

**CONFERENCE OF CHIEF JUSTICES
CONFERENCE OF STATE COURT ADMINISTRATORS**

Resolution 3

Admission of Evidence from Cell Phones and Other Personal Electronic Devices

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators (Conferences) have long supported the expansion of meaningful access to the justice system for all; and

WHEREAS, in 2018 the Conferences adopted Resolution 7, which urged their members to carefully review and assess their policies with respect to cell phone use in courthouses, so as to appropriately balance the security risks posed by cell phone use with the needs of litigants, especially those who are self-represented; and

WHEREAS, in 2018 the Conferences, in the process of adopting Resolution 7, recognized 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, the Conferences recognize 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, the Conferences recognize that, as a result of this trend, 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, the Conferences recognize that 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, the Conferences recognize that this task can involve 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, the Conferences recognize that 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, the Conferences recognize that judges have not always 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 Conferences recognize that 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 Conference of Chief Justices and the Conference of State Court Administrators encourage their 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.

Adopted as proposed by the CCJ and COSCA Access and Fairness Committee at the 2019 Annual Meeting on July 31, 2019.