

The Cyber-Snooping Spouse: Protecting Email Communications during Divorce

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Sadly, contested family law cases often bring out the worst in people. Some people will go to extremes to gain the upper hand in a litigation context. Spousal snooping occurs when a spouse surreptitiously monitors the other spouse's computer activity. While this practice is generally viewed as criminal in a civil litigation context, in family law cases the legalities become much murkier; For instance, is a spouse permitted to install spyware or key-stroke monitoring software on a "family" or "community" computer to track the other spouse's activity? Generally, the answer is yes. What about after the divorce papers are filed? What if one spouse moves out of the marital home after filing; may he or she continue to monitor the family computer left behind? And what about emails; may a divorcing spouse read the emails of the other spouse after the divorce papers are filed?

As a general rule, I tell clients that if they are still living together as husband and wife and no legal action has been commenced, neither party has a reasonable expectation of privacy, especially if they are dealing with a family computer. After a legal petition has been filed, or after one party has left the marital residence, the issue of cyber-snooping becomes more problematic. Right or wrong, during family law litigation it is quite common for divorcing spouses to monitor the other spouses email activity. The cyber-snooper will generally defend his (or her) activity by claiming that the other spouse gave his password to her during the marriage, and therefore she assumed she still had "permission" to read the other party's emails. While the legalities of this behavior could be argued back and forth, some practical advice is in order:

I tell all potential clients to assume that their emails are being monitored by the other party. I advise every client to create a new email account on a secure server at the commencement of the litigation. While this will not entirely thwart the dedicated computer hacker, it will protect most people in most cases. This is especially important if the client intends to communicate with his or her attorney through email. While it is improper for third persons to review confidential, attorney-client protected communications, it happens. Take precautionary steps to assure that your cyber communications are kept confidential and that they do not fall into the hands of an adversarial party.



Timothy Durkin joined JacksonWhite in 2010, and quickly established himself as a highly effective family law attorney with the perfect balance of assertiveness and compassion. Tim is often complimented for his dedication to professional service, as he works closely with his clients to keep them informed, listen to their needs and involve them in the decision making process.

Tim handles all types of family law, including divorces, paternity actions, child custody, child support, relocation and jurisdiction issues, adoptions, termination of parental rights and parental severance actions, title 8 guardianships, spousal maintenance cases, division of marital property and debts, pre-nuptial agreements, post decree modifications and enforcement of custody and divorce orders, mediation services, grandparent visitation cases, and domestic violence issues. He is licensed to practice law in all Arizona State Courts, as well as the United States District Court, District of Arizona, and serves clients throughout the Phoenix metro area. To read more about what former clients are saying about hiring Tim, or to set up a free consultation, please visit www.jacksonwhitelaw.com/arizona-family-law.

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