

## Portable Communication Devices in Courthouses

In June 2017, the CACM Committee, with the concurrences of the Committee on Information Technology and the Committee on Judicial Security, updated its 2010 guidance on the admission of portable communication devices into the courthouse. This document sets forth Judicial Conference guidance for courts to consider in developing their own policies on the use of portable communication devices in courthouses and courtrooms (JCUS-SEP 17, p. \_\_\_).

The Conference's guidance applies to all:

- courts of appeals,
- district courts,
- bankruptcy courts,
- the Court of Federal Claims, and
- the Court of International Trade.

### (a) Devices Covered

- cellular phones;
- "smartphones" (e.g., iPhones, Android devices, and other mobile phones that perform many of the functions of a computer);
- tablets;
- laptop computers;
- devices that wirelessly connect to and pair with computers and smartphones to transmit data (including smart watches, earpieces, headphones, and fitness trackers); and
- audio recorders, still cameras, and video cameras that can connect wirelessly to other devices.

### (b) Device Capabilities

- (1) Portable communication devices, including cellular and smartphones now perform many of the functions of a computer, have internet access, and are equipped with cameras and microphones.
- (2) These devices have the ability to live stream video, as well as to post videos, pictures, and textual content to the internet, including social media feeds (e.g., Twitter, Facebook, Snapchat, Instagram, YouTube, and Periscope), and can post content instantaneously to blogs and other websites.

### (c) Types of Policies Adopted by Courts on Devices

- (1) Federal courts have adopted a variety of rules to address the admission and use of devices in federal courthouses, including the following:
  - (A) In some districts, possession of devices is strictly limited in the courthouse. Districts either prohibit the admission of devices in the courthouse or only allow attorneys to bring them into the courthouse with stringent restrictions on their use. For example, attorneys may be allowed to use their devices only to access a calendar function.
  - (B) In some districts, devices are generally allowed into the courthouse and courtroom, but may have to be turned off or silenced while in the courtroom.
  - (C) In some districts, individuals with a business reason to enter the courthouse (e.g., attorneys, court employees, law enforcement) are allowed to possess and use devices in the courthouse and courtroom. Many districts, however, employ restrictions, which may vary depending on the user. Variations include the following:
    - (1) Court personnel, law enforcement, building tenants, and attorneys are afforded the greatest levels of access in terms of the types of devices that can be brought in and the extent to which they are allowed to be used in the courthouse and courtroom.
    - (2) Jurors typically have more restricted access to devices.

### (d) Types of Policies Adopted by Courts on Use of Devices by the Media

- (1) Broadcasting of district court proceedings is prohibited under Judicial Conference policy, but within that constraint, some courts have adopted policies permitting the media to make limited use of devices. In addition, some judges have addressed this issue on a case-by-case basis, or when the media specifically submits a request to use a device in the courtroom.

**Note:** Some judges have allowed the media to use social media, including Twitter and other platforms, to provide text-based coverage of proceedings from designated locations, such as courtrooms or separate rooms with closed-circuit video. None has allowed media to use recording functions, including video, audio, or photographs.
- (2) Courts that have policies allowing the media limited use of devices include some of the following conditions:

- (A) Members of the media must register with, and receive approval from, the clerk's office before they can request permission from a presiding judge to use a device to communicate from the courtroom.
- (B) Members of the media must make a formal request or otherwise receive permission from the presiding judge to use a device to communicate from the courtroom.
- (C) Members of the media may use devices to communicate from within the courtroom unless directed otherwise by the presiding judge.
- (D) Members of the media must be credentialed to use a device to communicate from the courtroom.
- (E) Members of the media may use devices only in designated areas of the courthouse.
- (F) Members of the media are only allowed to send and receive text messages in the courtroom if it does not disrupt proceedings.
- (G) Members of the media may use their devices to take and transmit notes to their publisher only from a designated area within the courthouse.
- (H) Members of the media must not create a verbatim transcript of proceedings.

(e) Security Considerations

- (1) Security is an important consideration in dealing with devices, as some can be (and have been) converted for use as weapons and explosives, which could be operated remotely. Additional concerns have been raised due to increased use of non-metallic materials in manufacturing and smaller size, which affects the ability of scanning equipment to detect devices and hidden explosives.
- (2) Courts should consider providing varying degrees of access to categories of persons utilizing the courthouse based on their needs and/or their threat potential. For example, some groups, such as court employees, members of the bar, and contract employees who have undergone a background check, might be allowed greater use of electronic devices in the courthouse or courtroom, compared to the general public and jurors.
- (3) The level of restrictions on admission and use of these devices may well determine the level of burden placed on the court security officers and impact the public's right of access to the courthouse. Updating and

augmenting screening equipment, as has been done at airports, will assist in reducing these concerns, as will better and more frequent training of screening equipment operators.

(f) Adopting a Court Policy on Devices

- (1) Courts should work closely with the district U.S. marshal and the judicial security inspector responsible for courthouse security in developing a policy regarding devices in the courthouse. Court security committees, which may include federal defenders and the panel attorney district representative, are well suited to this task and should take the lead in policy development.
- (2) In developing the court's policy, courts should consider, and seek to clearly define, as appropriate:
  - (A) The devices to which the policy applies, including cellular and smart phones, tablets, laptops, and wireless accessories (such as smartwatches, fitness trackers, earpieces, etc.) and digital or other types of video cameras or audio recorders.
  - (B) To whom the policy will apply and how it applies to various types of persons entering the courthouse and courtrooms. Some courts distinguish among the following groups in their policies, while others apply the same policy to all persons:
    - (1) Court personnel, law enforcement personnel, and tenants of the building (often given full access for any device);
    - (2) Attorneys, public defenders, assistant U.S. attorneys, CJA panel attorneys and their staffs, pro se litigants, and parties to the case;
    - (3) General public;
    - (4) Members of the working media; and
    - (5) Jurors.
  - (C) The times, locations, or proceedings at which the devices may be used (e.g., in the courtroom versus a media room or separate courtroom with live feed, during court session versus only during recess or before or after proceedings, to record ceremonial events, such as naturalizations and swearing in of new judges).
  - (D) Whether the same policy should apply in every division and courthouse of the district or circuit, or whether different provisions should apply to different courthouses.

- (E) Whether the court should provide awareness training or other methods to inform persons entering the courthouse of the risks and benefits of bringing the device into the courthouse or courtroom that support the court's policy.
- (F) The court administration implications of banning the entry of certain devices, including the following:
  - (1) The impact on the workload of court security officers.
  - (2) The extent of the delay in entry to the building that may result.
  - (3) The need for and feasibility of providing storage facilities in the courthouse for these devices and the process for taking custody of and returning devices to building entrants and dealing with any complaints of damage or liability issues relating to the devices that may arise.
  - (4) If no storage facilities for these devices can be provided, the manner of dealing with entrants who cannot store the device in their nearby cars or offices because neither of these options is available to them.
- (2) Whatever policy is adopted, there should be ample notice provided.
  - (A) Signs should be conspicuously posted outside the courthouse and at the security posts.
  - (B) The policy should be featured prominently on the court's website and in notices provided to attorneys and jurors.
  - (C) The court security officers should be apprised of both the letter and spirit of the policy by the United States Marshals Service judicial security inspector, who is the contracting officer's technical representative for the court security officer program and integral to implementing this program. The court security officers are contract employees, and should only receive their working procedures from their supervisors, who receive them from the Judicial Security Inspector.

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Approved by Judicial Conference, March 12, 2017