
Coates' Canons Blog: When an Employee Wants to Record a Meeting with a Supervisor

By Robert Joyce

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It's not a meeting that anyone wants. The public works director is going to have to tell the truck driver that his poor performance is threatening his job. The city manager is going to tell the police chief that a number of the chief's management decisions have been unacceptable. The county finance officer must talk with the payroll clerk about the clerk's arrest last Saturday night.

The truck driver, the police chief, and the payroll clerk are all afraid for their jobs, and they are distrustful of the boss. They ask for permission to record the meeting.

When an employee of a unit of government in North Carolina asks for such permission, must the supervisor grant it?

No. The employee may be told that recording will not be permitted and that any attempt to record the meeting will result in immediate dismissal from employment.

That's what the law allows, but the mere fact that the law allows it does not necessarily make it a good idea. My advice when this question comes—and it comes every once in a while—is to let the employee record the meeting and be glad that the employee asked.

I give this advice for three reasons.

First, for the supervisor to refuse the employee permission to record the meeting can give the impression that the supervisor has something to hide. That should not be the case. The supervisor should, of course, be genuinely interested in keeping the content of the meeting confidential. The provisions of the personnel records privacy statutes—GS 153A-98 for counties and GS 160A-168 for cities—probably require confidentiality. But the primary purpose of that confidentiality is to protect the employee. The employee is, of course, going to be hearing what is said in the meeting. If she wants, additionally, to record it, and thus risk some kind of later breach of confidentiality if the recording is played for someone else, I recommend letting her.

Second, the supervisor is warned that the meeting will be recorded. She can be on her toes not to say anything she would later regret hearing played back. To the extent she is concerned about her own reputation and image, she can protect them by not saying stupid things. In fact, she can enhance her reputation and image by saying careful, thoughtful, wise, and fair things. To the extent that she is concerned about protecting the confidentiality interests of other employees, she can simply avoid saying anything that would compromise those interests. She shouldn't be saying such things even if the meeting were not being recorded.

Third, under North Carolina law, it would be fully lawful for the employee to *secretly* record the meeting *without even informing* the supervisor. GS 15A-287 makes it a felony to record oral communications "without the consent of at least one party to the communication." That is, either party to a conversation can give sufficient consent to its recording. When the boss meets with the employee, it would be a felony for a third person to secretly record the meeting. But since the employee herself is a party to the communication in the meeting she can consent to secretly recording it herself. She doesn't have to tell anyone about her consent. She can just stick the recorder in her purse or pocket—or turn on the "record" function on her smart phone and record away.

Now, the mere fact that the law provides that recording is lawful where only one party consents does not mean that the employee has a right to record. Just because it is lawful does not mean that it has to be permitted. It's also lawful to wear a swim suit with tassel loafers, but an employee does not have a right to dress that way at work. The supervisor is free to tell the employee that such attire is unacceptable. And the supervisor is free to tell the employee that recording the



meeting is unacceptable.

Still, I recommend giving permission to an employee who wants to record. In fact, I recommend celebrating. At least the supervisor is on notice that the recording is happening and can be on guard not to say something she would hate to hear played back later. If the employee simply took advantage of the fact that the law permits one-party consent to secretly record, the supervisor may later find unfortunately, unguarded statements played back.

In cases where the supervisor knows that the employee is recording the meeting, the supervisor should record the meeting as well. It would be a good idea to say, on the recording, that the meeting is being recorded at the employee's request.

Links

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=15a-287