



## ALL IN THE FAMILY

Legal blog on all aspects of Family Law and Divorce in Massachusetts and Rhode Island

### Before You Hit “Record” in Your Divorce, Consider This

BY ROBIN M. LYNCH NARDONE • FEBRUARY 18, 2026

In today’s society, the temptation is to take photos and videos of everything and then post on social media to share your experiences with a broad audience. When it comes to parties involved in divorce, that temptation to record things is strong—especially in a custody dispute where emotions run high and trust is low. People often feel that having “evidence” is best. So, they install cameras outside (or even inside) their homes and pull out their phones and start recording all interactions with the other party. And sometimes, people secretly record their spouse during an argument.

Before you do that, take a breath. In Massachusetts, recording your spouse—particularly audio—can land you in serious trouble if you’re not careful.

Massachusetts has one of the strictest wiretap laws in the country. Wiretap laws prohibit the unauthorized, intentional interception, use, or disclosure of oral, wire, and electronic communications. Secretly recording someone’s statements without their knowledge can be a crime. In Massachusetts, an audio recording is considered “secret” unless the person being recorded has *actual knowledge* of it. That means if you slip your phone into your pocket and capture audio without making it obvious, you have crossed a line.

On the other hand, open audio recording is generally permitted. If the device is in plain view and it’s clear that recording is happening, that can make all the difference. Courts have recognized that when a camera or phone is visibly recording, and the circumstances make it obvious, a person may be found to have actual knowledge. Still, “probably okay” is not the same as “risk-free.” Before you record audio, talk to your lawyer.

Then there is the question of video. Video-only recordings are permissible without actual knowledge, though not in places where a person has an expectation of privacy. The question then becomes; can those videos be utilized in court?

In general, video footage can be admitted at trial if three basic requirements are met: it must be relevant, it must fairly and accurately represent what it claims to show, and it must not be barred by some exclusionary rule. A judge has

broad discretion in deciding whether to admit videos. Authentication is usually straightforward—someone with firsthand knowledge can testify that the video is a fair and accurate depiction of what happened.

In other words, if you were there and can honestly say, “Yes, this is exactly what occurred,” that may be enough to get the video in.

But admissible doesn’t always mean advisable.

Take caution if you are considering recording during parenting exchanges. Even if it’s legal, it can look terrible. Judges are focused on the best interests of the child. A parent who turns every drop-off into a filmed event can come across as escalating conflict rather than reducing it. If your goal is to show that the other parent is behaving unreasonably, but the video shows you holding a cell phone inches from their face, the strategy may backfire.

And here’s the reality check: you should assume you are being recorded, too.

Doorbell cameras, security systems, cell phones—video and audio recording are everywhere. Any time you’re in a public place or approaching someone’s home, you should act as though a camera is running. Because it likely is. We are all familiar with the phrase that ends with “...can and will be used against you in a court of law.” If you are outside your co-parent’s house behaving badly, the video of your behavior caught on the doorbell camera can really hurt your case.

The bottom line? Recording can be a powerful tool—but also a dangerous one. Before you press “record,” make sure you understand both the legal risks and the courtroom optics.