

CAYMAN ISLANDS



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PRACTICE DIRECTION NO. 1 OF 2014
PRACTICE GUIDANCE



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Use of portable cameras, recording and electronic devices, including cellular phones and laptop computers, in and from court buildings, courtrooms and judges' chambers

The prevalent use of recorders, cellular phones, laptops and other devices, whether electronic or otherwise, and live text-based forms of communication (including texts and "twitter") in court buildings and in particular in and from courtrooms and chambers has made it necessary to provide directions on their usage by attorneys and counsel and their assistants and employees attending court or chambers. Separate guidance is issued for the press and the general public (**see pages 4-6 below**).

1. The following definitions shall apply:

- (a) "court" means any courtroom or equivalent, including judge's chambers, or any other place in which judicial business is being carried out whatever type of matter is being or will be heard therein;
- (b) "court building" means any building in which a court is located, whether permanently or temporarily;
- (c) "electronic device" means, for these purposes:
 - (i) any type of portable phone or computer or any other device that is capable of receiving, transmitting, making, saving or recording messages or transcripts, whether verbal or written, images, sounds, data or other information by electronic or any other means;
 - (ii) any camera, whether a separate instrument or integrated within some other device and regardless of whether it operates electronically, mechanically or otherwise and whether it records still or moving images by using digital technology, film, or any other means;

(iii) any recording device regardless of whether it operates electronically, mechanically or otherwise and whether it uses digital technology, tape or any other means.

(d) "Judge" includes, for this purpose, a Magistrate and a Justice of the Peace.

2. Possession and use of electronic devices:

(a) Generally: Subject to inspection by court security personnel and the restrictions in this Practice Direction, an electronic device, other than a separate camera, may be brought into a court building and used other than in a court in session for the purpose of making and receiving phone calls and electronic messages by e-mail, text, twitter or otherwise for any lawful purpose not otherwise prohibited provided that no electronic device may be used to take photographs or in any manner whatsoever that interferes with proceedings in any court or with the work of any court or Judicial Administration staff or other official personnel in any way. Without prejudice to this generality, verbal use of any electronic device may not take place near the workstation or place of work of any member of such staff or personnel or near the door to any court in session.

(b) Court

(i) All electronic devices shall be turned off before entering a court in session and, subject to (ii) below, shall remain turned off while inside the court and no electronic device shall be used while in the court.

(ii) A presiding Judge will, in his or her discretion in the particular circumstances, usually allow the attorneys and counsel appearing in the hearing in the court (and their assistants and employees) to make reasonable and lawful use of electronic devices in the court in connection with the hearing concerned, provided that such use is not verbal, that the electronic device is in "silent" mode or similar mode and that such use does not interfere in any way with the proceedings or inconvenience the judge or anyone else present.

(iii) Under the direction of the Judge, electronic communication linking an on-site electronic device to an off-premises receiving device or network may be specifically permitted for the purpose of assisting the Court in its duties consistent with the provisions of the Practice Direction and Guidance.

(c) Security or privacy in a particular case: If, in the discretion of the presiding Judge the circumstances of a particular case or hearing raise security or privacy issues that the Judge considers justify a restriction on the use of electronic devices or any of them, the Judge may

make a direction or order limiting or prohibiting such use in the court or in any other area of the court building designated by the Judge for the purpose. Such direction or order may provide for the collection by a marshal or court security official of all electronic devices in the possession of those present in the court or other designated area of the court building and their return when the persons who were in possession of such electronic devices leave the court or other designated area.

(d) Breach of Practice Direction

- (i) A marshal or court security official, whether on the order or direction of a Judge or otherwise, may confiscate and retain any electronic device that is used in breach of this Practice Direction or of any order or direction of a Judge. Confiscation or retention shall operate subject to the direction or order of the court.
- (ii) A Judge may direct the person in possession of any electronic device to delete any images or recordings made which are prohibited under this Practice Direction.
- (iii) A marshal or court security official, on the order or direction of a Judge, may delete any images or recordings made which are prohibited under this Practice Direction
- (iv) A person who willfully or persistently breaches this Practice Direction or any direction or order by a Judge in relation to any electronic device may be found in contempt of Court.

Dated the 6th day of January 2014

Hon. Anthony Smellie Q.C.
Chief Justice

PRACTICE GUIDANCE

1. This Practice Guidance (the Guidance) applies to court proceedings which are open to the public and to those parts of the proceedings which are not subject to reporting restrictions. It is issued (as guidance and not a Practice Direction) following a consultation relating to the use of live, text-based communications. Those consulted included the judiciary, the Attorney General, the Director of Public Prosecutions, the Bar, the Law Society, and Editors in addition to interested members of the public via the Judicial website.
2. The Guidance clarifies the use which may be made of live text-based communications, such as mobile email, social media (including Twitter) and internet enabled laptops in and from courts in the Cayman Islands. For the purposes of this Guidance these means of communication are referred to, compendiously, as live, text-based communications.
3. The Guidance is consistent with the general practice of the Courts to prohibit the taking of photographs in court and the use of sound recording equipment in court unless the leave of the judge has first been obtained. In addition, there is the general requirement that nothing should be published which is likely to prejudice a fair trial.

General principles

4. The Judge or Magistrate has an overriding responsibility to ensure that proceedings are conducted consistently with the proper administration of justice, and to avoid any improper interference with its processes.
5. A fundamental aspect of the proper administration of justice is the principle of open justice. Fair and accurate reporting of court proceedings forms part of that principle. The principle is however subject to well-known exceptions. Two such exceptions are the prohibitions, set out in paragraph 3, on photography in court and on making sound recordings of court proceedings.
6. The prohibition on photography in court, by any means, is absolute in the context of court hearings and in relation to those within the precincts of the court. Any equipment which has photographic capability must not have that function activated.
7. Sound recordings are also prohibited unless, in the exercise of its discretion, the court permits such equipment to be used. Some of the factors relevant to the exercise of that discretion are:
 - (a) the existence of any reasonable need on the part of the applicant for leave, whether a litigant or a person connected with the press or broadcasting, for the recording to be made;

- (b) the risk that the recording could be used for the purpose of briefing witnesses out of court;
- (c) any possibility that the use of the recorder would disturb the proceedings or distract or worry any witnesses or other participants.

Use of live, text-based communications: general considerations

8. The normal, indeed almost invariable, rule has been that cellular phones must be turned off in court. There is however no statutory prohibition on the use of live, text-based communications in open court.
9. Where a member of the public, who is in court, wishes to use live text-based communications during court proceedings an application for permission to activate and use, in silent mode, a cellular phone, small laptop or similar piece of equipment, solely in order to make live, text-based communications of the proceedings, will need to be made. The application may be made by sending a written request to the judge through court staff.
10. It is presumed that a representative of the media or a legal commentator using live, text-based communications from court does not pose a danger of interference to the proper administration of justice in the individual case. This is because the most obvious purpose of permitting the use of live, text-based communications would be to enable the media to produce fair and accurate reports of the proceedings. As such, a representative of the media or a legal commentator who wishes to use live, text-based communications from court may do so without making an application to the court. To ensure the proper application of this direction, it will be necessary to maintain a register of accredited media representatives similar to that maintained by the Legislative Assembly.
11. When considering, either generally or on its own motion, or following an application by a member of the public, whether to permit live, text-based communications, and if so by whom, the paramount question for the Judge will be whether the application may interfere with the proper administration of justice.
12. In considering the question of permission, the factors identified in relation to sound recordings above are likely to be relevant (paragraph 7 above).
13. Without being exhaustive, the danger to the administration of justice is likely to be at its most acute in the context of criminal trials, e.g. where witnesses who are out of court may be informed of what has already happened in court and so coached or briefed before they then give evidence, or where information posted on, for instance, Twitter about inadmissible evidence may influence members of a jury. However, the danger is not confined to criminal proceedings; in civil, and

sometimes family proceedings, simultaneous reporting from the courtroom may create pressure on witnesses, distracting or worrying them.

14. It may be necessary for the Judge or Magistrate to limit live, text-based communications to representatives of the media for journalistic purposes but to disallow its use by the wider public in court. That may arise if it is necessary, for example, to limit the number of mobile electronic devices in use at any given time because of the potential for electronic interference with the court's own sound recording equipment, or because the widespread use of such devices in court may cause a distraction in the proceedings.
15. Subject to these considerations, the use of an unobtrusive, hand-held, silent piece of modern equipment for the purposes of simultaneous reporting of proceedings to the outside world as they unfold in court by accredited media representatives is generally unlikely to interfere with the proper administration of justice.
16. Permission to use live, text-based communications from court may be withdrawn by the court at any time if the presiding judge considers that the circumstances so require.

Dated the 6th day of January 2014

The Hon. Anthony Smellie
Chief Justice