

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 9th day of November, 2021.

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect are hereby amended, effective July 1, 2022.

Add Rule 2:107 as follows:

PART TWO

VIRGINIA RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS.

* * *

Rule 2:107. (Effective July 1, 2022, unless modified by the General Assembly) Ultrahazardous Items as Exhibits

(a) Ultrahazardous items may not be brought into any courtroom as exhibits without leave of the court for good cause shown. Ultrahazardous items are those substances or devices the presence of which in the courtroom, notwithstanding reasonable safety precautions, could pose a significant threat to human health, including, but not limited to, explosives, explosive devices, biological or chemical toxins, and highly potent controlled substances such as fentanyl and carfentanil that are toxic by their nature or quantity.

(b) Photographs or reasonable facsimiles of ultrahazardous items are admissible in any proceeding, hearing or trial to the same extent as if such ultrahazardous items themselves were being introduced as evidence. Such photographs must fairly and accurately depict the ultrahazardous items and clearly include scale for the size of the items depicted. "Reasonable facsimiles" are models that substantially replicate the actual ultrahazardous items in appearance and are of a scale of 1:1. All facsimiles must be clearly labeled as facsimiles. This rule does not excuse the party offering such evidence from proving chain of custody but that party is not required to produce ultrahazardous items to establish chain of custody. Regardless of whether a party offers photographs or facsimiles of

ultrahazardous items under this rule, a party may offer properly authenticated photographs of ultrahazardous items as part of its proof on the issue of chain of custody.

(c) In any trial or hearing in which a party intends to offer photographs or facsimiles of ultrahazardous items into evidence, that party must:

1. Provide by mail, delivery, or otherwise, notice of such intent and a copy of such photographs or a description of the proposed facsimiles to counsel of record for the other party, or directly to a party who is proceeding pro se, at no charge, no later than 28 days before the hearing or trial, and promptly permit the other party to inspect the proposed facsimile; and

2. File a copy of the notice and photographs or description of the proposed facsimiles with the clerk of the court hearing the matter on the day that the notice is provided to the other party.

(d) If the opposing party objects to the introduction of a photograph or proposed facsimile, that party must file written notice of its objection with the court hearing the matter, with a copy to the other party, no later than 14 days after the notice and photographs required under subsection (c) were filed with the clerk by the other party. Upon filing of a timely objection, the court must conduct a pre-trial hearing to determine whether the photograph or proposed facsimile may be introduced as evidence, unless the parties with the concurrence of the court agree to consider the objection during the trial.

(e) If either party wishes that an ultrahazardous item itself be introduced as evidence in lieu of photographs or facsimiles, that party must file a motion with the court hearing the matter, with a copy to the other party. Such a motion by the Commonwealth or plaintiff must be filed no more than 28 days before the trial or hearing, and if by the defendant or respondent, no more than 14 days after the notice and photographs required under subsection (c) were filed with the clerk by the other party. Upon timely motion, the court must conduct a pre-trial hearing to determine whether good cause exists to allow ultrahazardous items themselves to be brought into the courtroom and introduced as evidence.

A Copy,

Teste:

A handwritten signature in blue ink, appearing to read "M. M. P. P. P.", is written over the printed name of the Clerk.

Clerk