

# SUPREME COURT OF GEORGIA

Atlanta     May 22, 2007

The Honorable Supreme Court met pursuant to adjournment.  
The following order was passed:

It is ordered that the Georgia Uniform Probate Court Rules, as revised this date, be hereby amended to read as follows:

## **Rule 31. Evidence**

### **Rule 31.1 Maintenance of Non-criminal Evidence.**

### **Rule 31.2 Maintenance of Criminal Evidence.**

### **Exhibit A. Suggested Minimum Requirements for an Evidence Maintenance Log.**

#### **Rule 31.1 Maintenance of Non-criminal Evidence.**

##### **(a.) Prior to and during the trial or hearing:**

The Clerk of the Probate Court or the Court Reporter in possession of documents, electronic documents, audio and video recordings of whatever form, exhibits, and other material objects or any other items admitted as evidence in a civil case shall, if such items are separated from the original case file, maintain a log or inventory of all such items with the case number, party names, description of the item, the name and official position of the custodian, and the location of the storage of the items. Dangerous or contraband items shall be placed in the custody of the Clerk of the Probate Court and be maintained in the courthouse or other such location as allowed by law and be available during court proceedings and accessible to the Court Reporter. Unless retained in the original case file, all such items admitted as evidence shall be identified or tagged by the Clerk of Court or Court Reporter with the case number and the exhibit number and be recorded in the log or inventory. Within 30 days after disposition of the case, the Court Reporter, if in possession of items admitted into evidence, shall transfer such items of evidence along with the evidence log or inventory to the Clerk of the originating Court. The Clerk of the Probate Court shall update the log or inventory to show the current custodian and the location of the evidence.

**(b.) Once the trial is concluded:**

Dangerous or contraband items shall be transferred to the sheriff or other appropriate law enforcement agency along with a copy of the log or inventory. The sheriff or other law enforcement agency shall acknowledge the transfer with a signed receipt and the receipt shall be retained with the log or inventory created and maintained by the Clerk of the Probate Court. The Clerk of the Probate Court and the sheriff or other law enforcement agency shall each maintain a log or inventory of such items of evidence. In all cases, the Court Reporter shall be granted the right of access to such items of evidence necessary to complete the transcript of the case. In any case in which no Court Reporter was retained, the Clerk of the Probate Court shall keep and store the evidence or insure that it is maintained in an appropriate location.

Evidence in the possession of the Clerk of the Probate Court or Court Reporter shall be maintained in accordance with the law. The designated custodian shall be responsible for the recording on the evidence log or inventory the name of the counsel or party, the date, and the purpose for the release of any such items of evidence. Subsequent to admission of any item into evidence by the Court, no substitution for the item admitted into evidence shall be made except by leave of the Court. Any counsel or party seeking to make a substitution for admitted evidence after the close of evidence shall file a motion for an order authorizing such substitution. Upon granting of an order for substitution, the order shall be entered into the log or inventory.

The log or inventory of any evidence separated from the original case file shall be maintained in the original case file. Upon the expiration of the time for the filing of an appeal during which no motion for new trial or appeal has been filed by any party, the Clerk of the Probate Court, Court Reporter, sheriff or other law enforcement agency may, and shall upon written request, return any item of admitted evidence to the counsel or party who tendered the same; provided, however, that no item which is contraband or illegal to possess in the state of Georgia shall be returned to any counsel or party, and all such items shall, upon the expiration of the time for the filing of an appeal during which no motion for new trial or appeal has been filed by any party, be delivered over to the sheriff of the county for appropriate disposition. Upon the expiration of the time for the filing of an appeal during which no motion for new trial or appeal has been filed by any party, the Clerk of the Probate Court, Court Reporter, sheriff or other law enforcement agency may notify in writing the counsel or party who tendered any admitted in evidence in the possession of such Clerk, Court Reporter, sheriff or law enforcement agency, to retrieve such item(s) within thirty (30) days of the written notice, and, upon the failure of the counsel or party to retrieve same within such thirty (30) days, the Clerk, Court Reporter, sheriff or law enforcement agency may dispose of the item(s).

### **31.2. Maintenance of Criminal Evidence.**

The Clerk of the Probate Court or the Court Reporter, in possession of documents, electronic documents, audio and video recordings of whatever form, exhibits, and other material objects or any other items admitted as evidence in a criminal case shall, if such items are separated from the original case file, maintain a log or inventory of all such items with the case number, party names, description of the item, the name and official position of the custodian, and the location of the storage of the items. Unless retained in the original case file, all such items admitted as evidence shall be identified or tagged by the Clerk of Court or Court Reporter with the case number and the exhibit number and be recorded in the log or inventory. Within 30 days after disposition of the case, the Court Reporter, if in possession of items admitted into evidence, shall transfer such items of evidence along with the evidence log or inventory to the Clerk of the originating Court. The Clerk of the Probate Court shall update the log or inventory to show the current custodian and the location of the evidence. Dangerous or contraband items shall be transferred to the sheriff or other appropriate law enforcement agency along with a copy of the log or inventory. The sheriff or other law enforcement agency shall acknowledge the transfer with a signed receipt and the receipt shall be retained with the log or inventory created and maintained by the Clerk of the Probate Court. The Clerk of the Probate Court and the sheriff or other law enforcement agency shall each maintain a log or inventory of such items of evidence. In all cases, the Court Reporter shall be granted the right of access to such items of evidence necessary to complete the transcript of the case. In any case in which no Court Reporter was retained, the Clerk of the Probate Court shall keep and store the evidence or insure that it is maintained in an appropriate location.

Evidence in the possession of the Clerk of the Probate Court or Court Reporter, during court proceeding, shall be maintained in accordance with the provisions of O.C.G.A. §17-5-55 and other applicable law. The designated custodian shall be responsible for recording on the evidence log or inventory the name of the counsel or party, the date, and the purpose for the release of any such items of evidence. Subsequent to admission of any item into evidence by the Court, no substitution for the item admitted into evidence shall be made except by leave of the Court. Any counsel or party seeking to make a substitution for admitted evidence after the close of evidence shall file a motion for an order authorizing such substitution. Upon granting of an order for substitution, the order shall be entered into the log or inventory.

The log or inventory of any evidence separated from the original case file shall be maintained in the original case file.

Upon the expiration of the time for the filing of an appeal during which no motion for new trial or appeal has been filed by any party, the Clerk of the Probate Court, Court Reporter,

sheriff or other law enforcement agency may, and shall upon written request, return any item of admitted evidence to the counsel or party who tendered the same; provided, however, that no item which is contraband or illegal to possess in the state of Georgia shall be returned to any counsel or party, and all such items shall, upon the expiration of the time for the filing of an appeal during which no motion for new trial or appeal has been filed by any party, be delivered over to the sheriff of the county for appropriate disposition. Upon the expiration of the time for the filing of an appeal during which no motion for new trial or appeal has been filed by any party, the Clerk of the Probate Court, Court Reporter, sheriff or other law enforcement agency may notify in writing the counsel or party who tendered any admitted in evidence in the possession of such Clerk, Court Reporter, sheriff or law enforcement agency, to retrieve such item(s) within thirty (30) days of the written notice, and, upon the failure of the counsel or party to retrieve same within such thirty (30) days, the Clerk, Court Reporter, sheriff or law enforcement agency may dispose of the item(s).

EXH. #	DESCRIPTION	RELINQUISHED BY	DATE/TIME OF TRANSFER	RECEIVING AGENCY	RECEIVING AGENT
		Signature of Relinquishing Clerk			Signature of Relinquishing Clerk
		Type or Print Name			Type or Print Name
		Signature of Relinquishing Clerk			Signature of Relinquishing Clerk
		Type or Print Name			Type or Print Name
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		Type or Print Name			Type or Print Name
		Signature of Relinquishing Clerk			Signature of Receiving Agent
		Type or Print Name			Type or Print Name
		Signature of Relinquishing Clerk			Signature of Receiving Agent
		Type or Print Name			Type or Print Name