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**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8010

**ORDER REGARDING USE OF THE MINNESOTA DIGITAL EXHIBIT
SYSTEM IN MINNESOTA DISTRICT AND APPELLATE COURTS**

By order filed on November 8, 2021, in response to the increase in court proceedings held virtually and the submission of digital exhibits in district court cases, this court established a pilot to (1) test the feasibility of using the Minnesota Digital Exhibit System (MNDES) to streamline exhibit management by providing a secure tool and standardized process for submitting, accessing, and managing exhibits in district court cases; (2) allow deliberating jurors to view admitted digital exhibits in compliance with Rule 26.03, subdivision 20 of the Rules of Criminal Procedure; and (3) provide the appellate courts with access to digital exhibits in cases on appeal. *See In re the Minnesota Digital Exhibit System Pilot, No. ADM09-8010 (Minn. Filed Nov. 8, 2021).*

The State Court Administrator was ordered to establish procedures to monitor the MNDES pilot and file a report providing recommendations on the continuation, expansion, or discontinuance of MNDES. On July 1, 2022, and September 15, 2022, the State Court Administrator reported successful implementation and use of MNDES and recommended updates and enhancements to MNDES, expansion of the MNDES pilot to all district courts, a pilot for use of MNDES during jury deliberations, and changes to the Rules of Public Access to Records of the Judicial Branch to address the public accessibility of exhibits

uploaded into MNDES. *See* Minnesota Digital Exhibit System Pilot Project Report, No. ADM09-8010 (filed July 1, 2022), *and* Minnesota Digital Exhibit System Pilot Project Report – Supplement to July 1, 2022 Report, ADM09-8010 (filed Aug. 2, 2024) (report dated Sept. 15, 2022).

This court then issued an amended order (1) permitting expansion of the MNDES pilot; (2) requiring additional security measures for devices used during jury deliberations; (3) providing a presiding judge discretion to mandate use of MNDES in district court proceedings; (4) clarifying that only those exhibits in MNDES offered in a court proceeding are “case records” as defined in the Rules of Public Access to Records of the Judicial Branch and that “pre-hearing” exhibits in MNDES that are not offered at the hearing are not case records and are not publicly accessible; and (5) directing that Minnesota Judicial Council Policy 502, Records Disposition, and State Court Administrator Policy 502(a), Records Retention Schedule, govern exhibits in MNDES that are part of a case record, and allowing for pre-hearing exhibits to be deleted from the system at the discretion of court administration or the presiding judicial officer. *See* In re the Minnesota Digital Exhibit System Pilot, No. ADM09-8010 (Minn. filed Oct. 5, 2022).

On May 30, 2024, the State Court Administrator’s Office submitted a third report detailing the work of a subgroup of the MNDES pilot team that included judicial officers, court staff, staff attorneys, and information technology staff that met regularly to plan for and implement the pilot for use of MNDES during jury deliberations. *See* Minnesota Digital Exhibit System Update and Jury Pilot Project Report, ADM09-8010 (filed Aug. 2, 2024) (report dated May 30, 2024).

Jury Pilot Results.

Prior to use of MNDES in jury deliberations, the MNDES pilot team and the jury subgroup ensured computers installed in jury deliberation rooms complied with strict cybersecurity protocols permitting juror access to only those digital exhibits admitted into evidence. The team also developed and disseminated best trial practice advice, jury instruction materials, and local equipment instructions. The State Court Administrator reported that between December 2023 until April 2024, 11 judges across 9 judicial districts participated in the pilot use of MNDES with deliberating juries in 15 cases. The number of exhibits in the pilot trials ranged from 2 to 84. Jurors reported ease of use of MNDES to view all types of digital exhibits and none of the jurors in the pilot trials requested technological assistance or reported technological problems during deliberations. Surveyed judicial officers also indicated that MNDES was effective and relayed their intent to continue to use MNDES during jury deliberations.

Due to the success of the pilot, the State Court Administrator recommended that the pilot for use of MNDES during jury deliberations end and that use of MNDES by deliberating juries be implemented statewide in a manner that ensures security of devices used by jurors.

Need for Consistency Statewide.

As established during the pilot, once MNDES is implemented in a district, it becomes the only system where judicial branch staff make official entries regarding the exhibits offered and admitted in district court cases within that district. However, because MNDES use is discretionary statewide under the pilot, requirements for parties to use

MNDES for the actual submission of hearing and trial exhibits are subject to varying orders, sometimes differing between counties within the same judicial district or between courtrooms within the same county, as presiding judicial officers issue orders directing MNDES use and specifying requirements for submissions in MNDES. This creates a gap where in some cases MNDES lists all offered exhibits for a particular case, but few or none of the digital exhibits are uploaded and available in MNDES.

To ensure consistency in exhibit management and case processing throughout all district courts, the State Court Administrator recommended that use of MNDES for digital exhibit submission and exhibit management be made mandatory statewide.

In addition to effectuating consistency in use of MNDES statewide, the State Court Administrator's report also identified the need for the court to place limits on the submission, access, use, and retention of digital court and case exhibit records.

Digital File Type Issues.

With the changes in technology and increase in use and proliferation of audio, video, and other digital media systems, evidence offered in court proceedings is increasingly and primarily digital in nature. Digital exhibits and digital exhibit file types have presented challenges for the courts both before and after the implementation of MNDES. Digital files requiring proprietary audio or video players have most often been played by the offering party at hearings and trials and then offered into evidence on a disc with a wide variety of files and at times without instructions for how to play the files, resulting in the audio or video files being rendered inaccessible and unplayable on appeal.

MNDES initially allowed all file types to be uploaded into MNDES. While MNDES can play the vast majority of uploaded digital file types, certain file types are not playable or viewable in MNDES. For example, certain proprietary file types, zipped files, and file types not compatible with commonly used media players cannot be played using MNDES. This can create confusion or frustration when a user or the court cannot view or play incompatible uploaded exhibits. In some instances, the inability of a reviewing court to view or play an admitted audio or video evidentiary file was not detected until well into the appeals process, requiring considerable work by the Clerk of Appellate Courts, the Centralized Appeals Unit, and district and appellate judicial officers to address the gaps in the record. In addition to the playback challenges, permitting the submission of all file types without specific guidelines and requirements increases the possibility that malicious files and programs could be introduced into judicial branch systems.

In response to the problems associated with uploading incompatible, inappropriate, or potentially unsafe file types, cybersecurity and information technology personnel in the State Court Administrator's Office analyzed the file types uploaded to MNDES and created a list of Acceptable File Types that both work with the MNDES player and do not pose a cybersecurity threat to Minnesota Judicial Branch systems. On April 8, 2024, the State Court Administrator issued an Order, effective June 1, 2024, requiring that the upload permissions for MNDES file types be set to permit users to upload only those file types that are playable or reviewable using MNDES, and directed that an Acceptable File Types List be published. Order Establishing Permitted File Types for the Minnesota Digital Exhibit Systems, No. SCA-AO-24-1 (filed Apr. 8, 2024).

To mitigate the challenges associated with the submission of non-conforming file types, the State Court Administrator recommended that parties be required to submit exhibits to the court only in a format on the Acceptable File Types List as directed in the State Court Administrator's Order.

Digital Exhibit Retention and Access.

Rule 128 of the General Rules of Practice for the District Courts, Retrieval or Destruction of Exhibits, states that the offering party of exhibits must “remove all exhibits from the custody of the court upon final disposition of a case” and that “[f]ailure to do so within 14 days of being notified to do so will be deemed authorization to destroy such exhibits.” Notably, Rule 128 was implemented when exhibits were offered into evidence and retained in original, physical form pending the final disposition of a case. Digital exhibits uploaded into MNDES are inherently copies of digital records provided by the party offering the exhibit, and are not unique, original physical items. Parties submitting digital exhibits into MNDES are presumed to retain the exhibit they uploaded to MNDES. Thus, parties submitting digital exhibits to MNDES do not require the same notice to retrieve exhibits deposited with the court before such exhibits may be destroyed by the court.

To streamline the destruction of digital exhibits maintained in MNDES, the State Court Administrator has requested that district courts be able to destroy digital exhibits in MNDES according to Minnesota Judicial Council Policy 502, Records Disposition, and State Court Administrator Policy 502(a), Records Retention Schedule, and to do so without notice to the submitting party.

Finally, Rule 8, subdivision 2(i)(2) of the Rules of Public Access to Records of the Judicial Branch provides that the record custodian may “provide public access by e-mail or other means of transmission to publicly accessible records that would not otherwise be remotely accessible under parts (b) through (h)” of Rule 8. Exhibits are not covered in subdivision 2, parts (b) through (h). Exhibits are instead addressed in Rule 8, subdivision 5, which states in part at paragraph (c) that “[e]videntiary exhibits from a hearing or trial shall not be remotely accessible” Thus, while the record custodian has discretion to provide public access by e-mail or other means to certain publicly accessible records that would not otherwise be remotely accessible, there is no exception allowing the court to provide access by e-mail or other means to exhibits. Explaining this limitation, the 2015 Advisory Committee Comment states:

Rule 8, subd. 5, is also amended to clarify that trial exhibits are not remotely accessible. Many exhibits because of their physical nature cannot be digitized, and therefore would not be remotely accessible. This clarification attempts to provide consistency for remote public access treatment of exhibits.

Currently when a member of the public or the media requests access to publicly accessible digital exhibits, the court must either arrange and facilitate a public viewing of the exhibit or download the exhibit onto some type of drive to provide it to the requestor. However, because MNDES is an online exhibit management system, it may be feasible in some circumstances for the court to fulfill a digital exhibit access request by providing a hyperlink to an exhibit in MNDES—if approved by the presiding judge—which will save district court staff time and resources.

The State Court Administrator has requested that amendments to the public access rules be considered—and that, in the interim, the court by this order permit—that district courts be given the discretion to provide remote access to publicly accessible digital exhibits, if and when the presiding judge approves of that method of transmission.

Court Rules Governing Digital Exhibits.

In January 2020 and February 2023, this court recognized the nature and impact of digital evidence in criminal proceedings when it permitted certain audio and video evidence into the jury room during jury deliberations and subsequently amended Rule 26.03, subdivision 20 of the Rules of Criminal Procedure to require audio and video exhibits admitted during a trial to be permitted into the jury room, with some exceptions. *See In re Pilot Project in Certain Criminal Jury Trials*, No. ADM10-8049 (Minn. filed Jan. 8, 2020), *and Order Promulgating Amendments to the Minnesota Rules of Criminal Procedure*, No. ADM10-8049 (Minn. filed February 24, 2023).

While the Rules of Criminal Procedure address the use of digital evidence in court proceedings, neither the General Rules of Practice for the District Courts nor the Rules of Civil Procedure address digital or electronic evidence submitted in non-criminal district court proceedings. Additionally, while the Rules of Public Access to Records of the Judicial Branch address electronic access to judicial branch records and the provision of both physical and digital records, the rules do not differentiate between digital and physical exhibits or directly address access to digital exhibits.

This court previously recognized the need to modernize court rules and practice when it developed and implemented Rule 14 of the General Rules of Practice for the

District Courts requiring mandatory electronic filing and service of pleadings or documents, with certain exceptions. Similarly, we recognized the need to develop standardized formatting requirements by further amending the Rules of General Practice to require that “all pleadings or documents filed electronically must comply with the format requirements established by the state court administrator in the *Minnesota District Court Registered User Guide for Electronic Filing*.” See Minn. Gen. R. Prac. 6.01.

Just as the promulgation of Rule 14 modernized electronic filing and service, new and amended rules of procedure are needed to address the submission, access, use, and retention of digital exhibits in district court proceedings. This will likely require amendments to the General Rules of Practice for the District Courts and the Rules of Public Access to Records of the Judicial Branch. The Rules of Criminal Procedure, Rules of Civil Procedure, Rules of Civil Appellate Procedure, and Rules of Evidence may also require amendment to address issues relating to digital exhibits in the near future.

Until any such amendments to the respective rules can be considered and promulgated, the following order of this court is necessary to address the submission, access, use, and retention of digital exhibits in court proceedings.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. Parties and attorneys must use MNDES for the submission of all electronic (digital) exhibits, including documents, photographs, audio files, and video files, for all district court cases statewide, unless the presiding judge permits, for good cause shown, an alternative submission method pursuant to a direct request by the submitting party. Court

staff must use MNDES to track all exhibit submissions and to provide the exhibits that are part of the case record on appeal for all district court cases statewide.

2. Because the use of MNDES makes it feasible to send audio and video exhibits into the jury deliberation room, in compliance with Minn. R. Crim P. 26.03, subd. 20(1)—which requires that the court must permit received exhibits or copies into the jury room subject to certain exceptions—the district courts must permit admitted audio and video exhibits in MNDES into the jury room in criminal proceedings unless the trial judge excludes an exhibit from the jury room in a particular case under the exceptions delineated in that rule.

3. The district courts may permit admitted audio and video exhibits in MNDES into the jury room in civil proceedings at the discretion of the trial judge.

4. The trial judge must ensure that proper protocol is used to confirm that devices provided to jurors in the deliberation room to view exhibits in MNDES meet cybersecurity requirements established by the State Court Administrator and that jurors can only use the devices to view exhibits the presiding judge has authorized the jurors to view during deliberations.

5. Parties shall submit exhibits into MNDES in a format that complies with the MNDES Acceptable File Types List. The List shall be maintained, periodically reviewed, and published by the State Court Administrator on the Minnesota Judicial Branch website.

6. Parties shall make reasonable efforts to convert any exhibit that requires a proprietary player and/or codecs into a file type listed on the MNDES Acceptable File Types List. If the file cannot be converted to an acceptable file type, the party shall contact

the presiding judge to request permission to submit the exhibit to the court outside of MNDES. If submission outside of MNDES is approved by the presiding judge and if the exhibit is admitted into evidence, the submitting party must ensure the submitted file is readable and reviewable, provide to the district court any proprietary player and/or codecs necessary to play the file, provide instructions for how to play the file, and facilitate requests for public access and appellate review.

7. District courts may delete exhibits in MNDES from the system subject to the Minnesota Judicial Branch Policy on Records Disposition (Policy 502) and the Records Retention Schedule (Policy 502(a)) without the notice to the submitting party that is otherwise required by Minn. Gen. R. Prac. 128.

8. If authorized by the presiding judge, court administration may provide public access by e-mail or other means of transmission to publicly accessible exhibits in MNDES. Court administration is also authorized to provide access by e-mail or other electronic means to exhibits in MNDES to parties, litigants, or other participants officially affiliated with a case in district court or on appeal.

9. Exhibits in MNDES offered in court proceedings are “case records” as defined in Rule 3 of the Rules of Public Access to Records of the Judicial Branch. Exhibits uploaded and stored in MNDES but not offered to the court (those exhibits in “pre-hearing status”) are not case records of the Minnesota Judicial Branch as defined in the Rules of Public Access and are not publicly accessible.

10. Exhibits containing or alleged to contain sexual content or nudity, as defined in Rule 4, subd. 1(s), of the Rules of Public Access to Records of the Judicial Branch, or

containing live hyperlinks to such content, must not be uploaded into MNDES. Such exhibits must be submitted by conventional means.

11. This order supersedes all prior orders regarding the MNDES pilot, is effective January 1, 2025, and will continue until further order of this court.

Dated: August 30, 2024

BY THE COURT:

A handwritten signature in black ink, appearing to read "Natalie E. Hudson". The signature is written in a cursive, flowing style.

Natalie E. Hudson
Chief Justice