

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION
OF A COMMITTEE TO REVIEW THE
PRESERVATION, ACCESS, AND
SEALING OF COURT RECORDS

ADKT. No. 410

FILED

MAR 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

CORRECTED ORDER ADOPTING PROTOCOL FOR STORAGE,
RETENTION AND DESTRUCTION OF EVIDENCE

WHEREAS, the Nevada Supreme Court is concerned about the lack of standardized protocols for the storage, retention and destruction of evidence; and

WHEREAS, because of the foregoing concern and pursuant to the Nevada Rules on the Administrative Docket, the Nevada Supreme Court on April 26, 2007, created a subcommittee to propose a uniform protocol; and

WHEREAS, the subcommittee presented a proposed protocol to this court and a public hearing was held on the protocol on November 2, 2009; and

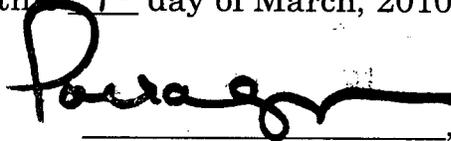
WHEREAS, this court solicited and considered public comment on the draft protocol; and

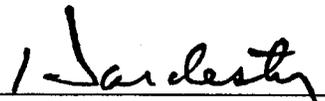
WHEREAS, this court entered an order on March 4, 2010, adopting the protocol, but an incorrect version of the protocol was attached; accordingly,

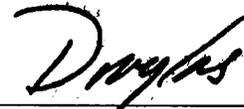
IT IS HEREBY ORDERED that the Protocol for the Storage, Retention and Destruction of Evidence shall be adopted and shall read as set forth in Exhibit A.

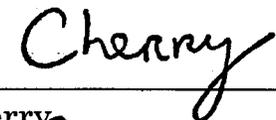
IT IS FURTHER ORDERED that the adoption of this protocol shall be effective thirty days from the date of this order. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rules.

Dated this 9th day of March, 2010.

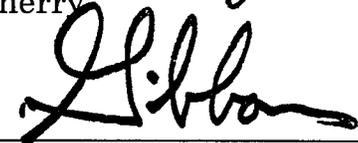

_____, C.J.
Parraguirre


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons


_____, J.
Pickering

cc: All District Court Judges
All Justices of the Peace
All Municipal Court Judges
All District Court Clerks and County Clerks
Administrative Office of the Courts

EVIDENCE RETENTION AND DESTRUCTION SUBCOMMITTEE

EVIDENCE PROTOCOL

Introduction

The mission of this subcommittee is to make recommendations to the Nevada Supreme Court Commission on Preservation, Access, and Sealing of Court Records regarding a uniform policy on the storage, retention, and destruction of evidence that would be used by District Courts in the State of Nevada. In addition to protecting the health and safety of Court employees, the Court has an interest in ensuring that evidence integrity is maintained and that the property rights of individuals are preserved. These recommendations are measures related to the handling of certain items which may have been used as exhibits in civil, criminal, and family law matters. Nothing contained in these procedures is intended to override the inherent power of the Court to render rulings consistent with the rules of evidence and the rules of civil and criminal procedure on the handling of exhibits being offered into evidence before the Court.

While the focus of this subcommittee was on the storage, retention and destruction of evidence in the evidence rooms of the various courts within the State of Nevada, the committee recognizes that the responsibility for the admission, integrity and disposition of evidence lies ultimately with the judge. It is respectfully submitted that the judge, acting as gatekeeper, can facilitate the orderly retention and disposition of evidence through a careful selection process of the evidence that is initially admitted at trial.

Definitions

1. **Biohazardous materials:** Biohazardous materials are materials of biological origin that could potentially cause harm to humans, domestic or wild animals, or plants. Biohazardous materials may be infectious or toxic non-infectious in nature.
2. **Biological Evidence:** Any semen, blood, saliva, hair, skin tissue, or other identified biological material removed from physical evidence.
3. **Bloodborne pathogen:** Pathogenic micro-organisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).
4. **Contamination:** The presence or the reasonably anticipated presence of blood or other potentially infectious materials on an item or surface.
5. **Contaminated Sharps:** Any contaminated object that can penetrate the skin including, but not limited to, needles, scalpels, broken glass, broken capillary tubes, and exposed ends of dental wires.
6. **Controlled substances:** Drugs and drug products regulated under the Uniform Controlled Substances Act.
7. **Decontamination:** The use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens or potentially infectious agents on a surface or item to the point where they are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.

8. **Dangerous drug:** See NRS 454.201 "Dangerous Drug" defined.
9. **Drugs:** See Controlled Substances.
10. **Expiration of sentence:** The date a defendant is either discharged from probation without execution of sentence or the date a defendant serving an executed sentence is discharged from supervised or special release.
11. **Explosive:** A substance, especially a prepared chemical, that has the potential to explode or cause an explosion.
12. **Exposure incident:** A specific eye, mouth, other mucous membrane, non-intact skin, or parenteral contact with blood or other potentially infectious materials that results from the performance of an employee's duties.
13. **Flammable:** A chemical that falls within one of the following categories:
 - a. "*Aerosol, flammable.*" An aerosol that, when tested by the method described in 16 C.F.R. (Code of Federal Regulations) 1500.45, yields a flame projection exceeding 18 inches at full valve opening, or a flashback (a flame extending back to the valve) in any degree of valve opening.
 - b. "*Gas, flammable.*" (1) A gas that, at ambient temperature and pressure, forms a flammable mixture with air at a concentration of 13% by volume or less; or (2) A gas that, at ambient temperature and pressure, forms a range of flammable mixtures with air wider than 12% by volume, regardless of the lower limit.
 - c. "*Liquid, flammable.*" Any liquid having a flash point below 100°F (37.8°C), except any mixture having components with flashpoint of 100°F (37.8°C) or higher, the totals which make up 99% or more of the total volume of mixture.
 - d. "*Solid, flammable.*" A solid, other than a blasting agent or explosive as defined in 29 C.F.R. 1910.109 (a), that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard. A solid is a flammable solid if, when tested by the method described in 16 C.F.R. 1500.44; it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.
14. **Harmful physical agent:**¹ Heat, noise, ionizing radiation and non-ionizing radiation as defined in Nevada Revised Statutes.
15. **Hazardous substance:** See NRS 459.429 "Hazardous substance" defined.
16. **Hazardous waste:** See NRS 459.430 "Hazardous waste" defined.
17. **Immediate precursor:** See NRS 453.086 "Immediate precursor" defined.
18. **Infectious agent:** Any organism, such as a pathogenic virus, parasite, or bacterium, that is capable of invading body tissues, multiplying, and causing disease.
19. **Narcotics:** See Controlled Substances.
20. **Other potentially infectious materials:** (1) The following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

¹ See NRS 459.3816 Designation of highly hazardous substances and explosives: Regulations: amendment.

- (2) Any unfixed tissue or organ (other than intact skin) from a human (living or dead); and (3) HIV-containing cell or tissue cultures, organ cultures, and HIV- or HBV- containing culture medium and other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.
21. **Parenteral:** Piercing mucous membranes or the skin barrier through such evidence as needle sticks, human bites, cuts, and abrasions.
 22. **Personal protective equipment:** Specialized clothing or equipment worn by an employee for protection against a hazard. General work clothes (e.g., uniforms, pants, shirts or blouses) not intended to function as protection against a hazard are not considered to be personal protective equipment.
 23. **Reactive:** Tending toward the decomposition or other unwanted chemical change during normal handling or storage. A chemical that, in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense or become self-reactive under conditions of shocks, pressure or temperature.
 24. **Secondary container:** A second container which prevents leakage during handling, processing, storage, transport, or shipping.

Exhibit Stickers²

1. Exhibits must be marked for identification with an exhibit sticker provided by the court before being referred to in court.
2. Voluminous exhibits that are clearly delineated may not need to be marked separately.
3. Exhibit stickers will only be placed on those exhibits intended to be submitted into evidence at a trial or hearing. Exhibit stickers shall not be placed on any other copies of exhibits.
4. Exhibit stickers in all cases must be marked with the full case number and exhibit number or letter and must show whether the exhibit was admitted.³

Placement of Exhibit Stickers

1. Stickers will be placed on the exhibits in a manner which will not interfere with the viewing of the exhibit. If at all possible, exhibit stickers should be placed in the lower right corner of the front side of the first page of documents. If the sticker is placed on the back of a document or photograph, then the sticker should be placed in the lower right corner. Caution: Exhibit stickers will not adhere well to some surfaces, e.g. smooth metal or plastic. In such cases, the sticker must be securely taped to the exhibit.
2. If an exhibit sticker cannot be attached directly to the exhibit, the sticker will be attached to a wired or stringed tag which will then be attached to the exhibit.

² The subcommittee found Nevada District Courts used various colored stickers to delineate the source of the exhibits. Example: some district courts use blue stickers for the defendant and white stickers for the State or plaintiff exhibits, while others use blue stickers for the State or plaintiff exhibits and white for the defendant. The subcommittee was not able to propose a uniform policy for colored stickers at this time.

³ The subcommittee makes no recommendation at this time regarding whether or not the exhibit stickers should be labeled alphabetically or numerically.

3. To aid in locating exhibits, exhibit stickers should be visible at all times. However, if this is not possible because the exhibit is stored in a non-transparent container, the container must be labeled.

Preparing Trial Exhibits

1. All ammunition will be submitted in sealable containers.
2. All clothing, shoes, boots, hats, gloves, jackets or other wearing apparel must be dried to prevent molding and submitted in clear plastic bags or paper sacks.
3. Any firearm will have all ammunition removed prior to submission to the court. When submitted, the firearm must be in a condition that will not allow the trigger to be pulled thereby detonating any live ammunition which may be placed in the weapon. For example: firearms must have bolts removed and taped securely to the side or locked to the rear, cylinders swung out, loading gates open, or slides or breeches locked open.
4. Breakable exhibits must be submitted in protective containers strong enough to prevent breakage and contain spillage.
5. All perishable items (e.g., food) and those emanating odors (e.g., untanned animal hides) must be submitted in transparent plastic bags or other types of transparent airtight containers. The judge may allow a photograph of such an exhibit to be substituted in place of the physical exhibit.
6. All drugs must be submitted in clear heavy-duty plastic bags or other types of transparent non-breakable containers. Any opening of the bag or other container must be completely sealed with exhibit tape.
7. Hazardous substances (such as acid, gasoline, explosives, etc.) must be submitted in containers approved for storage of a hazardous substance strong enough to prevent breakage and contain spillage. The outside of the container must clearly a) identify the contents, b) be marked "Hazardous," and c) be labeled as required by local, state, and federal regulations.
8. Multi-page documents not securely fastened may be placed in transparent plastic bags to ensure that pages are not lost.
9. In cases in which counsel anticipate that there will be more than 50 documentary exhibits, the documentary exhibits must be submitted in an organized system which will help in handling and locating the exhibits. For example: documentary exhibits may be placed in three ring binders with tab dividers or in file folders marked with the exhibit numbers.

Safekeeping of Exhibits During Trial or Hearing

1. During Recesses-During court recesses, sensitive exhibits must be placed in a secure place unless the in-court clerk or another court employee is guarding the exhibits or the courtroom is emptied and the exhibits are locked in the courtroom. For purposes of this paragraph, the term "sensitive exhibits" includes money, drugs, firearms, jewelry, and other valuable items.
2. Overnight-Storage of exhibits overnight during a trial must be in either the designated exhibit storage area (described in the following section under Required

Exhibit Storage) or a locked exhibit cabinet in the courtroom. If there is no lockable exhibit storage cabinets in the courtroom, exhibits may be stored in the courtroom overnight only if authorized by the judge. Overnight storage of sensitive exhibits (drugs, firearms, money, etc.) must be in the designated exhibit storage area described in the Required Exhibit Storage section below. Overnight storage of biohazardous materials, controlled substances, explosives, flammable materials, and/or other potentially hazardous substances must be in a locked area or the designated storage area. Additionally:

- a. Prior to placing exhibits in storage, the clerk will insure that the exhibits needing special storage containers are adequately packaged to prevent contamination of the area, odor, breakage, or spillage.
- b. Before a firearm is placed in storage, it must be checked to be sure that there is no ammunition in it. All firearms must be stored in sealed gun cases.
- c. Perishable exhibits or exhibits too large for the court's designated storage area will be stored in a manner and in a place approved by the trial judge.

Required Exhibit Storage

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

1. Except during court proceedings or upon order of the court, all exhibits offered and admitted, will be stored in the designated storage area.
2. The designated storage area will be accessible only to court personnel and will be kept locked at all times except when in use.
3. All exhibits stored in the designated exhibit storage area, except for weapons or drugs, should be stored separately, when possible, in envelopes or suitable boxes. The case number and case name shall be noted on the outside of the envelope or box. A list of the exhibit numbers contained in the envelope or box will be noted on or in the envelope or box.
4. Perishable exhibits (e.g. food) or exhibits too large for the court's designated exhibit storage area will be stored in a manner and in a place approved by the trial judge.
5. Before placing in storage, the clerk will insure that exhibits needing special storage containers as required are adequately packaged to prevent contamination of the area, odor, breakage, or spillage.
6. Before a firearm is placed in storage, it must be checked to be sure that there is no ammunition in the firearm.
7. Drugs, firearms, or contraband should be stored in a separate secured area of the evidence room.
8. Biological specimens must be stored in a suitable storage container designed to preserve the physical integrity of the item.

Missing Exhibits

All courts will establish, in writing, a procedure for the systematic and immediate notification of supervisors and the administrative staff if an exhibit cannot be located after a thorough search and in no event longer than one judicial day, excluding weekends and holidays, after an exhibit is found to be missing or is lost.

Preservation of Biological Evidence

A.B. No. 279 effective October 1, 2009

Section 1. Chapter 176 of NRS is hereby amended by adding thereto the provisions set forth as Sections 2, 3, and 4 of this act.

Section 2. 1. Except as otherwise provided in this section, upon the conviction of a defendant for a category A or B felony, an agency of criminal justice that has in its possession or custody any biological evidence secured in connection with the investigation or prosecution of the defendant shall preserve such evidence until the expiration of any sentence imposed on the defendant.

2. Biological evidence subject to the requirements of this section may be consumed for testing upon notice to the defendant.

3. An agency of criminal justice may establish procedures for:

(a) Retaining probative samples of biological evidence subject to the requirements of this section; and

(b) Disposing of bulk evidence that does not affect the suitability of such probative samples for testing.

4. The provisions of this section must not be construed to restrict or limit an agency of criminal justice from establishing procedures for the retention, preservation and disposal of biological evidence secured in connection with other criminal cases.

5. As used in this section:

(a) "Agency of criminal justice" has the meaning ascribed to it in NRS 179A.030

(b) "Biological evidence" means any semen, blood, saliva, hair, skin tissue or other identified biological material removed from physical evidence.

Secs. 3 and 4. (Deleted by amendment.)

Sec. 5. NRS 176.0911 is hereby amended to read as follows:

176.0911 As used in NRS 176.0911 to 176.0917, inclusive, and section 2 of this act, unless the context otherwise requires, "CODIS" means the Combined DNA Indexing System operated by the Federal Bureau of Investigation.

Secs. 6-10 (Deleted by amendment.)

Disposal of Physical Evidence Before Criminal Trial

NRS 52.385 Property evidencing crime: Return to person entitled to possession; admissibility of photographs in lieu of property; disposal of property not returned.

1. At any time after property of any person other than the one accused of the crime of which the property is evidence comes into the custody of a peace officer or law enforcement agency, the rightful owner of the property or a person entitled to possession of the property may request the prosecuting attorney to return the property to him. Upon receipt of such a request, the prosecuting attorney may, before the property is released, require the peace officer or law enforcement agency to take photographs of the property. Except as otherwise provided in subsection 3, the peace officer or law enforcement agency shall return the property to the person submitting the request within a reasonable time after the receipt of the request, but in no event later than 180 days after the receipt of the request.
2. In the absence of such a request, the prosecuting attorney may authorize the peace officer or law enforcement agency that has custody of the property to return the property to the owner or a person who is entitled to possession of the property.
3. If the prosecuting attorney to whom a request for the release of property is made determines that the property is required for use as evidence in a criminal proceeding, he may deny the request for the release of the property.
4. Photographs of property returned pursuant to the provisions of this section are admissible in evidence in lieu of the property in any criminal or civil proceeding if they are identified and authenticated in the proceeding by:
 - (a) The rightful owner of the property or person entitled to possession of the property to whom the property was released;
 - (b) The peace officer or representative of the law enforcement agency who released the property; or
 - (c) A credible witness who has personal knowledge of the property, in accordance with the provisions of NRS 52.185 to 52.295, inclusive.
5. Any property subject to the provisions of this section which is not returned under the provisions of this section must be disposed of as provided in NRS 179.125 to 179.165, inclusive.

(Added to NRS by 1975, 1183; A 1979, 694; 1985, 796; 1993, 279; 1999, 754)

NRS 52.395 Controlled substances, dangerous drugs and immediate precursors: Procedure for destruction of unnecessary quantity seized as evidence; disposal of hazardous waste. Except as otherwise provided in NRS 453A.400:

1. When any substance alleged to be a controlled substance, dangerous drug or immediate precursor is seized from a defendant by a peace officer, the law enforcement agency of which the officer is a member may, with the prior approval of the prosecuting attorney, petition the district court in the county in which the defendant is charged to secure permission to destroy a part of the substance.

2. Upon receipt of a petition filed pursuant to subsection 1, the district court shall order the substance be accurately weighed and the weight thereof accurately recorded. The prosecuting attorney or his representative and the defendant or his representative must be allowed to inspect and weigh the substance.
3. If after completion of the weighing process the defendant does not knowingly and voluntarily stipulate to the weight of the substance, the district court shall hold a hearing to make a judicial determination of the weight of the substance. The defendant, his attorney and any other witness the defendant may designate may be present and testify at the hearing.
4. After a determination has been made as to the weight of the substance, the district court may order all the substance destroyed except that amount which is reasonably necessary to enable each interested party to analyze the substance to determine the composition of the substance. The district court shall order the remaining sample to be sealed and maintained for analysis before trial.
5. If the substance is finally determined not to be a controlled substance, dangerous drug or immediate precursor, unless the substance was destroyed pursuant to subsection 7, the owner may file a claim against the county to recover the reasonable value of the property destroyed pursuant to this section.
6. The district court's finding as to the weight of the substance destroyed pursuant to this section is admissible in any subsequent proceeding arising out of the same transaction.
7. If at the time that a peace officer seizes from a defendant a substance believed to be a controlled substance, dangerous drug or immediate precursor, the peace officer discovers any material or substance that he reasonably believes is hazardous waste, the peace officer may appropriately dispose of the material or substance without securing the permission of a court.
8. As used in this section:
 - (a) "Dangerous drug" has the meaning ascribed to it in NRS 454.201
 - (b) "Hazardous waste" has the meaning ascribed to it in NRS 459.430
 - (c) "Immediate precursor" has the meaning ascribed to it in NRS 453.086
 (Added to NRS by 1975, 1183; A 1987, 1547; 1989, 183; 1999, 2641; 2001, 3071)

Nevada Revised Statutes Destruction or Disposal of Exhibits-Civil

NRS 3.305 Destruction or disposal of exhibits by clerk. When the district court orders the disposal of an exhibit, the clerk shall serve written notice upon the last attorney or attorneys of record, representing the parties to the action wherein the exhibit was admitted into evidence, to withdraw such exhibit, and upon the failure to make such withdrawal within 30 days after service of notice, the clerk shall petition the court for an order requesting:

1. Destruction of the exhibit if such exhibit is found by the court to be of no value; or
2. Delivery of an exhibit of value to the board of county commissioners as the property of the county.

(Added to NRS by 1957, 708; A 1973, 439)

NRS 3.307 Destruction or disposal of exhibits in civil actions. A district court, on its own motion, may order destroyed or otherwise disposed of any exhibit or deposition introduced in the trial of a civil action or proceeding or filed in such action or proceeding which:

1. If appeal has not been taken from the decision of the district court in such action or proceeding, remains in the custody of the district court or clerk of such court two years after the time for appeal has expired.
2. If an appeal has been taken, remains in the custody of the district court or clerk of such court two years after final determination thereof, or which remains in the custody of the district court or clerk of such court for a period of two years after:
 - (a) A motion for a new trial has been granted or a motion to set for trial has not been made within such two years;
 - (b) The filing of the remittitur where the action or proceeding, after appeal, has been remanded to the trial court for a new trial and the same has not been brought to trial within two years from the date of filing of the remittitur;
 - (c) The dismissal of such action or proceeding; or
 - (d) The introduction or filing thereof where there is no provision for the destruction or other disposition of such exhibit or deposition and where, in the discretion of the district court, the same should be destroyed or otherwise disposed of.

The order shall be filed with the pleadings of each case in which any such order is made. (Added to NRS by 1971, 318; A 1973, 439)

Procedure for Return and Destruction of Exhibits-Civil⁴

1. Upon order of the court, the clerk shall return all civil exhibits by one of the following methods:
 - a. Delivery. The clerk may return civil exhibits together with a copy of the inventory and receipt, a) by certified mail; or b) personal delivery at the courthouse to the attorney, an employee of the attorney's firm, or the attorney's courier service. The person receiving the exhibits must complete and sign the court's copy of the inventory and receipt form.
 - b. Notice to Pick Up. The clerk may either telephone the attorney or party, or send an "Exhibit Notice Letter" by first-class mail to the attorney or party indicating that the attorney or party must pick up the civil exhibit within 33 calendar days from the date the letter is sent.
 - c. If the "Exhibit Notice Letter" is returned to the court undelivered, upon order of the court, as set forth below, the clerk shall make reasonable attempts to locate the attorney or party through such means as telephoning, contacting the State Bar of Nevada or the local county bar association, etc. Upon locating a current address for the attorney or party, the clerk shall then send a supplemental "Exhibit Notice Letter" to the attorney or party.
 - d. Judgment Stamps. In lieu of the Notice to Pick Up, the Final Judgment may be stamped or printed with a notice notifying counsel that if no appeal is filed the attorney must pick up the civil exhibits between 33 and 60 calendar days from the date of the distribution of a Final Judgment or Order.

⁴ See NRAP 4 (a)

2. Upon order of the court, the clerk shall dispose of or destroy all civil exhibits not being released in the following manner:
 - a. Place paper items in the recycle bin. Sealed exhibits *must* be shredded.
 - b. Pull any charts, tubes, x-rays, or miscellaneous items to destroy or dismantle, and discard in the trash.
 - c. Audio and video tapes should be dismantled and the tape cut into many pieces.
 - d. CDs and DVDs should be broken or cut.
3. After all exhibits in the group have been destroyed, the clerk shall sign each certificate of destruction, and staple the exhibit list to the original petition order and file them along with the original certificates of destruction.
4. The clerk shall update the card and/or database to reflect the exhibits that have been destroyed.
5. If there are no other items being held in the exhibit room for that case number, the clerk shall stamp the card, date and place the card into the closed card drawer. If the card is kept electronically, the clerk shall follow the court's case management system procedures to stamp, date, and electronically file the card.

Procedure for Return and Destruction of Exhibits-Criminal⁵

1. **Moving Party:** The Clerk of the Court (or his or her authorized deputy), the District Attorney (or his or her authorized deputy) of the county in which the criminal case was filed, the Attorney General (or his or her authorized deputy), the property owner, the defendant, or the defendant's attorney may apply for an order permitting the release or destruction of an exhibit offered and/or admitted in a criminal case filed in district court at the time release or destruction is sought.
2. **Time:**
 - a. A moving party may apply for an order seeking the release or destruction of an exhibit offered and/or admitted in a criminal case 1 year after the trial judge signs the judgment of conviction and it is entered by the clerk.
 - b. (i) A moving party that has been acquitted may apply for an order seeking the release or destruction of an exhibit offered and/or admitted in a criminal case immediately following his/her acquittal.
(ii) If the moving party does not apply for an order seeking release or destruction of an exhibit offered and/or admitted in a criminal case within one year of the acquittal, the court clerk may apply for an order seeking the release or destruction of an exhibit offered and/or admitted.
3. **Prohibition:** No exhibit offered and lodged with the clerk and/or admitted in a criminal case filed in the court may be released or destroyed absent a court order issued by the trial judge, or the chief judge if the trial judge is no longer in office, and no order may be issued absent a showing of good cause.
4. **Good Cause:** The moving party bears the burden of demonstrating good cause. The demonstration must address the following:
 - a. **Materiality:** whether the loss or destruction of the exhibit will prejudice the prosecution or defense in the event of a re-trial or post-conviction litigation, and

⁵See NRAP 4 (b)

- b. Whether the defendant filed a direct appeal from the judgment or filed any post-conviction petitions or motions in either state or federal court, and the results of that litigation.
5. Notice and Opportunity to be heard: Before a district judge may rule on the application of the moving party, the opposing side must be given notice and opportunity to be heard as provided for in the applicable DCRs. (Depending on who the moving party is, the opposing side would include the District Attorney of the county in which the criminal case was tried or his or her authorized deputy, the Attorney General or his or her authorized deputy, or, if the State is the moving party, the opposing side would include the defendant and the defendant's attorney at the time release or destruction is sought.) If the district judge deems it appropriate, he or she may require an evidentiary hearing.
6. Contents and Notice of Order: Any order disposing of an application filed under this heading must contain specific findings of fact supporting the decision. A copy of the decision must be served by the clerk of the court on the defendant, his or her counsel, if any, the Attorney General, and the District Attorney of the county in which the defendant was convicted.
7. Upon order of the court, the clerk shall return all criminal exhibits by one of the following methods:
 - a. Delivery. The clerk may return criminal exhibits together with a copy of the inventory and receipt, a) by certified mail; or b) personal delivery at the courthouse to the attorney, an employee of the attorney's firm, or the attorney's courier service. The person receiving the exhibits must complete and sign the court's copy of the inventory and receipt form.
 - b. Notice to Pick Up. The clerk may either telephone the attorney or party, or send an "Exhibit Notice Letter" by first-class mail to the attorney or party indicating that the attorney or party must pick up the criminal exhibit.
 - c. If the "Exhibit Notice Letter" is returned upon order of the court as set forth below, to the court undelivered, the clerk shall make reasonable attempts to locate the attorney or party through such means as telephoning, contacting the State Bar of Nevada or the local county bar association, etc. Upon locating a current address for the attorney or party, the clerk shall then send a supplemental "Exhibit Notice Letter" to the attorney or party.
 - d. Judgment Stamps. In lieu of the Notice to Pick Up, the Final Judgment may be stamped or printed with a notice notifying counsel that if no appeal is filed the attorney must pick up the criminal exhibits.
 - e. The clerk shall verify that all the items that go back to an agency are in the bags or envelopes they came in. If an item has been released from an agency, package a copy of the order releasing the evidence, and the receipt of exhibits should be attached to the bag or envelope the item was removed from.
Highlight the exhibits on the exhibit list that should go back to an agency.
8. Disposal or Destruction: Once an Order has been signed authorizing the disposal or destruction of exhibits the clerk shall dispose or destroy the exhibits in the following manner:
 - a. Place paper items in the recycle bin. Sealed exhibits *must* be shredded.

- b. Pull any charts, tubes, x-rays, or miscellaneous items to destroy or dismantle, and discard in the trash.
 - c. Audio and video tapes should be dismantled and the tape cut into many pieces.
 - d. CDs and DVDs should be broken or cut.
 - e. The disposal of firearms, ammunition, controlled substances, biohazardous materials, and biological exhibits should be in conformity with local law enforcement policies and procedures.
 - f. After the exhibits are destroyed, the clerk shall sign the certificate of destruction of exhibits and/or dispositions, staple the exhibit list to the original petition order, and file them along with the original certificates of destruction.
9. After all exhibits in the group have been destroyed, the clerk shall sign each certificate of destruction, and staple the exhibit list to the original petition order and file them along with the original certificates of destruction.
 10. The clerk shall update the card and/or database to reflect the exhibits that have been destroyed and archive the case.
 11. If there are no other items being held in the exhibit room for that case number, the clerk shall stamp the card with the “Destroyed Stamp” and date, and place the card into the closed card drawer. If the card is kept electronically, the clerk shall follow the court’s case management system procedures to stamp, date, and electronically file the card.

Procedures for the Handling, Retention, and Destruction of Exhibits-Family Court

1. Hearing Exhibits Maintained in File⁶
 - a. The clerk shall generate a court and cause cover page for exhibit.
 - b. The clerk shall file-stamp the cover page and attach to exhibit(s).
 - c. If admitted, the clerk shall stamp the exhibits(s) with the “Admit stamp.”
 - d. If not admitted, the clerk shall write the case number on the exhibit label.
 - e. The clerk shall enter the document code notating the exhibit numbers and whether the exhibits were admitted or not.
 - f. The clerk shall print the barcode label for imaging.
 - g. Once exhibit is imaged, the document is filed and stored by date.
 - h. Exhibit List is not necessary as these exhibits are treated as a file-stamped document and imaged.
2. Hearing exhibits maintained in the evidence vault
 - a. After a hearing, the court clerk shall sign over the exhibits to the evidence custodian, when applicable, with a copy of the exhibit list.
 - b. The custodian or court clerk shall verify all exhibits are present and list the exhibit(s) on the exhibit log or enter the exhibits into the case management system, if available.
 - c. All exhibits, offered and admitted, should be packaged by case number, labeled, and placed in the evidence vault.

⁶ These types of exhibits should not be removed from the file and destroyed. They should be maintained as part of the file to protect the integrity of the Family Court file.

- d. After two (2) years, the evidence custodian/clerk shall petition the court to destroy/dispose of the exhibits and notification, by first-class mail, is sent to the parties.
- e. After thirty (30) days from notification, a Petition and Order to Destroy Exhibits is sent to each Judge for signature and exhibits are then destroyed or returned to the party if an Order to Return or Release Exhibits was filed.
- f. After exhibits are destroyed or returned, the clerk shall update the database to reflect the exhibits have been destroyed or returned.
- g. If there are no other items being held in the exhibit room for that case number, the clerk shall stamp the card, date and place the card into the closed card drawer. If the card is kept electronically, the clerk shall follow the court's case management system procedures to stamp, date, and electronically file the card.

Forms

Please see Appendix A for examples of forms used by various courts to document the receipt, release, disposal, and return of exhibits.

Safety

Storage of items listed in this protocol and contained in the Storage/Evidence Room shall comply with the applicable local, state, and federal codes, including the International (2003) Fire Code, and the National Fire Protection Association's (NFPA) 232 Standard for the Protection of Records.

Conclusion

This evidence protocol may be amended from time to time as necessary to comply with requirements set forth by Supreme Court Rules and changes to the Nevada Revised Statutes. Please contact the Administrative Office of the Courts for any comments, changes, or proposed updates to this evidence protocol. Provisions may also be reviewed and amended as deemed necessary by the Commission on Preservation, Access, and Sealing of Court Records.

APPENDIX A

1 CODE 1692

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

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IN AND FOR THE COUNTY OF WASHOE

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8

9

vs. Plaintiff,

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Case No.

11

Dept. No.

12

Defendant.

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_____ /

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RECEIPT

15

Received from the Clerk of the Court, the following:

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STATE OF NEVADA)
) SS.
COUNTY OF WASHOE)

AFFIDAVIT

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21

_____ first being duly sworn and under penalty of perjury, deposes and says that he is lawfully entitled to possession of the above-listed exhibit(s) and does hereby acknowledge receipt of the same.

22

23

Subscribed and sworn to before me this

24

_____ day of July, 2009.

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HOWARD W. CONYERS
Clerk of the Court

Print

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By _____
Deputy Clerk

Signature

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1 **CODE 3370**

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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

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Case No.

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Plaintiff,

Dept. No.

11

vs.

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Defendant.

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NOTICE AND ORDER

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16

You are hereby notified that, the exhibits in the above-entitled case, pursuant to NRS 3.305 and NRS 3.307 may be permanently withdrawn.

17

18

19

You are further notified that if the exhibits are not claimed within thirty (30) days after receipt of this notice and order they will be destroyed or if found to be of any value, delivered to the Board of County Commissioners as the property of Washoe County.

20

21

IT IS HEREBY ORDERED that the exhibits in the above-entitled matter be withdrawn, destroyed or delivered to the Board of County Commissioners and a receipt filed with the Clerk of the Court.

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Dated this _____ day of July, 2009.

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DISTRICT JUDGE

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1 Code: 4035

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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

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Plaintiff(s),

Case No. _____

11

vs.

Dept. No. _____

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Defendant(s).

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STIPULATION AND ORDER RELEASING EXHIBITS

16

The parties to the above entitled action by and through their respective counsel
hereby stipulate that the following exhibits may be permanently withdrawn:

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PLAINTIFF'S Exhibits _____

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may be withdrawn by _____

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DEFENDANT'S Exhibits _____

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may be withdrawn by _____

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DATED this _____ day of _____, 2007.

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Attorney for Plaintiff

Attorney for Defendant

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ORDER

Good cause appearing,

IT IS HEREBY ORDERED that the above exhibits may be withdrawn and this stipulation and order filed with the Clerk.

DATED this _____ day of _____, 2007.

DISTRICT JUDGE

CERTIFICATE OF SERVICE

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Case No.

Pursuant to NRCP 5 (b), I certify that I am an employee of the Second Judicial District Court, and that on the _____ day of July, 2009, I deposited in the Washoe County mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the attached document, addresses to:

Dated this _____ day of July, 2009.

Mario Lopez

Jury Trial Exhibits

PLTF: **STATE OF NEVADA**

PATY: **DDA**

DEFT:

DATY: **DPD**

Case No:

Dept. No:

Clerk:

Date:

Exhibit No. Admitted	Party	Description	Marked	Offered	
9	State	Calibration Declaration	04/06/09	No Objection	04/07/09
10	State	Solution Declaration	04/06/09	No Objection	04/07/09
11	Defendant	Washoe County Sheriff's Office Detention Property Record Form dated 11/7/08 – Property Tag No. 1222	04/06/09	No Objection	04/07/09
12	Defendant	Washoe County Sheriff's Office Detention Property Record Form dated 11/7/08 – Property Tag No. 186	04/06/09		
13	Defendant	Vehicle Registration Data – Anthony Martin Lopez – dated 03/27/09	04/06/09		

Case ***
Dept. ***

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

Plaintiff,

ORDER FOR
DESTRUCTION
OF EVIDENCE

VS.

Defendant.

_____ /

The above-entitled case, having been concluded and the evidence no longer being needed in the prosecution of the case, it is Ordered that Exhibit No. ***** , be destroyed, pursuant to NRS 3.305.

DATED this _____ day of _____ 20__.

DISTRICT JUDGE

Copies to *****

Case ****
Dept ****

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

*****,

Plaintiff,

**ORDER RELEASING
EVIDENCE**

vs.

Defendant.
_____ /

This matter having no filings or prosecution since _____,

DATED this ____ day of _____ 20__.

DISTRICT JUDGE

RECEIPT

The undersigned agent _____ hereby acknowledges
receipt of Exhibit ____, _____, on _____, 20__.

Copies to *****

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ROP

**DISTRICT COURT
CLARK COUNTY NEVADA**

vs.

Plaintiff,

Defendant,

Case No.:

RECEIPT OF EXHIBITS

I do hereby acknowledge that I have received the following exhibits which were heretofore admitted into evidence in the above-entitled action and are being released in accordance with the Order of the Court dated

EXHIBITS:

DATED: This _____ day of _____, 200__.

Signed: _____

Print: _____

Agency: _____

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«Exhibit9»

Dated: This _____ day of _____, 200 ____ .

«ClerkName» Custodian of Evidence

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ODED

DISTRICT COURT
CLARK COUNTY NEVADA

«PLAINTIFF»,

Plaintiff,

vs.

«DEFENDANT»

Defendant,

Case No.: «CASENUMBER»

ORDER FOR DISPOSAL OF EXHIBITS

It appearing to the Court that in the above-entitled action the exhibits in the custody of the Clerk of the Court are in a posture to be disposed of pursuant to NRS 3.305 and 3.307; the Court upon its own motion hereby ORDERS

That the Custodian of Evidence of the Clerk of the Court shall cause said exhibits to be destroyed or otherwise disposed of if they have not been withdrawn by the last attorney or attorneys of record within 30 days following notice given by the Custodian of Evidence.

DATED: This _____ day of _____, 200__.

DISTRICT COURT JUDGE

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III

That the exhibits hereinafter set forth are believed to be of no value and should be destroyed.

EXHIBITS:

«DExhibit1»

«DExhibit2»

WHEREFORE, Petitioner requests that an Order be entered authorizing her to dispose of exhibits as set forth herein.

DATED: This _____ day of _____, 200__.

By _____

«ClerkName» Deputy Clerk

Submitted by:

DAVID ROGER, DISTRICT ATTORNEY

By _____

Deputy District Attorney
Nevada Bar No.
Attorney for Petitioner

ORDER

Based upon the foregoing Petition, and good cause appearing, it is hereby ORDERED:

That the Petitioner herein shall cause the exhibits listed in the above Petition to be destroyed or disposed of pursuant to NRS 3.305 and 239.110.

DATED: This _____ day of _____, 200__.

DISTRICT COURT JUDGE

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IV

That the exhibits are believed by the Clerk to be of no value which would warrant their delivery to the Board of County Commissioners of Clark County, Nevada, as property of said County.

WHEREFORE, Petitioner requests that an Order be entered by this Court authorizing the destruction and/or disposal of said exhibits by the Clerk of the Court.

DATED: This _____ day of _____, 200__.

By _____

«ClerkName» Deputy Clerk

Submitted by:

DAVID ROGER, DISTRICT ATTORNEY

By _____

Deputy District Attorney
Nevada Bar No.
Attorney for Petitioner

ORDER

Based upon the foregoing Petition, and good cause appearing, it is hereby ORDERED

That the Petitioner herein shall cause the exhibits in the above-entitled action to be destroyed and/or disposed of as set forth in the foregoing Petition.

DATED: This _____ day of _____, 200__.

DISTRICT COURT JUDGE

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PODE

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,)
Plaintiff,)
vs) Case No. «CASENUMBER»
«DEFENDANT»)
Defendant,)
_____)

PETITION AND ORDER FOR DISPOSAL OF EXHIBITS

Edward A. Friedland, Clerk of the Court, respectfully petitions the Court as follows:

I

That there are exhibits in the above-entitled case which are in a posture to be destroyed or disposed of pursuant to NRS 3.305 and 239.110.

II

That certain exhibits hereinafter set forth are believed to be of value pursuant to NRS 3.305 and should be delivered to the Board of County Commissioners and the property of the County. That the exhibits to be delivered by the Clerk of the Court's Custodian of Evidence to the Board of County Commissioners are as follows:

- «Exhibit1»
- «Exhibit2»
- «Exhibit3»

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CODE

DISTRICT COURT
CLARK COUNTY NEVADA

«PLAINTIFF»

Plaintiff,

vs.

Case No.: «CASENUMBER»

«DEFENDANT»

Defendant,

CERTIFICATE OF DESTRUCTION OF EXHIBITS AND/OR DEPOSITIONS

The undersigned hereby certifies that she is a Deputy Clerk, Evidence Custodian; that she destroyed the exhibits and/or depositions in the above-entitled action pursuant to the Petition and Order for Disposal of Exhibits and/or Depositions filed «PetitionDate».

DATED: This _____ day of _____, 200__.

EDWARD A. FRIEDLAND, CLERK OF THE COURT

By _____

«ClerkName» Deputy Clerk,
Evidence Custodian



**CLARK COUNTY COURTS
EIGHTH JUDICIAL DISTRICT COURT
LAS VEGAS TOWNSHIP JUSTICE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FLOOR
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

February 12, 2010

«AttorneyFirstName» «AttorneyLastName», Esq.
«Firm»
«Address»
«CityStateZip»

RE: «Plaintiff» VS «Defendant»
«CaseNumber»

Dear «MrMs». «AttorneyLastName»,

As attorney of record, you are hereby notified that a Petition will be filed seeking an Order authorizing the Clerk of the Court to destroy or dispose of the exhibits/depositions in the above-referenced action. This is in accordance with the provisions of Nevada Revised Statutes 3.305 and 3.307.

If you wish to have the exhibits returned to you, a Court Order for release of exhibits must be filed with the Clerk of the Court within thirty (30) days from receipt of this letter. If more than one attorney represented a party, or if any exhibits were marked as Joint, a Stipulation and Order must be filed with the Clerk of the Court directing the release to one of the attorneys. *A copy of the filed Order must be delivered to the Clerk of the Court's Office, Evidence Custodian, as soon as it is filed.*

If you have any questions contact the Clerk of the Court's Office, Evidence Custodians at (702) 671-0797, Monday through Friday, 8:00am to 5:00pm.

Your cooperation will be appreciated.

STEVE D. GRIERSON, Clerk of the Court

By _____
«ClerkName» Deputy County Clerk,
Evidence Custodian



**CLARK COUNTY COURTS
EIGHTH JUDICIAL DISTRICT COURT
LAS VEGAS TOWNSHIP JUSTICE COURT**



REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FLOOR
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

February 12, 2010

«AttorneyFirstName» «AttorneyLastName», Esq.
«Firm»
«Address»
«CityStateZip»

RE: STATE OF NEVADA VS «Defendant»
«CaseNumber»

Dear «MrMs». «AttorneyLastName»,

You are hereby notified that a Petition will be filed seeking an Order authorizing the County Clerk to destroy or dispose of the exhibits in the above-entitled action. This is in accordance with the provisions of Nevada Revised Statutes 3.305 and 239.110.

If you wish to have the exhibits returned to you, a Court Order for release of exhibits must be filed with the Clerk of the Court within thirty (30) days from receipt of this letter. If more than one attorney represented a party, or if any exhibits were marked as Joint, a Stipulation and Order must be filed with the Clerk of the Court directing the release to one of the attorneys. *A copy of the filed Order must be delivered to the Clerk of the Court's Office, Evidence Custodian, as soon as it is filed.*

If you have any questions contact the Clerk of the Court's Office, Evidence Custodians at (702) 671-0797, Monday through Friday, 8:00am to 5:00pm.

Your cooperation will be appreciated.

STEVEN D. GRIERSON, Clerk of the Court

By _____
«ClerkName» Deputy County Clerk,
Evidence Custodian



**CLARK COUNTY COURTS
EIGHTH JUDICIAL DISTRICT COURT
LAS VEGAS TOWNSHIP JUSTICE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FLOOR
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

February 12, 2010

Philip Kohn, Esq.
Public Defender
309 S. Third Street
Las Vegas, NV 89101

RE: STATE OF NEVADA VS «Defendant»
«CaseNumber»

Dear «MrMs». «AttorneyLastName»,

You are hereby notified that a Petition will be filed seeking an Order authorizing the County Clerk to destroy or dispose of the exhibits in the above-entitled action. This is in accordance with the provisions of Nevada Revised Statutes 3.305 and 239.110.

If you wish to have the exhibits returned to you, a Court Order for release of exhibits must be filed with the Clerk of the Court within thirty (30) days from receipt of this letter. If more than one attorney represented a party, or if any exhibits were marked as Joint, a Stipulation and Order must be filed with the Clerk of the Court directing the release to one of the attorneys. *A copy of the filed Order must be delivered to the Clerk of the Court's Office, Evidence Custodian, as soon as it is filed.*

If you have any questions contact the Clerk of the Court's Office, Evidence Custodians at (702) 671-0797, Monday through Friday, 8:00am to 5:00pm.

Your cooperation will be appreciated.

STEVEN D. GRIERSON, Clerk of the Court

By _____
«ClerkName» Deputy County Clerk,
Evidence Custodian