

Chapter 16
Iowa Rules of Electronic Procedure

CLERK SUPREME COURT

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Rule 16.412 Exhibits.**16.412(1) Maintenance of hearing and trial exhibits.**

a. Exhibits offered at a hearing or a trial must be maintained electronically for purposes of the record.

b. Exhibits offered at a hearing or a trial that cannot reasonably be maintained electronically may be maintained nonelectronically for purposes of the record.

c. Prior to offering an exhibit, the submitting party must redact the exhibit pursuant to division VI of this chapter (Personal Privacy Protection), except as provided in rule 16.601(3) (exhibits).

d. If the court requires a party to bring paper copies to trial for the court and jury, the paper copies must be marked as a copy.

COMMENT:

~~Rule 16.412(1). EDMS is designed to store or maintain in an electronic form as many exhibits as possible. Rule 16.412 does not specify when exhibits should be converted to electronic form and decisions on when to do so will need to be made on a case-by-case basis. Examples of exhibits that may not be reasonably maintained electronically include physical exhibits, large or original photographs, and blueprints.~~

16.412(2) Electronic submission of proposed exhibits prior to hearing or trial.

a. Mandatory. A party ~~may~~ must submit proposed exhibits to the court prior to the hearing or trial in which the party intends to offer the proposed exhibits for admission into evidence. Upon submission through EDMS, each proposed exhibit will receive a file stamp. Case attorneys and self-represented case parties will have access to proposed exhibits. Exhibits offered or admitted into evidence are subject to the public access and personal privacy rules of divisions V and VI of this chapter.

b. Exceptions. The following exceptions apply to the requirement of submitting proposed exhibits electronically prior to hearing or trial.

(1) Prosecutors in a criminal case must submit proposed exhibits pursuant to this rule only if the exhibit has been disclosed to the opposing party through the discovery process.

(2) Criminal defendants may submit proposed exhibits prior to the hearing or trial but are not required to. The clerk of court will ensure criminal defense exhibits are maintained electronically. This rule does not supersede a defendant's obligations under Iowa Rule of Criminal Procedure 2.14.

(3) When a party could not reasonably anticipate use of an exhibit or when the exhibit is used as rebutting evidence, a party may be excused from electronically submitting the exhibit as a proposed exhibit prior to the hearing or trial.

(4) A party is excused from electronically submitting proposed exhibits prior to a hearing or trial if the party is excused from electronic filing under rule 16.302(2), 16.302(3), 16.701(3), or 16.801(2)(b).

c. Method.

(1) Each proposed exhibit must be submitted as a separate docket event document.

(2) The filer must insert include the exhibit number and provide a description of the proposed exhibit into in the "Additional Text" "Exhibit Description" field. When an individual exhibit is filed in multiple parts, the filer must repeat the exhibit number and insert a description for each part into the "Additional Text" "Exhibit Description" field.

e(3) An exhibit that exceeds the required size limit for a submission as posted in the electronic filing section of the Iowa Judicial Branch website must be separated into parts of an acceptable size, and each part must be filed as a separate attachment under the same docket event separately.

ed. Exhibit Maintenance Order. At the conclusion of the hearing or trial or hearing, the court, except in juvenile court proceedings, ~~shall~~ must enter an exhibit maintenance order that states which proposed exhibits were offered ~~or~~ and which were admitted into evidence. If no party files an objection to the exhibit maintenance order within 10 business days, the clerk of court thereafter may delete proposed exhibits that are not listed in the order.

e. Sanctions. If a party fails to submit a proposed exhibit as this rule requires, the court, upon its own motion or the motion of any party, may impose sanctions. A sanction imposed under this rule must be limited to that which will deter repetition of the conduct or comparable conduct by others. The sanction for violating this mandatory electronic submission rule may not include exclusion of the exhibits from the hearing or trial.

COMMENT:

Rule 16.412(2). Access to proposed exhibits filed before trial is restricted to self-represented case parties, attorneys indexed to the case, and the court. ~~The court may ask attorneys who have filed proposed exhibits to bring paper copies to trial for the court and jury.~~ If an exhibit in a public case contains protected information, the party offering it, or the party filing it as proposed, must redact the protected information before the exhibit becomes public. Rule 16.601(3) allows the submitting party 14 days to redact the exhibit before it becomes public. Admitted exhibits that a party has not identified as containing protected information generally become public. Exhibits submitted in paper in all proceedings, including proceedings listed in rules 16.412(3) and 16.412(6), may remain in paper unless the matter is appealed, at which time the clerk of court will scan the exhibits. Examples of descriptions in the ~~“Additional Text”~~ “Exhibit Description” field for proposed exhibits include ~~“Exhibit 1—Contract” or “Exhibit A—“Letter from Jane Doe.” or “Photo of red car.”~~ Examples of ~~“Additional Text”~~ “Exhibit Description” field descriptions entries for exhibits filed in multiple parts include ~~“Exhibit 1.1—Contract (Part 1)” or and “Exhibit 1.2—Contract (Part 2).”~~ An exhibit description submission in EDMS would appear as follows:

Exhibit #	Exhibit Description
Def. Ex. A	Photo of red car

16.412(3) *Exhibits offered at a hearing or a trial that were not submitted as proposed exhibits.* When offered or admitted at hearing or trial, an exhibit that can reasonably be maintained electronically, but that was not previously submitted as a proposed exhibit, will remain nonelectronic unless the court orders otherwise. Upon an appeal in the case, the clerk of court will electronically file the exhibit.

16.412(4) *Index of nonelectronic exhibits.* When a party offers one or more exhibits that will be maintained nonelectronically under rule 16.412(1)(b), ~~(c), or (d)~~, the party must electronically file an index of the exhibits. The index should list and briefly describe the nonelectronic exhibits.

16.412(5) *Exhibits to pleadings.* Under rule 16.311(1), evidentiary material that is submitted with or attached to a motion or other pleading must be filed as an attachment and should not be submitted as a proposed exhibit.

16.412(6) *Submission of proposed exhibits in small claim, simple misdemeanor, traffic, and municipal infraction cases.* Proposed exhibits may be but are not required to be submitted electronically in small claim, simple misdemeanor, traffic, and municipal infraction cases. The submitting party must redact proposed exhibits, whether electronic or nonelectronic, pursuant to division VI of this chapter prior to submitting the proposed exhibits. Upon initiation of an appeal in the case types included in this rule, the clerk of court

will convert exhibits admitted in nonelectronic form to an electronic form when possible.

16.412(7) *Submission of video and audio exhibits.*

a. Video exhibits. Video exhibits must be submitted in the following format: .avi, .flv, .mpeg, .mp4, .wms, or ~~.mov~~. ~~Or, .mov;~~ or the video exhibit must be submitted with a player application that allows the exhibit to be viewed. Video exhibits cannot be electronically filed but may be submitted to the court on a media storage device such as a CD, DVD, or flash drive. The media storage device must contain only the exhibit or exhibits and any required player application and no other files or applications. Upon initiation of an appeal, the clerk of court will provide any video exhibits to the appellate court.

b. Audio exhibits. Audio exhibits must be submitted in the following format: .wav, .mp3, or ~~.wma~~. ~~Or, .wma;~~ or the audio exhibit must be submitted with a player application that allows the exhibit to be heard. Audio exhibits cannot be electronically filed but may be submitted to the court on a media storage device such as a CD, DVD, or flash drive. The media storage device must contain only the exhibit or exhibits and any required player application and no other files or applications. Upon initiation of an appeal, the clerk of court will provide any audio exhibits to the appellate court.

c. Video and audio exhibits in an appeal to district court. Transcribed portions of a video or audio exhibit may be included in documents filed in an appeal to the district court, provided the transcribed material was properly admitted in the underlying court case. The parties must not embed or include actual audio or video in any documents filed in an appeal to the district court.

16.412(8) *Disposition of scanned exhibits.* Exhibits for which the clerk of court is responsible for scanning will be disposed of according to the requirements of the Iowa Rules of Civil Procedure and Iowa Rules of Criminal Procedure.

16.412(9) *Mistrial.* In the event of mistrial, the parties, the court, and the clerk of court must comply with all of the following:

a. Exhibit maintenance order. The court, except in juvenile court proceedings, must enter an exhibit maintenance order that states which proposed exhibits were offered or which were admitted into evidence. If no party files an objection to the exhibit maintenance order within 10 business days after

its filing, the clerk of court may delete proposed exhibits that are not listed in the order.

b. Index of nonelectronic exhibits. When a party offers one or more exhibits that will be maintained nonelectronically under rule 16.412(1)(b), the party must within 10 business days after the offer electronically file an index of the exhibits. The index must list and briefly describe the nonelectronic exhibits.

c. Clerk of court to retain custody of exhibits. The clerk of court will retain custody of all exhibits offered or admitted during the trial, whether the exhibits are maintained electrically or nonelectronically.

d. Release of nonelectronic exhibits for use during retrial. Nonelectronic exhibits offered or admitted during the trial may not be released for use in a retrial except upon order of the court. The order must identify each nonelectronic exhibit to be released by number or letter and by a brief description, and the order shall specify to whose custody the exhibit is released.

e. Nonelectronic exhibits not offered or admitted during retrial. For nonelectronic exhibits released pursuant to this rule that are not offered or admitted during the retrial, the party to whom the exhibits were released must immediately return the exhibits to the clerk of court.

16.412(10) Criminal codefendant's trial. In the event nonelectronic exhibits are offered or admitted during a trial and then are needed for use in a codefendant's trial, the parties, the court, and the clerk of court must comply with the following provisions:

a. Clerk of court to retain custody of exhibits. The clerk of court will retain custody of all exhibits offered or admitted during the first defendant's trial, whether the exhibits are maintained electronically or nonelectronically.

b. Release of nonelectronic exhibits for use during codefendant's trial. Nonelectronic exhibits offered or admitted during the first defendant's trial may not be released for use in a codefendant's trial except upon order of the court. The order must identify each nonelectronic exhibit to be released by number or letter and by a brief description, and the order must specify to whose custody the exhibits are released.

c. Nonelectronic exhibits not offered or admitted during codefendant trial. For nonelectronic exhibits released pursuant to this rule that are not offered or admitted during the codefendant's trial, the party to whom the exhibits were released must immediately return the exhibits to the clerk of court.

16.412(11) *New trial.* If nonelectronic exhibits are offered or admitted during trial, and the district or appellate court has ordered a new trial, the parties and the court must comply with the following provisions:

a. Clerk of court to retain custody of exhibits. The clerk of court will retain custody of all exhibits, whether maintained electronically or nonelectronically, which were offered or admitted during the prior trial.

b. Release of nonelectronic exhibits for use during new trial. Nonelectronic exhibits offered or admitted during the prior trial may not be released for use in the new trial except upon order of the court. The order must identify each nonelectronic exhibit to be released by number or letter and by a brief description, and the order must specify to whose custody the exhibits are released.

c. Nonelectronic exhibits not offered or admitted during new trial. If any nonelectronic exhibits released pursuant to this rule are not offered or admitted during the new trial, the party to whom the exhibits were released must immediately return the exhibits to the clerk of court.