content accurately reflects the content.



APPENDIX H— Proposed Amendments to the Arizona Rules of Criminal Procedure

Pre-rule changes enacted through Arizona Supreme Court Order R-17-0002, filed August 31, 2017

Rule 15.1. Disclosure by State

...

b. Supplemental Disclosure; Scope. Except as provided by Rule 39(b), the prosecutor shall make available to the defendant the following material and information within the prosecutor's possession or control:

- (1) The names and addresses of all persons whom the prosecutor intends to call as witnesses in the case-in-chief together with their relevant written or recorded statements,
- (2) All statements of the defendant and of any person who will be tried with the defendant,
- (3) All then existing original and supplemental reports prepared by a law enforcement agency in connection with the particular crime with which the defendant is charged,
- (4) The names and addresses of experts who have personally examined a defendant or any evidence in the particular case, together with the results of physical examinations and of scientific tests, experiments or comparisons that have been completed,
- (5) A list of all papers, documents, photographs, ~~or~~ tangible objects, and digital or electronic evidence that the prosecutor intends to use at trial or which were obtained from or purportedly belong to the defendant,
- (6) A list of all prior felony convictions of the defendant which the prosecutor intends to use at trial,
- (7) A list of all prior acts of the defendant which the prosecutor intends to use to prove motive, intent, or knowledge or otherwise use at trial
- (8) All then existing material or information which tends to mitigate or negate the defendant's guilt as to the offense charged, or which would tend to reduce the defendant's punishment therefor.
- (9) Whether there has been any electronic surveillance of any conversations to which the defendant was a party, or of the defendant's business or residence;
- (10) Whether a search warrant has been executed in connection with the case;
- (11) Whether the case has involved an informant, and, if so, the informant's identity, if the defendant is entitled to know either or both of these facts under Rule 15.4(b) (2).

...



i. Additional Disclosure in a Capital Case.

(1) The prosecutor, no later than 60 days after the arraignment in superior court, shall provide to the defendant notice of whether the prosecutor intends to seek the death penalty. This period may be extended up to 60 days upon written stipulation of counsel filed with the court. Once the stipulation is approved by the court, the case shall be considered a capital case for all administrative purposes including, but not limited to, scheduling, appointment of counsel under Rule 6.8, and assignment of a mitigation specialist. Additional extensions may be granted upon stipulation of the parties and approval of the court. The prosecutor shall confer with the victim prior to agreeing to an extension of the 60 day deadline or any additional extensions, if the victim has requested notice pursuant to A.R.S. Section 13-4405.

(2) If the prosecutor files notice of intent to seek the death penalty, the prosecutor shall at the same time provide the defendant with a list of aggravating circumstances the state will rely on at the aggravation hearing in seeking the death penalty.

(3) The prosecutor, no later than 30 days after filing a notice to seek the death penalty, shall provide to the defendant the following:

(a) The names and addresses of all persons whom the prosecutor intends to call as witnesses to support each identified aggravating circumstance at the aggravation hearing together with any written or recorded statements of the witness.

(b) The names and addresses of experts whom the prosecutor intends to call to support each identified aggravating circumstance at the aggravation hearing together with any written or recorded statements of the expert.

(c) A list of any and all papers, documents, photographs, ~~or~~ tangible objects, and digital or electronic evidence that the prosecutor intends to use to support each identified aggravating circumstance at the aggravation hearing.

(d) All material or information that might mitigate or negate the finding of an aggravating circumstance or mitigate the defendant's culpability.

(4) The trial court may enlarge the time or allow the notice required in Rule 15.1(i)(3) to be amended only upon a showing of good cause by the prosecution, or upon stipulation of counsel and approval of the court.

(5) Within 60 days of receipt of the disclosure required under Rule 15.2(h)(1), the prosecutor shall disclose to the defendant the following:



- (a) The names and addresses of all persons whom the prosecutor intends to call as rebuttal witnesses on each identified aggravating circumstance together with any written or recorded statements of the witness.
- (b) The names and addresses of all persons the state intends to call as witnesses at the penalty hearing together with any written or recorded statements of the witness.
- (c) The names and addresses of experts who may be called at the penalty hearing together with any reports prepared by the expert.
- (d) A list of any and all papers, documents, photographs ~~or~~ tangible objects, and digital or electronic evidence that the prosecutor intends to use during the aggravation and penalty hearings.

...

[remainder of rule remains unchanged]



Rule 15.2 Disclosure by Defendant

...

c. Disclosure by Defendant; Scope. Simultaneously with the notice of defenses submitted under Rule 15.2(b), the defendant shall make available to the prosecutor for examination and reproduction the following material and information known to the defendant to be in the possession or control of the defendant:

- (1) The names and addresses of all persons, other than that of the defendant, whom the defendant intends to call as witnesses at trial, together with their relevant written or recorded statements;
- (2) The names and addresses of experts whom the defendant intends to call at trial, together with the results of the defendant's physical examinations and of scientific tests, experiments or comparisons that have been completed; and
- (3) A list of all papers, documents, photographs, ~~and~~ other tangible objects, and digital or electronic evidence that the defendant intends to use at trial.

...

h. Additional Disclosure in a Capital Case.

- (1) Within 180 days after receiving the state's disclosure pursuant to Rule 15.1(i)(3), the defendant shall provide to the prosecutor:
 - (a) A list of all mitigating circumstances intended to be proved.
 - (b) The names and addresses of all persons, other than the defendant, whom the defendant intends to call as witnesses during the aggravation and penalty hearings, together with all written or recorded statements of the witnesses.
 - (c) The names and addresses of any experts whom the defendant intends to call during the aggravation and penalty hearings together with any reports prepared excluding the defendant's statements.
 - (d) A list of any and all papers, documents, photographs, ~~or~~ tangible objects, and digital or electronic evidence that the defendant intends to use during the aggravation and penalty hearings.
- (2) The trial court may enlarge the time or allow the notice required in Rule 15.2(h)(1) to be amended only upon a showing of good cause by the defendant or upon stipulation of counsel and approval of the court.
- (3) Within 60 days of receiving the state's supplemental disclosure pursuant to rule 15.1(i)(3), the defense shall disclose the names and addresses of any rebuttal witnesses, together with their written or recorded statements, and the names and addresses of any experts who may be called at the penalty hearing, together with any reports prepared by the experts.



APPENDIX I—Proposed Amendments to Arizona Rules of Family Law Procedure

Rule 49. Disclosure

• • •

I. Electronically Stored Information.

(1) Duty to Confer. When the existence of electronically stored information is disclosed or discovered, the parties must promptly confer and attempt to agree on matters relating to its disclosure and production, including:

a. requirements and limits on the disclosure and production of electronically stored information;

b. the form in which the information will be produced; and

c. if appropriate, sharing or shifting of costs incurred by the parties for disclosing and producing the information.

(2) Resolution of Disputes. If the parties are unable to satisfactorily resolve any dispute regarding electronically stored information and seek resolution from the court, they must present the dispute in a single joint motion. The joint motion must include the parties' positions and the separate certification of all counsel required under Rule 51(F). In resolving any dispute regarding electronically stored information, the court may shift costs if appropriate.

(3) Presumptive Form of Production. Unless the parties agree or the court orders otherwise, a party must produce electronically stored information in the form requested by the receiving party. If the receiving party does not specify a form, the producing party may produce the electronically stored information in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the producing party.

I.J. Continuing Duty to Disclose. The duty described in this rule shall be a continuing duty, and each party shall make additional or amended disclosures whenever new or different information is discovered or revealed. Such additional or amended disclosures shall be made not more than thirty (30) days after the information is revealed to or discovered by the disclosing party.

I.K. Additional Discovery. Nothing in the minimum requirements of this rule shall preclude relevant additional discovery on request by a party in a family law case, in which case further discovery may proceed as set forth in Rule 51.



APPENDIX J—Proposed Amendments to Arizona Rules of Protective Order Procedure

Rule 36. Admissible Evidence

...

(b) Reports, Documents, or Forms as Evidence. Any report, document, or standardized form, electronically stored information, or digital evidence required to be submitted to a court may be considered as evidence if either filed with the court or admitted into evidence by the court.

(c) Any digital evidence or electronically stored information may be considered as evidence if either filed with the court or admitted into evidence by the court.



APPENDIX K—Proposed Amendments to the Arizona Juvenile Court Rules

Rule 16. Discovery

...

B. Disclosure by the State.

1. Time Limits. Within ten (10) days of the advisory hearing, the prosecutor shall make available to the juvenile for examination and reproduction the following material and information within the prosecutor's possession or control:

- a. The names and addresses of all persons whom the prosecutor will call as witnesses at the adjudication hearing together with their relevant written or recorded statements;
- b. All statements of the juvenile and of any other juvenile for whom there is a companion adjudication hearing scheduled for the same time;
- c. The names and addresses of experts who have personally examined the juvenile or any evidence in the particular case, together with the results of physical examinations and scientific tests, experiments or comparisons, including all written reports or statements made by an expert in connection with the particular case;
- d. A list of all papers, documents, photographs, ~~or~~ tangible objects, and digital or electronic evidence which the prosecutor will use at the adjudication hearing, and upon further written request shall make available to the juvenile for examination, testing and reproduction any specified items contained in the list. The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under this section; and
- e. All material or information which tends to mitigate or negate the juvenile's alleged delinquent conduct.

2. Prosecutor's Duty to Obtain Information. The prosecutor's obligation under this rule extends to material and information in the possession or control of members of the prosecutor's staff and of any other persons who have participated in the investigation or evaluation of the case and who are under the prosecutor's control.

3. Disclosure by Order of Court. Upon motion of the juvenile and a showing that the juvenile has substantial need for additional material or information not otherwise covered in these rules, the court may order any person to make the material or information available to the juvenile if the juvenile is unable, without undue hardship, to obtain the material or information or substantial equivalent by other means. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

C. Disclosure by Juvenile.

1. Physical Evidence. The juvenile shall be entitled to the presence of counsel at the taking of evidence in connection with the allegations contained in the petition, as requested in writing by



the prosecutor, at any time after the filing of the petition. This rule shall supplement and not limit any other procedures established by law. The juvenile shall:

- a. Appear in a line-up;
- b. Speak for identification by witnesses;
- c. Be fingerprinted, palmprinted, footprinted or voiceprinted;
- d. Pose for photographs not involving re-enactment of an event;
- e. Try on clothing;
- f. Permit the taking of samples of hair, blood, saliva, urine or other specified materials which involve no unreasonable intrusions of the juvenile's body;
- g. Provide handwriting samples; or
- h. Submit to a reasonable physical or medical examination, provided such examination does not include a psychiatric or psychological examination.

2. Notice of Defenses/Witnesses. Within fifteen (15) days of the advisory hearing, the juvenile shall provide the prosecutor with written notice specifying all defenses which the juvenile will introduce at the hearing, including, but not limited to alibi, insanity, self-defense, entrapment, impotency, marriage, mistaken identity and good character. The notice shall specify for each defense the persons, including the juvenile, who will be called as witnesses at trial in support thereof. It may be signed by either the juvenile or the juvenile's counsel and shall be filed with the court.

3. Disclosures by Juvenile. Simultaneously with the filing of the notice of defenses/witnesses as required by this rule, the juvenile shall make available to the prosecutor for examination and reproduction:

- a. The names and addresses of all persons, other than the juvenile, who will be called as witnesses at the adjudication hearing, together with all statements made by them in connection with the particular case;
- b. The names and addresses of experts who will be called at the adjudication hearing, together with the results of physical examinations, scientific tests, experiments or comparisons, including all written reports and statements made by the expert in connection with the particular case; and
- c. A list of all papers, documents, photographs, ~~and~~ other tangible objects, and digital or electronic evidence which the juvenile will use at the adjudication hearing.

4. Additional Disclosure upon Request. The juvenile, upon written request, shall make available to the prosecutor for examination, testing, and reproduction any item listed pursuant to this rule.

5. Extent of Juvenile's Duty to Obtain Information. The juvenile's obligation under this rule extends to material and information within the possession or control of the juvenile, the juvenile's attorneys and agents.

6. Disclosure by Order of the Court. Upon motion of the prosecutor, and a showing that the prosecutor has substantial need for additional material or information not otherwise covered in these rules, the court may order any person to make the material or information available to the prosecutor if the prosecutor is unable, without undue hardship, to obtain the material or information or substantial equivalent by other means and that disclosure thereof will not violate



the juvenile's constitutional rights. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

...

Rule 44. Disclosure and Discovery

A. Scope of Disclosure. All information which is not privileged shall be disclosed. Disclosure shall be made in the least burdensome and most cost effective manner which shall include the inspection of materials, with or without copying. Disclosure shall include, but is not limited to the following:

1. Reports prepared by or at the request of any party;
2. Reports of any social service provider;
3. Foster Care Review Board and Court Appointed Special Advocate reports;
4. Transcripts of interviews and prior testimony;
5. Probation reports;
6. Photographs;
7. Physical evidence;
8. Digital evidence or electronically stored information;
9. ~~8.~~ Records of prior criminal convictions;
10. ~~9.~~ Medical and psychological records and reports;
11. ~~10.~~ Results of medical or other diagnostic tests; and
12. ~~11.~~ Any other information relevant to the proceedings.

... [remainder of Rule is unchanged]

Rule 73. Disclosure and Discovery

A. Scope of Disclosure. Disclosure shall include, but is not limited to the following:

1. Reports prepared by or at the request of any party;
2. Reports of any social service provider;
3. Foster Care Review Board and Court Appointed Special Advocate reports;
4. Transcripts of interviews and prior testimony;
5. Probation reports;
6. Photographs;
7. Physical evidence;
8. Digital evidence or electronically stored information;
9. ~~8.~~ Records of prior criminal convictions;
10. ~~9.~~ Medical and psychological records and reports;
11. ~~10.~~ Results of medical or other diagnostic tests; and
12. ~~11.~~ Any other information relevant to the proceedings.

... [remainder of Rule is unchanged]



APPENDIX L—Proposed Amendments to the Arizona Rules for Eviction Actions

Rule 10. Disclosure

a. Upon request, a party shall provide to the other party: 1) a copy of any lease agreement; 2) a list of witnesses and exhibits; 3) if nonpayment of rent is an issue, an accounting of charges and payments for the preceding six months; and 4) copies of any documents, digital evidence, or electronically stored information the party intends to introduce as an exhibit at trial.

[remainder of rule is unchanged]

Digital Exhibit Management Reference Materials

NCACC 2024 Conference

Alabama – Fourth District Court of Appeals

- **PowerPoint**

Arizona

- **Arizona Supreme Court Administrative Order 2021-0142**
Policies for the submission and management of exhibits submitted through the digital evidence portal.
- **Exhibit Cover Sheet**
Example of a coversheet submitted by trial courts to the appellate court including a link to where the digital exhibits are stored and listing all exhibits.
- **Public Registration Example**
Instructions available publicly to assist attorneys and members of the public with how to register to use the product.
- **Report and Recommendations of the Arizona Task Force on Court Management of Digital Evidence** (October 2017)
Report outlining recommendations with regard to digital evidence for Arizona's courts.

Florida – Fourth District Court of Appeals

- **PowerPoint**

Vermont – Fourth District Court of Appeals

- **PowerPoint**
- **General Order**

General

- **JTC Resource Bulletin: Managing Digital Evidence in Courts** (February 2016)
Report from the Joint Technology committee regarding considerations on digital evidence storage and procedures.

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General

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AI and the Courts: Digital Evidence and Deepfakes in the Age of AI

AI advances are causing challenges in the courtroom as judges grapple with evidentiary issues related to digitally enhanced evidence as well as the emergence of deepfakes (convincing false pictures, videos, audio, and other digital information). These advances make it easier and cheaper to enhance digital evidence or create deepfakes causing evidentiary issues to arise.

Digitally Enhanced Evidence

Digitally enhanced evidence is audio, videos, or images that have been enhanced by AI software. The purpose is generally to improve the quality of audio, videos, or images. This differs from past uses, such as zooming in on an image, speeding up or slowing down a video, or separating a voice from background noise, in that AI may fill in pixels on the image with what the software thinks should be in the image, thus altering it from the original.

This technology was recently at the center of a criminal trial in Washington state when digitally enhanced video was not admitted into evidence. The court based its decision on the testimony of the expert witness who testified “the AI tool(s) utilized ... added approximately sixteen times the number of pixels, compared to the number of pixels in the original images to enhance each video frame, utilizing an algorithm and enhancement method unknown to and unreviewed by any forensic video expert.” The court found that the expert “demonstrated that the AI method created false image detail and that process is not acceptable to the forensic video community because it has the effect of changing the meaning of portions of the video.”

It may be necessary for courts to consider changes to the rules of evidence but until that happens, Judges may need to require expert testimony to determine the authenticity and reliability of audio, videos, and images that are challenged rather than relying on the standards for admission.

What is a Deepfake?

“Deepfake” refers to fabricated or altered but realistic audio, videos, or images made using software, for example, by embedding another person’s likeness into an image or video. Deepfakes have become very sophisticated in recent years, and it is not easy for an average person to identify the audio, video, or image as fake.

Deepfakes and the Courts

The issue of deepfakes can arise in any court proceeding in which a party presents digital evidence in the form of an image, video, or audio. Fabricated evidence could be submitted as authentic evidence or authentic evidence could be challenged as fabricated evidence. When a party alleges that digital evidence has been fabricated, expert testimony may be needed to authenticate the challenged evidence. This could result in a battle between the experts and higher litigation costs for all parties and could widen the access to justice gap.¹

¹ Delfino, Rebecca, Pay-to-play: Access to Justice in the Era of AI and Deepfakes (February 10, 2024). Loyola Law School, Los Angeles Legal Studies Research Paper No. 2024-08.

Of concern is the effect that deepfakes could have on the case's outcome because of the considerable impact that visual evidence has on fact finders. According to studies referenced in a recent law journal article, as compared to jurors who hear just oral testimony, "jurors who hear oral testimony along with video testimony are 650% more likely to retain the information."² Once jurors have seen video evidence, it is very hard for the impact to be undone, even with admonishments to the jury. Another study published in 2021 by the Center for Humans and Machines at the Max Planck Institute for Human Development and the University of Amsterdam School of Economics, demonstrates the difficulty of identifying deepfakes. The study found that the participants could not reliably detect deepfakes. The study found that people are biased towards identifying deepfakes as authentic (not vice versa) and overestimate their own abilities to detect deepfakes even after being instructed on how to detect deepfakes.³ The mere existence of deepfakes combined with proliferation of online information, both real and fabricated, that people are exposed to daily may also lead to jury skepticism because people do not know what information they can trust.⁴

Current Evidentiary Rules

The existing Federal Rules of Evidence and the various state rules of evidence require that any evidence submitted must be real and that the party submitting the evidence has the obligation to authenticate it, by proving that the evidence is what it purports to be. Judicial officers already have an obligation to determine whether the probative value of the evidence submitted outweighs the possible unfair prejudice, confusion of the issues, or misleading of the jury that would result from its admission.

Are the Current Rules Sufficient?

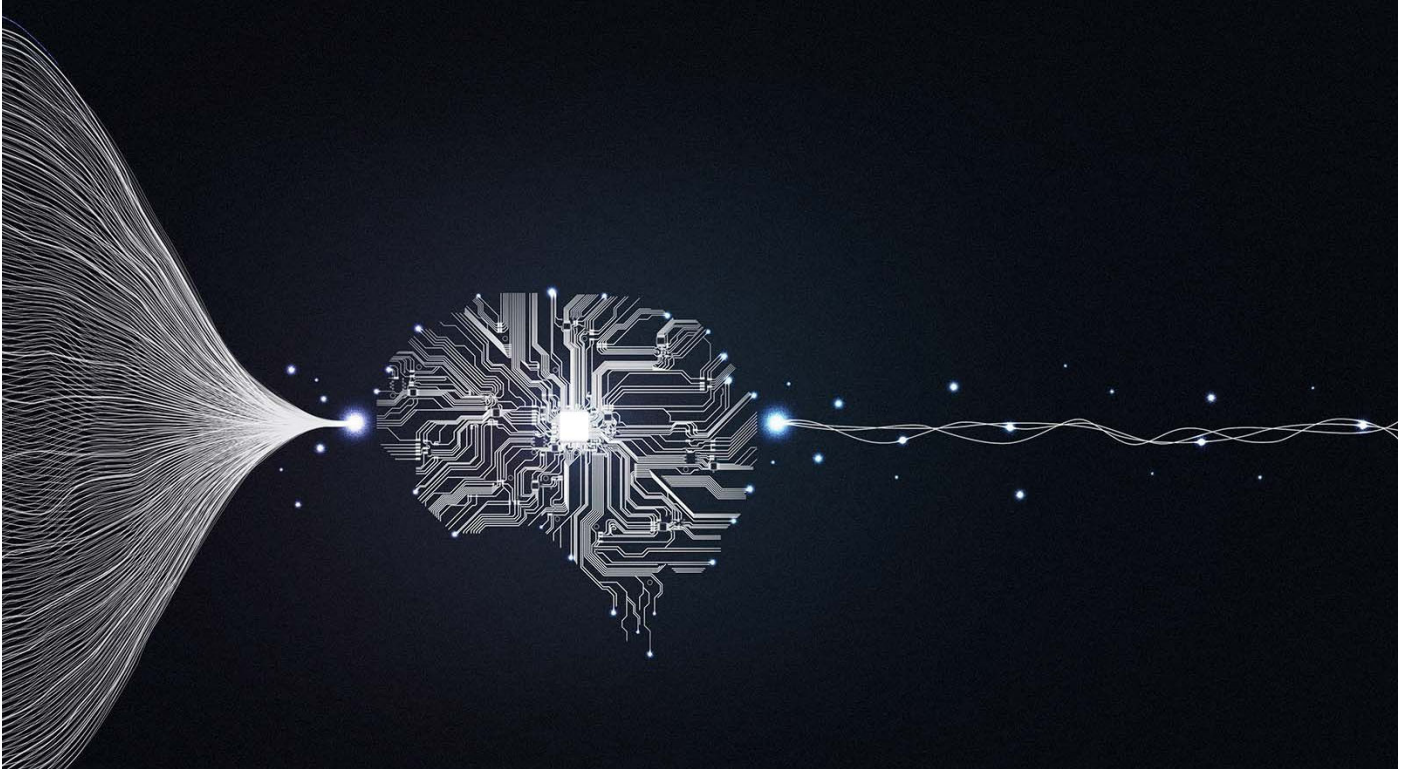
Prior to the advent of deepfakes, the rules of evidence have been sufficient to adapt to technology changes. Laws and rules of evidence addressing deepfakes lag behind the technology. At present, tools to detect deepfakes are not as sophisticated as the tools to create deepfakes such that not all deepfakes will be identifiable. To mitigate the impact of deepfakes on litigation and jurors, judicial officers should identify related evidentiary issues and rule on those prior to trial and outside the presence of the jury, if possible.

The legal community is having ongoing discussions about the need for changes to the rules of evidence. However, it will be important for the courts to address the potential for harm to the legal process that deepfakes pose, and to evaluate whether more stringent rules should be adopted for the admission of digital evidence. In addition, for case types with high rates of self-representation, relying on the parties to challenge the authentication of evidence, which the current adversarial process requires, may be unrealistic. If deepfakes proliferate, courts may need to reconsider who is responsible for determining whether evidence is authentic, especially if reliable technology tools become available that would enable courts to determine if something is real or fake. If deepfakes become ubiquitous, the perception may shift to believing every piece of evidence is fake or has been altered; if so, this may require a more arduous authentication process routinely involving experts, costs, new technologies, elongating the length of trials. This would be a significant shift from current practices.

² Rebecca A. Delfino, *Deepfakes on Trial: A Call To Expand the Trial Judge's Gatekeeping Role To Protect Legal Proceedings from Technological Fakery*, 74 HASTINGS L.J. 293 (2023).

³ Köbis NC, Doležalová B, Soraperra I. *Fooled twice: People cannot detect deepfakes but think they can*. *iScience*. 2021 Oct 29;24(11):103364. doi: 10.1016/j.isci.2021.103364. PMID: 34820608; PMCID: PMC8602050.

⁴ Rebecca A. Delfino, *Deepfakes on Trial: A Call To Expand the Trial Judge's Gatekeeping Role To Protect Legal Proceedings from Technological Fakery*, 74 HASTINGS L.J. 293 (2023).



Artificial Intelligence



Resource Center



State Activities



Events & Activities




AI Rapid Response Team

Each day, the National Center for State Courts is gaining new insights from experts in the field to assess the impact of AI while also looking to industry leaders for greater context on the rate of adoption.

NCSC's holistic understanding of the dynamic artificial intelligence landscape allows us to support courts in developing policy, practices and strategies related to these evolving technologies.

To keep courts well-informed and prepared for the evolution of AI-related technologies, NCSC has created resources that provide guidance, references, and tools to respond to critical and emerging issues related to artificial intelligence in courts.

These resources will help you answer basic questions like "What is AI?" and learn about ways courts can responsibly use AI while ensuring the accessible and fair administration of justice. You can also find events and activities designed to build community and foster collaboration as we work together to understand the impact of AI in courts and the practice of law.

Chat with us! 

For more information on NCSC's AI-related work, drop us a note at ai@ncsc.org.

Get updates

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Events & Activities

Court AI Implementers' Forum

To foster information sharing and collaboration, NCSC, [JTC](#), and [CITOC](#) have launched a forum where AI coders, practitioners, and implementers can regularly meet to share AI-related court initiatives and learn about resources.

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Date, Frequency and Length of Meetings

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Artificial Intelligence (AI)

Interim Guidance

March 2024

from the AI Rapid Response Team at the National Center for State Courts

AI and the Courts: Getting Started

To understand and ultimately benefit from the use of generative AI technologies, courts should consider experimenting with AI tools in ways that minimize risk and maximize learning.

Select a Few Simple ‘Low Risk’ Tasks

Select tasks that exclusively utilize public data and information such as in the area of civil cases. Examples could include using a generative AI chatbot like ChatGPT or Google Gemini to summarize lengthy documents, draft internal communications, or conduct basic legal research. Start with internal facing tasks and documents before using AI tools on external facing items.

Use a “Human-in-the-Loop” Approach

Generative AI technologies and the use of them in courts are new, and therefore AI-generated output should not be relied upon until it has been reviewed by a human subject matter expert (called "Human-in-the-Loop"). Presume it will contain errors and likely bias and carefully review every AI generated document for accuracy and completeness. Once more comfortable with the technology (and depending on the task), reevaluate to determine if a “Human-on-the-Loop” approach can be taken, which entails a human periodically spot-checking the generated information to ensure accuracy, as opposed to checking every document.

Note that the approach may vary with an AI tool from a reputable vendor having a model that was developed/trained for a specific purpose vs. free or low-cost public tools.

Ensure Permission and Understand the Terms of Use

Before using any generative AI technology, ensure the organization and policy makers are comfortable with the tasks it will be used for and can accept any terms and conditions that are attached to the use

of the technology (e.g. data being sent back to the model). (See the “Platform Considerations” Interim Guidance publication.) If one does not already exist, consider creating an internal policy that allows for AI technology use with some guidelines. (See the “AI Policy Considerations” Interim Guidance publication.)

Train Staff and Judges on AI Systems

To effectively utilize generative AI technologies, provide training and education to staff and judges. This helps them understand how to interact with the AI tool, interpret generated outputs, and effectively review and validate the AI-generated documents or results.

Prepare for Advanced Tasks

As court personnel become more comfortable with utilizing generative AI for basic tasks, consider how it can be used for more advanced tasks, such as data extraction and entry, external facing chatbots for customer service, or automated drafting of orders. Conduct pilot projects to test the feasibility and effectiveness of the technology in each specific context. This allows for a controlled testing environment where the technology impact, benefits, and risks can be assessed.

Engage in Knowledge Sharing

Share what is learned with other courts that are also experimenting with generative AI. This allows for the exchange of experiences, best practices, and lessons learned, enabling courts to make informed decisions and avoid potential pitfalls.

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AI and the Courts: Talking Points

AI is already having an impact on the courts and we must be prepared and forward thinking when it comes to addressing how AI can be used effectively, efficiently, and ethically to promote the administration of justice.

Scope of AI Technologies

AI is the umbrella term and generative AI is one type of AI technology that you hear most about in the media today. AI is used to refer to something as simple as spell check, predictive typing or asking Siri or Alexa the temperature, or as complex as computer based legal research, projections, facial recognition, or generating documents, videos, or audio.

Generative AI (GenAI)

What makes GenAI unique is the ability to create new content, including text, images, and audio. The number of companies launching GenAI products, particularly in the legal field, is increasing exponentially so it is important to be informed.

Potential AI Applications

AI technologies have the ability to streamline internal court operations such as automating data entry, docketing, scheduling and case processing, generating court documents, and data analytics. It could be used to develop tools to aid self-represented litigants and to create informational content for court visitors.

AI can be a tool to aid the courts, lawyers, and litigants in the right circumstances, but it is not a replacement for judges and lawyers and there must be guardrails in place to make sure that it is ethically being used by courts and parties.

Public Trust and Confidence

It is the responsibility of judges to maintain the public's trust and confidence in courts and the integrity of legal proceedings which can be eroded by GenAI errors or biases.

- **Ethical Guidelines:** Updated guidelines may be needed to make sure that GenAI is used **ethically** by lawyers, litigants, and the courts.
- **Court Rules:** Courts may need to adopt rules requiring lawyers and litigants to verify the accuracy of **AI-generated content** before submitting documents to the court, or make clear that the current rules apply to AI-generated content.
- **Education:** There is a need for **education** on how GenAI is being used to create content that looks incredibly real, sometimes referred to as **deepfakes**. It will impact discovery and evidentiary issues in legal proceedings.

GenAI Challenges and Concerns

GenAI is a new technology and as such, it is prone to errors. For example:

- GenAI is known for '**hallucinating**,' which means generating inaccurate or fictitious content, such as case citations to cases that do not exist. This made headlines last June when a lawyer in New York was sanctioned for misleading the court with fictitious citations in a brief submitted to the court.
- If the databases used to train GenAI are not diverse or contain incorrect data, the results could be **biased** or **inaccurate**.

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EXHIBIT LIST COVERSHEET

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AGREE LIMITED PARTNERSHIP

V

IL, Z CORRAL LLC, ET AL.

CASE NUMBER: CV2020-054234

HEARING DATE: SEPTEMBER 27, 2022

HEARING TYPE: BENCH TRIAL

JUDICIAL OFFICER: HONORABLE MELISSA IYER JULIAN

A: Plaintiff Exhibits

Index	Name	Date	Offered	Shown to Jury	Admitted for Appeal Purposes	Admitted
0001	Exhibit 1					STIP 1 09/27/2022
0002	Exhibit 2	September 06, 2013				STIP 2 09/27/2022
0003	Exhibit 3	September 04, 2018				STIP 3 09/27/2022
0004	Exhibit 4	November 18, 2020				STIP 4 09/27/2022
0005	Exhibit 5	April 09, 2020				STIP 5 09/27/2022
0006	Exhibit 6	May 08, 2020				STIP 6 09/27/2022
0007	Exhibit 7	May 14, 2020				STIP 7 09/27/2022
0008	Exhibit 8	June 10, 2020				
0009	Exhibit 9	July 10, 2020				PLF 9 09/27/2022
0010	Exhibit 10	August 11, 2020				PLF 10 09/27/2022
0011	Exhibit 11	September 15, 2020				PLF 11 09/27/2022
0012	Exhibit 12					
0013	Exhibit 13					
0014	Exhibit 14	April 20, 2020				PLF 14 09/27/2022
0015	Exhibit 15	June 22, 2020				PLF 15 09/27/2022
0016	Exhibit 16	August 31, 2020				PLF 16 09/27/2022
0017	Exhibit 17	May 19, 2020				PLF 17 09/27/2022

B: Defendant Exhibits

Index	Name	Date	Offered	Shown to Jury	Admitted for Appeal Purposes	Admitted
0001	(1) Def Exhibit 18	September 19, 2022				
0002	(2) Def Exhibit 19	September 19, 2022				
0003	(3) Def Exhibit 20	September 19, 2022				STIP 3 09/27/2022
0004	(4) Def Exhibit 21	September 19, 2022				STIP 4 09/27/2022
0005	(5) Def Exhibit 22	September 19, 2022				STIP 5 09/27/2022
0006	(6) Def Exhibit 23	September 19, 2022				STIP 6 09/27/2022
0007	(7) Def Exhibit 24	September 19, 2022				STIP 7 09/27/2022
0008	(8) Def Exhibit 25	September 19, 2022				STIP 8 09/27/2022
0009	(9) Def Exhibit 26	September 19, 2022				STIP 9 09/27/2022
0010	(10) Def Exhibit 27	September 19, 2022				STIP 10 09/27/2022
0011	(11) Def Exhibit 28	September 19, 2022				STIP 11 09/27/2022
0012	(12) Def Exhibit 29	September 19, 2022				STIP 12 09/27/2022
0013	(13) Def Exhibit 30	September 19, 2022				STIP 13 09/27/2022
0014	(14) Def Exhibit 31	September 19, 2022				STIP 14 09/27/2022
0015	(15) Def Exhibit 32	September 19, 2022				STIP 15 09/27/2022
0016	(16) Def Exhibit 33	September 19, 2022				STIP 16 09/27/2022
0017	(17) Def Exhibit 34	September 19, 2022				STIP 17 09/27/2022
0018	(18) Def Exhibit 35	September 19, 2022				STIP 18 09/27/2022
0019	(19) Def Exhibit 36	September 19, 2022				STIP 19 09/27/2022
0020	(20) Def Exhibit 37	September 19, 2022				STIP 20 09/27/2022
0021	(21) Def Exhibit 38	September 19, 2022				STIP 21 09/27/2022
0022	(22) Def Exhibit 39	September 19, 2022				STIP 22 09/27/2022
0023	(23) Def Exhibit 40	September 19, 2022				STIP 23 09/27/2022
0024	(24) Def Exhibit 41	September 19, 2022				STIP 24 09/27/2022
0025	(25) Def Exhibit 42	September 19, 2022				STIP 25 09/27/2022
0026	(26) Def Exhibit 43	September 19, 2022				STIP 26 09/27/2022

Digital Evidence
Registration – Public Users

1. Access the Registration page: <https://digitalevidence.azcourts.gov/Account/Register>
2. Enter information in all **required fields** (screenshot on next page)
Note: clicking anywhere on the screen will identify all required fields
 - a. **Title:** e.g., *Mr. / Ms. / Mx. / Dr.*
 - b. **First Name**
 - c. **Last Name**
 - d. **Username:** **min 5, max 30 characters**
 - e. **Email**
 - f. **Confirm Email**
 - g. **Usual Role:** select the **appropriate role** from the drop-down menu
Note for Government Agency Users: additional options will be available if your email domain is the same as the court's email domain, and you should only select one of the following options
 - i. Attorney
 - ii. Interested Party
 - iii. Law Enforcement
 - iv. Law Office Staff
 - v. Litigant Represented by Attorney
 - vi. Self Represented Litigant
 - h. **Usual Location:** **United States of America** is the only option available in the drop-down menu
 - i. **Password:** **at least 8 characters** and must contain:
 - i. an **uppercase letter**,
 - ii. a **lowercase letter**,
 - iii. a **number**, and
 - iv. a **special character** (e.g., \$, @, &, *, etc.)
 - j. **Confirm Password**
 - k. **I have read and agree to be bound by the terms and conditions above:** only after reading the [Data Privacy Policy](#) and the [Terms and Conditions](#), select the box to **add a check mark**
Note: right-click on the links to open in a new tab/window
 - l. **Register Button:** will activate once all required fields have been correctly completed
3. The entered email address will receive a verification email/link from noreply@caselines.com
 - a. To activate your user account, **click the link within 48 hours**
4. To log in and access cases that you have been invited into, access the Digital Evidence Portal Log On Page: <https://digitalevidence.azcourts.gov/Account/LogOn>
Note: BOOKMARK/SAVE the log on page

Account Information

Language: English (US) ✓

Title (Mr, Mrs, ..): Ms. ✓

First Name: El ✓

Last Name: R ✓

User Name: t ✓

Cell phone: USA (+1) ✓

Email: @gmail.com ✓

Confirm Email: @gmail.com ✓

Hide Email: Do not display my email address when showing me on the list of people for a case.

Usual Role: Attorney ✓
Please select ...
Attorney
Interested Party
~~Juror~~
Law Enforcement
Law Office Staff
Litigant Represented by Attorney
Self Represented Litigant

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I consent to you providing me with business and marketing information.

Register ✓

Jannet Okazaki

Jannet Okazaki is a Deputy Managing Director at the National Center for State Courts, where she has been part of the technology consulting team since 2017. She has a depth of knowledge in court technology solutions, policy development, and governance. She works on education development for the bi-annual technology conferences, eCourts, and CTC. Her projects focus on court technology, innovation, and business processes. Jannet currently oversees a DOT/FMCSA grant portfolio that studies various aspects of data collection, data quality, reporting, and compliance related to traffic court and commercial driving cases.

Her work at NCSC includes projects involving digital evidence, evidence-based public access policy guidance, Continuity of Operations Planning (COOP), studies related to emerging technologies, data exchanges, technology assessments, courtroom technology, cybersecurity in the courts, and Artificial Intelligence. Before working at NCSC, Jannet retired from the State of Florida with 32 years of service in Children and Family Services, Juvenile Justice, and the Trial Courts managing technology services.

Jannet is a certified Public Management Professional (PMP).

Cindy M. Guerra. Esq., the Executive Chief Assistant Public Defender of Operations and Assistant General Counsel in the Public Defender's Office for the 11th Judicial Circuit of Florida, has been a Florida attorney since 1991. Having initially worked as an Assistant Public Defender after graduating from Nova Southeastern University Law School, she returned to the Public Defender's office after 25 years. Now, Ms. Guerra supervises over 100 staff, leads the case management database team, and oversees artificial intelligence (AI) and machine learning projects, negotiates agreements on several projects, and is responsible for the building renovations and the future construction/expansion of our facilities. She has extensive administrative experience having served as Chief Operating Officer at the Palm Beach Clerk & Comptroller's office for 8 years, overseeing a multi-million-dollar operation with over 450 employees. There she led the first team in the nation to use AI and robotics to automate court document processing. She also served as Florida Deputy Attorney General for 5 years.

AI and the Courts: Digital Evidence and Deepfakes in the Age of AI

AI advances are causing challenges in the courtroom as judges grapple with evidentiary issues related to digitally enhanced evidence as well as the emergence of deepfakes (convincing false pictures, videos, audio, and other digital information). These advances make it easier and cheaper to enhance digital evidence or create deepfakes causing evidentiary issues to arise.

Digitally Enhanced Evidence

Digitally enhanced evidence is audio, videos, or images that have been enhanced by AI software. The purpose is generally to improve the quality of audio, videos, or images. This differs from past uses, such as zooming in on an image, speeding up or slowing down a video, or separating a voice from background noise, in that AI may fill in pixels on the image with what the software thinks should be in the image, thus altering it from the original.

This technology was recently at the center of a criminal trial in Washington state when digitally enhanced video was not admitted into evidence. The court based its decision on the testimony of the expert witness who testified “the AI tool(s) utilized ... added approximately sixteen times the number of pixels, compared to the number of pixels in the original images to enhance each video frame, utilizing an algorithm and enhancement method unknown to and unreviewed by any forensic video expert.” The court found that the expert “demonstrated that the AI method created false image detail and that process is not acceptable to the forensic video community because it has the effect of changing the meaning of portions of the video.”

It may be necessary for courts to consider changes to the rules of evidence but until that happens, Judges may need to require expert testimony to determine the authenticity and reliability of audio, videos, and images that are challenged rather than relying on the standards for admission.

What is a Deepfake?

“Deepfake” refers to fabricated or altered but realistic audio, videos, or images made using software, for example, by embedding another person’s likeness into an image or video. Deepfakes have become very sophisticated in recent years, and it is not easy for an average person to identify the audio, video, or image as fake.

Deepfakes and the Courts

The issue of deepfakes can arise in any court proceeding in which a party presents digital evidence in the form of an image, video, or audio. Fabricated evidence could be submitted as authentic evidence or authentic evidence could be challenged as fabricated evidence. When a party alleges that digital evidence has been fabricated, expert testimony may be needed to authenticate the challenged evidence. This could result in a battle between the experts and higher litigation costs for all parties and could widen the access to justice gap.¹

¹ Delfino, Rebecca, Pay-to-play: Access to Justice in the Era of AI and Deepfakes (February 10, 2024). Loyola Law School, Los Angeles Legal Studies Research Paper No. 2024-08.

Of concern is the effect that deepfakes could have on the case's outcome because of the considerable impact that visual evidence has on fact finders. According to studies referenced in a recent law journal article, as compared to jurors who hear just oral testimony, "jurors who hear oral testimony along with video testimony are 650% more likely to retain the information."² Once jurors have seen video evidence, it is very hard for the impact to be undone, even with admonishments to the jury. Another study published in 2021 by the Center for Humans and Machines at the Max Planck Institute for Human Development and the University of Amsterdam School of Economics, demonstrates the difficulty of identifying deepfakes. The study found that the participants could not reliably detect deepfakes. The study found that people are biased towards identifying deepfakes as authentic (not vice versa) and overestimate their own abilities to detect deepfakes even after being instructed on how to detect deepfakes.³ The mere existence of deepfakes combined with proliferation of online information, both real and fabricated, that people are exposed to daily may also lead to jury skepticism because people do not know what information they can trust.⁴

Current Evidentiary Rules

The existing Federal Rules of Evidence and the various state rules of evidence require that any evidence submitted must be real and that the party submitting the evidence has the obligation to authenticate it, by proving that the evidence is what it purports to be. Judicial officers already have an obligation to determine whether the probative value of the evidence submitted outweighs the possible unfair prejudice, confusion of the issues, or misleading of the jury that would result from its admission.

Are the Current Rules Sufficient?

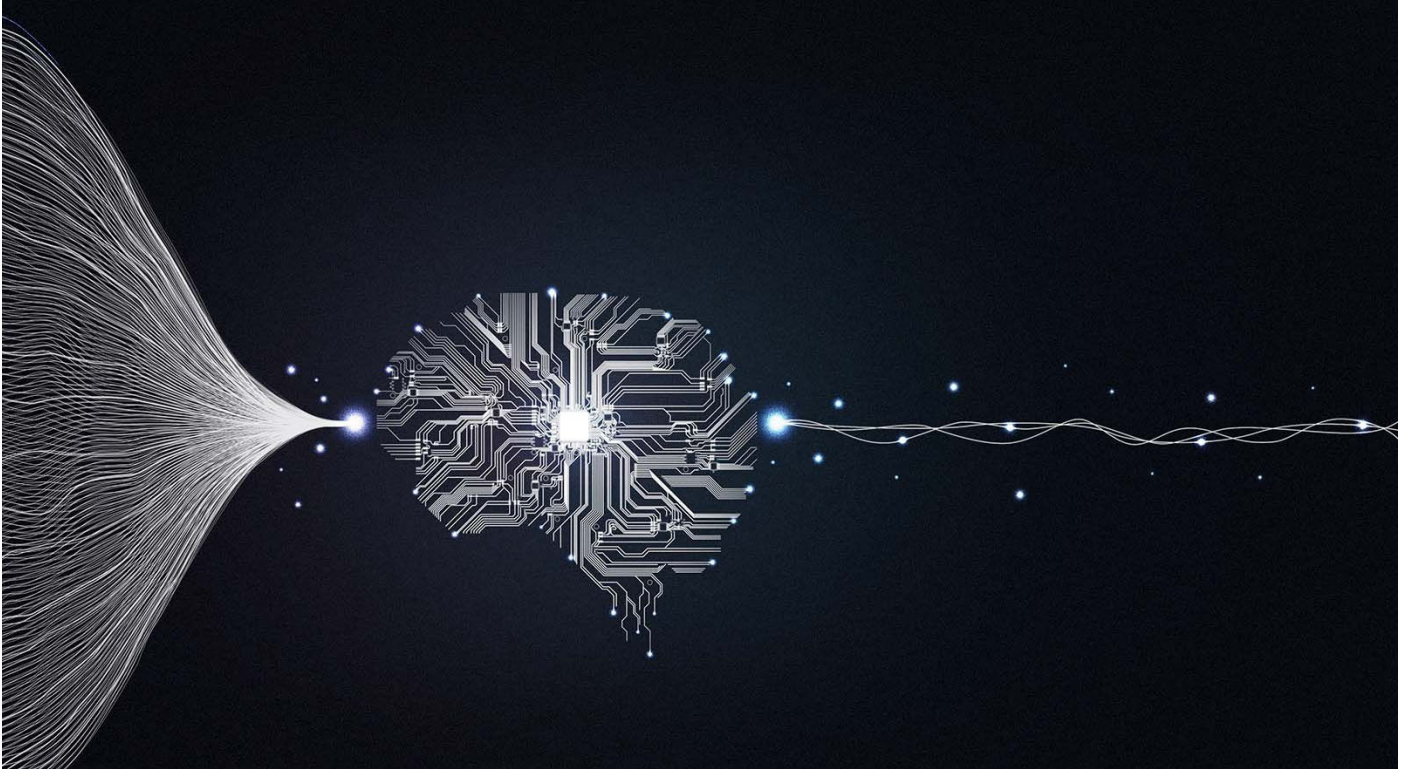
Prior to the advent of deepfakes, the rules of evidence have been sufficient to adapt to technology changes. Laws and rules of evidence addressing deepfakes lag behind the technology. At present, tools to detect deepfakes are not as sophisticated as the tools to create deepfakes such that not all deepfakes will be identifiable. To mitigate the impact of deepfakes on litigation and jurors, judicial officers should identify related evidentiary issues and rule on those prior to trial and outside the presence of the jury, if possible.

The legal community is having ongoing discussions about the need for changes to the rules of evidence. However, it will be important for the courts to address the potential for harm to the legal process that deepfakes pose, and to evaluate whether more stringent rules should be adopted for the admission of digital evidence. In addition, for case types with high rates of self-representation, relying on the parties to challenge the authentication of evidence, which the current adversarial process requires, may be unrealistic. If deepfakes proliferate, courts may need to reconsider who is responsible for determining whether evidence is authentic, especially if reliable technology tools become available that would enable courts to determine if something is real or fake. If deepfakes become ubiquitous, the perception may shift to believing every piece of evidence is fake or has been altered; if so, this may require a more arduous authentication process routinely involving experts, costs, new technologies, elongating the length of trials. This would be a significant shift from current practices.

² Rebecca A. Delfino, *Deepfakes on Trial: A Call To Expand the Trial Judge's Gatekeeping Role To Protect Legal Proceedings from Technological Fakery*, 74 HASTINGS L.J. 293 (2023).

³ Köbis NC, Doležalová B, Soraperra I. *Fooled twice: People cannot detect deepfakes but think they can.* *iScience*. 2021 Oct 29;24(11):103364. doi: 10.1016/j.isci.2021.103364. PMID: 34820608; PMCID: PMC8602050.

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Artificial Intelligence



Resource Center



State Activities



Events & Activities



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A great way to do this is to sign up for the [NCSC Court AI Implementer’s Forum](#).

Artificial Intelligence (AI)

Interim Guidance

March 2024

from the AI Rapid Response Team at the National Center for State Courts

AI and the Courts: Getting Started

To understand and ultimately benefit from the use of generative AI technologies, courts should consider experimenting with AI tools in ways that minimize risk and maximize learning.

Select a Few Simple ‘Low Risk’ Tasks

Select tasks that exclusively utilize public data and information such as in the area of civil cases. Examples could include using a generative AI chatbot like ChatGPT or Google Gemini to summarize lengthy documents, draft internal communications, or conduct basic legal research. Start with internal facing tasks and documents before using AI tools on external facing items.

Use a “Human-in-the-Loop” Approach

Generative AI technologies and the use of them in courts are new, and therefore AI-generated output should not be relied upon until it has been reviewed by a human subject matter expert (called "Human-in-the-Loop"). Presume it will contain errors and likely bias and carefully review every AI generated document for accuracy and completeness. Once more comfortable with the technology (and depending on the task), reevaluate to determine if a “Human-on-the-Loop” approach can be taken, which entails a human periodically spot-checking the generated information to ensure accuracy, as opposed to checking every document.

Note that the approach may vary with an AI tool from a reputable vendor having a model that was developed/trained for a specific purpose vs. free or low-cost public tools.

Ensure Permission and Understand the Terms of Use

Before using any generative AI technology, ensure the organization and policy makers are comfortable with the tasks it will be used for and can accept any terms and conditions that are attached to the use

of the technology (e.g. data being sent back to the model). (See the “Platform Considerations” Interim Guidance publication.) If one does not already exist, consider creating an internal policy that allows for AI technology use with some guidelines. (See the “AI Policy Considerations” Interim Guidance publication.)

Train Staff and Judges on AI Systems

To effectively utilize generative AI technologies, provide training and education to staff and judges. This helps them understand how to interact with the AI tool, interpret generated outputs, and effectively review and validate the AI-generated documents or results.

Prepare for Advanced Tasks

As court personnel become more comfortable with utilizing generative AI for basic tasks, consider how it can be used for more advanced tasks, such as data extraction and entry, external facing chatbots for customer service, or automated drafting of orders. Conduct pilot projects to test the feasibility and effectiveness of the technology in each specific context. This allows for a controlled testing environment where the technology impact, benefits, and risks can be assessed.

Engage in Knowledge Sharing

Share what is learned with other courts that are also experimenting with generative AI. This allows for the exchange of experiences, best practices, and lessons learned, enabling courts to make informed decisions and avoid potential pitfalls.

A great way to do this is to sign up for the [NCSC Court AI Implementer’s Forum](#).

Artificial Intelligence (AI)

Interim Guidance

from the AI Rapid Response Team at the National Center for State Courts

AI and the Courts: Talking Points

AI is already having an impact on the courts and we must be prepared and forward thinking when it comes to addressing how AI can be used effectively, efficiently, and ethically to promote the administration of justice.

Scope of AI Technologies

AI is the umbrella term and generative AI is one type of AI technology that you hear most about in the media today. AI is used to refer to something as simple as spell check, predictive typing or asking Siri or Alexa the temperature, or as complex as computer based legal research, projections, facial recognition, or generating documents, videos, or audio.

Generative AI (GenAI)

What makes GenAI unique is the ability to create new content, including text, images, and audio. The number of companies launching GenAI products, particularly in the legal field, is increasing exponentially so it is important to be informed.

Potential AI Applications

AI technologies have the ability to streamline internal court operations such as automating data entry, docketing, scheduling and case processing, generating court documents, and data analytics. It could be used to develop tools to aid self-represented litigants and to create informational content for court visitors.

AI can be a tool to aid the courts, lawyers, and litigants in the right circumstances, but it is not a replacement for judges and lawyers and there must be guardrails in place to make sure that it is ethically being used by courts and parties.

Public Trust and Confidence

It is the responsibility of judges to maintain the public's trust and confidence in courts and the integrity of legal proceedings which can be eroded by GenAI errors or biases.

- **Ethical Guidelines:** Updated guidelines may be needed to make sure that GenAI is used **ethically** by lawyers, litigants, and the courts.
- **Court Rules:** Courts may need to adopt rules requiring lawyers and litigants to verify the accuracy of **AI-generated content** before submitting documents to the court, or make clear that the current rules apply to AI-generated content.
- **Education:** There is a need for **education** on how GenAI is being used to create content that looks incredibly real, sometimes referred to as **deepfakes**. It will impact discovery and evidentiary issues in legal proceedings.

GenAI Challenges and Concerns

GenAI is a new technology and as such, it is prone to errors. For example:

- GenAI is known for '**hallucinating**,' which means generating inaccurate or fictitious content, such as case citations to cases that do not exist. This made headlines last June when a lawyer in New York was sanctioned for misleading the court with fictitious citations in a brief submitted to the court.
- If the databases used to train GenAI are not diverse or contain incorrect data, the results could be **biased** or **inaccurate**.

PLAIN LANGUAGE IN COURT DOCUMENTS

Julie Clement



Julie Clement is the Deputy Clerk of the Michigan Supreme Court. She is president of Clarity Inc., an international organization that promotes plain legal language. She is also a member of the International Plain Language Federation and the Center for Plain Language boards and an instructor in Simon Fraser University's Plain Language Certificate program. Julie is a Distinguished Professor Emerita of the Western Michigan University Cooley Law School and served as editor in chief of The Clarity Journal for 14 years.

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	CASE NO.
---	----------------	-----------------

Court address Court telephone no.

Plaintiff's name(s), address(es), and telephone no(s).

Defendant's name(s), address(es), and telephone no(s).

v

Plaintiff's attorney, bar no., address, and telephone no.

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in this court, _____ Court, where

it was given case number _____ and assigned to Judge _____.

The action remains is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date	Expiration date*	Court clerk
------------	------------------	-------------

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

Summons — Notice to Respond to a Court Case

State of Michigan

To be filled out by
the Court Clerk

Which Michigan Court?

_____ District Court
_____ Circuit Court
_____ Probate Court

Court Address

Court Phone Number

Case Number

Judge

Who gets this form?

Original – Court
1st copy – Defendant
2nd copy – Plaintiff
3rd copy – Process Server

**Plaintiff: Follow
these instructions**

You are starting a court case against the defendant(s).

1. Fill out **Section A: Parties in your case.**
2. Fill out **Section B: Related cases.**
3. Submit this form to the court clerk, along with your complaint, and (if necessary) a case inventory (form MC 21).

→ Need a form?

<https://www.courts.michigan.gov/SCAO-forms/>

**Defendant: What
you need to know**

The plaintiff has started a court case against you.

→ See the **Summons** on the next page.

**Section A: Parties
in your case**

Plaintiff(s): name(s), postal address(es), email address(es), and phone number(s)

Defendant(s): name(s), postal address(es), email address(es), and phone numbers(s)

If you have more than one plaintiff, you may use one name and write "and others."

If there is more than one defendant, you may use a separate form for each one.

If the plaintiff has an attorney: name, bar number, postal address, email address, and phone number(s)

**Section B: Related
cases**

Is there a pending (still in court) or resolved (no longer in court) case in the family division of the circuit court involving a family member of the plaintiff or the defendant?

Domestic-Relations Cases
The plaintiff must check the one that applies.

- No
 Yes. I have separately filed a completed case inventory (form MC 21) for the other case(s).
 I don't know

Other Civil Cases
("civil" means not a criminal case)

The plaintiff must check any that apply (continued on next page).

- There is a previously filed civil case between these parties arising out of the same transaction or occurrence alleged in this complaint. It was filed earlier in:

This court
 Another court:
Court _____
Case Number _____
Judge _____

Is the previously filed case still pending?

- No
 Yes

Approved, SCAO: Form MC01

Page 1 of 2

▲ **AFTER:** State of Michigan Summons (pg. 1). By Karen Schriver Associates, Inc. for the Kimble Center for Legal Drafting at Cooley Law School (Lansing, Michigan).

Summons — Notice to Respond to a Court Case

State of Michigan

Case Number

Section B: Related cases (continued)

Other Civil Cases

The plaintiff must check any that apply.

- This is a business case that involves a business or commercial dispute under a Michigan statute, MCL 600.8035.
- The Michigan Department of Health and Human Services (MDHHS) and a contracted health plan may have a right to recover expenses in this case. I will provide a notice and copy of this complaint to MDHHS, and (if applicable), the health plan as required by MCL 400.106(4).


Plaintiff: STOP HERE

- ➔ File pages 1 and 2 with the court clerk, along with your complaint, and (if necessary) a case inventory (form MC 21).

Notice to the Defendant

Summons

This summons is issued in the name of the people of the State of Michigan.



What to Know

- The plaintiff has started a court case against you.
- Here is how much time you have to answer after you received this summons and a copy of the complaint:

If they were delivered to you personally	21 days after you received them.
If you received them in the mail	28 days after the date you received them.

- If you do not answer before your time runs out, the court may enter a legal judgment against you for what the plaintiff is asking for.

What to Do

- If you want to respond and participate in the case, you must file a written answer (form MC 03)—or take other lawful action—with the court.
- Do you need an accommodation?

If you have a disability	fill out form MC 70.
If you need a foreign language interpreter	fill out form MC 81.

- If you need help, call the court at the phone number on page 1. The court can answer questions on procedure, but cannot give legal advice.

For the Court Clerk

Place the court seal on this page.

Court Clerk's Issuance of Summons

Issue Date _____ Expiration Date _____
(Invalid if not served on or before this date.)

Court Clerk _____

SUMMONS

PROOF OF SERVICE

Case No. _____

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

<input type="checkbox"/> OFFICER CERTIFICATE I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)	OR	<input type="checkbox"/> AFFIDAVIT OF PROCESS SERVER Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)
--	----	---

I served personally a copy of the summons and complaint,
 I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____
List all documents served with the summons and complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee		Signature _____
\$		\$		
Incorrect address fee	Miles traveled	Fee	TOTAL FEE	Name (type or print) _____
\$		\$	\$	Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ Attachments

_____ on _____
Day, date, time

_____ on behalf of _____
Signature

Proof of Service — Summons & Complaint

State of Michigan

Case Number

To be filled out by
the Court Clerk

Which Michigan Court?

_____ District Court
_____ Circuit Court
_____ Probate Court

Who gets this form?

Original – Court
1st copy – Defendant
2nd copy – Plaintiff
3rd copy – Process Server

Instructions to the Process Server

1. Deliver the summons and the complaint to the defendant, or the defendant's agent, no later than:
 - the expiration date on the summons or
 - the date that the order for a second summons expires.
2. Ask the defendant(s) to sign the Acknowledgment of Service.
3. File this proof of service with the court clerk. If you cannot complete service, you must return this original and all copies to the court clerk.

Defendant's Acknowledgment of Service

I acknowledge that I have received service of the Summons and Complaint.

(If applicable) I also received the following documents:

Process Server:
If the defendant does not sign the Acknowledgment, you must fill out the next three sections (Affidavit, Certificate, and Declaration) about your service.

Signature _____
Day, date & time _____
(If applicable) I received the papers on behalf of:

Affidavit of My Authority to Make Service

Check one box.

Officer Certificate (notarization not required)

- I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]).

OR

Affidavit of Process Server Who Is Not an Officer (notarization required on the next page)

- I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]).

Certificate or Affidavit of Actual or Attempted Service

Process Server:
List other documents you served or attempted to serve, if any. Then fill in the boxes at the top of the next page.

- I certify or swear that I served or attempted to serve these documents on the defendant(s) listed on the next page:
- Summons & Complaint
 - Other documents

- I have listed the place and manner of service or attempted service on the next page.

Proof of Service — Summons & Complaint
 State of Michigan

Case Number

Certificate or Affidavit of Actual or Attempted Service (continued)

Defendant(s) name(s) and the address(es) where I made or attempted service	Day, date, time of service or attempted service	Method
		<input type="checkbox"/> In person <input type="checkbox"/> Registered or certified mail* <input type="checkbox"/> Unable to serve
		<input type="checkbox"/> In person <input type="checkbox"/> Registered or certified mail* <input type="checkbox"/> Unable to serve
		<input type="checkbox"/> In person <input type="checkbox"/> Registered or certified mail* <input type="checkbox"/> Unable to serve

* Return receipt required

Process Server's Declaration

I declare under the penalties of perjury that I have examined this proof of service and that its contents are true to the best of my information, knowledge, and belief.

→ If you are not a sheriff, deputy sheriff, baliff, appointed court officer, or party's attorney, do not sign the declaration **until** you're in front of a notary.

 Process Server's Signature

→ Submit a copy of the return receipt (if sent via registered or certified mail).

 Name (type or print)

 Title

Service fee \$	Miles traveled	Fee \$	+	Incorrect-address fee \$	Miles traveled	Fee \$	=	Total Fee \$
-------------------	----------------	-----------	---	-----------------------------	----------------	-----------	---	------------------------

Notarization (if required)

Signed and sworn to before me on _____

Date

in _____ County, Michigan

Signature _____

My commision expires _____

Date

Notary public in _____ County, Michigan

The information below is the public-facing information available for this standard. Highlighted text identifies places where missing content is available only by purchasing the standard. The table of contents is available on the website but is not included in this document.

ISO 24495-1:2023

Plain language

Part 1: Governing principles and guidelines

Foreword

ISO (the International Organization for Standardization) is a worldwide federation of national standards bodies (ISO member bodies). The work of preparing International Standards is normally carried out through ISO technical committees. Each member body interested in a subject for which a technical committee has been established has the right to be represented on that committee. International organizations, governmental and non-governmental, in liaison with ISO, also take part in the work. ISO collaborates closely with the International Electrotechnical Commission (IEC) on all matters of electrotechnical standardization.

The procedures used to develop this document and those intended for its further maintenance are described in the ISO/IEC Directives, Part 1. In particular, the different approval criteria needed for the different types of ISO document should be noted. This document was drafted in accordance with the editorial rules of the ISO/IEC Directives, Part 2 (see www.iso.org/directives).

ISO draws attention to the possibility that the implementation of this document may involve the use of (a) patent(s). ISO takes no position concerning the evidence, validity or applicability of any claimed patent rights in respect thereof. As of the date of publication of this document, ISO had not received notice of (a) patent(s) which may be required to implement this document. However, implementers are cautioned that this may not represent the latest information, which may be obtained from the patent database available at www.iso.org/patents. ISO shall not be held responsible for identifying any or all such patent rights.

Any trade name used in this document is information given for the convenience of users and does not constitute an endorsement.

For an explanation of the voluntary nature of standards, the meaning of ISO specific terms and expressions related to conformity assessment, as well as information about ISO's adherence to the World Trade Organization (WTO) principles in the Technical Barriers to Trade (TBT), see www.iso.org/iso/foreword.html.

This document was prepared by Technical Committee ISO/TC 37, *Language and terminology*.

A list of all parts in the ISO 24495 series can be found on the ISO website.

Any feedback or questions on this document should be directed to the user's national standards body. A complete listing of these bodies can be found at www.iso.org/members.html.

Introduction

Plain language is communication that puts readers first. It considers:

- — what readers want and need to know;
- — readers' level of interest, expertise and literacy skills;
- — the context in which readers will use the document.

Plain language ensures readers can find what they need, understand it and use it. Thus, plain language focuses on how successfully readers can use the document rather than on mechanical measures such as readability formulas.

Extensive studies have shown that writing in plain language saves time or money (or both) for readers and organizations. Plain language is more effective and produces better outcomes. In addition, readers prefer plain language. For organizations, plain language is an important way to build trust with the readers. Finally, the process of translating is more efficient for plain language documents than for documents that are difficult to understand.

This document will help authors develop documents that communicate effectively with their intended readers. It applies to most written languages and reflects the most recent research on plain language and the experience of plain language experts. See Reference [3] for research on plain language.

Plain language is not to be confused with easy language. Plain language can be used for a general audience, while easy language is used for people who have difficulties with reading comprehension. These difficulties can be caused by health conditions, not being fluent in the given language or other reasons.

1 Scope

This document establishes governing principles and guidelines for developing plain language documents. The guidelines detail how the principles are interpreted and applied.

This document is for anybody who creates or helps create documents. The widest use of plain language is for documents that are intended for the general public. However, it is also applicable, for example, to technical writing, legislative drafting or using controlled languages.

This document applies to most, if not all, written languages, but it provides examples only in English.

While this document covers the essential elements of plain language, it has some intentional limits, as follows:

- — It does not cover all types of communication. It applies only to printed or digital information that is primarily in the form of text.

NOTE 1 However, creators of other types of communications, such as podcasts and videos, can find this document useful.

- — It does not include existing technical guidance about accessibility and digital documents, although the guidance can apply to both.

NOTE 2 For guidance on accessibility, authors of digital documents can consider the Web Content Accessibility Guidelines^[4] and EN 301 549.^[2]

2 Normative references

There are no normative references in this document.

3 Terms and definitions

For the purposes of this document, the following terms and definitions apply.

ISO and IEC maintain terminology databases for use in standardization at the following addresses:

- — ISO Online browsing platform: available at <https://www.iso.org/obp>
- — IEC Electropedia: available at <https://www.electropedia.org/>

3.1 plain language

communication in which wording, structure and design are so clear that intended *readers* (3.2) can easily

- — find what they need,
- — understand what they find, and
- — use that information

[SOURCE: International Plain Language Federation^[3]]

3.2 reader

member of the intended audience for a *document* (3.3)

Note 1 to entry: While the word “reader” is historically rooted in the verb “to read”, all intended audience members do not necessarily “read” documents. For the purposes of this document, the term “reader” includes the following:

- — Everyone who uses a document, whether they view it, hear it, touch it or a combination.
- — Someone who will skim or scan a document, looking only for particular information.
- — Someone to whom a document is read, whether by a person or a device.

Note 2 to entry: There can be several different audiences for the same document. For example, the primary audience of an income tax form is the taxpayer, and the secondary audience is the tax agency. If the needs of different readers conflict, then the needs of the primary audience have priority.

3.3 document

set of printed or digital information, primarily in the form of text

EXAMPLE:

Audio description, email, error message, contract, form, podcast script, video manuscript, webpage.

3.4 author

individual or organization who develops or helps develop *documents* (3.3)

EXAMPLE:

Content developers or managers, editors, information architects or designers, information developers or managers, legislative drafters, professional writers, public relations officers, technical writers, translators, UX (user experience) writers, writing project managers.

3.5 document type

class of *documents* (3.3) having similar characteristics

EXAMPLE:

Email, webpage, postal letter, instruction manual, newspaper article, form.

[SOURCE:ISO 8879:1986, 4.102, modified — The list of examples has been modified and separated from the text of the definition.]

3.6 image

visual representation of information

EXAMPLE:

Chart, diagram, drawing, flowchart, graph, icon, infographic, map, picture, photograph, table.

3.7 information design

visual integration of text, typography, *images* (3.6) and multimedia to help *readers* (3.2) find, understand and use information

Note 1 to entry: Information design makes the structure and content visual.

3.8 evaluation

assessment of how well *readers* (3.2) find, understand and use information

4 Governing Principles

[Not included in public-facing materials. Section 4 lists and elaborates on the four governing principles. But although section 4 is not included in the public-facing materials, sections 5.1, 5.2, 5.3, and 5.4 identify the four governing principles and the guidelines for using them.]

5 Guidelines

[Below, you'll see the headings for each of the four principles and then for the guidelines for each principle. In the full standard, you would then see descriptions and additional guidance under each of these headings and subheadings. That detail is available only by purchasing the standard. You can see some of that detail in the sample document posted here: <https://cdn.standards.iteh.ai/samples/78907/d194fac21d6a45f38bfcfec9657f7498/ISO-24495-1-2023.pdf>]

5.1 Guidelines for Principle 1: Readers get what they need (relevant)

- 5.1.1 Overview
- 5.1.2 Identify the readers
- 5.1.3 Identify the readers' purpose
- 5.1.4 Identify the context in which readers will read the document
- 5.1.5 Select the document type or types
- 5.1.6 Select content that readers need

5.2 Guidelines for Principle 2: Readers can easily find what they need (findable)

- 5.2.1 Overview
- 5.2.2 Structure the document for readers
- 5.2.3 Use information design techniques that enable readers to find information
- 5.2.4 Use headings to help readers predict what comes next
- 5.2.5 Keep supplementary information separate

5.3 Guidelines for Principle 3: Readers can easily understand what they find (understandable)

- 5.3.1 Overview
- 5.3.2 Choose familiar words
- 5.3.3 Write clear sentences
- 5.3.4 Write concise sentences
- 5.3.5 Write clear and concise paragraphs
- 5.3.6 Consider including images and multimedia

5.3.7 Project a respectful tone

5.3.8 Ensure that the document is cohesive

5.4 Guidelines for Principle 4: Readers can easily use the information (usable)

5.4.1 Overview

5.4.2 Evaluate the document continually as it is developed

5.4.3 Evaluate the document further with readers

5.4.4 Continue to evaluate readers' use of the document

[The following documents are available in the purchased version]

Figure 1 – Relationship of the four principles

Annex A (Figure A-1) Overview of principles and guidelines

Annex B (Table B.1) Sample checklist

Bibliography

- [1] ISO 8879:1986, *Information processing — Text and office systems — Standard Generalized Markup Language (SGML)*
- [2] EN 301 549, *Accessibility requirements for ICT products and services*
- [3] International Plain Language Federation. ISO Plain Language Standard – Bibliography [online]. Available at: <https://www.iplfederation.org/plain-language/bibliography/>
- [4] Web Content Accessibility Guidelines (WCAG) [online]. Available at: <https://www.w3.org/WAI/standards-guidelines/wcag/>



Douglas T. Shima

Clerk of the Kansas Supreme Court and Court of Appeals

Shima has been with the appellate courts since 1995, first as a research attorney for the Court of Appeals and then as chambers counsel for Judge G. Joseph Pierron Jr., who sits on the Court of Appeals. He graduated from Washburn University School of Law, where he served as Washburn Law Journal staff, received the Order of the Barristers Award from the Washburn Moot Court Council, and received American Jurisprudence Awards for legal research and writing, and in constitutional law.



Gary L. Chambon, Jr.

Michigan Court of Appeals
Lansing, Michigan

Gary L. Chambon, Jr., is a district clerk of the Michigan Court of Appeals in the Lansing office. His work includes review of new filings with the Michigan Court of Appeals for jurisdictional concerns. Mr. Chambon has been employed as a permanent staff attorney of the Michigan Court of Appeals since 2002. Previously, he was a judicial clerk to former Michigan Supreme Court Justice Clifford W. Taylor and Michigan Court of Appeals Judge William C. Whitbeck. Mr. Chambon is a member of the Appellate Practice

Section of the State Bar of Michigan.



Tiffany N. Mortier

Tiffany N. Mortier, Esq., has been with the Colorado Court of Appeals since 2003 and is now motions and jurisdiction counsel. Tiffany graduated from Vermont Law School in 2001 and entered the Presidential Management Fellowship program. She then served as a law clerk to Judge John R. Webb and more recently as Counsel to Chief Judge Steven L. Bernard and Chief Judge Gilbert M. Román.



Wellbeing and the Appellate Courts

What is wellbeing?

How employees experience work and what can be done to support them and help them thrive



Wellbeing includes

mental health

physical
health

safety

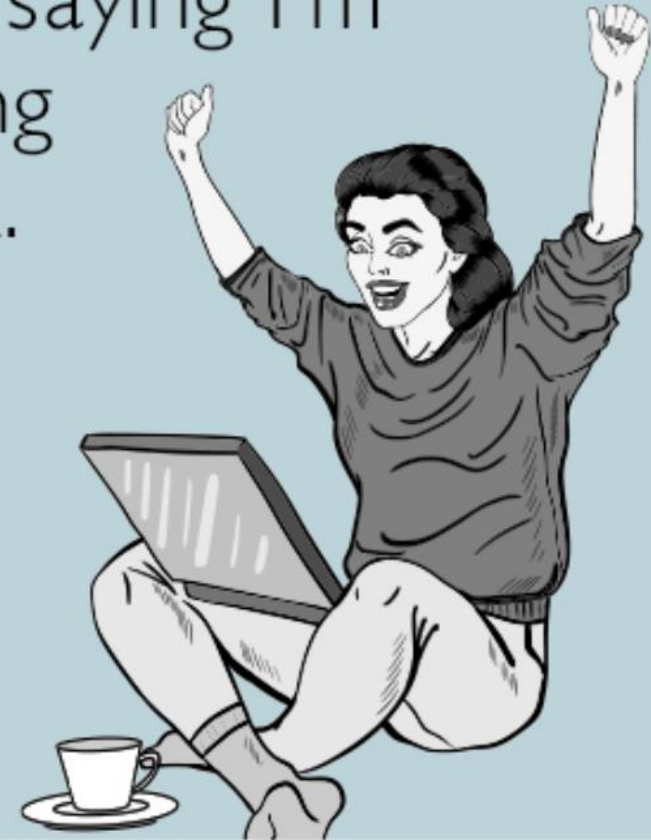
feeling valued

feeling part of
a community

What is it not?

Why is wellbeing important?

The only time I get up early for work is to write the email saying I'm not coming into work.



som^{ee}cards

A large orange circle is positioned on the left side of the slide, partially overlapping the text.

Investing in
wellbeing
can
increase

Retention

Productivity

Recruitment

Satisfaction

Colorado Judicial Branch

Established two state-wide wellbeing committees: one for judges and one for employees

Providing guidance and support to courts on implementing flexible and remote work options

Mental health services

There's so much more to do . . .

Colorado Judicial Well-Being Model



OCCUPATIONAL
Engagement
Contribution
Job Security
Work/Life Balance




INTELLECTUAL
Learning
Creativity
Challenge
Cognitive Health




ENVIRONMENTAL
Interdependence
Support Network
Org Climate
Org Culture

ORGANIZATIONAL GROUPS



CULTURAL
Identity
Inclusion
Purpose/Values
Thought Diversity

TEAMS INDIVIDUAL



SAFETY
Psychological
Physical
Structural
Trauma Informed
Crisis Support



EMOTIONAL
Mental Health
Support for Needs
Emotional Safety



SOCIAL
Relationships
Connection
Inclusion
Belonging



PHYSIOLOGICAL
Physical Health
Recreational
Freedom from Harm



DRAFT

Mental Health Program (20th Judicial District)



Confidential trauma-informed one-on-one counseling;



Group/team de-briefs led by a trauma informed mental health professional/counselor;



Crisis intervention (event specific) services led by a trauma informed mental health professional/counselor.



Colorado Court of Appeals

“Just Be” Mindfulness Program

Peer to Peer coaching

Therapy dogs

Group and individual sessions with mental health professionals after incidents

Remote work options

Flexible work options

Day of Service

Share your wellbeing ideas and experiences at your table ... report back to the group with at least one idea for improving employee wellness at our courts

Let's Talk



Thought Session



Hayden G. DePorter

Hayden DePorter, Esq., is an appellate law clerk at the Colorado Court of Appeals. Hayden is passionate about DEI efforts, which has led to speaking engagements across Colorado, as well as Lyft Headquarters in San Francisco. They won the inclusive excellence award from the University of Denver, as well as the summit scholar award from the Colorado LGBT Bar Association. Hayden is currently on the Colorado LGBT Bar Association Board of Directors, a member of the CBA Professionalism Coordinating Council, and a member of the Governance Group at the Colorado Court of Appeals. Hayden received their J.D. from the University of Denver Sturm College of Law and their B.S. from the University of Wisconsin-Madison where they worked as a beet farmer.

WORKING WITH TRANS AND NON-BINARY STAFF AND LITIGANTS

**They
Them**

HELLO

My pronouns are

Hayden DePorter (they/them)

Appellate Law Clerk, Colorado Court of Appeals

**They
Them**

**He
Him**

**She
They**

**He
They**

**She
Her**

Community Agreement

Acknowledge impact as distinct from intent. Words have power; words can harm. Your words and actions can have an impact on others. Be mindful that while you may have the best intentions, what you say or do can have a very different impact on others.

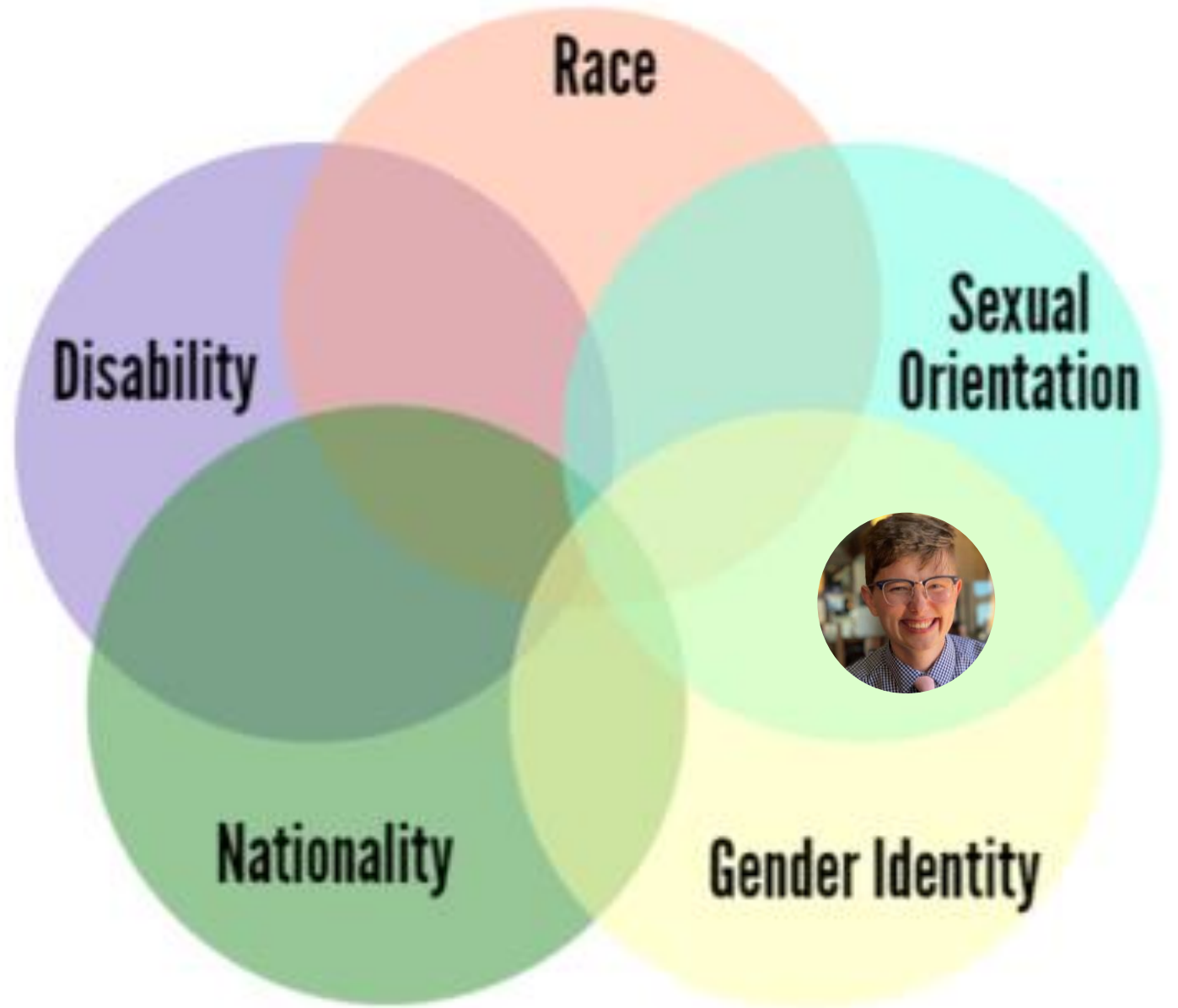
Honor confidentiality. What's said here stays here; what's learned here leaves here.

Use "I" statements. Everyone is entitled to their beliefs and opinions, as long as they are sharing from their own personal experience. Avoid speaking on behalf of others or making broad generalizations about groups of people.

We are all learning. If you've spent a lot of time reading about non-binary identities or consider yourself a strong ally, try to remember that there was a time when you were just learning, too. Be patient with people who have just begun their learning.

Be curious, not judgmental.

Intersectionality



Terminology: Introduction

- LGBTQ refers to Lesbian, Gay, Bisexual, Transgender, and Queer
 - You may also see LGBT, GLBT, or other variations (possibly with more letters such as I (Intersex) and A (could be Asexual, Agender, or Ally)).
- Sex and gender are not the same.



Terminology: Sex and Gender

Sex refers to a person's biological or physiological status based on chromosomes and reproductive organs, and is typically categorized as male, female, or intersex.

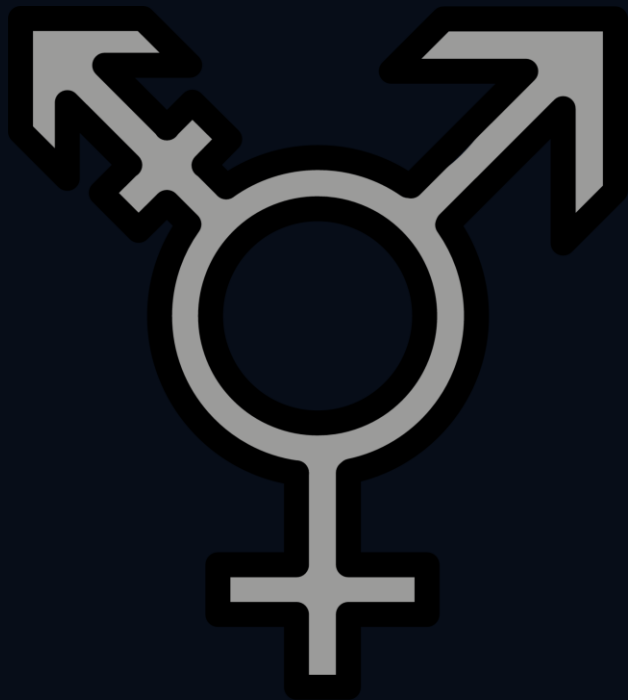
Intersex describes a person born with reproductive or sexual anatomy and/or a chromosome pattern that can't be classified as typically male or female. (Intersex is not the same thing as transgender.)

Gender refers to socially constructed roles, behaviors, and characteristics that a given society typically considers "appropriate" for women and men.

- These norms vary among different communities and societies, and vary over time.
- Gender is not limited to the binary "male and female" construct.



What Does Transgender Mean?



Anyone whose current lived gender is *different* from the sex they were assigned at birth.

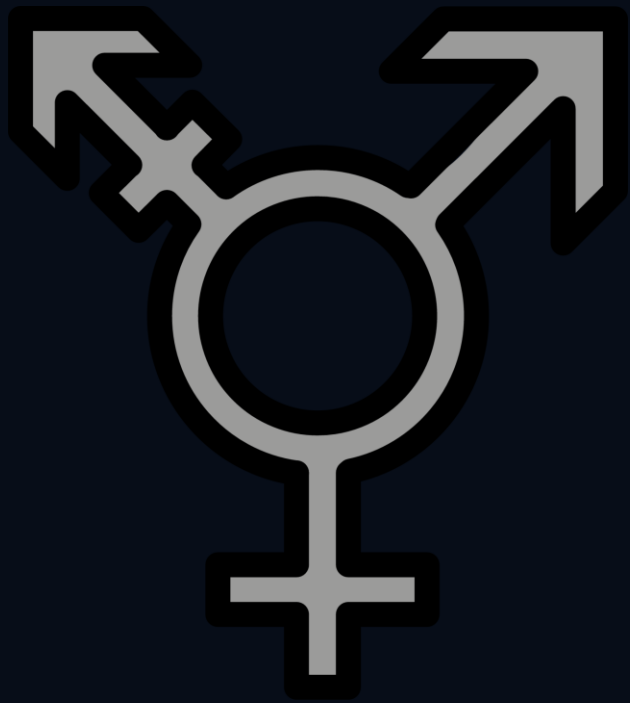
- Binary people (men and women)
- Non-binary people (genderqueer, gender nonconforming, etc.)

Unacceptable Terminology



- Transgendered**ed**
- Transsexual
- Tranny
- Transvestite
- Pre-operative/post-operative

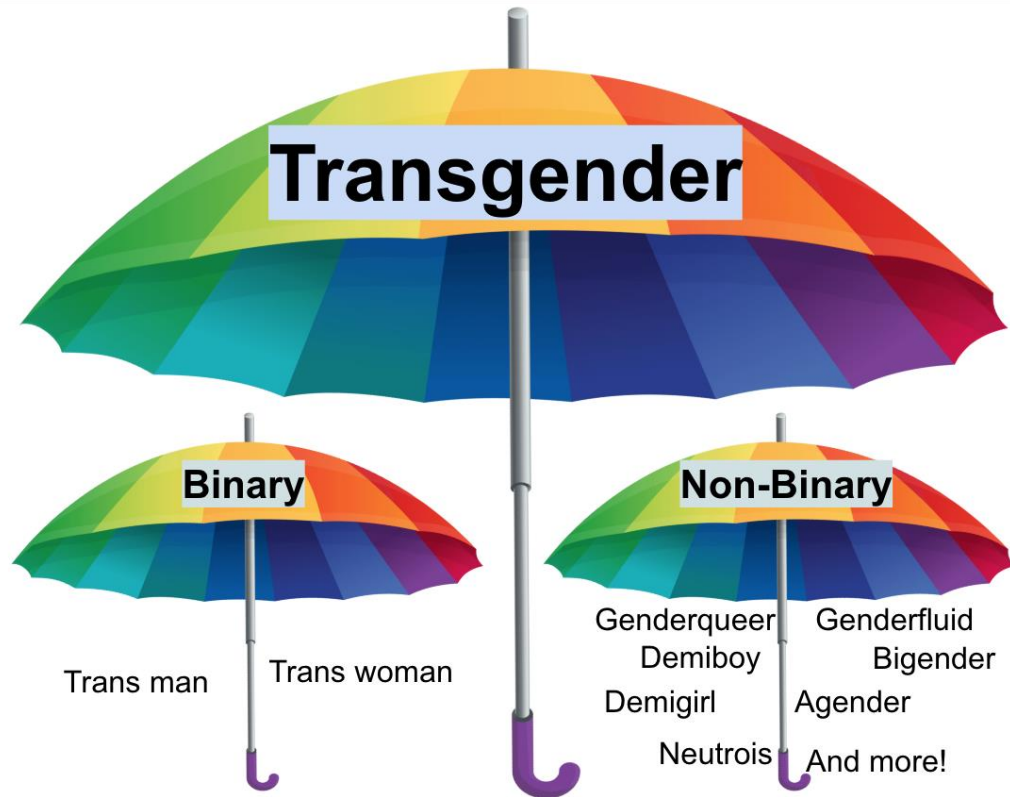
Transitioning



Gender transition refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender instead of the sex they were assigned at birth. During gender transition, individuals **may** begin to outwardly express the gender consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly, over a long duration of time, or not at all.

Medical treatment may or may not be part of transitioning.

Trans Umbrella



While the term “non-binary” falls under the “trans umbrella,” it is important to note that identifying as transgender does not mean that particular individual is non-binary. Though transgender individuals can be non-binary, most transgender individuals identify as strictly male or female.

Gender 101

Sex

A social, legal, medical designation assigned at birth based on a medical assessment of the body

Gender

Typically associated with one's biological sex: the social construction of norms, behaviors and roles that varies between societies and over time

Gender Identity

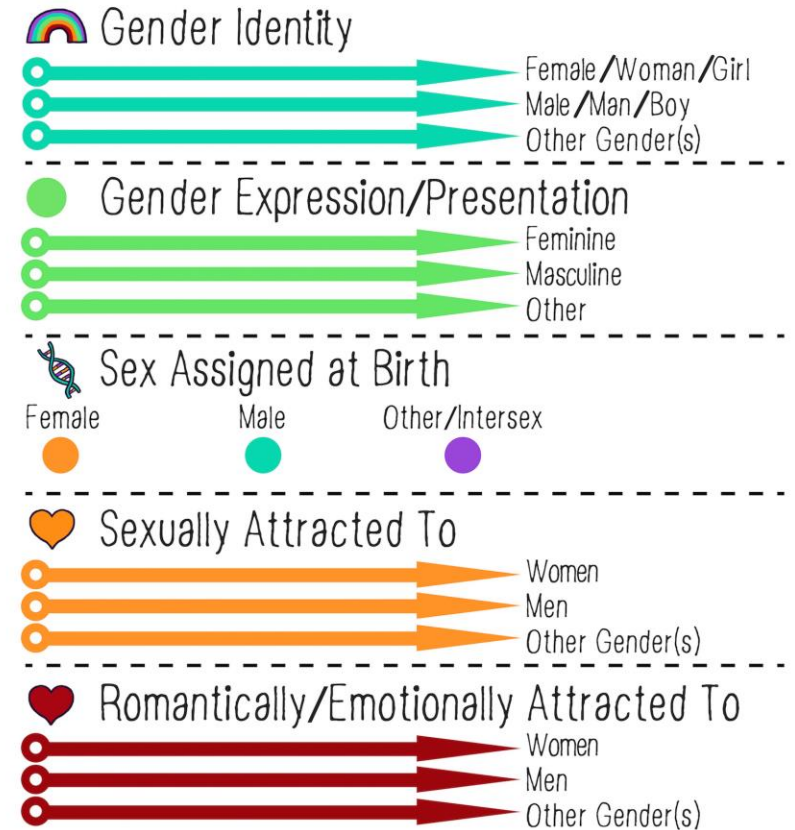
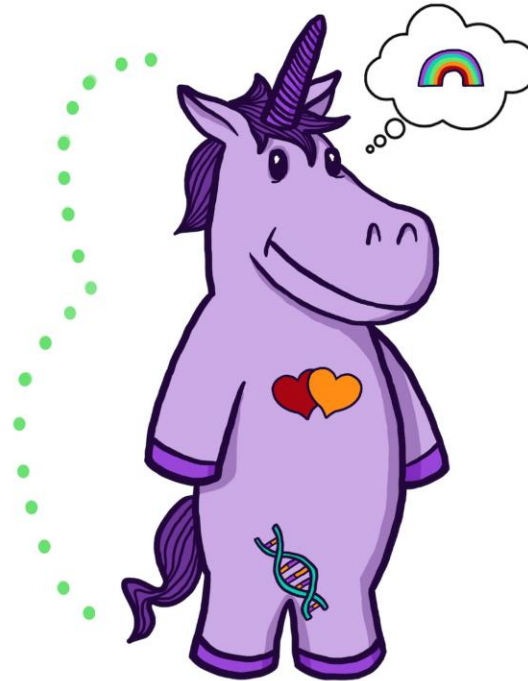
An individual's personal sense of having a particular gender.

Gender Expression

External manifestations of gender, expressed through one's name, pronouns, clothing, haircut, behavior, voice, or body characteristics.

The Gender Unicorn

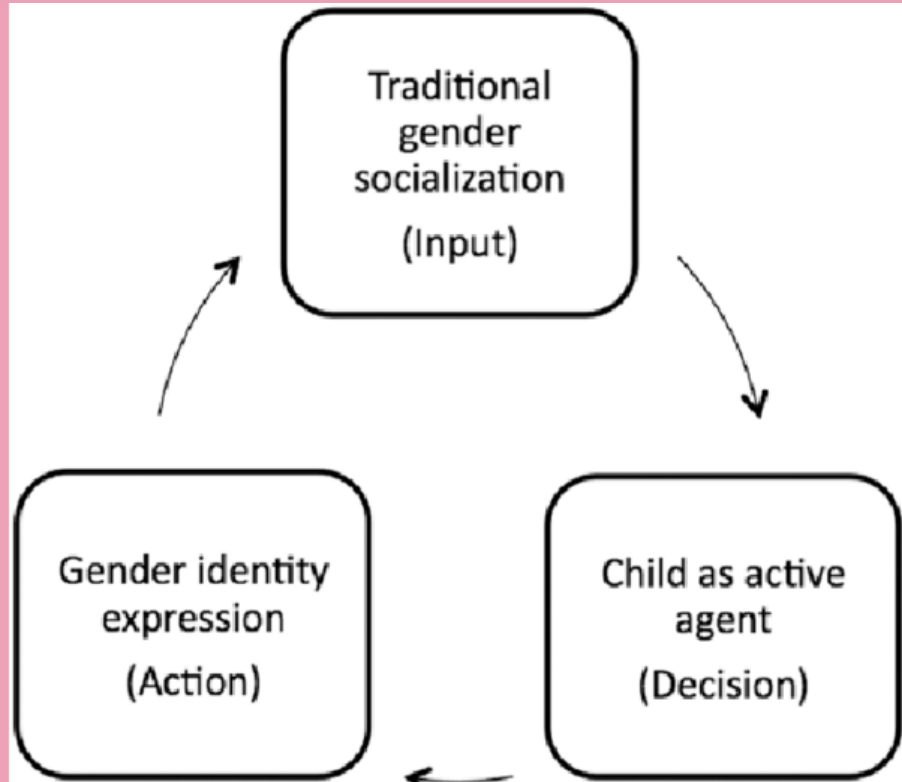
Graphic by:
TSER
Trans Student Educational Resources



To learn more, go to:
www.transstudent.org/gender

Design by Landyn Pan

Gender Identity Development Starts Around Age Two



PhotoScan by Google Photos

Pronouns 101

Gender Pronouns

Please note that these are not the only pronouns. There are an infinite number of pronouns as new ones emerge in our language. Always ask someone for their pronouns.

Subjective	Objective	Possessive	Reflexive	Example
She	Her	Hers	Herself	She is speaking. I listened to her. The backpack is hers.
He	Him	His	Himself	He is speaking. I listened to him. The backpack is his.
They	Them	Theirs	Themselves	They are speaking. I listened to them. The backpack is theirs.
Ze	Hir/Zir	Hirs/Zirs	Hirself/ Zirself	Ze is speaking. I listened to hir. The backpack is zirs.

Design by Landyn Pan

[transstudent.tumblr.com](https://www.tumblr.com/transstudent)
[facebook.com/transstudent](https://www.facebook.com/transstudent)
twitter.com/transstudent

For more information,
go to transstudent.org/graphics

TSER
Trans Student Educational Resources

Neopronouns

Neopronouns are a category of new (neo) pronouns that are used in place of “she,” “he,” or “they.”

A neopronoun can be a word created to serve as pronoun without expressing gender, like “ze” and “zir.”

Gender Inclusive Language in the Workplace

Can you think of a time you've seen unnecessarily gendered language in the workplace and/or courtroom?

What are ways you can change the language to be more inclusive?

Gender Exclusive v. Inclusive Language

Gender Exclusive (Red X)	Gender Inclusive (Green Checkmark)
Ladies and gentlemen, guys and gals	Colleagues, team, people
Maternity and paternity leave	Parental leave, parental time off
Husband, wife, boyfriend, girlfriend	Partner, spouse
"What are your preferred pronouns?"	"What pronouns do you use?"
Ms., Mr., or Mrs.	People's first names, non-gender specific titles like Mx or M
Mailman, chairman, policeman	Mail clerk, chairperson, police officer
Sexual preference	Sexual orientation

AIHR | ACADEMY TO INNOVATE HR

Examples: Gender Inclusive Language in the Workplace

“His or her job responsibilities include...” → “Job responsibilities include...” or “Their job responsibilities include...”

- “Employees should approach Human Resources with any questions regarding his/her benefits.” → “Employees should approach Human Resources with any questions regarding their benefits.”
- Maternity leave/paternity leave → Parental leave
- Ladies and gentlemen of the jury → Members of the jury

Some More Examples:

INSTEAD OF...

Hello ma'am/sir

Did you help him/her?

TRY...

Hello there

Did you help that person? Did you help that customer?

Inclusive Forms in Practice

*Date of Birth 

Gender Male Female Other

Setup Date 

External ID



Gender*

Male Female

- Gender**
Check one or more options that reflect your gender.
- woman
 - man
 - non-binary
 - transgender
 - intersex
 - Two Spirit (see below for more information)
 - gender non-conforming
 - Other:

Inclusive Forms in Practice: Notice of Pronouns in Utah

_____	Notice of Pronouns
_____	<input type="checkbox"/> She / her / Ms.
Plaintiff/Petitioner	<input type="checkbox"/> She / her / Mrs.
v.	<input type="checkbox"/> He / him / Mr.
_____	<input type="checkbox"/> They / them / Mx.
Defendant/Respondent	<input type="checkbox"/> _____
	Case Number _____
	Judge _____

Bring a copy of this to each court hearing.

I ask the court to use the following pronouns for me during court hearings:

She / her / Ms. She / her / Mrs. He / him / Mr.

They / them / Mx. (pronounced "mix") _____
additional pronoun

Practicing Allyship

- Add your pronouns in your email signature and online.
- Avoid addressing the group as “ladies and gentlemen”
- Include pronouns in introductions to create a space for individuals to voluntarily provide their pronouns.
- Practice using gender neutral pronouns **on your own time**. Feeling comfortable with these terms does not happen immediately and can require concerted effort. Be open and willing to being corrected should you make a mistake when addressing someone.
- When you see someone being misgendered, privately speak to the person who has done the misgendering and teach them how to do better next time.
- Put in the work! Read books and articles written by transgender and non-binary people.
- Speak to your workplace's Operations or Human Resources staff about implementing safe trainings and practices for *all* employees.
- Think before you ask. A reminder that words and actions can have an impact on others. Be mindful that while you may have the best intentions, what you say or do can have a very different impact on others.
- Always listen to transgender and non-binary people when they trust you enough to tell you about injustices they face—listen and believe them.
- Take accountability for mistakes, assumptions, or thoughts you may have had in the past regarding trans and non-binary people.
- **Reminder:** You can't tell if someone is non-binary or transgender simply by looking at them.

Example in Practice: My Email Signature

Hayden DePorter

Appellate Law Clerk | Hon. Jaclyn Casey Brown

Colorado Court of Appeals

hayden.deporter@judicial.state.co.us

Pronouns: they/them/theirs [what's this?](#)

what's this?

"They" Pronouns

*"They are a writer and wrote that book **themselves**. Those ideas are **theirs**. I like both **them** and **their** ideas."*

WHAT DO YOU MEAN THAT YOU GO BY "THEY" PRONOUNS?

It means that if you refer to me using a pronoun instead of my name that you can use "they." For example, if Dana goes by "they" pronouns, you could say "Dana went to the library" or "**They** went to the library."

Often, people make assumptions about the gender of another person based on a person's appearance or name. Then, they apply those assumptions to the pronouns and forms of address used to refer to a person.

Whether or not these assumptions are correct, **the very act of making an assumption can send a potentially harmful message** -- that people have to look a certain way to demonstrate the gender that they are or are not.

Scenario 1

You are talking in a meeting about someone who uses “they/them” pronouns and say, “His idea for that project is going to work very well. Let’s try that.” Later, after the meeting, you realize that you used the incorrect pronouns for that person.

What might you do? (There is no “right” answer)

Scenario 1 Continued

- Go up to them and say: “I’m really sorry I used the wrong pronouns for you in that meeting earlier. I know you go by ‘they/them’ and I will make sure I get it right next time.”
- Send an email apologizing

Note: You don’t have to linger on the topic if the other person doesn’t want to talk about it further. Don't dwell on your mistake – it’s not productive and it's inappropriate to make the person feel awkward and responsible for comforting you. In other words, it’s your job to remember and respect someone’s gender pronouns. **The best apology is to be better in the future**

Scenario 2

You have a new coworker who uses the pronouns, “ze/zir.” You find this information out from zir email signature. You do not know anyone who uses those pronouns, nor do you know how to pronounce them.

What might you do? (There is no “right” answer)

Scenario 2 Continued

- Google first. There are hundreds of resources out there created by trans and non-binary folks.
- Watch videos on pronunciation.
- While there are common ways to pronounce neopronouns, there are many variations, so if someone trusts you enough to share their pronouns with you, you should feel comfortable asking for clarification.
 - For example, “Hey there, Maddy, I noticed the pronouns ‘z-e’ and ‘z-i-r’ on your email signature and I want to make sure I am pronouncing that right. Can tell me how you pronounce it?”
- **Tip: write down what the person said so you do not have to ask again.**

The Expert in Anything was Once a Beginner

- <https://pronouns.org/>
- <https://transequality.org/issues/resources/understanding-non-binary-people-how-to-be-respectful-and-supportive>
- <https://www.glaad.org/transgender/allies>
- <https://www.npr.org/2021/06/02/996319297/gender-identity-pronouns-expression-guide-lgbtq>
- <https://www.bustle.com/wellness/how-to-use-neopronouns-expert>

Questions?



Let's Keep the Conversation Going



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TRANS STUDENTS
EXPLAIN WHY
PRONOUNS
ARE IMPORTANT