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Family Law  
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# Legal Matters®

## Snooping on your spouse may be tempting...but it's legally dangerous

More and more spouses who are thinking about divorce, or who are going through the divorce process, are snooping on the other spouse. They're looking for evidence of adultery, hidden assets, bad parenting, or other information that might give them a leg up in a divorce or custody proceeding.

"Snooping" covers a wide range of activities. For instance, it could include accessing a spouse's private e-mail or social-networking account, looking in a spouse's smartphone for suspicious phone numbers or texts, or digging through his or her web search history.

Some spouses have been known to use methods that are more technologically sophisticated. These can include installing keylogging software on a computer that tracks every keystroke a spouse makes, setting up hidden cameras or recorders, attaching a GPS device to a spouse's car, or even swapping out a spouse's GPS device with a similar-looking device that transmits pictures of where the car goes and who's in the passenger seat.

You might be tempted to snoop on a spouse or an ex-spouse, but if you are, it's absolutely critical to talk to a lawyer beforehand. This is because some of these practices could be illegal and get you arrested. In addition, the fact that you uncovered information illegally could cost you credibility in divorce court, and the evidence you came up with might not even be admissible in court if you obtained it through improper means.

If you discuss your concerns and suspicions with your attorney, your attorney may be able to use other methods to obtain the same kind of information without compromising your credibility or your case.

So what kinds of snooping are actually allowed?

It's perfectly legal to do a Google search on a spouse, for example. However, it's potentially illegal to hack into a spouse's password-protected smartphone or Facebook page. Although the law varies from place to place and

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## Mother gets visitation despite severe disability

A mother in California was severely injured while giving birth to triplets. The injury left her permanently brain-damaged and paralyzed. She is unable to move or to speak, and she can communicate only by blinking.

The father filed for divorce two years after the birth, and began raising the children as a single parent. The mother's parents, who were caring for her in another state, sued on her behalf to obtain visitation for her with the children.

The father argued that the mother was too disabled to benefit from the visits, and that their young children – who hadn't seen her in two years – could be traumatized by her condition.

But the court found that even though the mother couldn't interact with the children, the children could still see, touch and bond with her. Because of this, the court said, it was in the children's best interest to maintain a relationship with her.

As a result, the mother was granted a monthly online Skype visit with the children, and a five-day visit each summer.

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## Biological father could sue over secret adoption

An unwed father whose child was adopted without his knowledge or consent can sue the mother and the adoptive parents for interfering with his parental rights, the Virginia Supreme Court recently decided.

Before the child was born, the father had accompanied the mother to doctors' appointments, and the two had allegedly made plans to raise the child together. The mother had even apparently signed a form stating that the father wanted to keep the baby.

However, the mother didn't tell the father when the baby was born. And without telling him, her parents arranged for the baby to be adopted. After the birth, the mother signed over custody rights to a couple in Utah.

The father then sued the mother, the adoptive parents and others for interfering with his parental rights.

The Virginia Supreme Court allowed the suit, saying that the relationship between a parent and a child is an important legal right.

## Snooping on spouse may be tempting...but legally dangerous

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situation to situation, this could constitute a serious violation of someone's electronic privacy rights.

Installing a GPS device or key-logging software might also get you in trouble – especially if it's not clear that you have sole legal ownership of the car or the computer.

Hidden cameras and recording devices can create difficulties, too. They might violate wiretapping and other privacy laws.

For example, a man in California who was going through a bitter divorce discovered that his wife had sewn a tiny recording device into his son's blue jeans. Not only were he and his son recorded, but the device picked up conversations with lawyers, therapists, and members of the man's family. All these people have now filed lawsuits against the man's ex-wife, accusing her of violating federal laws against secret tape-recording.

In a similar case, a Nebraska woman who sewed a recording device into her four-year-old daughter's

teddy bear now has to pay a significant damages award, plus attorney fees and costs, for violating her ex-husband's privacy.

Computer snooping can also get people into serious hot water. For example, a Michigan man accessed his estranged wife's e-mail on a shared computer and discovered that his wife – who had been married twice before – was cheating on him with her second husband. He not only sought to use the information in his own divorce proceeding, but also printed out the e-mails and gave them to her first husband, with whom she was entangled in a custody dispute.

The man – who claims he "guessed" the password to her Gmail account – was criminally charged and faces up to five years in prison.

If you're concerned about a spouse's improper financial, romantic or parenting activities, talk to your attorney. Don't just take the law into your own hands, or you might wind up on the wrong side of it.

## Ex-wife is ordered to sign a non-compete agreement

In a divorce, a lot of things can be up for grabs, including a family business. But if you're not the one who gets to keep the business, don't assume that you can set up a competing one.

For example, when a Massachusetts couple divorced, both parties sought sole ownership of the family feed-and-grain store. The court awarded the business to the husband. The husband then asked the court to order the wife to sign a non-compete agreement, so she wouldn't be allowed to set up a rival store and drain business from him.

The court said no, but the husband appealed, and an appeals court said the non-compete might be a good idea.

A company's "goodwill" is a valuable business

asset and should be considered property owned by the couple, the appeals court said. Therefore, a court that divides up a couple's property can award a business's "goodwill" to one spouse by forcing the other spouse not to start a competing business.

However, the court said a non-compete agreement can't be overly broad and can't foreclose the other spouse from making a living in his or her field. Therefore, a judge has to write a non-compete agreement carefully, and limit it only to the restrictions that are truly necessary to protect the viability of the business.



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## Man beats IRS, gets to claim tax exemption for child

After a divorce, which parent gets to claim the child as a dependent for tax purposes? Usually, it's the parent with whom the child spends the most time during the year. If the other parent wants to claim the exemption, the IRS typically requires the first parent to sign a form agreeing to this arrangement.

However, one man who didn't have a signed form took the IRS to court and won.

After a divorce in New York, the mother got primary custody, but the divorce court awarded the dependency exemption to the father. The mother promised to sign the required IRS form each year, as long as the father stayed up-to-date on his child support payments.

The father paid his child support, but one year the mother refused to sign the form anyway. The father claimed the exemption on his taxes, and he attached a copy of the separation agreement to his tax return as proof that he was entitled to it.

The IRS denied the exemption, saying the separation agreement wasn't a sufficient substitute for the form.

But the man went to court, and the U.S. Tax Court sided with him. It said the IRS was wrong, and he had adequately proven that he was entitled to the exemption.

## Father's child support isn't reduced by son's SSI benefits

A father can't reduce the amount of child support he owes for his disabled adult son by the amount of Supplemental Security Income benefits the son receives, the New Hampshire Supreme Court recently ruled.

The father was required to pay \$750 a month to help support his son. He argued that he was entitled to a dollar-for-dollar credit for the \$450 a month in SSI benefits that his son received from the government.

But the court ruled that he wasn't entitled to a reduction.

According to the court, SSI benefits are not the same as Social Security Disability Income (SSDI) benefits that are paid to dependent children of disabled workers.

Unlike SSDI benefits, the son's SSI benefits have no connection with the father's earning history. Therefore, the son's benefits replace his own lost income, rather than substituting for any lost income on the part of the father.



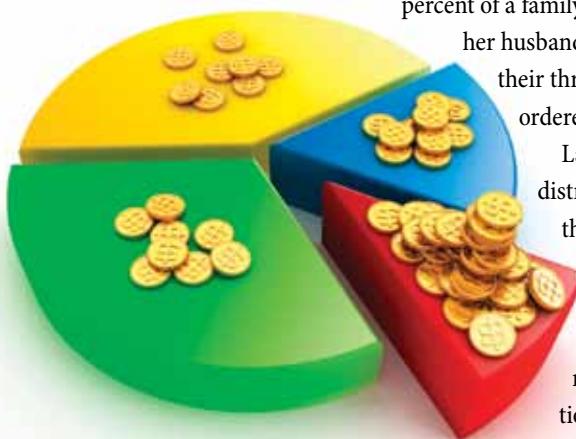
## Not all the funds that spouses receive affect child support

Child support is typically based on a spouse's income...but not all the money that a spouse happens to receive counts as "income."

For instance, an ex-wife in Minnesota owned 20 percent of a family corporation. When she and her husband divorced, she got custody of their three children and the husband was ordered to pay child support.

Later, the corporation decided to distribute a large amount of funds to the owners so they could transfer them to a new business entity that would lend money to the corporation. As a result, the wife received \$2.7 million in distributions, and immediately transferred them to the new entity.

The husband argued that this was "income" to the wife, and since she had so much income, he shouldn't have to pay as much in child support.



But the Minnesota Court of Appeals said that because the wife was merely re-investing the funds instead of pocketing them, they shouldn't be treated as income.

In another case, an unemployed man in Illinois was living off assets he'd been awarded in his divorce. He apparently put the assets into a savings account, and withdrew \$8,500 each month to cover his living expenses.

When a judge had to decide how much he owed in child support, the judge classified the withdrawals as "income," and ordered the father to pay \$2,000 a month in child support.

But on appeal, the Illinois Supreme Court sided with the father. It said the money in the account already belonged to him, and so withdrawing it did not represent any new gain or benefit.

Instead, the court said, the father's child support obligations should be based on the needs of his children and his ability to pay.



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