

Wiretapping and Divorce

Wiretapping is a crime under both federal and Illinois law. When one spouse wiretaps the other's conversations, the wiretapper faces jail time and civil penalties. Remedies allow the aggrieved party equitable or declaratory relief, recovery of (money) damages and punitive damages, and reasonable attorney's fees and litigation costs.¹ Proof can be difficult, however, as an accused wiretapper has some very strong defenses at his disposal.²

The federal and Illinois laws were created to protect the privacy of individuals engaged in private conversations and when making phone calls. As technology has developed, however, the laws have not kept pace. Indeed, the Illinois law refers to "telegraph and telephone" lines; even Western Union no longer uses telegraph devices. Nevertheless, the laws have been applied to ever-evolving applications. The battleground today focuses on electronic communications: e-mails, text messages, IMs, and faxes. Critical in the analyses is the distinction between programs that contemporaneously "intercept" communications (for example, where a copy of an e-mail is generated when the "send" button is clicked) and programs that break into a computer or other device and retrieve prior communications from storage. The latter is not an "interception" and, therefore, the wiretap laws usually do not apply.³

Many divorce litigants now seek to introduce evidence obtained through "spyware;" software that, once installed on a computer, logs each keystroke, or takes a screenshot of websites visited, and stores the information for later retrieval by the "spy." Originally marketed to parents concerned about their children's on-line activities, many spyware packages are now targeted to concerned spouses as a tool to develop evidence for an anticipated divorce.

Illinois courts have been slow to recognize spyware as a violation of the wiretap laws. The generally accepted argument is that an individual has no expectation of privacy when using a home computer... even if the use is password protected.⁴ One federal court, however, has held that the use of spyware against a spouse constitutes eavesdropping under the federal statute.⁵ Illinois' legislature has (as recently as 2006) declined to expand Illinois law to specifically apply to electronic communications. Illinois law today can be interpreted to conclude that users have no expectation of privacy when they use home computers and hand-held devices... even if the communication or activity is password protected.

This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or info@illinoisdivorce.com.