

IN THE ALABAMA COURT OF THE JUDICIARY

In the Matter of:

MARVIN W. WIGGINS,
CIRCUIT JUDGE
4TH JUDICIAL CIRCUIT

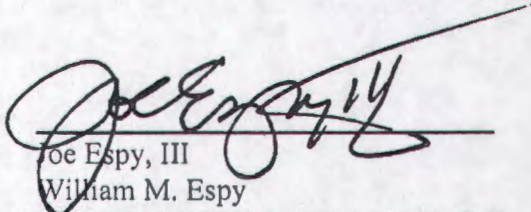
Case No. 51



**OBJECTIONS IN REGARD TO EXHIBIT LIST OF
JUDICIAL INQUIRY COMMISSION**

COMES NOW Judge Marvin W. Wiggins ("Wiggins") and objects to Judicial Inquiry Commission's exhibits 15 and 16. The objection is based upon the Florida statute attached hereto and made a part thereof.

Wiggins also objects to any exhibits that fail to comply with Rule 401 and/or Rule 901 Alabama Rules of Evidence.

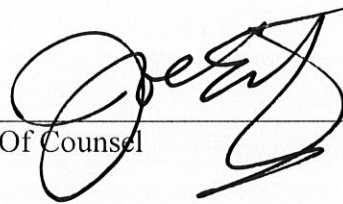

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was hand delivered on this the 1st day of November, 2019 to the following:

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Of Counsel

The Florida Senate

2012 Florida Statutes

Title XLVII

CRIMINAL PROCEDURE AND
CORRECTIONS

Chapter 934

SECURITY OF
COMMUNICATIONS

Entire Chapter

SECTION 03

**Interception and disclosure of wire,
oral, or electronic communications
prohibited.**

934.03 Interception and disclosure of wire, oral, or electronic communications prohibited. —

(1) Except as otherwise specifically provided in this chapter, any person who:

- (a) Intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication;
- (b) Intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:
 - 1. Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or
 - 2. Such device transmits communications by radio or interferes with the transmission of such communication;
- (c) Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;
- (d) Intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or
- (e) Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication intercepted by means authorized by subparagraph (2)(a)2., paragraph (2)(b), paragraph (2)(c), s. 934.07, or s. 934.09 when that person knows or has reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, has obtained or received the information in connection with a criminal investigation, and intends to improperly obstruct, impede, or interfere with a duly authorized criminal investigation;

shall be punished as provided in subsection (4).

(2)(a)1. It is lawful under ss. 934.03-934.09 for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

2. Notwithstanding any other law, a provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person, may provide information, facilities, or technical assistance to a person authorized by law to intercept wire, oral, or electronic communications if such provider, or an officer, employee, or agent thereof, or landlord, custodian, or other person, has been provided with:

- a. A court order directing such assistance signed by the authorizing judge; or
- b. A certification in writing by a person specified in s. 934.09(7) that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required, setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required.

3. A provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person may not disclose the existence of any interception or the device used to accomplish the interception with respect to which the person has been furnished an order under ss. 934.03-934.09, except as may otherwise be required by legal process and then only after prior notice to the Governor, the Attorney General, the statewide prosecutor, or a state attorney, as may be appropriate. Any such disclosure renders such person liable for the civil damages provided under s. 934.10, and such person may be prosecuted under s. 934.43. An action may not be brought against any provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person for providing information, facilities, or assistance in accordance with the terms of a court order under ss. 934.03-934.09.

(b) It is lawful under ss. 934.03-934.09 for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his or her employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of 47 U.S.C. ch. 5, to intercept a wire, oral, or electronic communication transmitted by radio or to disclose or use the information thereby obtained.

(c) It is lawful under ss. 934.03-934.09 for an investigative or law enforcement officer or a person acting under the direction of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.

(d) It is lawful under ss. 934.03-934.09 for a person to intercept a wire, oral, or electronic communication when all of the parties to the communication have given prior consent to such interception.

(e) It is unlawful to intercept any wire, oral, or electronic communication for the purpose of committing any criminal act.

(f) It is lawful under ss. 934.03-934.09 for an employee of a telephone company to intercept a wire communication for the sole purpose of tracing the origin of such communication when the interception is requested by the recipient of the communication and the recipient alleges that the communication is obscene, harassing, or threatening in nature. The individual conducting the interception shall notify local police authorities within 48 hours after the time of the interception.

(g) It is lawful under ss. 934.03-934.09 for an employee of:

1. An ambulance service licensed pursuant to s. 401.25, a fire station employing firefighters as defined by s. 633.30, a public utility, a law enforcement agency as defined by s. 934.02(10), or any other entity with published emergency telephone numbers;
2. An agency operating an emergency telephone number "911" system established pursuant to s. 365.171; or
3. The central abuse hotline operated pursuant to s. 39.201

to intercept and record incoming wire communications; however, such employee may intercept and record incoming wire communications on designated "911" telephone numbers and published nonemergency telephone numbers staffed by trained dispatchers at public safety answering points only. It is also lawful for such employee to intercept and record outgoing wire communications to the numbers from which such incoming wire communications were placed when necessary to obtain information required to provide the emergency services being requested. For the purpose of this paragraph, the term "public utility" has the same meaning as provided in s. 366.02 and includes a person, partnership, association, or corporation now or hereafter owning or operating equipment or facilities in the state for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

(h) It shall not be unlawful under ss. 934.03-934.09 for any person:

1. To intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public.
2. To intercept any radio communication which is transmitted:
 - a. By any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

- b. By any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including any police or fire communications system, readily accessible to the general public;
 - c. By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or
 - d. By any marine or aeronautical communications system.
3. To engage in any conduct which:
- a. Is prohibited by s. 633 of the Communications Act of 1934; or
 - b. Is excepted from the application of s. 705(a) of the Communications Act of 1934 by s. 705(b) of that act.
4. To intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station of consumer electronic equipment to the extent necessary to identify the source of such interference.
5. To intercept, if such person is another user of the same frequency, any radio communication that is not scrambled or encrypted made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system.
6. To intercept a satellite transmission that is not scrambled or encrypted and that is transmitted:
- a. To a broadcasting station for purposes of retransmission to the general public; or
 - b. As an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls, when such interception is not for the purposes of direct or indirect commercial advantage or private financial gain.
7. To intercept and privately view a private satellite video communication that is not scrambled or encrypted or to intercept a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted, if such interception is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain.
- (i) It shall not be unlawful under ss. 934.03-934.09:
- 1. To use a pen register or a trap and trace device as authorized under ss. 934.31-934.34 or under federal law; or
 - 2. For a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful, or abusive use of such service.
- (j) It is not unlawful under ss. 934.03-934.09 for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser which are transmitted to, through, or from a protected computer if:
- 1. The owner or operator of the protected computer authorizes the interception of the communications of the computer trespasser;
 - 2. The person acting under color of law is lawfully engaged in an investigation;
 - 3. The person acting under color of law has reasonable grounds to believe that the contents of the communications of the computer trespasser will be relevant to the investigation; and
 - 4. The interception does not acquire communications other than those transmitted to, through, or from the computer trespasser.
- (3)(a) Except as provided in paragraph (b), a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.
- (b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication:
- 1. As otherwise authorized in paragraph (2)(a) or s. 934.08;
 - 2. With the lawful consent of the originator or any addressee or intended recipient of such communication;
 - 3. To a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

4. Which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

(4)(a) Except as provided in paragraph (b), whoever violates subsection (1) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 934.41.

(b) If the offense is a first offense under paragraph (a) and is not for any tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) was committed is a radio communication that is not scrambled, encrypted, or transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication, then:

1. If the communication is not the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication, or a paging service communication, and the conduct is not that described in subparagraph (2)(h)7., the person committing the offense is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. If the communication is the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication, or a paging service communication, the person committing the offense is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 3, ch. 69-17; s. 1163, ch. 71-136; ss. 2, 3, ch. 74-249; s. 249, ch. 77-104; s. 1, ch. 78-376; s. 187, ch. 79-164; s. 2, ch. 80-27; s. 1, ch. 87-301; s. 2, ch. 88-184; s. 2, ch. 89-269; s. 1582, ch. 97-102; s. 18, ch. 99-168; ss. 7, 9, ch. 2000-369; s. 2, ch. 2002-72; s. 30, ch. 2010-117.

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