

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



[John Narron](#) is a Board Certified Family Law Specialist and has been practicing law in North Carolina since 1977, with a practice concentration in all manner of civil disputes that frequently involve complex equitable distribution proceedings, alimony trials, will caveats, employment disputes, personal injury trials and negotiations, and a wide variety of commercial business disputes. John has served as a mediator in more than 200 family law disputes in Wake County, Franklin County, Johnston County, Wayne County, Guilford County, Forsyth County, and Pender County.

Can I record my spouse's phone calls?

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With the ever increasing amount of technology available to us in our daily lives, many electronic devices such as computers or cell phones have become an increasingly popular resource for the collection of evidence particularly in domestic cases. It is easy enough to access a spouse's computer when it is kept at home and there are also various spyware programs that can be purchased over the internet that when installed on someone's computer provide complete access to everything that happens on that computer to the party that is intercepting that information with the help of the spyware. While such methods may be clever and reliable resources for the collection of potential damaging evidence against a spouse, one should always consider the legal consequences of his or her actions before deciding to undertake efforts to intercept emails or other communications from a spouse. Federal law regulates the interception of most real time communications such as telephone calls, email or oral conversations. Generally, the Federal law makes the intentional interception of any wire, oral or electronic communication unlawful, including the use of electronic or mechanical devices or the aid of another person to intercept communication between other people.

There is no violation of the Federal law when at least one party to the communication consents to the recording or interception. For example, you can record most phone conversations provided one party knows he or she is being recorded. However, some states (but not North Carolina) are not this liberal, and in those states, care should be given to recording communication which originates from another state.

The Federal Wire Tapping Act establishes criminal sanctions for violations which may include a fine and/or imprisonment for not more than 5 years. The act further provides for a civil cause of action for an individual whose communications have been unlawfully intercepted by another. Available damages include actual damages, profits made by the person violating the act, or statutory damages of \$100 per day up to \$10,000 for each day that the act is violated.

North Carolina offers similar protections to those afforded under the Federal law. The North Carolina Electronic Surveillance Act makes the willful interception, disclosure, or use of wire, oral or electronic communications without the consent of at least one party to the communications a Class H Felony. However, the Court of Appeals ruled that this act only applies to oral communications and that it is not a violation of this act to

videotape someone without their knowledge provided the video tape does not include an audio recording.

In a trial which was held in Brunswick County in 2012 a husband who intercepted his ex-wife's emails by use of spyware installed on her computer was found to have violated the State law and ordered to pay \$25,400 plus attorney's fees to his former spouse for the violation.

Our Courts have also ruled that information obtained illegally in violation of the State or Federal act cannot be offered in evidence in any trial.

In any domestic dispute it is vital to obtain the advice of a competent domestic attorney before you even consider any effort to intercept or record the communications of a third party without that person's knowledge.

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