

Can Work Email Destroy the Spousal Privilege?

By [Donald Scarinci](#)

Married couples may want to monitor what they discuss via their work email. The Fourth Circuit Court of Appeals recently ruled that correspondence exchanged between spouses through their employers' email systems was not protected by the [marital communications privilege](#).

The case, *United States v. Hamilton*, involved allegations of bribery against a member of the Virginia House of Delegate. Phillip Hamilton allegedly helped secure funding for a new center at Old Dominion University in exchange for a lucrative position with the school. Evidence against Hamilton included emails that he exchanged with his wife about their financial difficulties and his hope that the new center would create a position for him. The emails were sent to or from Hamilton's work email account.

In attempting to overturn his bribery conviction, Hamilton challenged the admission into evidence of emails he sent to and received from his wife, claiming that the admission violated the [marital communications privilege](#). The Fourth Circuit disagreed. Instead, the court supported the government's argument that Hamilton waived the marital communications privilege by communicating with his wife on his workplace computer, through his work email account, and subsequently failing to safeguard the emails.

The decision relied heavily on *Wolfe v. United States*, 291 U.S. 7, 14 (1934) in which the U.S. Supreme Court ruled that a defendant's communication with his wife did not come "within the privilege because of [his] voluntary disclosure" of the communication "to a third person, his stenographer." As further explained by the Supreme Court, because "[t]he privilege suppresses relevant testimony," it "should be allowed only when it is plain that marital confidence cannot otherwise reasonably be preserved."

According to the Fourth Circuit, "email has become the modern stenographer." While emails are generally considered confidential, just as spouses can "conveniently communicate without" use of a stenographer, they can also "conveniently communicate without" using a work email account on an office computer. In this case, it found that Hamilton was aware of his employer's computer policies, which guaranteed no expectation of privacy, and took no steps to further protect the confidentiality of his communications with his wife.

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