

IN THE SUPREME COURT FOR THE STATE OF ALASKA
ORDER NO. 949

Revising Criminal Rule
26.1, Exhibits

IT IS ORDERED:

Criminal Rule 26.1, Exhibits, is amended as follows:

- (a) Mark for Identification. All [INTENDED] exhibits shall be marked for identification at the time of trial or hearing unless the judge orders pre-marking of the exhibits. [OTHERWISE ORDERED BY THE COURT. EXHIBITS MARKED FOR IDENTIFICATION WILL BE FILED WITH THE CLERK OF COURT.]
- (b) Procedure. Exhibits shall be marked for identification in the manner prescribed by the administrative director in the bulletin required by paragraph (h) of this rule. All exhibits marked for identification shall be listed on an exhibit list provided by the court. The form of the exhibit list shall be prescribed by the administrative director.
- (c) [(B)] Admission. Exhibits properly marked for identification may be admitted into evidence upon the motion of any [A] party[,] or upon the court's own motion. After an identified exhibit is admitted [RECEIVED] by the court, the clerk shall mark the exhibit "admitted"[,] in a manner [AND FORM] prescribed by the administrative director. When an exhibit is admitted into evidence, the fact of its admission shall be noted immediately on the exhibit list.
- [(C) ALL EXHIBITS MARKED FOR IDENTIFICATION SHALL BE LISTED ON AN EXHIBIT LIST PROVIDED BY THE COURT. WHEN AN IDENTIFIED EXHIBIT IS ADMITTED INTO EVIDENCE, THE FACT OF ITS ADMISSION SHALL BE NOTED IMMEDIATELY ON THE EXHIBIT LIST. THE FORM OF THE EXHIBIT LIST SHALL BE PRESCRIBED BY THE ADMINISTRATIVE DIRECTOR.]
- (d) Custody of Exhibits. At the time an exhibit is offered into evidence, the exhibit shall be placed in and remain in the clerk's custody until released as provided in paragraph (g) of this rule or as set forth in the administrative bulletin required by paragraph (h) of this rule. Exhibits which have not been offered into evidence shall not be placed in the custody of the clerk unless otherwise ordered by the court.

(e) [D] Final Check. Prior to [FINAL ARGUMENT OR] submission of the case to the jury or to the court sitting without a jury [WITHOUT ARGUMENT], the court shall require counsel and those parties not represented by counsel to (1) examine all intended, identified, offered, or admitted exhibits and the in-court clerk's exhibit list, (2) confirm to the court that the list accurately reflects the status of the exhibits, and (3) confirm that any modifications to the exhibits ordered by the court have been made. Upon [A] proper motion[,] or the court's own motion, the court may order additional exhibits marked for identification and/or admitted into evidence. At the time of the final check, identified [IDENTIFIED] exhibits which have not been offered for admission but which the court has previously ordered placed in the clerk's custody shall be returned to the appropriate party [FORTHWITH], unless otherwise ordered by the court.

(f) Submission to the Jury. Unless otherwise ordered by the court, all exhibits admitted into evidence shall be given to the jury for deliberation, except the following exhibits will not be given to the jury without a specific court order:

- (1) live ammunition;
- (2) firearms;
- (3) drugs and alcoholic beverages;
- (4) perishable, flammable or hazardous materials; and
- (5) money, jewelry or other valuable items.

The court may allow a photograph of an exhibit to be submitted to the jury in place of the physical exhibit.

(g) Return of Some Exhibits After Hearing or Trial.

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

- (1) live ammunition;
- (2) firearms;
- (3) drugs and alcoholic beverages;
- (4) perishable, flammable or hazardous materials;
- (5) money, jewelry or other valuable items; and
- (6) items which are unwieldy due to bulk and/or weight.

Whenever exhibits are returned to counsel for safekeeping pending appeal, the court may require counsel to submit an affidavit setting forth the specific measures taken to insure safekeeping of the exhibits.

- h) [E] Administrative Bulletin. The administrative director [ADMINISTRATIVE DIRECTOR] shall establish standards and procedures by appropriate bulletin consistent with these rules governing the marking, handling, storage, safekeeping, and disposal of all exhibits coming into the court's custody. Unless otherwise ordered by the court, such standards and procedures are controlling.

DATED: October 17, 1988

EFFECTIVE DATE: January 15, 1989

Chief Justice Warren W. Matthews

Justice Rabinowitz

Justice Burke

Justice Compton

Justice Moore