

STATE OF MINNESOTA
IN SUPREME COURT
ADM09-8010



IN RE THE MINNESOTA DIGITAL EXHIBIT SYSTEM PILOT

A M E N D E D O R D E R

In November 2021, the court established a pilot program using the Minnesota Digital Exhibit System (MNDES). The MNDES pilot was created in response to the increase in court proceedings held virtually and the submission of digital exhibits in district court cases. MNDES streamlines exhibit management by providing a secure tool and standardized process for submitting, accessing, and managing exhibits in district court cases. MNDES also allows deliberating jurors to view admitted exhibits electronically, and it provides the appellate courts with access to the exhibits in cases that are appealed. The use of MNDES was first piloted in the district courts for Ramsey, Pine, Sherburne, and Washington counties, starting November 1, 2021. A statewide rollout to all judicial districts for the use of MNDES before jury deliberations began in May 2022.

The expansion of the MNDES pilot to all judicial districts, as well as enhancements to MNDES since the start of the pilot, requires a new court order. First, Rule 26.03, subdivision 20 of the Rules of Criminal Procedure allows evidence received during a trial to be in the jury room, unless that evidence is “depositions and audio or video material.” Minn. R. Crim. P. 26.03, subd. 20(1). Under this rule, the jury’s review of depositions and

audio or video evidence “must occur in open court,” the parties must be present unless the defendant waives the right to be present, and the jury’s deliberations must be suspended during that review. Minn. R. Crim. P. 26.03, subd. 20(2)(b)–(c). The requirement in this rule for jurors to return to the courtroom to review audio and video evidence hinders the objectives of the MNDES pilot. The November 8, 2021, order that established the MNDES pilot suspended this rule in the Ramsey, Pine, Sherburne, and Washington County District Courts. Now that the MNDES pilot has been expanded to all judicial districts, the suspension of Rule 26.03, subdivision 20(1)–(2) must likewise be expanded.

Clarification is also required as how the Rules of Public Access to Records of the Judicial Branch are to apply to exhibits under the MNDES pilot. As background, before the onset of the COVID-19 pandemic, the process for submitting evidentiary exhibits consisted of parties bringing physical copies of potential exhibits to court in order to offer them during a hearing or trial. Because these pre-hearing exhibits were a parties’ discovery material, they were never part of the court record unless or until a judicial officer made an admissibility determination after the exhibit was offered (e.g., received without objection, received over objection, not received, etc.). A significant increase in the submission of digital evidence (e.g., body camera videos, cell phone videos, security system videos, photos, documents, etc.), coupled with a sharp increase in remote court proceedings at the onset of the COVID-19 pandemic, led to parties increasingly providing digital exhibits to court administration in advance of a hearing or trial. The variability in submission, review, and management of digital exhibits posed security, storage, and exhibit tracking challenges, and MNDES was developed to address those issues. MNDES provides a single

point where parties can upload their digital exhibits before a hearing, where it is held in MNDES by the court for the parties in a “pre-hearing” status unless or until a party offers them into evidence at a hearing or trial.

The Rules of Public Access to Records of the Judicial Branch govern access to case and administrative records of the courts, including evidentiary exhibits. An exhibit becomes a court record after it is offered by a party or received by the court, and as part of the court record, is presumptively accessible to the public absent a motion by the offering party to designate the exhibit as confidential or sealed. *See* R. Pub. Access, Rule 2. Access to parties’ exhibits that have not yet been offered have historically been inaccessible to the public through the courts because they are not court records and remain parties’ discovery materials until offered in a case. MNDES allows parties to upload pre-hearing exhibits before a hearing or trial for court administration to hold until such time as a party decides to offer the digital exhibits uploaded into MNDES into evidence. Pre-hearing exhibits that are uploaded into MNDES are not reviewed by the court or court administration until being offered or admitted into the court record, and the first opportunity a court has to ensure that an exhibit does not contain any non-public or irrelevant material is when the exhibit is offered. For these reasons, public access to pre-hearing digital exhibits is premature unless otherwise ordered by a court.

MNDES storage and management features allow court staff to share exhibits by sending a link via e-mail or text that allows the recipient of the link to remotely view or download the shared exhibits in MNDES. This feature provides court staff with the ability to share evidentiary exhibits in the same manner that the Rules of Public Access permit

court staff to share publicly accessible case records by providing public access by e-mail or other means of transmission. However, the Rules of Public Access currently prohibit court staff from providing remote access to evidentiary exhibits from a hearing or trial. Minn. R. Pub. Access 8, subd. 5(c).

Additionally, MNDES retains uploaded pre-hearing exhibits that have not been offered in the system unless or until a party or court staff request deletion. Because these have always been records of a party and not case or court records, the Minnesota Judicial Branch's Policy 502 (Records Disposition) and Policy 502(a) (Records Retention Schedule) do not address pre-hearing exhibits stored in MNDES, and further clarification by this order is required to ensure removal of these non-Minnesota Judicial Branch records from MNDES.

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

IT IS HEREBY ORDERED THAT:

1. For the purposes of piloting the use of MNDES, the provisions of Rule 26.03, subdivision 20(1)–(2) of the Rules of Criminal Procedure that govern a jury's review of admitted audio and video evidence are suspended statewide when using MNDES during jury deliberations in those instances where those requirements would interfere with allowing deliberating jurors to review admitted exhibits on MNDES, including audio and video evidence.

2. Any or all exhibits may be viewed on MNDES by deliberating jurors in criminal and civil proceedings participating in this pilot, subject to the presiding judge's discretion.

3. Devices used by jurors to view exhibits on MNDES must meet cybersecurity requirements established by the State Court Administrator and must be set up so that jurors can only use them to view exhibits the presiding judge has authorized the jurors to view during deliberations.

4. MNDES is not required to be used unless the presiding judge orders otherwise.

5. The State Court Administrator shall establish procedures to monitor the MNDES pilot and shall continue to monitor the MNDES pilot.

6. The State Court Administrator is authorized to conduct a survey of the participants in the MNDES pilot. The purpose of the survey is to collect information on the issues raised by the pilot and not to assess individual performance. In order to ensure the anonymity of the individuals who respond to the survey and to ensure candid and honest responses, anything in the survey responses that can identify the respondent shall be confidential and non-public. Survey information may be disclosed to employees of the Minnesota Judicial Branch where the disclosure is necessary to the work of the project team, as determined by the State Court Administrator.

7. Exhibits in MNDES offered in court proceedings are “case records” as defined in and subject to Rule 3 of the Rules of Public Access to Records of the Judicial Branch.

8. Exhibits uploaded and stored in MNDES but not offered to the court (those exhibits in “pre-hearing status”) are not records of the Minnesota Judicial Branch as

defined in the Rules of Public Access and, therefore, are not publicly accessible unless otherwise ordered by the judge presiding over the proceeding associated with the exhibit(s).

9. Court administration is authorized to provide access by e-mail or other electronic means to evidentiary exhibits in MNDES to parties, litigants, or other participants officially affiliated with a case in district court or on appeal.

10. Exhibits stored in MNDES that are part of a case record will be deleted from the system subject to the Minnesota Judicial Branch Policy on Records Disposition (Policy 502) and the Records Retention Schedule (Policy 502(a)). Any pre-hearing exhibits in MNDES that are not part of a case record may be deleted from the system at the discretion of court administration or the presiding judicial officer.

11. This order is effective immediately and will continue until further order of this court.

Dated: October 5, 2022

BY THE COURT:



Lorie S. Gildea
Chief Justice