

## Texting in the Courtroom: Curse or Advantage

*By Judge Katherine Mader,  
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One morning I looked up from the bench as I was on the verge of making a controversial ruling. Something was odd. When the argument first began there was just one attorney in court for each side. The ruling was going to go against the defense. As I looked up I saw a bank of assistant public defenders and supervisors sitting in a row. They were all staring at me. How did they all know to arrive at the same time just before the ruling?

My first reaction was that someone in the court called the office and told colleagues to hurry down: "Judge Mader is about to make a bozo ruling. Come watch the fireworks..." Then I realized that I never saw a phone being used. And I knew I had a sign outside my door telling entrants to turn their phones off. Then I got a bit ticked. Obviously the phones hadn't been turned off. The attorneys were texting their colleagues and that's how they arrived.

I wondered how much underground texting was going on, and how much I should care. When I looked around more closely I realized that almost everyone in my court was texting and that included my staff. Jurors, of course, definitely did not text. And neither did I on the bench. I decided to query my staff and attorneys what they got out of texting in court. I wanted to decide whether it was disrespectful to the court, or actually beneficial and made my court run more smoothly.

I've come to the conclusion that texting for certain purposes, by certain people, is actually a great benefit to the smooth operation of my court, and on the whole, not disruptive. In order to demonstrate why, I'll describe a typical day (with thanks to my many anonymous informants who clued me in):

8:30 a.m.

Text from court reporter to clerk: "I'm here, just stuck at the elevator. B up in a few minutes. Don't worry."



8:35 a.m.

Multi-defendant case. I question my clerk, "Where are all the attorneys? Have they called in?"

My clerk: "Don't worry. I'll text to coordinate them. We'll find out immediately where they are, and get them all here at the same time.

Private attorneys are also running their offices that in Los Angeles, could be

anywhere in the County. Sitting in court, waiting for the case to be called they text with their office about appointments, text law clerks about briefs they'd like them to write, text potential new clients about setting up appointments and arranging for "Mr. Green" to arrive.

8:45 a.m.

All the missing attorneys arrive except one. He's stuck in Pomona. No worries, He has texted a co-counsel and asked the co-counsel to stand in for him. My question:

"Is there a date you can all agree upon to return for the next pre-trial?" This next step used to take agonizing minutes while each attorney checked their smart phone calendars. "We've got the next date arranged among all of us by text, even with the attorney in Pomona. We're ready to go."

9:00 a.m.

One attorney gets a text from another court clerk. She's needed there immediately. She texts back: "I'm stuck in 117. I

will be there in five minutes." Before texting, looking for attorneys took hours. We called the other courts; we called the attorney's offices, "Have you seen deputy DA Brown?"

9:15 a.m.

PD gets text from a colleague that a client in another court wants to represent himself. Can she get the discovery from her office and show up in the other court to be relieved?

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This text alone saves a trip by the PD to the other court, another trip to her office, and then back to the court again to turn over the discovery.

My judicial assistant figures out that we are missing a file. A text goes out to the file clerk as to what we need. The file is brought right away. In the past it has taken hours sometimes to even locate the file clerk.

9:30 a.m.

Pre-trial hearing with legal issue. We all know there's a case on point but there's not much time to find it before our trial starts at 10:30. My question: "Can one of you text your appellate divisions and get the cite of the case we're looking for? One minute later we have the name and holding of the case and I'm reading it on my desk computer. I can make a ruling and feel confident about it.

9:45 a.m.

After pre-trial conference all parties decide on an appropriate plea. Deputy DA texts the parameters of plea to supervisor on another floor. Supervisor texts back a counter-offer. The offer is accepted. Plea is taken on the record.

10:00 a.m.

Specially-assigned deputy DA has day off but defendant wants to take the deal already proposed. We all know that when someone wants to plead it's best to take the plea immediately. Deputy DA in court texts DA at home. "Is it okay?" Plea is taken.

10:15 a.m.

Attorneys arrive in court to set up video equipment for trial to begin at 10:30 a.m. Video equipment is broken. The technician could be anywhere in the 18-story building. Texts go out.

Within a minute different equipment and technicians arrive to fix the glitch so we're ready to go on time.

10:30 a.m.

The trial is beginning. The jurors are in their seats. They are not texting. They are paying close attention.

Deputy DA texts her investigating officer who is keeping a witness on a different floor in the DA's Office. It's time to get the witness downstairs to begin his testimony.

Whoops. Defense attorneys are not cross-examining the witness as long as expected. Another text by the deputy DA to investigating officer: "Get the next witness ready to go. We're moving really fast. Tell the 1:30 p.m witness we may need them before lunch."

Electronic video equipment breaks down again. Deputy DA texts tech support and they come down to fix equipment while she questions witness about other subject not requiring the equipment.

Quick text from court reporter to judicial assistant: What was the exact spelling of the witness that's on the stand now? I didn't get it". Text immediately returned and record made accurate.

Deputy DA realizes she needs diagram of Santa Monica college to better examine a witness.

She sends quick text to her law clerk to get diagram from internet, print it out, and come to court before witness leaves the stand. Five minutes later the diagram is displayed on the screen.

Assistant public defender is watched by a colleague in the office who wants attorney before the court to ask witness a critical question. Instead of disrupting the court and walking up to counsel table the colleague discreetly sends a text with the proposed question which is promptly asked.

A deputy DA, in order to spend four weeks in my court doing a jury trial had to "hand off" a special circumstances murder preliminary hearing to another DA who is doing her a favor by conducting the preliminary hearing in another court. She gets a text from the other DA, "Witness X hasn't shown up, do you mind if we take his testimony through Prop 115 (police officer hearsay) rather than hold up the prelim? She texts back that she's comfortable with 115.

These examples don't mean that texting isn't also used for non-court-related purposes during the court day. Watching their uses I now see that some of them are not only

legitimate but save court time by eliminating phone calls and some recesses for purely personal reasons.

For example, my court reporter, who is a single mother of 3, used to like to break at 3 exactly to call home and make sure her children got home safely from school. Now she can relax and glance at her phone for a text reassuring her that her children have returned free from harm.

Another court employee has a home health care aide that cares for her mother. Sometimes the aide sends a text: "Can I give your mother 2 aspirin for her headache?" This is certainly preferable to breaking court for this exchange to occur by phone.

One attorney got an urgent text because his cleaning person didn't know the house code to enter his home to clean. He was able to send it to her without missing a beat of the trial.

The Pew Foundation did a survey in 2013 that determined that 91% of adult Americans own cell phones and 81% send and receive texts. In the courtroom, much of this texting has been "underground." I am convinced that my courtroom saves time and runs smoother as a result of texting. Posted signs and bailiff proclamations prohibiting texting are actually inhibiting valuable communication.

Of course, any good thing can be abused and should be monitored closely. However, we shouldn't close our eyes to the ways new technology can help us. This article is about texting only, not spectators taking pictures of witnesses, recording testimony, jurors texting during trials, or other nefarious uses.

I am only suggesting that texting nowadays is a fact of our interconnected lives. If we don't all make efforts to discover how to use it effectively I can only SMH. ("Shake my Head") 🙄