

Digital Evidence and Privacy in New Jersey Family Law Cases

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In New Jersey family law matters, electronic evidence is now routine. Text messages, emails, social media content, financial and messaging applications, location data, and cloud storage frequently appear in divorce, custody, support, and domestic violence cases. While this evidence can be highly persuasive, it also presents significant privacy, admissibility, and ethical challenges.

Digital evidence is commonly used to support or refute claims related to income, assets, parenting ability, domestic violence, and credibility. Courts acknowledge the value of such evidence, but only when it is lawfully obtained, reliably preserved, and properly presented.

Under the New Jersey Rules of Evidence, digital evidence must be relevant and authenticated to be admissible. Authentication requires proof that the evidence is what the proponent claims it to be and that it has not been altered. A screenshot alone may be insufficient if authenticity is challenged. Because digital evidence is easily manipulated, courts will closely examine how it was collected and maintained, including whether an identifiable chain of custody exists.

Privacy concerns are equally critical. In New Jersey, accessing another person's emails, messages, social media accounts, cloud storage, or devices without authorization may violate state and federal law, regardless of marital or cohabitation status. Risks arise when individuals bypass security measures, install spyware or tracking software, or intercept communications without lawful consent.

Once litigation is pending or reasonably anticipated, parties have a duty to preserve digital evidence. Preservation steps include disabling auto-delete functions, maintaining devices in their current state, exporting data in native formats, disabling auto-delete, wiping devices and documenting collection efforts.

Timing and presentation are also critical. Digital evidence is most persuasive when it is complete, contextualized, and accurate. Producing full message threads—rather than selective excerpts—enhances credibility, even when some content may be unfavorable. Selective disclosure can invite skepticism and challenges from opposing parties.

When handled properly, digital evidence is a powerful tool in New Jersey family law litigation. Parties should avoid unauthorized access, preserve relevant data, and pursue discovery strategies that respect privacy and proportionality. Thoughtful collection, careful authentication, and responsible presentation can strengthen motions, facilitate settlement, and enhance trial advocacy.

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