



Can I Use Electronically-Stored Information to Spy on My Cheating Spouse?

Understanding Privacy and Surveillance Laws

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Table of Contents

A Guide to Preparing for Divorce	4	
Can I Use Electronic-Stored Information to Spy on My Cheating Spouse?	6	
The Reality of Spying on a Cheating Spouse	7	
Catching Your Cheating Spouse	7	
How Can Proof of Infidelity Impact a Divorce Case?	9	
Spousal Support	9	
Child Custody	9	
The Difference Between Legal and Physical Custody	10	
Proving Adultery	11	
Social Media Sites	12	
Electronic Communications	12	
Electronic Evidence	12	
Silent Video Surveillance and Hidden Devices	13	
Hire a Private Investigator	13	
GPS Tracking System on a Private Vehicle	14	
Know the Consequences of Your Actions	14	
Wiretapping and Electronic Eavesdropping	15	
Federal Law	16	
PA State Law	16	
Can I Use Text Messages on My Cheating Spouse's Phone?	17	
Can a Recorded Conversation Catch My Unfaithful Spouse?	18	
In-person Communications:	18	
Is Video Recording an Admissible Evidence?	20	
Is it Legal to Snoop in Spouse's Email or Facebook to Seek Proof of Infidelity?	21	
Can I use GPS Tracking to Monitor My Spouse's Whereabouts?	22	
Admissible Evidence of Infidelity	23	
The Importance of Hiring an Attorney	23	
Your Family Lawyer at Work	24	
Authenticating Electronically-stored Information	25	
What You Need to Know?	28	
Choose a Competent Family Lawyer	28	
Don't Expect to Win	29	
Do Not Tamper with Electronically-Stored Information	29	
Don't Believe What Others Say About Divorce	29	
Marital Property	29	
Child Support and Custody	30	
Will I Serve Jail Time?	30	
About the Author	32	

A Guide to Preparing for Divorce

Let's get this out of the way:

Sad to say, the person you walked down the aisle with and envisioned to be your better half for the rest of your life turned out to be the wrong person. The vows you made have gone down the drain and you desperately want a divorce.

If you are looking to get a divorce, it is important to not allow your emotions to get the best of you. You must not act on impulse. You need to think about preparing for the financial and emotional costs. By taking the time to create a well-thought out plan, you will pave the way to receiving a settlement you are pleased with which will help you transition to your new life. But first, you need to have a clear sense of what divorce involves.

You Will Need Money

Before filing a divorce petition, expect that emotions will run high and your spouse might react violently or angrily. They might leave you high and dry. Without any money, how can you pay for a good lawyer, therapist, financial planner, and a place to stay before the divorce settlement is finalized? You will need to have a secure way of

having a ready cash flow to finance your divorce and prepare for life on your own. Our Divorce attorneys can advise you on your legal options when it comes to accessing money in shared accounts or other assets.

Think About Whether Separation Could Be a Better Option.

Granted, your marriage may be over, but if you are dependent on your spouse, you might consider separation as a more practical option. Think about your health insurance coverage that might be tied in with your spouse's employer. Think about retirement benefits and 401(k) plans that you or your spouse have.

Choose the Right Divorce Lawyer.

No two situations are the same. Every marriage has its own unique issues that resulted in divorce. Choosing the right lawyer who understands your case and has handled similar cases or specializes in a certain practice is a start to the right direction. Your lawyer can walk you through the marital assets, liabilities, divorce settlement terms and options, and its long-term impact on your life post-divorce. Negotiation, collaborative divorce, and mediation should also be discussed.

Look for Hidden Assets.

Before the divorce, make sure you know every asset included in your marital estate and how much they are worth, so that in case your spouse reacts unfavorably, there is little chance that they can hide assets and properties from you, since you've done your research all ready and everything is accounted for.

Update Your Resume.

While in transition and even before divorce, consider updating your resume and polishing a cover letter for employment. You cannot depend on your spouse's income anymore. This is especially important for stay-at-home parents. Understand that child support and alimony won't pay all of the bills. You will need a stable source of income to maintain your lifestyle and household.

Get Real and Prepare for the Financial Reality of Divorce.

Rather than panic when the loan collectors are knocking on your door, make sure you have a post-divorce budget ready now so you can align and adjust the divorce settlement in your favor. You need to have a post-divorce budget prepared detailing your income and expenses, so that you can work towards that during your divorce negotiations. Financial preparation is always one of the keys to preparing for divorce.

The attorneys at Petrelli Previtera understand that divorce is very stressful. That is why we take the time to walk you through your options so we can help you successfully transition into your next phase of life. Take the first step towards your new future by scheduling your consultation today.



Can I Use Electronic- Stored Information to Spy on My Cheating Spouse?

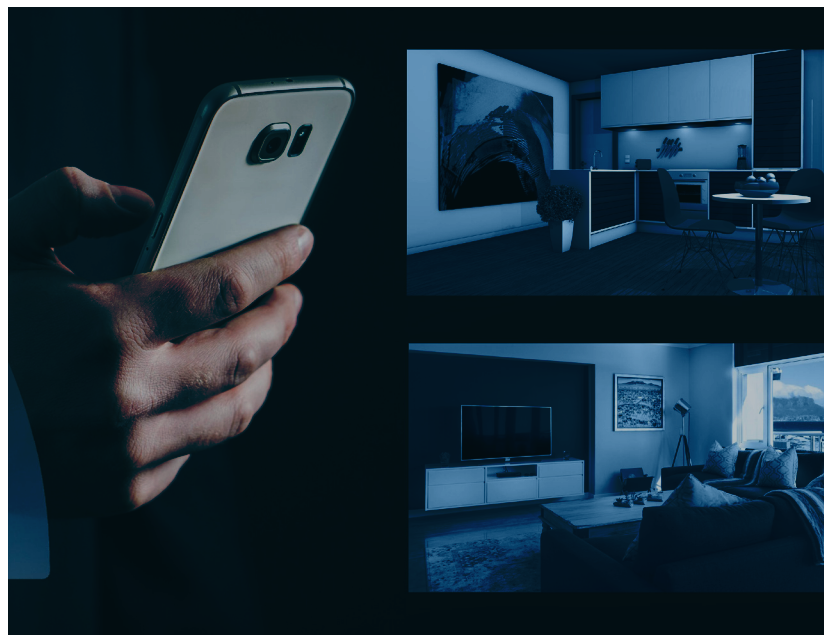
You married the spouse of your dreams and you are thankful because your wish came true. However, there are signs of infidelity with frequent calls and secretive text messages from an anonymous person, sudden office meetings with unusual home arrival, concern about appearance, and missing money in the bank.

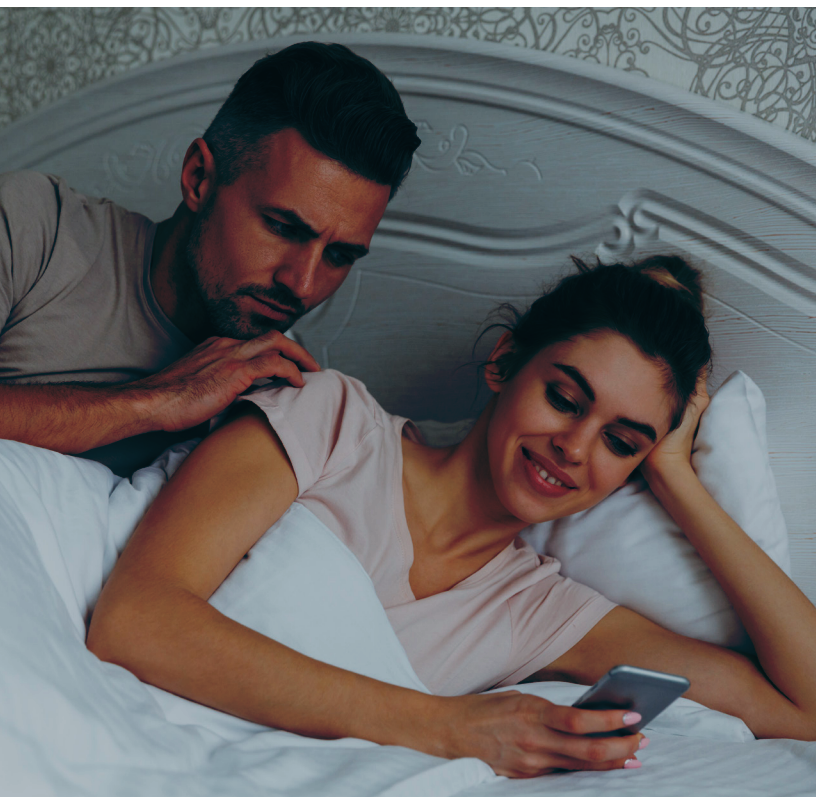
Good for you, you have access to the spy technology that you've seen in blockbuster movies to monitor your spouse's activities. Smart phones can be tracked to determine the whereabouts of the owner, CCTVs for monitoring suspicious behavior in your home, hidden microphones to catch conversations, and a GPS tracking system planted on the car in case the cell phone was left behind. However, it is important to think before you act.

The purchase of these devices are not prohibited by law. However, there are federal and state laws that consider the use of these systems as

illegal and a violation of a person's right to privacy. When you think your trust is compromised and abused, don't act in haste. You might get in hot water and find yourself on the other end of criminal proceedings. This may also have a negative impact on a custody or parenting time determination if you are going through a divorce.

Gain some inspiration from this e-book, learn to gather valuable evidence and use it against your cheating spouse. Understand the law and get to know how it works with answers to commonly asked questions and through real-life cases.





The Reality of Spying on a Cheating Spouse

Here are some reasons of why you might be inclined to spy on your spouse: they have cheated before and the same pattern is happening, you want to satisfy your feeling of insecurity or need for control, you want to use this information as a leverage in a divorce suit or to gain the upper hand in a child custody conflict.

Catching Your Cheating Spouse

It is very hard to catch a cheating spouse because they often will not admit it and they will lie. Call it unfair, but the rules of the game on infidelity favors the cheating spouse. Unless you have evidence to prove your allegations that will show the cheating spouse's wrongdoing, this will not stop the dishonest spouse from lying. Having proof might level the playing field and maybe tilt the issue in your favor.

Advancements in technology developed products and services to catch the lying, cheating spouse. They can run, but they cannot hide.

Cell phone software apps can detect your spouse's cell phone and forward emails, texts, and other cell phone activities. A global positioning satellite (GPS) will track your cheating spouse's vehicle whereabouts 24/7. Deleted messages and photos may be recovered from Windows, Mac, Android, and iOS systems with data recovery apps. There are online services that can help you uncover your spouse's hidden profiles, you

can see your spouse and the lover during their tender moments. Concealed cameras and voice triggered recording systems can be camouflaged as a pen, clock, radio, and other household items which can serve as your watchdog when you're away. However, these are not legal or admissible in Court. In fact, your spouse may take legal action against you and attempt to obtain a Final Restraining Order against you for staking consistent with the relevant State statute.

Pennsylvania is a two-party consent state, so in order to record anything and have it admissible in court, all parties that are part of the conversation must consent to being recorded.

Another way of revealing the truth is by hiring a private investigator (PI). This works well when your spouse is skeptical that you know about the infidelity. Further, PIs are good at infidelity investigation: they know the surveillance systems that are legal in your area. This is important if you are trying to gather evidence to prove your spouse's unfaithfulness. Video surveillance and other



information gathered by a PI is admissible and legal. The PI can be a witness and testify in Court if necessary.

Though certain technology may be available, there are two important questions to ask yourself:

1. Is it legal, and
2. Is it admissible in Court?

How Can Proof of Infidelity Impact a Divorce Case?

There are no-fault states when it comes to divorce, including Pennsylvania & New Jersey, meaning the supported spouse filing for a divorce is not obligated to prove the infidelity of a paying spouse.

While it is possible to have a no-fault divorce granted in Pennsylvania, if both of the spouses do not consent to the divorce, the movant spouse must wait one year from the date of separation to proceed with a no-fault divorce unilaterally. During this time, if they are the higher wage earner they could be obligated to pay the lower wage earning spouse alimony pendente lite which is support during the divorce proceedings.

It is possible, however, to request a fault based divorce without waiting this one year period if there is proof of adultery. Typically the guilty spouse will “consent” to no fault divorce grounds after the 90 day waiting period to avoid having to pay.

Spousal Support

In Pennsylvania, infidelity can have an impact on the award of alimony, but it is not required that the divorce be granted on grounds of adultery to be considered which is why many matrimonial attorneys will still recommend for a party to file under an Irreconcilable Differences cause of action in divorce.

Child Custody

There are no specific guidelines that penalize a cheating spouse by denying custody of a child. Although adultery per se is not harmful to the child, custody is determined by what is the best interest of the child. Adultery can impact the decision of the judge if it was determined that the unfaithful spouse is irresponsible, unstable, or unfit to be a parent to a child.

Often times, one parent’s adultery will negatively affect that parent’s relationship with the child. The parties’ relationship with each parent is an important consideration in any custody determination.

The Difference Between Legal and Physical Custody

Legal custody is the right to make major decisions concerning the child's education, health, and welfare. It means deciding where your child should go to school, whether or not they should receive medical or health insurance, and even determining the doctor to see to the child's care.

Shared legal custody aka "joint custody" is when both parents have shared rights. However, it does not mean that both parents need to agree all the time, meaning each parent has the freedom to decide what they think is best for their children. In cases when parents cannot agree on major decisions like which school their child should attend, the case might be litigated in court. When parents cannot agree together on decisions regarding their children, a parent is "unfit" (because of neglect, substance abuse, physical abuse, and other incapacity), or having one parent retain sole legal custody would work for the good of the child, usually, both parents

are granted joint legal custody. Sole legal custody means that one parent is awarded the right to make all decisions regarding the child's education, health, and welfare without consulting the other parent. Before making a decision, courts will always make the best interests of the child their prime concern.

Primary Physical Custody & Shared Physical Custody is when the parent has the right to take the child home with them after the divorce or which parent the child will be staying with post-divorce. This right grants the parents the right to have the child physically present in their residence or place. The primary custodial parent is the one parent the child primarily lives with. The parent without partial custody has less visitation rights. Sole physical custody is when the child lives primarily with one parent while the other parent is granted visitations rights. Shared physical custody is when both parents share physical care of the child. It does not warrant an even fifty-fifty split between parents, but grants both parents rights to provide physical care for their child almost equally. An example of a fifty-fifty split is

when each parent would alternate in having the children weekly. Physical custody rights are determined by the court for the specific best interests of the child and is not granted when there is evidence of abuse or neglect by the parents.

Property Distribution

In most cases, the proof of evidence of adultery is not considered by the judge during the property division proceedings, except in the case of dissipation of marital assets. This means that if marital funds were spent by the unfaithful spouse on the paramour in their illicit affair, a credit might be due and owing to the other party.

Proving Adultery

Each state has their own standard for proving adultery if you have file under that specific fault ground. In some states, both people are guilty if one of them is married to someone else. Other states, the rule covers only married women. Many states consider a single act of adultery

a crime, the illicit affair should be continuing and notorious in other states.

In Pennsylvania, if a spouse chooses adultery as the cause of action, and the other spouse does not admit to the affair, a hearing will be held and evidence will need to be presented. Typically, the Court will require details regarding dates and places associated with the infidelity. Because of the complex nature involved and the limited benefits to filing under the grounds of adultery in Pennsylvania, your attorney may advise you to file under the no-fault provisions.

If an aggrieved spouse files a case, mere accusations are not adequate to obtain a divorce on the grounds of infidelity; the complaining spouse has to prove the guilt. Many forms of proof may not be admissible in a divorce court, so how do you provide the evidence that will be allowed by the court?

Social Media Sites

With the advent of the internet, gathering evidence of adultery is a bit easier. Information from the cheating spouse's social media accounts can be used to prove adultery anything that is posted is considered public. Additionally, you may request an audit of social media accounts through the discovery process in Pennsylvania.

Facebook or Instagram with compromising photos of the cheating spouse and the paramour in their tender moments. Images of gifts or tokens from either the unfaithful spouse or the paramour. Intimate posts quoting messages of affection are fair game.

Electronic Communications

Recording of a telephone conversation is only legal if consent of all participants is obtained. Of course, the law also provides for recording of "any transfer of signs, signals, writing, images, sounds, data or intelligence

of any nature." For example, a text message can only be shared when consent has been given.

Electronic Evidence

Access to information on a computer shared between spouses is legal if a spouse did not cite this in the divorce proceedings. Either of the spouses can use the data on the hard drive.

Conversely, if a spouse revokes the right of the other to a device, the usage of the information is unauthorized and cannot hold up in a divorce court. The same holds true for hacking into a personal account like an email by guessing the password. The offender faces criminal charges or civil consequences.

Silent Video Surveillance and Hidden Devices

The law specifies protections for individuals who have a reasonable expectation of privacy, whether at home or in the bathroom. It is illegal to take recordings of a person in any state of undress and to transmit those images. However, public areas are permitted to have hidden devices.

Hire a Private Investigator

Private or Infidelity investigators are individuals licensed by the state to conduct surveillance. Hiring one can confirm your doubts and discover the truth of your cheating spouse. They are familiar with the investigation techniques in your area and they can provide the legal evidence that you need in your divorce suit.

You can watch a video of your unfaithful spouse in a romantic cuddle in a restaurant with the lover feeding each other with pasta, then proceed to a motel for a couple of hours. This information is fully admissible in Court.



GPS Tracking System on a Private Vehicle

The use of electronic tracking systems without knowledge or consent does violate Pennsylvania law. It is always best to go on the side of caution. There are other relevant and legal methods to gather information rather than GPS tracking your spouse.

Know the Consequences of Your Actions

What was once a family filled with love, trust, and happiness turned sour because of the illicit activities of your spouse. You feel angry; you want to get rid of the rat by filing for a divorce. The suspicion needs to be supported by evidence to tilt the decision of the court in your favor if seeking to file under an adultery cause of action.

Fret not, there are lots of products and services in the market that will catch your cheating spouse flat-footed. Capturing the spouse in a romantic tryst is easy, but can this be used as an admissible evidence?



The evidence should not violate any laws to be allowed in a divorce court. Otherwise, your time, effort, and money will be wasted; you will be flooded with criminal and civil liabilities; and a snicker from your cheating spouse. Plan ahead and know what works and what will not to win the battle.

A. Intent to Wiretap

18 U.S.C. § 2511 of the ECPA makes it a felony to intentionally intercept wire, oral, or electronic communications and endeavoring to intercept a communication, violators face the following consequences:

- *Not more than five years of imprisonment; or*
- *A maximum penalty of \$250,000 fine for individuals.*
- *A maximum penalty of \$500,000 fine for organizations.*

B. Custody of Illegal Wiretapping Equipment

18 U.S.C. § 2512 makes it a felony to possess unlawful wiretapping and eavesdropping equipment, violators face the following consequences:

- *Not more than five years of imprisonment; or*
- *A maximum penalty of \$250,000 fine for individuals.*

- *A maximum penalty of \$500,000 fine for organizations.*

C. Release of Information Obtained by Illegal Wiretapping

18 U.S.C. § 2511 makes it a felony to disclose information obtained by illegal wiretapping, violators face the following consequences:

- *Not more than five years of imprisonment; or*
- *A maximum penalty of \$250,000 fine for individual*
- *A maximum penalty of \$500,000 fine for organizations*

D. Additional Consequences

Intent to commit wiretapping, possession of wiretapping equipment, and the unlawful disclosure of information acquired through wiretapping are all charged as separate offenses. This is used as a leverage by prosecutors to intimidate offenders with extended sentences.

Wiretapping and Electronic Eavesdropping

There are wiretapping and electronic eavesdropping systems in

the market that can give the proof that you need. Keep in mind that any surveillance must be legal, sensible, and not invasive. Otherwise, your head will spin facing criminal

charges with jail time and civil financial liabilities for illegal and inappropriate actions. Know what you are getting into and develop a strategy before you act.

Federal Law

Years back, wiretapping was connecting a listening device to a phone and intercepting a conversation as it runs through the telephone wire. Nowadays, it is synonymous with eavesdropping, things like smartphones, drones, and nanny cams required Congress to modify the federal wiretap law of the 60s.

The 18 U.S.C. § 2511 Wiretap Act was amended into the Electronic Communications Privacy Act (ECPA) in 1986. Under ECPA it is illegal to covertly record any face-to-face conversation, phone call, email, text, or electronic communication that is private. The government restrictions on wiretapping telephone calls were extended to include transmissions of data by computer and other digital devices. Also, interception of stored electronic communications and tracking devices are not allowed.

Statutes penalize violators with fines and possible imprisonment depending on the severity of the offense.

Aside from the criminal consequences, violators also face civil penalties which are money damages paid to the accuser.

PA State Law

Pennsylvania's wiretapping law is a "two-party consent" law. Pennsylvania makes it a crime to intercept or record a telephone call or conversation unless all parties to the conversation consent. See 18 Pa. Cons. Stat. § 5703. Same as the federal law in Pennsylvania, it can be a felony offense if without the consent of both parties to the communication, the person willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication.

Divorce cases get intense to the point that spouses resort to dirty tactics to reveal the infidelity of the erring spouses. The judicial system

recognizes this and considers the invasion of privacy as a part of a tort law.

You may have all the reasons to hack the email or mount a GPS on your car to spy on your cheating spouse. Without the knowledge or consent, your actions will get you in hot water.

In *Kroh v. Kroh*, N.C. App. 347 (2002) the defending wife used tape recorders and video cameras to monitor her plaintiff husband's home conversations and actions. The plaintiff was awarded \$1,000.00 in compensatory damages under G.S. § 15A-296 and \$5,000 in punitive damages for violation of the Electronic Surveillance Act.

Since recording an in-person conversation or electronic communication is illegal, this activity is a felony offense. Anyone who audio records a conversation in violation of the Wiretapping Act, or who discloses or uses a recording that he or she knows was illegally obtained, commits a felony of the third degree punishable by up to seven years in prison and up to a \$15,000 fine.

Moreover, violation of the Wiretapping Act is grounds for a lawsuit by the person who was recorded, with remedies including actual damages or \$1,000 (whichever is greater), punitive damages, and reasonable attorneys' fees and litigation costs. It should also be noted that recordings obtained in violation of the Wiretapping Act generally cannot be used as evidence in any legal proceeding.

Anyone whose communication has been unlawfully taped can recover actual damages in the amount of \$100 per day of violation or \$1,000, whichever is greater, and also can recover punitive damages litigation costs, and attorney fees. 18 Pa. Cons. Stat. § 5725.

Can I Use Text Messages on My Cheating Spouse's Phone?

Do you notice something strange about your spouse's behavior? Are there things hidden from you? Is the cell phone used in mysterious ways?

It's time for a serious talk and to speak your mind if your spouse won't open up avoid jumping to conclusions and delve deeper into the problem. It could be work-related stress, problems with health, or finances which could be worked out to keep the marriage healthy.

You should not download apps or software on to your spouse's phone without their consent to knowledge. This could lead to civil and criminal penalties. You can gain this information through the discovery process of your divorce and avoid any potential headache.

Can a Recorded Conversation Catch My Unfaithful Spouse?

Technological advancements have made a recording device accessible. Recording a conversation is no longer exclusive to owners of fancy equipment; a simple press on the cell phone's button does the trick.

Plaintiffs often think that they are holding a key evidence against their cheating spouse. A secret recording

by the defendant of a conversation highlights the cheating, threats, and other discriminating evidence.

For instance, a mistreated party and the spouse had a heated argument. This was recorded as evidence unbeknownst to the cheating spouse. Everything was revealed from the extramarital affair to the hidden cash. The quarrel continues and the recording catches the cheating spouse admitting that his reported salary is lower than what he receives.

You hit the nail on the head, in a one-consent state, like New Jersey. But in Pennsylvania, a two-party consent state, this act is not only illegal, any recording derived from such means will not be admissible in court, and may bring unwanted charges against the recorder.

In-person Communications:

Recording an oral communication is unlawful when one person believed that the conversation was private. A conversation had in public could be subject to recording since there is no reasonable expectation of privacy.



Vicarious Consent

There are some exceptions to the Wiretap Act violation, which are found at §5704 of the Act. They include:

- Law enforcement, or individuals acting at the direction of law enforcement, who are otherwise complying with the requirements of the Act;
- Police and Emergency communication systems (i.e. 911);
- Prison phone systems;
- Where all parties to the communication consent to the recording;
- Public utilities, entities providing electronic communication services, telemarketers or telephonic customer service;
- School buses, for disciplinary or security reasons (assuming other requirements of the Act are met);
- A victim, witness, or private investigator to record an oral conversation if they reasonably

suspect that the party being recorded is committing, or about to commit, a crime of violence.

Absent any of the above exceptions, it is important to understand this law to avoid committing a felony offense. In this age of technology, it can be too easy to unknowingly slip up. So, unless you're recording in a public place (e.g., a video of an embarrassing or entertaining incident at your local superstore) or with the consent of the other party involved (it is suggested, confirmed on the tape recording), don't do it. And if someone wants to share a recording like that with you, don't listen to it.

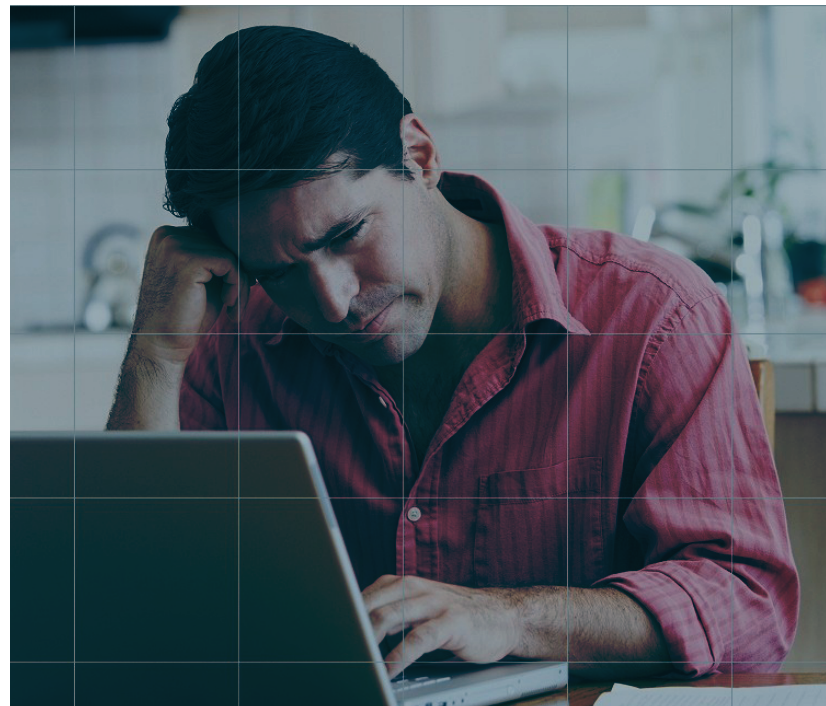
Is Video Recording an Admissible Evidence?

Federal and state laws cover only oral communications and videotaping without aural, recording is not a violation of wiretapping laws.

Capturing an image is not the same as intercepting a wire or oral communication since the contents of the conversation are not recorded. Video surveillance is not intercepting an

electronic communication because there is no image transmitted, but a video recording of the actions of characters in a real-time setting in a public place. Remember the statutes about tortious invasion of privacy, a video camera in a bedroom or any private area may expose you to civil liability.

Hidden cameras versus open and known cameras in and around the home are two different stories. If there are open and known cameras



in the home, that video evidence is admissible in Court as evidence and can be very powerful in supporting your claim.

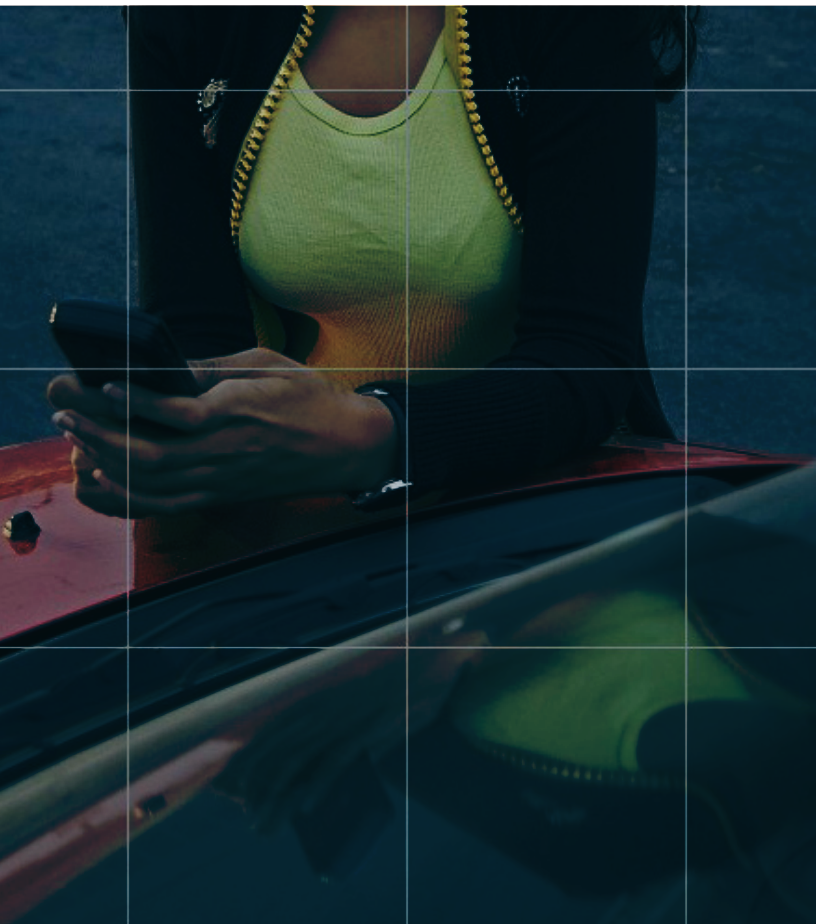
Is it Legal to Snoop in Spouse's Email or Facebook to Seek Proof of Infidelity?

Email, Facebook, or Twitter communications are being recognized in many divorce courts, but the manner in how the cyber evidence was collected will determine if it is admissible in court. Spouses trying to build a case for divorce may find themselves recipients of criminal and civil liabilities in pursuit of the smoking gun.

In today's technology-driven age, snooping software like spyware will send confidential information to a receiver. However, this does not mean the actions are legal. Any public postings on social media and other forums are permissible as the other party has no expectation to privacy.

In *White v. White*, 344 N.J. Super. 211 (Ch. Div. 2001), the husband asked the court to reject emails based on his right to privacy because he claimed they were located on his personal, password-protected AOL email account. As it turns out, the husband's email account had been inherently configured to automatically copy all email correspondence to a folder on the desktop of the couple's shared family computer. The wife didn't need to use a password or even log in to AOL to see the incriminating evidence. The court ruled the husband didn't have a reasonable expectation of privacy, thus making the emails admissible evidence in the custody case.

You are not violating any law if you gained access to your spouse's Facebook account by logging into your own. All information is public; the messages between your cheating spouse and the paramour and sensual poses can be used in your battle. Again, this information can also be gained through the discovery process.



Can I use GPS Tracking to Monitor My Spouse's Whereabouts?

The legality of a GPS device to monitor a spouse's whereabouts is up in the air.

The Supreme Court previously established that people riding in a vehicle can be seen by anyone, hence the whereabouts are not

considered confidential. However, in *U.S. v. Jones* the police installed a tracker in Jones' jeep without judicial approval and used it to follow him for a month. A jury found Jones not guilty on all charges save for conspiracy. The Supreme Court specifically stated in a 1983 case regarding the use of a beeper to track a suspect that the decision could not be used to justify 24-hour surveillance without a warrant.

The ruling sent mixed signals to the legal community, some lawyers believe that GPS devices are not allowed to spy on a spouse's whereabouts, others think that it was illegal because it involved police activity. Some lawyers say there is no law against GPS hence usage is legal, others believe that it depends on the ownership of the vehicle. In shared vehicles, there can be no expectation of privacy. However, it is best to err on the side of caution and avoid GPS monitoring your spouse's whereabouts. There are other powerful methods available to you as previously discussed.

Admissible Evidence of Infidelity

With all the information you've read, your head might be spinning. Now you understand what evidence will work and what will not in court.

So you printed all the information on your spouse's electronic communication; gathered and arranged all text messages and prepared other evidence that will prove your spouse's fault.

Proving adultery is tricky; there might be details missing in your evidence that will tilt the favor on the other side that could impact your claim for child custody, alimony, and asset division.

Read some more to get more inspiration to get your facts straight on your day in court.

The Importance of Hiring an Attorney

You visit the doctor for treatment of an ailment, employ the services of a carpenter for some house repairs,

and seek the services of a family lawyer to protect your rights in a divorce suit.

To save time and money, you forgo hiring a family lawyer and represent yourself. This will work if spouses are committed to end the marriage sans a legal battle, if there are no children or assets involved, and if neither party wants to receive alimony from the other. Even in those cases, it can be best to hire an attorney to ensure your legal rights are being preserved.



However, most people know that divorce is not a walk in the park. In fact; it is complicated, stressful, and a confusing process and an experienced family lawyer by your side will help you through it. There are a lot of decisions that need to be made and legal documents to plow through –these are trying moments and you won’t be able to think straight. Non-lawyers struggle with court rules and procedures, and legal jargons making legal documents too complicated to comprehend.

Your Family Lawyer at Work

Divorce laws vary by state, and your family lawyer will make use of the laws to your favor. They have the educational background, training, and savvy to determine the best course of action that will provide the best result.

Emotions run high and it is quite impossible for a couple to come to a settlement. They can act as a go-between and approach the issue judiciously within the law and settle the problem without going to the court.

Family lawyers have what it takes to divide assets fairly and they can draft the documents to bring your matter to a global resolution.

One of the most difficult issues in a separation has to be the welfare of the children. They can help with drafting an agreement of Child Custody for parents that are separating and amend the agreement if need be.

It often happens that family lawyers can’t help couples to settle family disputes outside of the court, the unforgiving spouse has to settle these matters in court. Your family lawyer will protect your rights and see to it that you get justice from your adulterous spouse. They will help you navigate the complex jungles of the family law and ensure that you get justice that you deserve.

You will have someone to email or call who can answer your questions and give you advice on matters that are relevant to the case.

Authenticating Electronically-stored Information

In a couple of months, you have a court schedule for your divorce case, and among your proofs are copies of electronically-stored information (ESI) from cell phones, Facebook, Twitter, and Instagram. Judges are skeptical about these exhibits being digitally manipulated, you should be able to authenticate them to stand up in court.

You may think you have a problem on your hands. With two amendments to the Federal Rule of Evidence (FRE), which took effect on December 1, 2017.

FRE 902 governs evidence that is “self-authenticating,” meaning items of evidence that do not require any extrinsic evidence of authenticity in order to be admitted into evidence at trial. The items covered by this rule include, for example, sealed and signed U.S. public documents, certified copies of public records, and newspapers and periodicals. Certain types of electronically stored

New Federal Rules of Evidence 902(13) and 902(14)

Rule 902(13):

Certified Records Generated by an Electronic Process or System. A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent must also meet the notice requirements of Rule 902(11).

Rule 902(14):

Certified Data Copied from an Electronic Device, Storage Medium, or File. Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent also must meet the notice requirements of Rule 902(11).

information, or “ESI,” were also made part of this group covered by FRE 902 on December 1, 2017.

It looks complicated, but it’s not. The statutes allow parties to authenticate certain types of ESI without needing to offer any testimony as to foundation. Specifically, the following ESI will no longer need foundation-related testimony at trial: (1) A record generated by an electronic process or system that produces an accurate result, as shown by an appropriate certification; or (2) data copied from an electronic device, storage medium, or electronic file, if

authenticated by a process of digital identification, as demonstrated by an appropriate certification.

The types of evidence that would fall under these rules could include GPS data, cell phone photos, text messages, and other electronic evidence, if the proponent introduced an authentication certificate, pursuant to FRE 902(13), showing that the ESI was obtained from systems that produced reliable results. FRE 902(14) will allow, among other things, self-authentication of forensic copies of web pages, text messages, or emails, certifying that they are the same as the originals.



To establish authenticity of the proof, the proponent of the ESI is required a certification way before the trial. The opposing party can challenge the authenticity of the proof. A qualified person can provide authenticity and can testify in court, a specialist would check the original copy and the duplicates to ensure that they are similar. Without any objection to the certification from the opposing party there is no need for the authenticator to attend the trial. The purpose of the committee is to encourage the parties involved to decide ahead of time whether to contest the authenticity of the ESI or not, to customize the trial arrangement and simplify the trial itself.

Evidence with proper certifications will save the parties and the court time and money from easier trial preparation, less witnesses, and brief trials.

In February 2016, the Pennsylvania Superior Court found in *Commonwealth v. Smith* that recording a conversation on a voice memo app on an iPhone is more like recording a conversation on a pre-digital tape recorder than on a telephone.

The superior court quoted a 2014 U.S. Supreme Court decision, *Riley v. California* : the term cell phone is itself misleading shorthand; many of these devices are in fact mini-computers that also happen to have the capacity to be used as a telephone. They could easily be called cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps or newspapers.

The lesson here: if you are thinking about recording a conversation with your ex (or soon-to-be-ex) spouse on your cell phone and you don't have the other person's permission, **DO NOT PRESS RECORD.**

In light of the above issues, the Court suggested that the following rules of thumb should be followed for litigants wishing to introduce evidence stored on cell phones:

CELL PHONE EVIDENCE	HARD COPY EVIDENCE
E-Mails & Texts	Printed on Paper
Social Media Messages	Printed on Paper
Photographs	Printed on Paper
Audio Recording	Duplicated on CD or Cassette
Video Recording	Duplicated on DVD

What You Need to Know?

A divorce is a complex and daunting nightmare.

So, you've decided to separate from your unfaithful spouse. The road has lots of humps and bumps along the way. Knowing what these are up-front will make the ride smoother, easier to navigate, and perhaps a favorable outcome at the end of your journey.

Choose a Competent Family Lawyer

Divorce is a legal matter that is less about the law and more of mediation, money, and parenting. Work with an experienced family lawyer to help you with this legal mess. The lawyer should get the point effectively as fast as possible to avoid dragging the case that can cost you. A long litigation can be daunting, a good lawyer will be properly motivated to complete the case up to fruition. A competent lawyer will do just about anything to win the case.

Don't Expect to Win

You're not a true winner when you beat your spouse in a divorce case, it's just scratching the surface. Deep inside, there were many joyous moments shared by the couple while raising the family. Besides, you won't end up with everything you want with issues about child custody, alimony, and division of assets. You might end up with child custody with a lower amount of spousal support. After the dust has settled, both parties will walk down memory lane reminiscing of happy moments, to win is pointless. It is important to have a goal, but be willing to compromise.

Do Not Tamper with Electronically-Stored Information

Texts can be cut and pasted to depict a message with romantic content, photos can be altered to display intimate moments. If these will be used as evidence, it has to go through the meticulous investigation of an expert or specialist. If ESI is tampered, the specialist won't issue a certificate and the supposed

evidence can't be admissible in court. DO NOT tamper with any evidence. It will only hurt you in the long run.

Don't Believe What Others Say About Divorce

Every divorce is unique and the advice from other people can be misleading or wrong. It's best to base your actions based on your decisions and not on other's experience. Be honest with your attorney, reveal all facts to analyze the case properly so that they can give you sound advice.

In a case in California, the wife filed for divorce without disclosing that she won \$1.5 million in the lottery. The husband was informed about this and told the judge about the concealment. The court awarded all, not just half, of the lottery winnings to the husband.

Marital Property

Marital property covers all property gained during the marriage, including the appreciation in value of a property acquired by a spouse

before the marriage or through inheritance, but not the property itself. The couples can come up with an agreement, and the judge can include this as part of the court order. In case of non-agreement, the court will split the property in an impartial manner through the process of equitable distribution. There are many factors to consider including the number of children, health issues, earning capability, education, and the standard of living.

The same court action is applied to alimony, which will be part of the court order before a divorce is granted.

Child Support and Custody

Child support and custody should be included with any pending divorce action. In fact, child support may have an important impact on a parties' ability to provide for alimony.

The separating couple must decide with whom the children will live and for other relevant matters such as where they will attend school, medical support, cost of living, and

visitation schedule. If the couple cannot come up with an agreement the court will decide for them.

Will I Serve Jail Time?

Federal and state laws are tricky if you are not a lawyer. It is possible you might be using ESIs which violate wiretapping laws. In the event you did, the relevant statute might state that you will fail jail time, but it is unlikely that the court will file a case against you for illegally spying on your spouse. The focus of the government on the wiretapping law is more on a national scale such as anti-terrorism, money laundering, drug-trafficking, and organized crime.

While it may be unlikely that you will be jailed for violation of the wiretapping law, an upset spouse will certainly utilize whatever available resources they may have. This could include, but is not limited, filing criminal charges against you with the County prosecutor or seeking a Final Restraining Order for stalking.

In a case from New York, a suspicious spouse got himself in hot water. The husband installed Spyware on his wife's cell phone three weeks before filing for divorce. He wanted to gain an edge in divorce proceedings by intercepting communications between his wife and her lawyer. He gained access to as many as 200 emails, which were discovered by a computer expert hired by his wife. The spouse's computers and devices were seized by the police and scoured for evidence that he intercepted from his wife's confidential communications.

In another case out of Texas, a man got four years jail time for using SpyRecon on his wife's cell phone.



About the Author:

Thomas Petrelli

As founding and managing partner of Petrelli Previtera, Tom leads the firm in resolving divorce cases. While he represents individuals and families in all types of financial situations, he has built a particularly strong reputation handling high asset divorces and those involving businesses as marital property. In this regard, he focuses on the protection, valuation, and distribution of significant assets or business interests.

Since passing the Bar, Tom's impressive career has earned him the recognition of his peers and authoritative legal organizations. He has been named in Pennsylvania Super Lawyers every year since 2009. Martindale-Hubbell awarded Tom with the Client Champion Gold Award in 2019 and in previous years. He is among Suburban Life Magazine's 2010 Awesome Attorneys in the category of Divorce and Family Law, and Arrival Magazine's Top 50 Family Lawyers in the Northeast.

The groundwork for Tom's laser-sharp legal mind started with his outstanding education. In addition to his Juris Doctor from Vermont Law School, he holds an LL.M. in Trial Advocacy from Temple University's James E. Beasley School of Law..

Contact our family law attorneys today. *If you're ready to discuss your legal options for your specific matter, we can help you get started and ensure you're as well-informed as possible from the beginning. Call us today.*

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