



New Jersey Supreme Court Finds Employee Had Reasonable Expectation of Privacy in Personal E-Mail

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The conflict between an employee's privacy interests in e-mail and an employer's interest in monitoring employee usage of company equipment raises difficult questions. Even more issues arise when an employee uses a company computer to communicate with her attorney about a suit she plans to file against her employer. The New Jersey Supreme Court wrestled with these issues in *Stengart v. Loving Care Agency, Inc.*

Stengart had used her company owned laptop to communicate with her attorney over the internet through a private, web-based, password protected, e-mail account. While the e-mail was sent over the internet, the computer automatically saved a copy of the e-mail to its hard drive. After Stengart filed suit, Loving Care recovered these e-mails and sought to use them as evidence in the suit. It argued that because of the company's written e-mail policy (1) Stengart had no expectation of privacy in the e-mail; and (2) she had waived the attorney-client privilege with respect to the e-mails because she had sent them using a company computer. The trial court agreed with Loving Care, but the New Jersey Appellate Division reversed, finding that Stengart had an expectation of privacy in her e-mail; that she had not waived the attorney-client privilege; and that Loving Care's counsel had violated ethics rules by reading and using the privileged documents.

The New Jersey Supreme Court agreed and found that Stengart had a reasonable expectation of privacy in the e-mail messages. The court stated that its decision principally rested on two premises: (1) the employer's written e-mail policy was ambiguous and did not provide Stengart sufficient notice that the company would read her private e-mail; and (2) her privacy interest was amplified by the public policy concerns underlying the attorney-client privilege. As for the company policy, the court found it ambiguous because it said nothing about monitoring messages sent and received through personal e-mail accounts. The court later in its decision commented, however, that a policy banning personal e-mail use would be unworkable. Additionally, because the e-mail messages were attorney-client communications, Stengart enjoyed a more robust privacy interest. Furthermore, because she had communicated with her attorney through her web-based account, she had taken reasonable steps to keep discussions with her attorney confidential and had not waived the attorney-client privilege.

Some key facts in the case provide guidance on how the case may be applied. The e-mails were sent over a web-based, password protected, private e-mail account, and so an employee would have a reasonable expectation that her communications would remain private. The Court implied that an employee's privacy interest might diminish where the employee has used a company e-mail account. The court also indicated that the location of the company's computer might be a relevant factor. Therefore, theoretically, the interest would further diminish if messages were composed while the employee was using the computer in the workplace and if sent through the employer's servers. These same considerations bear on whether the employee has waived the attorney-client privilege.

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