

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