

Litigating in the Digital Era: The Challenge of Electronic Evidence, Foreign Documents, and Electronic Signatures in Panama

In recent years, litigation in Panama and around the world has had to adapt to an inevitable reality: documents are no longer printed because they can be issued digitally, contracts are signed electronically, documents can be issued on another continent for use in our country, and evidence is submitted to the record in digital formats. In this new era of procedural law, lawyers must master not only traditional litigation techniques but also the protocols for authentication, validation, and admissibility of digital evidence. Today more than ever, the way evidence is presented can be as decisive to the process as its content.

Evidence knows no borders, but the Code does.

One of the most sensitive issues in current litigation practice is the use of documents from abroad. Digitally signed contracts in Europe, financial statements issued in the US, digital certifications from Asian suppliers, all are part of everyday life in many lawsuits, especially in commercial or administrative cases.

But for a foreign document to be admitted as evidence in a trial in Panama, it must meet specific requirements:

- Consular authentication or legalization, or
- Apostille, if the country of origin is a party to the Hague Convention (Panama is).
- Official translation, if it is written in a language other than Spanish.

Failure to follow these steps may result in its inadmissibility, regardless of its evidentiary content. In other words, the substance is lost if the form is not adequately maintained, a constant in the Panamanian process.

Electronic evidence is no longer the future; it is the present.

WhatsApp chats, emails, text messages, recorded video calls, social media posts, digital certificates of access to platforms, each of these elements has become part of the evidentiary reality in Panamanian litigation.

Article 780 of the Judicial Code and Article 459 of the Civil Procedure Code, which will come into full effect in October of this year, admit evidence by documents in general, but regulatory developments regarding electronic evidence have been more recent and have arisen through case law, supplementary provisions, and the application of regulations such as:

- Law 51 of 2008, on electronic documents and signatures.
- Law 82 of 2012, on computer crimes.
- And more recently, the criteria established by the Supreme Court of Justice on the admission and assessment of digital evidence.

The key, however, lies in how it is presented: isolated screenshots without context are unlikely to be of any value unless they are accompanied by certification of their origin and authenticity. In some cases, computer expertise may even be required to validate the content.

Electronic signature: valid, but with conditions.

Panama legally recognizes the use of electronic signatures through the aforementioned Law 51 of 2008. This law distinguishes between two types:

1. Simple electronic signature, such as a scanned image sent in a data message or a click of acceptance.
2. Qualified electronic signature, backed by a provider authorized by the National Electronic Signature Directorate (DNFE).



Although both are valid, the second carries a presumption of authenticity, which gives it much more probative weight in court. In practice, this means that a contract signed digitally with a qualified signature has the same value as one signed with a pen authenticated by a notary.

However, the challenge for many litigants is that judges, still unfamiliar with the technology, tend to demand more evidence to accept electronically signed documents, forcing lawyers to accompany them with certifications, expert reports, or detailed explanations.

The new litigator: half lawyer, half digital manager.

Litigating today is no longer just about mastering codes. It means knowing how to present a WhatsApp conversation without it being dismissed as informal. It means understanding how to authenticate a document issued in another country. It means knowing when an electronic signature can replace a handwritten signature and when it cannot.

This requires not only technical updates, but also a new attitude towards the process: less formalism, more focus on substance, while not neglecting the legal structure that lends value to the evidence.

At Alcogal, we support our clients through this transition with updated criteria, technical expertise, and a strategic vision. The digitization of evidence does not weaken the judicial process. It challenges it. It forces it to be more flexible and modern, but it also requires us to be more careful in technical matters. As trial lawyers, we must be among the first to master this hybrid system, so as not to be left behind in this digital age and on the threshold of a judicial system committed to changing and renewing the model of civil justice administration.



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