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January 22, 2008

Honorable Kimba M. Wood
Chief United States District Judge
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1610
New York, New York 10007-1312

Re: Proposed policy in the Southern District of New York on
possession of Wireless Enabled PDAs and cellular telephones by
all practicing attorneys in its courthouses

Dear Judge Wood:

On behalf of the Association of the Bar of the City of New York (the "Association") and its Federal Courts Committee, we write to respectfully propose a change to the current policy in the United States District Court for the Southern District of New York concerning possession by all practicing attorneys of wireless enabled Personal Digital Assistants ("PDAs") and cellular telephones in its two courthouses.

The Association is one of the oldest and largest local bar associations in the United States, with a current membership of over 23,000 lawyers. The Association serves not only as a professional association, but also as a leader and advocate in the legal community on a local, state, national and international level. The Association pursues its advocacy through the work of over 160 committees, including the Federal Courts Committee. Among other activities, the Association's committees prepare comments for legislative bodies, regulatory agencies and rule making committees on pending and existing laws, regulations and rules that have broad legal, regulatory, practical or policy implications. Further information regarding the Association can be found at its web site, <http://www.abcny.org>.

Currently, attorneys in private practice, attorneys working for public interest groups and non-federal government attorneys are not permitted to bring wireless enabled PDAs (e.g., blackberry devices) and cellular telephones into the courthouses of the Southern District of New York. We understand that this policy does not apply to Assistant United States Attorneys and Assistant Federal Public Defenders.

Several courthouses in New York and elsewhere in the United States, such as the District of Connecticut, the District of New Jersey, and the District of Massachusetts, and the New York Supreme Court, allow practicing attorneys to bring in these devices. As you may be aware, the United States District Court for the Eastern District of New York recently reviewed its policy and decided to permit attorneys presenting verification of bar membership to enter courthouses with wireless enabled PDAs and cellular phones, provided that they are either off or rendered silent. (For your easy reference, attached is a copy of the EDNY Administrative Order concerning this revised policy.) These courts have apparently considered potential issues of safety, courtroom decorum and impact upon sensitive proceedings, and have concluded that these devices should be permitted. In particular, we understand that the policy change in the Eastern District of New York was preceded by a careful review of these issues.

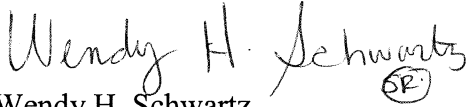
The Association believes that, for at least three reasons, the policy of the United States District Court for the Southern District of New York should be changed to permit all attorneys to bring wireless enabled PDAs and cellular phones into the courthouses. First, permitting these devices will improve court processes. In recent years, attorney practices in maintaining calendars and contact information have shifted greatly to reliance upon these devices. Many (if not most) attorneys would be better equipped to respond to the Court's questions on scheduling if they had access to their electronic calendar, typically stored in a blackberry or other form of PDA. Attorneys would also be better able to comply with court requests to contact opposing counsel or client representatives if they had access to their electronic rolodex, typically stored in a PDA or cellular phone. Further, PDAs and blackberries have become important organizational tools for storing information and communications regarding court proceedings, and attorney recourse to these devices would enhance an attorney's ability to present information to the Court.

Second, a policy change would be supported by considerations of fairness. At present, Assistant United States Attorneys and Assistant Public Defenders can bring these devices into the Southern District courthouses, but the same is not true for their adversary counsel. This gives a potential unfair advantage to those government attorneys, particularly in light of the increasing importance of these devices in the practice of law. To maintain a level playing field, these important tools should be available to all practicing attorneys appearing before the Court.

Third, and finally, while it goes without question that safety and impact upon sensitive proceedings are extremely important, as these devices have become part of every day usage, they have not created generally unsafe conditions. Where specific issues arise in sensitive proceedings—for example, in a case where the identity of a witness is confidential or there are specific safety concerns—special measures can be put in place with respect to those proceedings without having to ban attorney usage of these devices from the courthouses.

For these reasons, we urge the United States Court for the Southern District of New York to amend this policy and permit all lawyers to bring wireless enabled PDAs and cellular phones into its two courthouses. We thank Your Honor for your attention to this issue and for Your Honor's consideration of the Association's views. We would welcome the opportunity to provide further assistance on this issue upon request from the Court.

Respectfully submitted,


Wendy H. Schwartz