



Preparing for Your Divorce: Do's and Don'ts in the Age of Technology

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How does technology impact divorce and custody cases?

- The impact of technology on a divorce and custody case is as ever-changing as the field of technology itself. Cases can be won or lost in an “oh no” second. The “oh no” second is the amount of time it takes you to realize you shouldn’t have sent that email, posted that picture or tweeted that thought. Just like the field of technology is ever-changing, so will your life. You really don’t have time to lose in either of them, especially any “oh no” seconds. Technology can turn the tide in your favor, or direct the tidal toward you.

How does a litigant protect herself, assets and children?

- A litigant protects herself, assets and children by being wise and remembering what her mother told her, “if she doesn’t have anything nice to say than she shouldn’t say anything at all.” Litigants need to remember that anything posted or emailed is permanent, and can be used to her detriment. She can also protect herself by documenting and saving everything she can. Her spouse can make the same mistakes, and good defense is a great offense.

If my spouse is cheating, how can I legally use technology to uncover his behavior?

- To an extent. Technology can be our best friend and our worst enemy. So, it is better to let the professionals use the latest tools of the trade in uncovering a cheating spouse’s behavior. So a litigant’s best course of action is to hire a licensed and reputable private investigator.

Is spyware legal?

- Clearly, spyware that tracks a partner’s moves by observing and monitoring all computer activity such as websites visited, e-mails sent and received, instant messages sent and received, as well as all passwords and PINs entered by the spouse without their knowledge is *illegal* in most states. The use of such illegally obtained information as evidence in court proceedings is also prohibited by law and subject to significant fines and penalties both under state and federal law.

Can I intercept my husband’s e-mails?

- No, The Federal Wiretap Act prohibits use of communications obtained through wiretapping in violation of the Act admitted into evidence at trials or hearings. A Wife was fined \$20,000 last week (July 19, 2012) for such wrongdoing.¹ Also, several years ago, a law firm in Chattanooga, Tennessee, was sued for two million dollars (\$2,000,000) for allegedly using illegally obtained e-mail evidence in a divorce action. (It was likely the *Klumb* case, but I was unable to locate the results of this suit.) Allegedly, the estranged wife used e-mail spyware to intercept communications from her husband’s computer, and her attorney “used or tried to use” the communications in the divorce action. Attorneys, for both ethical and

¹ *Klumb v. Gaan*, 09-cv-115 (E.E. Tenn.; July 19, 2012).



legal reasons, must clearly advise clients not to use any illegal spyware devices even if they suspect their spouse is cheating.

Is it ok to put a gps on my husband's car?

- You can place a GPS tracking device on your spouse's vehicle if: the device is a "slap and go" type tracker, if the installer does not trespass upon property when installing the device, if the device does not alter the vehicle in any way, and the device does not use the vehicle's power supply.² However, there is federal legislation pending in the United States House and Senate that may directly affect the current law.

Can I follow my spouse using the "find my iPhone" app?

- The "find my iPhone" app can locate an iPhone by using its internal GPS. However, to use the app, you have to know the Apple I.D. that is associated with the iPhone. So, in essence you could use the app to find an iPhone, but is it legal to use such technology to track your spouse at any time especially during divorce litigation? The question is somewhat complex and fact dependent so you must discuss your particular situation with your own attorney.

How soon can I change my Facebook marital status to "single?"

- Don't change your Facebook relationship status, until after your divorce is final. It may be tempting, but it may also hurt you in the long run. Remember that in South Carolina adultery is a bar to alimony, and your spouse only needs to prove "inclination" and "opportunity" to have a finding adultery from the Court.

How do I find and hire the right attorney for me?

- You find the right attorney for you by doing your homework. You have to take time and make sure that there is a good fit between you and the attorney because you are going to be spending a lot of time with them. When you meet with the attorney ask questions and get a feel for their personality. Also, ask around a great attorney will have a great reputation and vice versa. Remember, it takes a long time to find the right diamond.

² Don Kneece, *GPS Tracking*, S.C. ASSOC. OF LEGAL INVESTIGATORS JOURNAL, Apr.-May-June 2009, at 12-13, available at <http://www.sclegalinvestigators.com/wp-content/uploads/2012/04/Journal-2009Q2.pdf>.



Technology “DO’s” and “Don’ts”

Below is a brief list of some “Do’s” and “Don’ts” when preparing for a divorce in the age of technology. Remember that this list is not exhaustive. It is only meant to give you an idea of what to expect to prepare for a divorce in the age of technology.

- Beware of your surroundings in the technological landscape. Your computer, smartphone and movements are often monitored using these devices.
- Protect or change your passwords to all accounts including e-mail, Facebook, Twitter, LinkedIn, Amazon, AppleId, Dropbox, iTunes, Logmein, etc. If your spouse knows your passwords, then he has access to a significant amount of information.
- Think twice before you publicly “post” on social media sites. Your “posts” on Facebook, Twitter, LinkedIn, YouTube and other social media can be taken out of context and used against you. When considering divorce or during divorce litigation, posting online is unwise and often detrimental to your case.
- Review your social media privacy settings and the current content posted on your profile pages.
- Do not delete material on your social media sites or e-mails except in the ordinary course of business prior to consulting with an attorney and do not delete information once you have consulted with an attorney without first seeking that attorney’s advice. Instead, simply *take down* your account without deleting it to remove the temptation to post.
- Beware of electronic “gifts” from your spouse because they might have preloaded with tracking software. The reason for this warning is that the cell phone or other electronic gifts (e.g., an iPod Touch) may have GPS and other monitoring technology downloaded on it, and you may not want to the giver to have the ability to track down his or her whereabouts.
- Password protect your cell phone and your cell-phone voice-mail. If you have an existing password, change it. Technology such as SpoofCards can disguise someone’s identity and even gender.
- Consider obtaining a new service plan for your existing cell-phone and even moving to a new service plan. Also make sure to password protect your account so no one else can access your account records or change the account settings. If you continue to use the existing cell-phone plan that is in your spouse’s name, realize that the records he can legally access your records. Additionally, find out from your provider whether or not any changes were made to your account settings (e.g., has any type of location service been added).
- Don’t change your Facebook relationship status, until after your divorce is final. It may be tempting, but it may also hurt you in the long run. Remember that in South Carolina adultery is a bar to alimony, and your spouse only needs to prove “inclination” and “opportunity” to have a finding adultery from the Court.



- Set all your Bluetooth to “hidden” and GPS to “911 only,” especially when in public areas.
- Clearly, spyware that tracks a partner’s moves by observing and monitoring all computer activity such as websites visited, e-mails sent and received, instant messages sent and received, as well as all passwords and PINs entered by the spouse without their knowledge is illegal in most states.³ The use of such illegally obtained information as evidence in court proceedings is also prohibited by law. The Federal Wiretap Act prohibits use of communications obtained through wiretapping in violation of the Act admitted into evidence at trials or hearings.⁴ Attorneys, for both ethical and legal reasons, must clearly advise clients not to use any illegal spyware devices even if they suspect their spouse is cheating.
- Protect Yourself Against the Use of Spyware:
 - Install good anti-spyware programs that seek out and destroy the spyware. Run the anti-spyware programs on your computer once a week.
 - Install a firewall and spam clocker program to help combat spyware.
 - Regularly update your operating system and web browsing software.
 - Do not open the Web links found in e-mail “spam” or other similar unsolicited messages.
 - Only install software from Web pages you trust.
 - If you install “free” software, carefully read the fine print in the license for any reference to collecting information from your computer and sending it elsewhere. (Be ESPECIALLY wary of popular “free” music and movie file-sharing programs.)
 - When opening a Web Page, if a dialog box appears unexpectedly asking you to accept a download, the safest response is to click the red “X” in the upper corner of the box to close the window (clicking “no” may not close the box).
 - Install software to detect, remove, and prevent the installation of spyware on your computer. Many internet service providers offer spyware protection software.⁵
 - The following methods will NOT protect a computer against or make the user aware of active spyware:
 - Antivirus software will not protect against spyware.
 - Checking the list of installed computer programs will not reveal spyware on the computer.
 - Pressing control-alt-delete to review the programs currently running will not reveal spyware.

³ See chart for individual state laws. “Electronic Surveillance Laws,” National Conference of State Legislature, available at <http://www.ncsl.org/issues-research/telecom/electronic-surveillance-laws.aspx>

⁴ Id. at 673 and 18 U.S.C. § 2515.

⁵ “What You Need to Know about Spyware,” *University of Washington*, <http://www.washington.edu/computing/security/spyware/> (last visited July 24, 2012); Guilherme Roschke and Erica Olsen, “Maintaining Safety and Security in a Digital Age” ABA Section of Family Law, 2009 Spring CLE Conference.



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- Turn off your cell phone when it is not in use for location and privacy safety.
- Try to use a safe, public computer at a local library or internet café if you suspect your computer might be monitored.
- Avoid cordless phones. Use a new phone for personal calls.
- Consider activating the key-lock feature present on cell-phones to prevent autodialing.
- Consider changing the passwords and PINs to your bank accounts frequently.
- If possible, use anonymous e-mail accounts accessed from public computers.
- Have more than one e-mail address, and avoid easy passwords. Change your password often.
- Avoid using e-mail to communicate sensitive and personal information.
- Caution family and friends from sharing addresses when sending or forwarding e-mails.
- NEVER use the BCC (Blind Copy) option when sending e-mails. Instead, forward the sent e-mail to others after you have sent it to the original recipient. Otherwise, if the BCC recipient chooses to "Reply All", their identity becomes known to all.
- Never open attachments from unknown sources and be skeptical of requests for information.
- Look for your name on the Internet and request government agencies such as the IRS, court systems, post office, etc. make your information confidential.⁷ Victims can request to have their records sealed or restrict who can access their information.
- Always log off or sign out when you are finished.
- Save and document everything.
- Obtain a private mailbox, and do not give out your real home address.
- Search or have your car searched for signs of tampering or presence of cell-phone monitoring devices.
- Safety Tips About Hidden Cameras in Personal Life and at Work:
 - Trust your instincts.

⁶ Don Kneece, *GPS Tracking*, S.C. ASSOC. OF LEGAL INVESTIGATORS JOURNAL, Apr.-May-June 2009, at 12-13, available at <http://www.scclegalinvestigators.com/wp-content/uploads/2012/04/Journal-2009Q2.pdf>.

⁷ "Alternatives to Violence of the Palouse, Technology Safety and Cyber-stalking," http://community.palouse.net/ATVP/Material/Brochures/PDF_Brochures/General_-_Technology_Safety.pdf (Last visited July 24, 2012).



- When possible, hold meetings or conversations in locations where you will feel more confident of security.
 - Know that there is camera detection equipment, but it is expensive.
 - Ask law enforcement or private investigators to assist in searching if you feel like you are being watched.
 - Understand the consequences and possible charges: criminal eavesdropping, stalking, or unlawful surveillance.
- The South Carolina Supreme Court recently held that if a one parent consents to a conversation between a child and the other parent, and the consent is best on a good faith belief that recording the conversation is in the best interest of the child, there is no violation of either the Federal or State wiretapping laws. *See State v. Whitner*, Op. No. 27142 (July 11, 2012).
- The best way to get hold of your spouse's electronically stored information (i.e., Facebook posts, Twitter feed, LinkedIn profile, e-mails, etc.) is through a formal discovery request.

In addition to the list of "Do's" and "Don'ts" (which is in no way exhaustive), other resources are attached that might be helpful when preparing for your divorce.

If you have any questions or concerns, please do not hesitate to visit my website and blog at scdivorceclaw.com or contact my office at (843) 722 8900.

