



National Association for Court Management
Strengthening Court Professionals

Original Resolution No. 4 of 2019

Balancing Admission of Evidence from Cell Phones and Other Personal Electronic Devices with Courthouse Safety and Security

WHEREAS, the National Association for Court Management (NACM) has made meaningful access to the justice system for all a core tenant; and

WHEREAS, NACM acknowledges that with respect to cell phone use in courthouses, it is appropriate to balance the security risks posed by cell phone use with the needs of litigants, especially those who are self-represented; and

WHEREAS, these security risks entail the potential for such a device to be used as a weapon and or as a means of intimidation through video or audio recording capabilities; and

WHEREAS, NACM recognizes that cell phones have become an integral part of daily life for many litigants, serving as an essential tool for communication, research, information storage, and safety; and

WHEREAS, NACM recognizes that this trend is not limited to cell phones and that other types of personal electronic devices (PEDs), including laptop computers and tablets, also have become an integral part of daily life for many litigants;

WHEREAS, NACM recognizes that litigants with increasing frequency are seeking to show judges material that is stored on cell phones and other PEDs during judicial proceedings, and are asking that it be admitted or treated as evidence; and

WHEREAS, the evidence litigants are seeking to present on cell phones and other PEDs comes in many forms, including but not limited to photographs, call logs, text and short message service messages, emails, video recordings, voice mail messages and other audio recordings, social media posts, and satellite map images; and

WHEREAS, this growing trend is particularly evident during certain types of judicial proceedings, which, by their nature, tend to involve large numbers of self-represented litigants, such as landlord-tenant eviction actions, child custody hearings, and restraining and harassment order hearings; and

WHEREAS, judges presented with evidence on cell phones or other PEDs during judicial proceedings are often faced with the difficult task of striking the appropriate balance between

adherence to the rules of evidence, which must be maintained in proceedings where such rules apply, and facilitating the ability of all litigants, including self-represented litigants, to be fully and fairly heard; and

WHEREAS, resolving both practical issues, such as whether the judges themselves should physically handle the cell phone or other PED to observe the evidence, and issues of an evidentiary nature, such as assessing the authenticity of the evidence, whether other evidence (e.g., the full text message exchange) should be admitted for purposes of completeness, and whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice or some other danger; and

WHEREAS, litigants, particularly those who are self-represented, often appear in court without additional copies of the evidence on their cell phones or other PEDs, thereby giving rise to issues such as the adequacy of notice to an opposing party (where the proceedings are not ex parte) and the need properly to preserve the evidence for the record and appeal; and

WHEREAS, judges may not have been provided with adequate guidance to assist them in dealing with these and other issues that can arise when a litigant seeks to present evidence on a cell phone or other PED; and

WHEREAS, the NCSC-COSCA-NACM Joint Technology Committee identified in their *Managing Digital Evidence in Courts* that court management systems are not currently designed to manage large quantities of digital evidence and which means that courts and industry must find creative ways to deal immediately with the dramatically increasing volume of digital evidence, while planning for and developing new capabilities; and

WHEREAS, courthouses, often due to budgetary limits, are not always equipped with the technical equipment or resources that might better assist judges and litigants, especially self-represented litigants, in the presentation, consideration, and preservation of evidence on cell phones and other PEDs;

NOW, THEREFORE, BE IT RESOLVED that the National Association for Court Management encourages its members to consider adopting policies or protocols to guide and assist judges in dealing with the many practical and evidentiary issues that can arise when a litigant, particularly a self-represented litigant, seeks to present evidence on a cell phone or other PED in balance with safety and security risks that the cell phone or PED can bring with them.

Adapted from a resolution of the Council of Chief Justices and Conference of State Court Administrators at their 2019 Annual meeting on July 31, 2019.