

SUPREME COURT OF ARIZONA

In the Matter of ) Arizona Supreme Court  
RULE 611, RULES OF EVIDENCE ) No. R-23-0025  
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**ORDER AMENDING RULE 611 OF THE ARIZONA RULES OF EVIDENCE  
AND RULE 124 OF THE RULES OF THE SUPREME COURT OF ARIZONA**

A petition having been filed proposing to amend Rule 611 of the Arizona Rules of Evidence, and comments having been received, upon consideration,

**IT IS ORDERED** that Rule 611 of the Arizona Rules of Evidence and Rule 124 of the Rules of the Supreme Court of Arizona are amended in accordance with the attachment to this order, effective January 1, 2024.

DATED this 24<sup>th</sup> day of August, 2023.

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/s/  
ROBERT BRUTINEL  
Chief Justice

TO:

Rule 28 Distribution

Jerry G Landau

Hon Sara J Agne, Tax Court Presiding Judge

Maria Elena Cruz

Lina G Garcia

Rosemarie Pena-Lynch

Steve B Koestner

Sherri McGuire Lawson

Gary M Kula

Shannon L Burns

## ATTACHMENT<sup>1</sup>

### ARIZONA RULES OF EVIDENCE

#### Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence

(a)-(c) [No change]

#### Comment [2024]

For the procedures and rules applicable to the handling of hazardous evidence in the courtroom, see Rule 124, Rules of the Supreme Court of Arizona.

### RULES OF THE SUPREME COURT OF ARIZONA

#### Rule 124. ~~Abrogated and Reserved, eff. Jan 1, 2012~~ Hazardous Evidence

(a) Hazardous Evidence. Hazardous evidence is not permitted inside the courtroom, except as provided in this rule. For the purposes of this rule, “hazardous evidence” means any physical evidence that a party seeks to bring into the courtroom that may create a substantial and serious risk of harm if ingested or absorbed, or if otherwise determined by the court to create a substantial and serious risk of harm.

(1) Presence of Hazardous Evidence in the Courtroom Upon Court Order. A party seeking to have hazardous evidence permitted in the courtroom must file a written motion. The court may order that hazardous evidence be permitted in the courtroom only if the court finds that the petitioning party has demonstrated that the need for the physical evidence substantially outweighs the potential health risks associated with its presence in the courtroom. In making the determination, the court must take into consideration all relevant factors, including:

(A) the rights of the parties; and

(B) the sufficiency and effectiveness of presenting digital representations of hazardous evidence in lieu of the hazardous evidence.

(2) Admitted Hazardous Evidence. If the court orders that hazardous evidence is permitted in the courtroom under (1) and a motion is made to admit such evidence, any order granting admission of the hazardous evidence must provide that a digital representation of the evidence is admitted in lieu of the hazardous evidence. At no time may the jury take custody of the hazardous evidence, but the jury is permitted to view hazardous evidence in the courtroom.

(3) Clerk of Court. Hazardous evidence may not be accepted by or be in the possession of a clerk of the court.

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<sup>1</sup> Additions to the text of a rule are shown by underscoring and deletions from text are shown by ~~strike-through~~.

(4) Retention of Hazardous Evidence. Hazardous evidence must be retained by the custodian of the evidence during the pendency of the case, any post-verdict proceedings, and appeals. All evidence tags issued by the clerk, other identifying markings, and packaging must remain in place and not be disturbed.