

Plaintiff Texting Witness On The Stand Results In Dismissal Of Lawsuit

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Technology affords litigants and their attorneys new and highly effective means to present evidence in the courtroom which can win or lose a case. Similarly, the misuse of electronic devices in the courtroom can impact the entire outcome. Last month, a Florida appellate court upheld a trial court's final judgment dismissing an action because the plaintiff was sending text messages to a witness who was on the stand.

In *Sky Development, Inc. v. Vistaview Development, Inc.*, the Chief Financial Officer of Plaintiff Sky Development was testifying at trial. The CFO was asked by Vistaview's counsel if he had received a key document. The court then held a 'sidebar' conference with the parties' respective attorneys and, during that conference, with the CFO remaining in the witness chair, the sole shareholder of Sky Development sent two text messages to the CFO relating to the question asked. Upon discovering the messages, the judge declared a mistrial, granted Vistaview's motion to dismiss the case and entered a final judgment. The appeals court upheld the dismissal and final judgment, ruling that "plaintiff's misconduct was certainly a blatant showing of fraud, pretense, collusion or other similar wrongdoing."

While some courts do not allow mobile phones into the courtroom, many still do. Parties to litigation should exercise common sense in using electronic devices. Electronic means cannot be used to do something that a party may not otherwise do, such as communicating with a witness on the stand. To review the court's opinion, go to <http://www.3dca.flcourts.org/opinions/3D10-1274.pdf>.

For more information about legislation or litigation involving technology, intellectual property protection of information technology assets or any other Information Technology law issue, contact your Miller Canfield attorney or Kathy Ossian, Leader of our Information Technology Team, or call her direct at 313.496.7644.