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Still serving
when possible

Please take Notice: Information supplied is based on our opinion reading - The Constitution, Conventions, law, Case Law, Rules, Regulations and Standards in the Republic of Ireland only. This sheet is drafted by lay litigants and might not be correct.

This is not legal advice, but the opinion of the author(s). Please consult your legal advisor

Opinions and suggestions will be appreciated.

Information sheet:

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Photo, Video and Audio Recordings

Question:

Is it legal to record all my dealings with social services or other professionals or persons during family law proceedings on video - photo or audio?

Answer:

In short: Yes - but only if you meet the following conditions (based on court rulings):

1. You are not allowed to share the recording with any third party without the consent of the person(s) being recorded or an order from the court.
2. Only recordings containing possible future evidence may be kept. The rest must be destroyed.
3. The recordings must be kept safe - in such a way that they do not fall into the hands of a third party.
4. When it is no longer needed, it must be destroyed.

The law:

The right to privacy is an unenumerated right under the Constitution of Ireland. The same right is also guaranteed in the European Convention of Human Rights Act.

The key word is "Privacy", but a right to privacy or, as it has been put, a right "to be left alone", can never be absolute.

Then remember why you recorded it – evidence – technically you're guilty of a crime if you don't disclose or destroy evidence that could be used in a trial.

From experience:

1. Dishonest social workers, other professionals or opponents will not give permission for you to take a survey. They will object and cancel meetings if they know this is happening. It is suggested to use commercially available audio recorders hidden in your clothes or handbag. Honest persons will not object.
2. Video and photo recording is usually not allowed in some government buildings without permission. It does not prevent you from using a hidden camera. Permission is usually granted to make video recordings or take photographs during access of parents and the children.
3. Do not attempt to make a video, photo or audio recording in a courtroom, not even with

your secret body camera. It is illegal. an audio recording can be made by a court-certified stenographer. The court has also installed digital audio recording equipment and you can request that it be turned on during the hearing and then request a DAR copy of the proceedings.

4. Social workers, and other professionals. lawyers, CFA management and others will try to force you to hand over the recordings. They can even and have in the past, get a member of An Garda Síochána to illegally confiscate it. Also, remember by law that Gardaí can lie to you but you must not lie to them. Inform them that you want to consult with your legal team before taking any action.
5. Your recordings should be analyzed and notes made as soon as possible. Name the files properly. Store at least 2 copies in different locations. Do not use CDs. Use portable drives or memory sticks.

Question:

How can I use the recordings legally?

Answer:

1. Note the evidence in the recordings. Own summary example:
 - a) 22/01/2001 at 3m22s Dr Mark - Peter is too fat
 - b) 25/03/2001 at 44m16s Ms Little - will never see children again
2. After receiving evidence in summary, draft your reply in a Statement or Affidavit or notes for court – Examples:
 - a) On page 14 of his report, Dr. Mark states that he examined Peter on 19 January 2001 finding Peter to be underweight. On 22 January 2001 Dr. Mark stated the opposite. His words were “Peter is at least 3 kilograms overweight and he should be put on a diet”.
 - b) Ms Little caused my wife to cry the whole night after she clearly stated that there was nothing we could do and that we would never see the children again.
3. Keep the recordings ready for playing in the court if your arguments are denied. I suggest a laptop or similar device with a media player that is easily controlled and speakers. Ensure the device's battery is fully charged.

Case law about recordings in Child Care matters:

Key case law to note and quote:

- a) Mr Justice Humphreys J. ruled on 25 February 2016 in the High Court matter P.H. & anor - v- Child and Family Agency [2016] IEHC 106 in paragraph 31 “The reality of the situation is that there is a huge imbalance of power as between the first named applicant..... on the one hand, and a State agency That the agency is denying certain of the claims of the first named applicant while, it is said, trying to prevent her from making a record which would support her account, can only rub salt in the wound of her powerlessness in this situation. Permitting persons the subject of the agency’s attentions to record interactions with the agency is the least that can be done as a first step to attempt to redress the imbalance as between parties in such a situation. The agency should cease to object to recording by persons in such situations.” Several other unpublished rulings are known about.
- b) HSE v AN - 15 May 2008. IEDC. HSE wanted all the recordings handed to them. The

judge refused and ordered copies to be handed to the State Solicitor for the County when evidence of offences was confirmed.

- c) HSE v AN – 22 October 2008. IEDC. Defendants allege perjury committed by a psychologist. HSE and psychologist objects to use of recordings as “it was made illegally without knowledge of the psychologist”. The court ruled that it should be played to counsel and the psychologist only, not to the Court. (Psychologist changed his evidence. This was a key factor in this case.)
- d) HSE v M – February 2012. IEDC. The HSE asked for an order prohibiting M from recording. The court ruled that M may record and should not be prevented. See conditions above.
- e) JF v HSE – 15 September 2010. IEHC. JF application for Judicial Review after HSE suspended access as punishment for recording. HSE denied this to be the reason. JF played a recording in court where the social worker clearly stated that access was suspended because of recordings. (Social workers did not know of a second recorder after they confirmed the first one was switched off). Access was restored and HSE was instructed to investigate social workers' lies.
- f) VTF v HSE – 15 November 2012. IEHC. The HSE objected against evidence in recordings as “recordings not certified as not tampered with. Applicant must have it certified at his expense”. The court ruled that HSE could receive a copy and have the recording examined at their expense. (They never did).
- g) Unconfirmed case – HSE v Unknown parent – 2007 – IEDC – The judge apparently agreed with the Social workers and warned the parents not to make recordings. I disagree with this statement.
- h) AF v AM - 2020 -IEDC - AF enjoyed only one hour of access with the children every two months. AM complained that it upsets the children if AF takes photos and makes video recordings. The judge decided that AF may only take 3 photos and one video during access.

Other cases that can be referred to for further reading:

Kennedy v. Ireland [1987] 1 I.R. 587, *Stanley v. Georgia* (1969) 394 U.S. 557, *Terry v. Ohio* (1968) 392 U.S. 1, *McGee v. A.G. & Anor* [1973] IESC 2; [1974] IR 284, *Conway v. I.N.TO.* [1991] 2 I.R. 305, *M. v. Drury* [1994] 2 I.R. 8, *Cogley v. R.T.E.* [2005] 2 I.L.R.M. 529 and many more.

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Comments, suggestions by email to ajvantonder@oupajoe.ie