

Marital Privilege In Communications On Workplace Computer?

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[Two or three years ago](#), employers – and their lawyers – were surprised to find that some courts held that employees had an attorney/client privilege in communications made with their personal lawyers on the company's computer, even when the employee had signed off on a technology use policy surrendering any expectation of privacy on company technology equipment. The limited body of court decisions on this question continues to be a mixed bag.

Now a court has addressed a different evidentiary privilege in the context of workplace computers. Just as with communications between lawyers and clients, in most states communications between spouses are privileged, meaning that the parties to those communications usually cannot be

compelled to testify about those communications. Philip Hamilton was a Virginia lawmaker who was convicted for bribery and extortion. Incriminating e-mails between Hamilton and his spouse conducted on Hamilton's work computer were admitted as evidence during the trial.

Hamilton appealed his conviction on the grounds that these communications were privileged and should not have been admitted into evidence. Relying in part on the employer's technology use policy, the U.S. Court of Appeals for the Fourth Circuit said that Hamilton had no reasonable expectation of privacy in the communications and therefore he waived any privilege when he made them on his work computer. The reasoning of this case is clearly at odds with some of the attorney/client privilege cases, which seemingly just concluded that the privilege outweighed the importance of employer technology policies, and this will certainly not be the last court to weigh in on this issue.

Bottom line: Employers should review their technology related policies to ensure that the policies cover these relatively new issues as well as possible, but this decision is a positive one for employers.

[A PDF of the decision can be downloaded here](#) .