

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CH. 81]

Amendment of Rule 8.4 of the Pennsylvania Rules of Professional Conduct; No. 243 Disciplinary Rules Docket

Order

Per Curiam

And Now, this 3rd day of April, 2024, upon the recommendation of the Disciplinary Board of the Supreme Court of Pennsylvania, having been published for comment in the *Pennsylvania Bulletin*, 52 Pa.B. 6357 (October 8, 2022):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 8.4 of the Rules of Professional Conduct is amended in the attached form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b) and shall be effective in 30 days.

Additions to the rules are in bold and are underlined.

Deletions from the rules are shown in bold and brackets.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

Subchapter A. RULES OF PROFESSIONAL CONDUCT

§ 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

* * * * *

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation, **except that a lawyer may advise, direct, or supervise others, including clients, law enforcement officers, and investigators, who participate in lawful investigative activities;**

* * * * *

Comment:

* * * * *

(2) Notwithstanding the general restriction against engaging in deceit, this Rule does not prohibit a lawyer from advising or supervising another who engages in an otherwise lawful and ethical undercover investigation, in which the investigator does not disclose his or her true identity and motivation, regardless of the nature of the matter or substantive area of law involved. This

Rule does not change the scope of a lawyer's obligations under Rule 4.2 and thus a lawyer must take reasonable measures so that the investigator does not communicate with a represented party in violation of Rule 4.2, does not seek to elicit privileged information, and otherwise acts in compliance with these Rules, court orders, and civil and criminal law.

[(2)] (3) Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[(3)] (4) For the purposes of paragraph (g), conduct in the practice of law includes: (i) interacting with witnesses, coworkers, court personnel, lawyers, or others, while appearing in proceedings before a tribunal or in connection with the representation of a client; (ii) operating or managing a law firm or law practice; or (iii) participation in judicial boards, conferences, or committees; continuing legal education seminars; bench bar conferences; and bar association activities where legal education credits are offered. The term "the practice of law" does not include speeches, communications, debates, presentations, or publications given or published outside the contexts described in (i)—(iii).

[(4)] (5) "Harassment" means conduct that is intended to intimidate, denigrate or show hostility or aversion toward a person on any of the bases listed in paragraph (g). "Harassment" includes sexual harassment, which includes but is not limited to sexual advances, requests for sexual favors, and other conduct of a sexual nature that is unwelcome.

[(5)] (6) "Discrimination" means conduct that a lawyer knows manifests an intention: to treat a person as inferior based on one or more of the characteristics listed in paragraph (g); to disregard relevant considerations of individual characteristics or merit because of one or more of the listed characteristics; or to cause or attempt to cause interference with the fair administration of justice based on one or more of the listed characteristics.

[(6)] (7) A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[(7)] (8) Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A

lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

[Pa.B. Doc. No. 24-491. Filed for public inspection April 12, 2024, 9:00 a.m.]

Title 25—LOCAL COURT RULES

LEBANON COUNTY

Rules of Civil Procedure; Administrative Order No. 1 of 2024; Doc. No. 2024-00021

Order of Court

And Now, this 27th day of March, 2024, pursuant to Pa.R.J.A. 103(c), it is *Hereby Ordered* that the Court adopts the following Rule of Civil Procedure Rule 52-223.1 regarding Custody of Exhibits which becomes effective April 1, 2024.

The District Court Administrator is *Hereby Ordered* to:

1. File one certified copy of this Order with the Administrative Office of Pennsylvania Courts to adminrules@pacourts.us;

2. Submit two paper copies of this Order to the Legislative Reference Bureau and one electronic copy in Microsoft Word format only to bulletin@palrb.us for publication in the *Pennsylvania Bulletin*;

3. Provide one copy of this Order to the members of the Lebanon County Bar Association;

4. Incorporate the Rule into the set of Local Rules within thirty (30) days of publication of the Local Rule in the *Pennsylvania Bulletin* and publish the rules on the Court's website at www.lebanoncountypa.gov.

5. File this Order in the Prothonotary's Office of Lebanon County.

Rule of Civil Procedure 52-223.1. Exhibits.

Rule 52-223.1. Exhibits.

(A) Exhibits—During Court Proceedings

(1) At the conclusion of a trial or hearing, all exhibits larger than 8 1/2 × 11 inches, which are part of the record, shall be reduced to that size, and all tangible objects which are part of the record, shall be photographed in color by the party originally proffering the evidence. The 8 1/2 × 11 inch reductions and color photographs shall be substituted in the record for the original exhibits and tangible objects unless the trial judge, upon motion or sua sponte, or an appellate court, shall direct otherwise.

(2) All exhibits which are bulky, oversized or otherwise physically impractical for the custodian to maintain (including, but not limited to, weapons, contraband and hazardous materials), shall be photographed in color by the party originally proffering the evidence. The original exhibit shall be maintained by the party originally proffering the evidence and the photograph of the exhibit (no larger in size than 8 1/2 × 11 inches) shall be entered into the record in lieu of the non-documentary exhibit.

(3) Whenever a video deposition of a witness or other video evidence is presented at trial or hearing, the video shall be marked as an exhibit. At the conclusion of the

trial or hearing, the video shall be submitted to the custodian for inclusion in the record of the case, unless the trial judge, upon motion or sua sponte, shall direct otherwise.

(a) Whenever a video deposition of a witness is presented at trial or hearing, it shall be accompanied by a transcript of the deposition as required by Pa.R.C.P. 4017.1(a)(2). The accompanying transcript shall be marked as an exhibit and retained in the record of the proceedings. In the event the record of the trial or hearing is transcribed for appellate or other purposes, the exhibit of the transcript accompanying the deposition shall be considered the official transcript of the testimony of the deponent. It shall not be necessary for the trial court reporter to also transcribe the audio portion of the videotape deposition which was presented at trial or hearing, so long as the record clearly reflects which part of the audio portion of the video deposition was offered into evidence and admitted.

(b) Whenever evidence is presented at trial or hearing in digital format, it shall be accompanied by a transcript of any dialogue contained within the video. The accompanying transcript shall be marked as an exhibit and retained in the record of the proceedings. In the event the record of the trial or hearing is transcribed for appellate or other purposes, the exhibit of the transcript accompanying the digital media shall be considered the official transcript of the video. It shall not be necessary for the trial court reporter to also transcribe the audio portion of the video which was presented at trial or hearing, so long as the record clearly reflects which part of the audio portion of the video was offered into evidence and admitted.

(B) Exhibits—After Court Proceedings

(1) After trial or hearing, exhibits admitted into evidence, as well as photographs of oversized, bulky and other non-documentary evidence shall be submitted to the custodian for filing pursuant to Pa.R.J.A. 5102.

(2) At the conclusion of the trial or hearing, the original documentary exhibits larger than 8 1/2 × 11 and non-documentary exhibits shall be returned for safekeeping to the party who presented it and that party shall maintain custody of the exhibit until conclusion of all appellate proceedings in the case, unless the trial judge, upon motion or sua sponte, shall direct otherwise.

(3) Notwithstanding the above, any person who has a possessory or legal interest in any exhibit which has been introduced into evidence may file a claim for such exhibit within thirty (30) days after trial. The presiding judge shall determine the validity of such claim and determine the manner and timing of disposition.

(C) DEFINITIONS

(1) *Custodian*—for purposes of this Rule, the term "Custodian" shall mean the Court's Official Court Reporter recording the proceeding.

(2) *Digital Media*—for purposes of this Rule, "digital media" shall mean either a dvd or thumb drive.

By the Court

JOHN C. TYLWALK,
President Judge

[Pa.B. Doc. No. 24-492. Filed for public inspection April 12, 2024, 9:00 a.m.]

Title 255—LOCAL COURT RULES

LEBANON COUNTY

Rules of Criminal Procedure; Administrative Order No. 2 of 2024; Doc. No. 2024-00021

Order of Court

And Now, this 28th day of March, 2024, pursuant to Pa.R.J.A. 103(c), it is *Hereby Ordered* that the Court adopts the following Rule of Criminal Procedure Rule 52-CrD-646 regarding Custody of Exhibits which becomes effective April 1, 2024.

The District Court Administrator is *Hereby Ordered* to:

1. File one certified copy of this Order with the Administrative Office of Pennsylvania Courts to adminrules@pacourts.us;
2. Submit two paper copies of this Order to the Legislative Reference Bureau and one electronic copy in Microsoft Word format only to bulletin@palrb.us for publication in the *Pennsylvania Bulletin*;
3. Provide one copy of this Order to the members of the Lebanon County Bar Association;
4. Incorporate the Rule into the set of Local Rules within thirty (30) days of publication of the Local Rule in the *Pennsylvania Bulletin* and publish the rules on the Court's website at www.lebanoncountypa.gov.
5. File this Order in the Prothonotary's Office of Lebanon County.

Rule of Civil Procedure. 52-223.1. Exhibits.

Rule 52-CrD-646. Exhibits.

(A) *Exhibits—During Court Proceedings*

(1) At the conclusion of a trial or hearing, all exhibits larger than 8 1/2 × 11 inches, which are part of the record, shall be reduced to that size, and all tangible objects which are part of the record, shall be photographed in color by the party originally proffering the evidence. The 8 1/2 × 11 inch reductions and color photographs shall be substituted in the record for the original exhibits and tangible objects unless the trial judge, upon motion or sua sponte, or an appellate court, shall direct otherwise.

(2) All exhibits which are bulky, oversized or otherwise physically impractical for the custodian to maintain (including, but not limited to, weapons, contraband and hazardous materials), shall be photographed in color by the party originally proffering the evidence. The original exhibit shall be maintained by the party originally proffering the evidence and the photograph of the exhibit (no larger in size than 8 1/2 × 11 inches) shall be entered into the record in lieu of the non-documentary exhibit.

(3) Whenever video evidence is presented at trial or hearing, the video shall be marked as an exhibit. At the conclusion of the trial or hearing, the video shall be submitted to the custodian for inclusion in the record of the case, unless the trial judge, upon motion or sua sponte, shall direct otherwise. Whenever evidence is presented at trial or hearing in digital format, it shall be accompanied by a transcript of any dialogue contained within the video. The accompanying transcript shall be marked as an exhibit and retained in the record of the proceedings. In the event the record of the trial or hearing is transcribed for appellate or other purposes, the exhibit of the transcript accompanying the digital media shall be considered the official transcript of the video. It shall not be necessary for the trial court reporter to also transcribe the audio portion of the video which was

presented at trial or hearing, so long as the record clearly reflects which part of the audio portion of the video was offered into evidence and admitted.

(B) *Exhibits—After Court Proceedings*

(1) After trial or hearing, exhibits admitted into evidence, as well as photographs of oversized, bulky and other non-documentary evidence shall be submitted to the custodian for filing pursuant to Pa.R.J.A. 5102.

(2) At the conclusion of the trial or hearing, the original documentary exhibits larger than 8 1/2 × 11 and non-documentary exhibits shall be returned for safekeeping to the party who presented it and that party shall maintain custody of the exhibit until conclusion of all appellate proceedings in the case, unless the trial judge, upon motion or sua sponte, shall direct otherwise.

(3) Notwithstanding the above, any person who has a possessory or legal interest in any exhibit which has been introduced into evidence may file a claim for such exhibit within thirty (30) days after trial. The presiding judge shall determine the validity of such claim and determine the manner and timing of disposition.

(C) *DEFINITIONS*

(1) *Custodian*—for purposes of this Rule, the term “Custodian” shall mean the Court’s Official Court Reporter recording the proceeding.

(2) *Digital Media*—for purposes of this Rule, “digital media” shall mean either a dvd or thumb drive.

By the Court

JOHN C. TYLWALK,
President Judge

[Pa.B. Doc. No. 24-493. Filed for public inspection April 12, 2024, 9:00 a.m.]

Title 255—LOCAL COURT RULES

LUZERNE COUNTY

Order Adopting Rule of Judicial Administration 5102; No. 00033 of 2024

Order

And Now, this 28 day of March 2024, it is hereby *Ordered and Decreed* as follows:

1. The Luzerne County Court of Common Pleas of the 11th Judicial District of Pennsylvania hereby adopts Luzerne County Rule of Judicial Administration 5102, a true and correct copy of which is following hereto.

2. Pursuant to Pa.R.J.A. 103(c), the following Luzerne County Rule of Judicial Administration shall be disseminated and published in the following manner:

a. One copy via email to the Administrative Office of Pennsylvania Courts;

b. Two paper copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* and one electronic copy via e-mail saved in a Microsoft format to bulletin@palrb.us;

c. One copy for publication on the Court’s website, located at www.luzernecounty.com; and,

d. One copy to the Luzerne County Office of Court Administration, *Luzerne Legal Register*, and the Luzerne County Clerk of Judicial Records for public inspection and copying.

3. It is further Ordered that the effective date of this Order shall be thirty (30) days after the date of Publication in the *Pennsylvania Bulletin*.

4. It is further Ordered that these local rules shall be kept continuously available for public inspection and copying in the Office of Judicial Services and Records of Luzerne County.

By the Court

MICHAEL T. VOUGH,
President Judge

Custody and Storage of Exhibits

Rule 5102. General Provisions.

(a) *During the Court Proceedings.* The court reporter is responsible to act as the custodian of exhibits with the exception of contraband, weapons, money, or other dangerous materials. The moving party shall keep custody of and be responsible for all contraband, weapons, money, or other dangerous materials. The appropriate custodian shall secure and maintain all exhibits during the court proceedings, including breaks and recesses.

(b) *After the Court Proceedings.*

(1) The moving party shall keep custody of and be responsible for all non-documentary material submitted into evidence at trial, including contraband, weapons, money, or other dangerous materials. The materials shall not be left in the courtroom at the conclusion of the trial.

(2) The moving party shall retain all trial exhibits which are larger than 8.5 × 11. The moving party shall submit an original or copy of the trial exhibit no larger than 8.5 × 11 to the court reporter which will be entered into the permanent record. The court reporter shall file a copy of the trial exhibits with the appropriate filing office within five (5) days of the conclusion of the court proceedings.

(3) The moving party is responsible for copying any digital evidence (videotapes, phone calls, etc.) presented at trial on a DVD, CD or USB flash drive and submitting same to the court reporter. The court reporter shall file a copy with the appropriate filing office within five (5) days of the conclusion of the court proceedings.

(c) *Index of Exhibits.* The court reporter will provide each party with a proposed trial exhibit form, in substantially the format set forth in Form 1 of the Appendix to these Rules, for each party to utilize during trial which will be provided to the court reporter at the conclusion of the proceedings to prepare an accurate index of exhibits. Immediately upon the termination of court proceeding, the court reporter shall assemble and identify all such exhibits in the case including a numbered list of exhibits, identify the proponent of each exhibit, whether the exhibit was admitted or rejected from evidence, and a description or identification of the exhibit. The court reporter shall be responsible for filing this exhibit list with the appropriate filing office within five (5) days of the conclusion of the court proceedings.

(d) *After Final Disposition of the Case.* This will include the expiration of any applicable appeal period, the moving party may, after notice to counsel for all parties, petition the Court for an order authorizing the removal and disposition by destruction, or otherwise, of any non-documentary exhibit or any tangible exhibit of a size or weight precluding its enclosure in a regular case file.

(e) *Exclusions.* This rule excludes proceedings before hearing officer in divorce, custody, support, delinquency, and dependency matters.

**FORM 1
INDEX OF EXHIBITS**

Case Name: _____

Docket No: _____ Judge: _____ Courtroom: _____ Date: _____

<i>PLF/ COMM</i>	<i>DEFT</i>	<i>Description of Exhibit</i>	<i>Admitted</i>	<i>Witness</i>	<i>Bulk Exhibit</i>

<i>PLF/ COMM</i>	<i>DEFT</i>	<i>Description of Exhibit</i>	<i>Admitted</i>	<i>Witness</i>	<i>Bulk Exhibit</i>

*Bulk Exhibit—Weapons, cash, contraband, bulky or oversized items

[Pa.B. Doc. No. 24-494. Filed for public inspection April 12, 2024, 9:00 a.m.]

Title 255—LOCAL COURT RULES

SOMERSET COUNTY

Custody of Exhibits; Local Rule 5102, 5103; 27 MISC 2024

Order of Court

And Now, this 22 day of March, 2024, in compliance with Rule 103(d) of the Pennsylvania Rules of Judicial Administration, it is hereby ordered that the Court adopts the following Rule of Judicial Administration Custody of Exhibits regarding Somerset County’s custody of exhibits, to be effective thirty (30) days after publication in the *Pennsylvania Bulletin*. This Rule shall supersede and replace Somerset County Rule of Judicial Administration 4090.

The Court Administrator’s is directed as follows:

1. File one certified copy of this Order with the Administrative Office of Pennsylvania Courts to adminrules@pascourts.us;

2. Submit two paper copies and one electronic copy in Microsoft Word format only to the Legislative Reference Bureau, bulletin@palrb.us for publication in the *Pennsylvania Bulletin*;

Pa. Code and Bulletin
Legislative Reference Bureau
647 Main Capitol Building
Harrisburg, PA 17120

3. Publication of the local rule on the Somerset County Courts website.

4. Provide an electronic copy of this Order to the *Somerset Legal Journal* for publication therein;

5. Incorporate this Rule into the Local Rules of Somerset County within thirty (30) days of publication of the Local Rule in the *Pennsylvania Bulletin* and publish the Rule on the Court’s official website;

6. File this Order in the Prothonotary’s Office of Somerset County.

By the Court

SCOTT P. BITTNER,
President Judge

CUSTODY OF EXHIBITS

Rule 5102. General Provisions.

The Court Reporter or Court Recorder/Technician for all, or a portion, of a court proceeding shall be designated as the “Custodian,” as defined by Pa.R.J.A. 5101(a)(2), for all documentary exhibits, photographs, and photoreproductions

of non-documentary exhibits accepted or rejected during the court proceeding submitted during that period.

(a) If only one custodian is involved with a proceeding, he or she shall file with the appropriate records office all submitted exhibits and index of exhibits within five (5) business days of the conclusion of the proceeding.

(b) If more than one custodian is involved with a proceeding, the first custodian shall provide the subsequent custodian (and so on, if more than two custodians) with the submitted exhibits and index of exhibits for that court proceeding. The custodian at the conclusion of the proceeding shall file with the appropriate records office all submitted exhibits and index of exhibits within five (5) business days of the conclusion of the proceeding. However, if a proceeding is transcribed automatically and there are exhibits introduced in that proceeding, then those exhibits shall be attached to and filed with the transcript of the proceeding and not filed separately.

(c) The index of exhibits form is attached hereto and made a part hereof as Exhibit “A”.

Rule 5103. Custody of Exhibits—Special Provisions.

(a) The proponent shall retain custody of physical evidence (including, but not limited to, weapons, cash, other items of value, drugs, or other dangerous/hazardous materials or substances) and bulky, oversized, or otherwise physically impractical exhibits at all times during and after a court proceeding.

(1) Any non-documentary exhibits shall be photographed by the proponent, converted to a letter sized document, and appropriately marked and produced during the court proceeding for inclusion in the documentary record.

(2) Unless otherwise provided by the presiding judge, at the conclusion of the court proceeding, non-documentary evidence shall be returned to the proponent for safekeeping as required by any applicable retention schedule, statute, rule, regulation, or policy, or until further order of court.

(3) Unless otherwise ordered, the proponent or filing office shall maintain non-documentary exhibits for the following time periods, at a minimum:

i. *Non-criminal matters.* Exhibits shall be retained until the later of the expiration of the appeal period or final disposition of the appeal, if one is taken.

ii. *Criminal matters.*

1. *Homicide cases.* Exhibits shall be retained for seventy-five (75) years.

2. *Summary cases.* Exhibits shall be retained for five (5) years.

3. *Other cases.* Exhibits shall be retained for twenty (20) years.

(b) Any digital exhibit that cannot be printed (ie. audio or video recording) shall be entered into the records on a USB drive (or other digital format if expressly approved

by the Court). If one party has multiple digital exhibits, they may be submitted together on one USB drive.

(c) Any exhibit containing confidential information or the equivalent to any of the categories enumerated in PA. Access Policy § 8.0 shall include a Confidential Document Form provided by the proponent so that the document can be properly sealed by the record office.

**Somerset County
Custodial List of Exhibits Form**

Case Name: _____

Docket No. _____

Attorneys: _____, Plaintiff _____ Defense _____

<i>Exhibit Number</i>	<i>Description of Exhibit</i>	<i>Proponent</i>	<i>Admitted</i>	<i>Rejected</i>	<i>Bulk Exhibit</i>

Completed date: _____

Court Reporter/Technician _____

Title 255—LOCAL COURT RULES**WESTMORELAND COUNTY****Reassignment of Recusals in Criminal Court; No. 3
of 2024****Administrative Order of Court**

And Now, to wit, this 27th day of March, 2024, in order to alleviate the heavy burden being placed upon Judge Krieger as a result of Judge Mears' conflicts and recusals resulting from his hiring of Amanda Rubin, Esquire, a former Assistant District Attorney, commencing Monday, April 1, 2024, any case which a judge who is obligated to recuse from shall be placed upon the wheel, said wheel containing the names of all four criminal court judges. The first case requiring reassignment occurring on or

after April 1, 2024, shall be assigned to the next judge on the wheel, starting with Judge Feliciani and thereafter, in the following order and repeating in similar fashion:

Judge Krieger

Judge Bilik-DeFazio

Judge Mears

This procedure shall alternate as needed until March 31, 2025 at which time the manner in which recusals are reassigned, shall return to the standard procedure currently in effect.

By the Court

CHRISTOPHER A. FELICIANI,
President Judge

[Pa.B. Doc. No. 24-496. Filed for public inspection April 12, 2024, 9:00 a.m.]