

DIGGING UP DIRT:
CREATIVE INVESTIGATIVE TECHNIQUES

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I. INTRODUCTION

Divorce in Texas means dividing up the kids and the cash. The “cash” is the house, bank accounts, cars, personal property, and any other asset of value. We all know the 3 most important steps to winning any case are preparation, preparation, and preparation. In divorce cases, accurate information is the 4th step toward successful representation of your client.

This article aspires to provide you with valuable information and direction to effectively dig up dirt on the other party in a divorce. Section II provides you with a tip sheet for cost efficient ways to quickly dig up and value the assets, primarily by using free or very inexpensive websites and resources. Section III of the article will show you how to unearth vital information directly from the source, so you do not have to rely on the opposing party’s potentially inaccurate provided information. Section IV will help you find people and their dark secrets. Finally, Section V will briefly discuss hiring a private investigator to get you what you need to win your case as well as alert you to some of the potential hazards of investigating on your own. So get out your shovels and let’s go digging!

II. FIND AND VALUE THE TREASURE

You do not have to rely on an Inventory and Appraisal completed by the opposing party to list all assets of the estate. You do not have to settle for the opposing party’s estimation of what each asset is worth. The following will help you quickly and inexpensively obtain your own list of all assets and values.

A. Real Property

The home is often the largest asset in a divorce and is easily discoverable. But what about other real property owned by the opposing party that your client may not be aware of that is worth a significant amount of money? Finding and getting the value of all real property should always be the first discovery step in a property case.

If you know that a certain piece of real property

exists and the address, or at least the general area where the property is located, the county tax appraisal district is a great way to get a free report of a property’s approximate value. To get a free tax appraisal report for properties in many Texas counties, use one of the following:

www.txcountydata.com/links.asp
www.taxnetusa.com

If your client suspects there may be other properties but has no idea where, for usually less than \$5.00, a couple of internet services will provide you with a thorough history of the opposing party showing ownership information, addresses, and dates for all property linked to that person:

www.accurint.com
www.irbsearch.com
www.publicdata.com
www.knowx.com

Many of the tax appraisal districts include a Certified Value History for each property showing the appraised value of the property for previous years.

Most courts will presume the tax value is accurate absent an appraisal by a hired expert. A professional appraisal, however, will usually provide you with a more detailed and precise valuation of the real property than a tax appraisal.

The cost for a professional appraisal dramatically varies from a couple hundred to a couple thousand dollars depending on the property. Often you’ll need multiple appraisals of the same property. For example, in a divorce you may need one showing the value of the property when purchased, one showing the value of the property at marriage, one showing the value on the date of separation, and one showing the value near the date of mediation or trial. Negotiate fees with your appraiser by simply asking for a multiple appraisal, discounted rate. Get numerous quotes from appraisers and let them compete against each other, thereby lowering the expenses to the client.

The appraiser and the report are crucial to the

success of your property case, so when choosing an appraiser, make sure that person is certified and licensed. For more information on appraisals and to find qualified professionals in your area, see:

www.appraisalinstitute.org

B. Financial Accounts

Finding bank accounts is a difficult task. Not only do you need to find all accounts in the opposing party's name, but you also need to find possible joint accounts with third-parties. You then need to have accurate information as to the value of the accounts, sometimes dating back for years.

Your best option is for the opposing party to sign a general release authorizing you to obtain any and all financial documents. Even if the opposing party supposedly identifies all his accounts, send the signed general release to most of the major banks and brokerage firms with a letter requesting the institution to identify all accounts currently held or previously held by the opposing party.

Most of the large financial firms have specific departments that are dedicated to responding to discovery requests such as this, so you will usually get a response within a couple of days.

i. Company addresses

For the address of nearly any financial entity, see:

www.hoovers.com

ii. Internet Search for Accounts

There are only a handful of qualified companies on the internet that can do a bank account search. Two reputable companies for searching financial accounts and assets are:

www.accurint.com

www.ariesdata.com (owned by Lexis Nexis)

Both of these companies advertise full compliance with Gramm-Leach-Bliley and other state and federal guidelines.

Another good resource in searching for assets is a private investigator. Many licensed investigators have resources not accessible to attorneys.

iii. NYSE and NASDAQ

For current prices on stocks and bonds, see:

www.money.cnn.com

iv. Credit Reports

www.experian.com

www.equifax.com

www.transunion.com

C. Automobiles

Kelly Blue Book and the NADA are still the leading authorities on the value of vehicles.

www.kbb.com

www.nadaguides.com

You will need detailed data on the vehicle to obtain a true value using the sites above.

D. Personal Property

Personal property is often lumped together and randomly valued by the parties to a divorce. Many attorneys do not spend much time valuing these items because often they are already divided between the parties. A quick, inexpensive valuation, however, can significantly increase the value of the personal property that may already be in the other party's possession and count against his or her side in the division of assets.

i. Computers and Electronics

For computers and electronics, you can get an accurate value for \$10.00 at:

www.orionbluebook.com

ii. Airline miles

You can buy and sell nearly any type of airline miles at the website below, giving you a sense of the true market value.

www.mileagelink.com

www.awardtraveler.com

With most airlines, airline miles may be transferred pursuant to a divorce decree for a fee. American Airlines requires a divorce affidavit to transfer miles between spouses. Their fee is \$50.00 for every 25,000 miles transferred, e.g. 1 - 25,000 miles, fee is \$50; 25,001 - 50,000 miles transferred, fee is \$100.

iii. Music and Movies

Determine the resale value of CD's and DVD's at:

www.uzed.com

iv. Anything Else

Of course, one of the best ways to obtain an approximate value of almost any type of property is still:

www.ebay.com

v. Furniture and Furnishings

For household furniture, an appraiser can provide you with an accurate value of individual pieces of furniture as well as a “room” appraisal, which is the sale amount of the entire room. The cost varies depending on the type and amount of furniture, but the cost is almost always justified as the furniture in a modest home will usually appraise for thousands of dollars. A certified appraiser from the organization below will provide you with an appraisal report.

www.isaappraisers.org

III. INFORMATION FROM THE SOURCE

Obtaining information from the source is always better than relying on the opposing party. This section explains how to get records directly from the opposing party’s employer and banking institutions, as well as other third parties with valuable information.

A. Income

Knowing the total amount of the opposing party’s income means knowing the amount of every single benefit afforded to him or her by the employer. Often times an income statement from the opposing party lists only gross wages, omitting income such as car allowances, matching 401k contributions, computer and cell phone allowances, scheduled bonuses, etc. It is crucial to obtain an accurate record of all income directly and indirectly received by the opposing party to properly set child support and spousal support amounts, and to help you obtain a favorable division of the marital assets.

Since every dollar counts, it is good practice to obtain income information directly from the opposing party’s employer. There are a couple of ways to obtain the employment records: 1) using a release, or 2) using a notice and subpoena.

i. Release of Employment and Financial Records

A release signed by the employee opposing party is the easiest way of obtaining accurate employment records directly from the employer. An example of a general release of employment records is attached as Appendix A. Send the signed release to the employer with a request for return of the records within 10 days. If you do not get a response or if opposing party will not provide you a release, use the notice and subpoena discussed below.

ii. Notice and Subpoena

TRCP 205 allows you to obtain employment documents directly from the opposing party’s employer. You must give the employer 10 days notice prior to sending the subpoena. It is good policy to provide the employer another 20 days once they receive the subpoena to return the requested documents to you. Always provide a business records affidavit with the subpoena. Examples of a notice, subpoena, cover letters, and business records affidavit are attached as Appendix B.

B. Financial Records

Once you have found all of the opposing party’s financial accounts using the techniques discussed early, use a signed release to obtain specific records showing withdrawals and deposits, transfers, balances, and signatories on the account. An example of a good financial release is attached as Appendix C. If you do not get a sufficient response or cannot secure a release, use a notice and subpoena.

C. Other Records

Use a notice and subpoena similar to the examples attached as Appendix B to obtain club membership applications, loan applications on vehicles, and church records. The income statements on club membership applications and vehicle loan applications will be helpful. Church membership forms often include a monthly payment amount or percentage of income that the person plans to tithe.

Other creative ways to use a notice and subpoena are as follows:

i. Police Records

With a notice and subpoena, you can obtain unredacted reports, notes, and information from the police department.

Some police departments, however, prefer to receive an Open Records Request instead of a subpoena. An Open Records Request can provide you with the same information in a quicker time frame. Contact the records division of the police department to determine their preference. An example of an Open Records Request Letter to a police department is attached as Appendix D.

Because most calls to the police do not result in an arrest, the 911 call transcripts may be the only evidence of police involvement. The 911 call records will not be included in the documents you receive from a police department unless you specifically ask for them. Most departments call these transcriptions of the emergency calls "Response Records." The letter in Appendix D includes such a request.

ii. Medical Records

In custody cases, the best interest of the child can override the doctor/patient privilege. Subpoena both physician and psychologist records. If the opposing party is the mother of the children in issue, always subpoena the records of her ob/gyn in addition to her other medical records. Many women consider their ob/gyn as their primary doctor and request treatment and prescriptions for a wide variety of both physical and mental illnesses.

iii. Prescription Records

Evidence of an abuse of prescription medication can be damaging to the opposing party. In cases where this may be an issue, look at their prescription bottles and subpoena the complete records of the prescription history at that pharmacy. If your client doesn't have access to the bottles anymore, subpoena the records at the 2 or 3 pharmacies nearest the opposing party's home and work.

The records are strong evidence that the opposing party is abusing prescription medication if you find the same prescription filled at 2 or more pharmacies within a short time of one another.

iv. Private Post Office Box Records

Look on credit card statements and bank statements for regular payments made to storefront postal stores. Subpoena the application for the post office box from the store. The application includes fairly detailed information on the box holder and

payor. You may find that the opposing party has authorized another person to receive mail at that post office box location, or even better, that the opposing party is paying for a post office box for his or her lover.

IV. PEOPLE AND THEIR SECRETS

Nothing beats a good witness to testify against the opposing party. But what if you only have a small amount of information on the witness and need to find that person. Subsection A below shows how the internet is a great place to begin before hiring a private investigator. Subsection B will help you find out information on witnesses, the opposing party, and your client.

A. Finding People

The internet will provide you with lots of information on all people involved in a case. The following websites will help you begin to put together a nice file on each person, including address, telephone number, businesses owned, etc. Do a search on the person using each site below as each one usually has slightly different information.

www.anywho.com

www.msn.com

www.google.com

www.yahoo.com

B. Finding Secrets

Once you have found all the people you need for your case, the next step is digging up the dirt on everyone, especially the opposing party.

i. Credit Card and Bank Statements

Finding good information in credit card and bank statements is tedious work that requires great patience. You also must be creative in finding valuable evidence because you never really know exactly what you are looking for. These statements are a goldmine of information, so take your time. Here are some examples of entries on statements that lead to great evidence.

Calling cards are not taxed so they are evenly priced charges at convenience stores. Opposing party's often use calling cards to call their lovers in an effort to hide the call from the discoverable telephone records.

If you see routine high cell phone charges paid

by the opposing party, make sure that it is for only one phone and not for the lover's phone, too.

Look for charges that are not clearly identifiable, such as "HLB, Inc." or "DDP." These usually are charges to internet companies and/or sexually oriented businesses or internet gambling.

Find restaurant charges that are enough for at least 2 people, and then find out who was at dinner with the opposing party.

Look for charges to jewelry stores, lingerie stores, and other retail stores that the opposing party never shopped before the alleged affair.

ii. Sex Offender Database

The State of Texas maintains a free database of all sex offenders. You can search the database at:

<http://records.txdps.state.tx.us>

iii. Additional Databases

There are thousands and thousands of databases containing valuable information available for you to search. The best way to search these databases is on a case by case basis and not pay for an extended subscription or be forced to pay for regular upgrades.

For approximately \$10.00 to \$20.00, you can purchase unlimited access to the databases for a few days or a few weeks through companies found at:

www.onlinedetective.com

www.publicdata.com

These databases provide information such as Department of Motor Vehicles, driver's license, criminal and civil court records, voter records, professional licenses, etc.

iv. Concealed-Handgun License

As of the writing of this article, you can file a written request with the Texas Department of Public Safety and a \$5.00 fee for disclosure of whether a person holds a concealed-handgun license. This has primarily been used by divorce lawyers when obtaining a protective order. During the 2003 Legislature, a bill was pending in the Texas Senate that would have ended this important access to information, however, that bill did not pass, and such information is still available. However, it is important to remember that upon receipt of a request for disclosure, the Texas Department of Public Safety will notify the gun holder of the request per

Texas Government Code §411.192 and Texas Administrative Code Title 37, Rule 6.113.

v. Church Records

Church membership forms usually require you to check all of your interests. The interests usually include singles group activities. If these "single" interest boxes are checked prior to the divorce, it could be good evidence of a plan or scheme.

These membership forms are also vital evidence in common law marriage cases. The form may be submitted as "Mr. and Mrs. Smith," or the form may have boxes to check for either "married" or "single."

vi. Telephone Records

Look for numbers dialed repeatedly and numbers dialed late at night. If the telephone and called number are land-lines, you can do a reverse search of the phone numbers obtaining the name and address of the person called. A reverse search on a cell phone is still not widely available and costs money. A few of the more thorough reverse searches available on the internet are:

www.anywho.com

www.google.com

www.msn.com

vii. Computer Records

Only advise your client of the following if he or she is still in the home and sharing the personal computer with the opposing party. Any attempts to monitor or spy on activities on a computer other than your own or one that is shared in your home is a serious violation of state and federal laws subjecting you and/or your client to potential criminal and civil penalties. *(See the next section on Electronic Communication)* In addition to serious civil penalties and criminal punishment, a violation of the privacy rights of third parties could subject you to misconduct charges by the state bar under Texas Rules of Professional Conduct Rule 4.04.

The remainder of this section assumes one is monitoring his or her own computer.

These creative techniques are designed for the relatively new or novice computer user. Following these easy steps to find out where the opposing party has been on the internet if that party is using Microsoft Internet Explorer: 1) Connect to the internet; 2) in the top toolbar, click on "tools"; 3)

click on “Internet Options”; 4) under the “General” tab, click on “Settings”; 5) then click on “view files” and “view objects.”

You can also view where the opposing party has been by clicking on the history icon that looks like a circular clock on the toolbar between the “Media” and “Mail” icons. This shows you the history of the internet over the last few days or weeks, depending on the setting.

To view web addresses that have been typed into the address bar, click on the down arrow at the end of the address bar.

To take monitoring of your computer a step further, there are numerous internet companies that for \$30 to \$100 will provide you with software that monitors every page and keystroke on your computer, creates a report, and sends the activity report to you at another computer. Conversely, you can purchase system detective software that will search for monitoring software and destroy it. To learn more about computer monitoring software, search on the internet for “spy software.”

V. INTERCEPTION AND RETRIEVAL OF ELECTRONIC COMMUNICATION

Both federal and state statutes control the question of covert interception of electronic conversation. The federal statutes are found at 18 U.S.C.A. Sec. 2510 et seq., the Omnibus Crime Control and Safe Streets Act of 1968, also known as the Federal Wiretap Statute and 18 U.S.C.A. 2710, et seq, the Stored Communications Act. Additionally, there is pertinent statutory control provided by the Communications Act of 1934, found at 47 U.S.C.A. Sec. 605, et seq. Controlling state statutes are Chapter 123, Texas Civil Practice and Remedies Code, Chapter 16.02, Texas Penal Code, and Article 18.20, Texas Code of Criminal Procedure.

Obviously the question of electronic interception has been a legislatively prolific one. The Wiretap Act protects against unauthorized “interception” of electronic communications. The Stored Communications Act protects against unauthorized “access” to electronic communication while it is in electronic storage. It is important for the family law practitioner to be able to distinguish between “interception” and “access.”

The terms are clearly defined in the 2001 case of

Fraser v. Nationwide Mutual Insurance Co., 135 F. Supp 2d 623 (E.D.Pa 2001). The pivotal claim in the case was the protection provided by statute against retrieval of a person's e-mail from post transmission storage. In order to determine if a violation of either, or both, Acts had occurred, the Court had to first have a basic understanding of how electronic communication, particularly e-mail, works.

First, an individual authorized to use the computer system logs on to the system to send a message. After a message is sent, the system stores the message in temporary or intermediate storage. I will refer to this storage as “intermediate storage.” After a message is sent, the system also stores a copy of the message in a separate storage for back-up protection, in the event that the system crashes before transmission is completed. I will refer to this storage as “back-up protection storage.” In the course of transmission from the sender to the recipient, a message passes through both intermediate and back-up protection storage. Transmission is completed when the recipient logs on to the system and retrieves the message from intermediate storage. After the message is retrieved by the intended recipient, the message is copied to a third type of storage, which I will call “post-transmission storage.” A message may remain in post-transmission storage for several years. Post transmission storage is similar to placing regular mail, or snail mail, in a file cabinet for long-term safekeeping.

The Court offered the following definitions of intercept: “intercept” is defined as the “acquisition” of the contents of any transfer of information from sender to recipient....Under the terms of the statute, the acquisition must be during the transfer, or during the course of transmission....The meaning of “interception” does not change when the communication is indirect, passing through storage in the course of transmission from sender to recipient.

The Stored Communications Act, which prohibits unauthorized “access” to an electronic communication while it is in “electronic storage” similarly provides protection for private communication only during the course of transmission. “Electronic storage” is defined under the Act as:

A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and,

B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

Part (A) of the definition covers intermediate storage. The Act clearly covers a message that is stored in intermediate storage temporarily, after the message is sent by the sender, but before it is retrieved by the intended recipient.

Part (B) of the definition refers to back-up protection storage which protects the communication in the event the system crashes before transmission is complete. Clearly, messages that are in post-transmission storage after transmission is complete are not covered by part (B) of the definition of electronic storage. Therefore, retrieval of a message from post-transmission storage is not covered by the Stored Communications Act. The Act provides protection only for messages while they are in the course of transmission.

In the decision, the Court wrote: The Wiretap Act and the Stored Communications Act are derivatives of the original Wiretap law enacted in 1968. Both Acts were enacted in the electronic Communications Privacy Act of 1986, Pub. L. No. 99-508. 100 Stat. 1848 (“EPCA”) to update and clarify Federal privacy protections and standards in light of dramatic changes in new computer and telecommunications technologies. Rep. 99 -5411, reprinted in 1986 U.S.C.A.A.N. 3555. The ECPA added electronic communication both to the definition of the Wiretap offense and to the definition of intercept.

The Wiretap Act protects against unauthorized “interception” of electronic communications. 18 U.S.C. Sec. 2511. The Stored Communications Act, protects against unauthorized “access” to electronic communication while it is in electronic storage. 18 U.S.C. Sec. 2701.

Historically, it has been argued that the Fourth and Fourteenth Amendments would prohibit the undisclosed recording or retrieval of conversation. The argument offered is that the reasonable expectation of privacy and/or the fundamental concepts of due process would require that one's electronic conversations be private. Neither amendment alone would provide such protection. Article IV of the Bill of Rights states: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches

and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. Since neither of the existing amendments would control or regulate the use of electronic interception, legislation was necessary.

The controlling federal statute, 18 U.S.C.A. Sec. 2510 et seq., the Federal Wiretap Statute, was the subject of much legislative debate. While it was clear that laws were needed, it was not clear as to how much should or could be restricted. The legislative history of the Act indicates that it was believed that wiretapping was primarily used in commercial espionage and marital litigation. Senator Long, the chair of the Subcommittee on Administrative Practice and Procedures, agreed that in addition to industrial espionage and divorce could be added a third area, politics. Unfortunately, even with extensive discussion, the Act was not drafted to say concisely that there is not a spousal exemption to wiretap.

Texas also has statutory prohibitions against electronic interception. Chapter 123, Texas Civil Practice and Remedies Code, Chapter 16.02, Texas Penal Code, and Section 18.20, Texas Code of Criminal Procedure, define the limitations upon interception of communication. More specifically, Chapter 123 states as follows: Sec. 123.001. Definitions In this chapter:

(1) “Communication” means speech uttered by a person or information including speech that is transmitted in whole or in part with the aid of a wire or cable.

(2) “Interception” means the aural acquisition of the contents of a communication through the use of an electronic, mechanical, or other device that is made without the consent of a party to the communication, but does not include the ordinary use of:

(A) a telephone or telegraph instrument or facility or telephone and telegraph equipment;

(B) a hearing aid designed to correct subnormal hearing to not better than normal;

(C) a radio, television, or other wireless receiver; or

(D) a cable system that relays a public wireless broadcast from a common antenna to a receiver.

Sec. 123.002 Cause of Action - (a) A party to a

communication may sue a person who:

(1) intercepts, attempts to intercept, or employs or obtains another to intercept or attempt to intercept the communication;

(2) uses or divulges information that he knows or reasonably should know was obtained by interception of the communication; or

(3) as a landlord, building operator, or communication common carrier, either personally or through an agent or employee, aids or knowingly permits interception or attempted interception of the communication. (b) This section does not apply to a party to a communication if an interception or attempted interception of the communication is authorized by Title 18, United States Code, Section 2516.

Sec. 123.004. Damages - A person who establishes a cause of action under this chapter is entitled to:

(1) an injunction prohibiting a further interception, attempted interception, or divulgence or use of information obtained by an interception;

(2) statutory damages of \$ 10,000 for each occurrence;

(3) all actual damages in excess of \$10,000;

(4) punitive damages in an amount determined by the court or jury; and

(5) reasonable attorney's fees and costs.

Article 18.20, Code of Criminal Procedure, is entitled "Interception and use of wire, oral, or electronic communications" and it reiterates the language of Sec. 123.001, et seq., in Sec. 16, "Recovery of Civil Damages Authorized," as well as setting forth in great detail what is permitted or prohibited in the interception of communication in the criminal law contest. Texas Penal Code, Sec. 16.02, "Unlawful Interception, Use or Disclosure of Wire, Oral, or Electronic Communications" establishes the penalty for unlawful interception, use or disclosure as a state jail felony. Both codes fail to expressly include or exclude communications between spouses. In order to determine the current status of the law, it is necessary to review the cases that have interpreted the statutes.

In 1977, the Texas Supreme Court ruled upon the use of taped conversations in *In the Matter of Bates*, 555 S.W.2d 420 (Tex. 1977). The Court relied heavily upon federal precedent in reaching the decision that a party to a telephone conversation may

legally record the conversation without the other party's knowledge or permission. Chief Justice Greenhill cites the federal decisions specifically: The Court in *White*, supra [*United States v. White*, 401 U. S. 745 91 S.Ct. 1122, 28 L.Ed.2d 453 (1971)] quoted from *Hoffa v. United States* as follows: In these circumstances, no interest legitimately protected by the Fourth Amendment is involved, for that Amendment affords no protection to a wrongdoer's misplaced belief that a person to whom he voluntarily confides his wrongdoing will not reveal it. 385 U.S. 293, 302 (1966). *In re Bates*, 555 S.W.2d 420 at 431. Judge Bates argued that the recording was inadmissible due to violations of the Federal Wiretap Statute and of the Communications Act of 1934. The Court found no merit in that argument, either.

Both statutes would prohibit the use of taped telephone conversations as evidence in state or federal courts unless the person taping the conversation is a party to the communication, or one of the parties to the conversation has given prior consent to such interception. *In re Bates*, 555 S.W.2d 420 at 431.

The Fifth Circuit has held that even in the context of adversarial proceedings to which the exclusionary of the Federal Wiretap Act applies, the rule does not preclude all use of illegally intercepted information. This rule is not self-executing; it is dependent upon a Motion to Suppress. *Forsyth v. Barr*, 19 F3d 1527 (Fifth Cir. 1994).

It is abundantly clear that the unconsensual interception of electronic communications is proscribed if at least one party to the conversation does not have knowledge of or consent to the interception. While there are several other issues to consider, they are somewhat beyond the scope of this article. The thorough practitioner, however, should consider the following:

1) The scope of Texas Rule of Civil Evidence 106 and Texas Rule of Criminal Evidence 106 both require that the remainder of related writings or recorded statements be introduced contemporaneously with a portion offered.

2) The effect of Texas Rule of Civil Evidence 803(6) and Texas Rule of Criminal Evidence 803(6), business records exception to the hearsay rule, may be used where applicable to admit video or electronic recordings (e.g. security tapes, answering machines, etc.), subject to authentication.

3) The effect of a party's consent to tap her own telephone in an attempt to secure conversation between her spouse and a third party to clearly establish violation of law or of court order (e.g. drug sales, violation of Protective Orders, etc.).

While some confusion still exists, it is undeniably clear that the provisions of both the federal statutes and the state statutes do not prohibit the introduction of electronically intercepted conversations as long as one party has knowledge of or has consented to the interception. The court has euphemistically determined that this becomes a burden of misplaced trust and places the burden of excluding the evidence upon the shoulders of the trusting party whose communication has been accessed or intercepted. It would appear that, for the time being at least, some of the questions of interception have been resolved. However, as technological advances are made, new questions will be presented.

One of those questions involves the retrieval of data. It is not uncommon for hardware or software to fail. Files, are routinely deleted, either accidentally or intentionally. Parties attempting to retrieve data are often advised that the loss or damage is permanent when in fact it is not.

Data recovery and forensic services can be classified into three (3) types:

- 1) basic recovery
- 2) forensic investigative services
- 3) advanced recovery and litigation support

Naturally, if the crucial evidence of the case is electronic communication, then a forensic investigative service would be advisable. But the question then becomes at what stage is the communication? Is it in storage and, if so, what type of storage? While the technology may exist for the retrieval of information believed to be otherwise lost, the production of it to opposing counsel or offering it as evidence may place the proffering party at risk for civil damages and/or criminal-punishment.

VI. USING A PRIVATE INVESTIGATOR

When all else fails, hire a private investigator to help you dig up the dirt. Private investigators are licensed professionals. To verify Texas licenses, contact the Texas Department of Public Safety Private Security Board at (512) 463-5545, or see:

www.txdps.state.tx.us/psb/

www.tali.org

www.pimall.com

Before you decide to employ a private investigator, you need to consider the privacy rights and laws for obtaining illegally acquired information.

A. The Attorney's Liability

You have to clearly define the investigator's role in gathering evidence for the case. To do so, you must understand the boundaries of legal investigations. You cannot rely on the investigator to know and abide by all of the strict privacy rules.

If you hire the investigator, you may be subjected to criminal conspiracy charges if you know of the investigator or client's intent to illegally wiretap communications. The same criminal conspiracy rules apply to other methods of investigations and are not limited to wiretapping only. For example, you may commit criminal conspiracy by directing the investigator to trespass if necessary to obtain the pictures you want. Additionally, you may be liable for civil damages caused by the investigator's actions.

Know the realistic limits of what a private investigator can do for you. They are not evidence-makers, they are evidence-gatherers. They are not above the law. They are simply well trained professionals that can greatly assist you in your hunt for buried treasure.

B. Range of Services

The main investigative service in family law cases is interception of communication, or wiretapping. Recordings made or consented to by a party to the communication, usually telephone calls, are admissible. In fact, these recorded conversations are often "smoking gun" evidence in divorce cases. The investigator, however, is not immune from criminal and civil liability for unauthorized interception of communications. Do not allow an investigator to record a conversation between the opposing party and the children, as a child does not have the power to consent.

If the opposing party is abusive, a private investigator can record, both audio and video, the exchange of the children.

You may direct an investigator to dig through the opposing party's trash for evidence. Some local

bar associations frown upon this practice unless you have a reasonable belief that the opposing party is discarding evidence. See Dallas Bar Association Legal Ethics Opinion 1997-01. A good example of reasonable belief is if your client knows opposing party is using drugs but is still passing the drug tests. A search of the trash may yield drug paraphernalia or masking agents designed to purge the body of drugs.

You may direct the investigator to follow the opposing party and draft a report based upon the surveillance. That report is admissible as a business record. The investigator may also testify as to his professional surveillance.

The investigator may also take pictures and make video recordings. Make sure to tell the investigator which is more important - getting the picture or getting caught. If you want to continue to secretly observe the opposing party over a period of time, the investigator will not risk getting caught just to get a picture, and vice versa.

Direct the investigator to only obtain pictures and video of the subject when the surveillance would not be considered a highly offensive intrusion of the subject's privacy rights. For example, the investigator may freely photograph the subject in public. Photographs of a person in their home or the use of hidden video cameras in the home may subject the investigator to a tort claim of invasion of privacy. See, *Boyles v. Kerr*, 855 S.W.2d 593 (Tex. 1993).

C. Prohibitions Against Attorneys Conducting Their Own Investigations

In the past, many attorneys have sent their paralegals out to interview potential witnesses, take photographs of an illicit rendezvous by the other spouse, or research records on the case. However, in 2003, the Texas legislature amended several portions of Chapter 1702 of the Texas Occupations Code, which regulates investigation services in Texas through the Texas Commission on Private Security (TCPS), effectively eliminating unlicensed investigations.

The expansion of the Texas Security Act now states:

This Chapter applies to any person who conducts an investigation if the investigation involves a person, or the affairs of a person, who is not employed by the same employer as the person conducting the investigation, and the

investigation is not conducted on the premises of the employer. Premises of the employer include walkways, parking areas, and other areas related to the affairs of the employer.

This amendment, for the first time, makes every person conducting an investigation, whether for remuneration or not, who is not employed by the same employer as the person being investigated (e.g. Kmart security investigating Kmart employees), conducting an investigation on the employer's premises (e.g., Kmart agents investigating shoplifters in Kmart stores), or properly licensed subject to Class A misdemeanor offense.

Accordingly, the legions of paralegals and secretaries, who have long been sent out to investigate as a means to save money are now at risk of civil and criminal penalties if they are not properly licensed by the TCPS. While the Texas Private Security Act specifically exempts attorneys from the prohibition against unlicensed individuals conducting investigations (§1702.324(b)(10)), other persons working on behalf of the attorney and conducting the investigations are not exempted. Other individuals who are exempt from the licensing provision include insurance adjustors, agents, brokers, professional engineers, and persons who obtain documents for use in litigation under an authorization or subpoena issued for a written or oral deposition.

An individual who is not exempted or who does not possess the proper license and conducts his or her own investigation is subject to civil and criminal penalties including a Class A misdemeanor. Additionally, the attorney who hired the unlicensed investigator, sends a person from the firm's office to conduct an investigation, or fails to properly license a person designated as an investigator, may be found to have committed a Class A misdemeanor him or herself. Therefore, in order to ensure that all investigators and personnel are properly licensed, it is important to obtain a copy of the registration and licensure forms from www.txdps.state.tx.us/psb/.

VII. CONCLUSION

You can now efficiently and quickly dig up and value assets, and you have ideas on how to unearth vital information directly from the source. You can

quickly and easily find people and their dark secrets, and if all else fails, you can confidently hire and direct the actions of a private investigator. By using these creative techniques, you will be more prepared than opposing counsel leading to a better verdict for your client.

We extend a special thanks to Judge Marilea W. Lewis, Judge of the 330th Judicial District Court in Dallas County, for her excellent work in the area of Electronic Communication, and her generous offer to allow us to use significant portions of her paper entitled “Interception and Retrieval of Electronic Communication” presented to the Dallas Bar Association in May 2003.

For detailed information on discovery rules, privileges, and evidentiary issues regarding the use of a private investigator, see “Using a Private Investigator -Privileges and Problems” by Judge Marilea W. Lewis and Kim Mercier, 28th Annual Advanced Family Law Course, 2002.

APPENDIX A

Release of Employment Records

RELEASE OF EMPLOYMENT RECORDS

Company Name, Inc.
1234 Street St.
City, Texas 00000

RE: NAME: OPPOSING PARTY
SSN: 123-45-6789

I, OPPOSING PARTY, authorize COMPANY NAME, INC., to release any and all information, records (including electronic records), or documents pertaining to me, encompassing the time period from _____ to _____, to TERESA C. EVANS and MELINDA L. EITZEN and the law firm MCCLURE DUFFEE & EITZEN LLP.

The information, records, or documents to be released include but are not limited to employment contracts or agreements; documents evidencing OPPOSING PARTY’s salary or other compensation; health, welfare, pension, vacation, travel, and club memberships; deferred compensation, pension, retirement, Keogh, individual retirement plan, profit-sharing plans, and stock options.

A copy of this authorization has the same force and effect as an original. The authority granted herein remains in effect for a period of 180 days from the date hereon or until I revoke same in writing.

SIGNED _____, 200__.

OPPOSING PARTY

STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 200__ by OPPOSING PARTY.

Notary Public, State of Texas

APPENDIX B

Notice and Subpoena

MCCLURE DUFFEE & EITZEN LLP

ATTORNEYS AND COUNSELORS AT LAW
8115 PRESTON ROAD, SUITE 270
DALLAS, TEXAS 75225
TELEPHONE (214) 692-8200
TELECOPIER (214) 692-8255

LISA G. DUFFEE
MELINDA L. EITZEN
KELLY G. MCCLURE *
TERESA C. EVANS
CLINT J. WESTHOFF

* BOARD CERTIFIED IN FAMILY LAW

COLLIN COUNTY OFFICE LOCATION:

5000 LEGACY DRIVE, SUITE 160
PLANO, TEXAS 75024
TELEPHONE: (972) 403-1200
TELECOPIER: (972) 403-1211

Date

Custodian of Records
Company Name, Inc.
1234 Street St.
City, Texas 00000

Re: *In the Interest of John Doe, Jr.*
Cause No. 03-00001
Pending in the 1st Judicial District Court
Any County, Texas

Enclosed please find our Notice for Production or Inspection of Documents. We are serving this notice upon you as the Custodian of Records for Company Name, Inc. The enclosed notice is not a subpoena as the law requires that we provide 10 days notice prior to issuing a subpoena.

If no objection is served upon us within 10 days by either your company or OPPOSING PARTY, we will issue a subpoena requiring the production of the documents listed in the enclosed Notice. We will also send a business records affidavit for you to complete when returning the records. Completion of the business records affidavit will eliminate the need for a person to actually come to our office and produce the records or to have to come to a hearing and testify regarding the authenticity of the records.

Please be advised that our law firm represents CLIENT in a lawsuit filed by OPPOSING PARTY to determine custody of their children. All documents requested in Exhibit "A" of the enclosed notice relate directly to that lawsuit and to the best interest of the children.

If you have any questions regarding the scope of the requested documents, or any other questions, either now or when you receive the subpoena, please feel free to contact us and we will be happy to discuss this matter with you further.

Best regards,

Teresa C. Evans

Enclosure
cc: Opposing Counsel, Esq.

NO. 03-00001

IN THE INTEREST OF

JOHN DOE, JR.

A CHILD

§
§
§
§
§

IN THE DISTRICT COURT

1ST JUDICIAL DISTRICT

ANY COUNTY, TEXAS

**NOTICE FOR PRODUCTION OR INSPECTION OF
DOCUMENTS AND OTHER TANGIBLE THINGS**

**TO: Custodian of Records
Company Name, Inc.
1234 Street St.
City, Texas 00000**

Under rule 205.3 of the Texas Rules of Civil Procedure, you are notified that a subpoena will be issued no less than ten days from the date this notice is served. This subpoena will require you to produce and permit inspection and copying of the following documents or tangible things at the offices of MCCLURE DUFFEE & EITZEN LLP, 8115 Preston Road, Suite 270, Dallas, Texas 75225, on or before *(date here should be around 20-30 days)* at 3:00 p.m.: all items listed on Exhibit "A" attached hereto and incorporated by reference as if fully set forth.

Respectfully submitted,

MCCLURE DUFFEE & EITZEN LLP
8115 Preston Road, Suite 270
Dallas, Texas 75225
Telephone: (214) 692-8200
Telecopier: (214) 692-8255

By: _____

MELINDA L. EITZEN
State Bar No. 00790637
TERESA C. EVANS
State Bar No. 24034159

ATTORNEYS FOR RESPONDENT

(Add Certificate of Service to Company Name, Inc and Opposing Counsel)

EXHIBIT A

This request relates to all records regarding OPPOSING PARTY whether individually or jointly with another person.

The terms “documents,” “writings,” and “records” are used in this exhibit in their customary broad sense and include without limitation the following items, regardless of origin or location, whether printed, recorded, filmed, or reproduced by any other mechanical process or written or produced by hand; whether or not claimed to be privileged on any ground; and whether an original, master, or copy.

If any of this information is solely in electronic or magnetic form, you must produce this information by providing the information on a 1.4 MB 3 1/2-inch or CD computer disks formatted for IBM-compatible computers with a notation identifying the computer program (including version identification) necessary to access the information.

The documents requested relate to documents prepared, received, or generated since _____ unless otherwise provided in this request. All requested documents, whenever actually prepared or generated, that relate to this period are to be produced.

You are to produce the following documents:

(Example for medical and psychological records)

1. Copies of any and all medical and psychological records and communications including, but not limited to: admission forms, history and physical consultations, written communications, documentation of oral communication, narratives, operation narratives, radiology reports, laboratory reports, nurses' notes, physicians' orders, diagnostic notes, progress notes, therapy summaries, physical therapy notes, medication lists and logs, and discharge summaries.

(Example for employment records)

1. All employment records relating in any way to OPPOSING PARTY, prior to, during and subsequent to employment with you, including but not limited to all past, present, and future employment contracts or agreements.
2. All documents reflecting the rate of pay and any and all changes in rate of pay for OPPOSING PARTY, including but not limited to documents evidencing OPPOSING PARTY's salary or other compensation.
3. All documents reflecting benefits, including but not limited to health, welfare, pension, vacation, travel, club memberships, and sick leave, that are available to OPPOSING PARTY, including all costs for such benefits and whether paid by you or by OPPOSING PARTY.
4. All documents relating to OPPOSING PARTY's overtime compensation; Christmas or other bonuses; deferred compensation; business expenses paid by the employer of OPPOSING

PARTY; life, hospital, and medical insurance; vacation and sick-leave benefits; severance pay; pension, retirement, Keogh, individual retirement plan, and profit-sharing plans, including the date participation began, current participation status, employee plan summary or handbook, current statement of account, and valuation or calculation of present value or actuarial equivalent value; and rights to purchase stock in employer corporation, including stock certificates relating to any stock option, stock, bonus, or employee stock ownership or purchase plan.

McCLURE DUFFEE & EITZEN LLP

ATTORNEYS AND COUNSELORS AT LAW
8115 PRESTON ROAD, SUITE 270
DALLAS, TEXAS 75225
TELEPHONE (214) 692-8200
TELECOPIER (214) 692-8255

LISA G. DUFFEE
MELINDA L. EITZEN
KELLY G. McCLURE *
TERESA C. EVANS
AIMEE M. PINGENOT
CLINT J. WESTHOFF

* BOARD CERTIFIED IN FAMILY LAW

COLLIN COUNTY OFFICE LOCATION:

5000 LEGACY DRIVE, SUITE 160
PLANO, TEXAS 75024
TELEPHONE: (972) 403-1200
TELECOPIER: (972) 403-1211

Date

Custodian of Records
Company Name, Inc.
1234 Street St.
City, Texas 00000

Re: *In the Interest of John Doe, Jr.*
Cause No. 03-00001
Pending in the 1st Judicial District Court
Any County, Texas

Enclosed please find the following:

1. Subpoena Requiring Production of Documents; and
2. Business Records Affidavit.

Please return to us the subpoenaed records along with the executed business records affidavit. If the records are provided prior to the time listed in the subpoena there is no requirement that someone from your organization travel to our office. The enclosed affidavit is provided for your convenience, as execution of the affidavit will prevent the future need of having a person from your organization actually travel to court hearings to testify regarding the produced documents. Without the affidavit, if we have a court hearing, we will have no choice but to issue a witness subpoena directing a records custodian from your organization to appear in court.

We look forward to receiving the documents and the business records affidavit within the time frame provided in the subpoena. If you have any questions, please feel free to contact us and we will be happy to discuss this matter with you further.

Best regards,

Attorney

Enclosures

cc: Opposing Counsel, Esq.

IN THE INTEREST OF	§	IN THE DISTRICT COURT
	§	
JOHN DOE, JR.	§	1ST JUDICIAL DISTRICT
	§	
A CHILD	§	ANY COUNTY, TEXAS

THE STATE OF TEXAS	§
	§
SUBPOENA	§

**TO: Custodian of Records
Company Name, Inc.
1234 Street St.
City, Texas 00000**

BY THIS SUBPOENA, the CUSTODIAN OF RECORDS of COMPANY NAME, INC., is commanded to produce the documents identified herein, in the case of “IN THE INTEREST OF JOHN DOE, JR., A CHILD,” filed under Cause Number 03-00001 in the 1st Judicial District Court of Any County, Texas, in the following manner:

PRODUCE DOCUMENTS AT:	LAW FIRM
ADDRESS:	Address Dallas, Texas
TIME:	on or before 3:00 p.m.
DATE:	on or before _____

The documents which COMPANY NAME, INC., is to produce are: All Documents listed on Exhibit “A” attached hereto and incorporated by reference as if fully set forth.

This subpoena is issued at the instance of CLIENT, Respondent in the above titled action, by and through ATTORNEY of the law firm of LAW FIRM, Respondent's attorneys of record.

**FAILURE BY ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A
SUBPOENA SERVED UPON THAT PERSON MAY BE DEEMED A CONTEMPT OF THE
COURT FROM WHICH THE SUBPOENA ISSUED OR A DISTRICT COURT IN THE
COUNTY IN WHICH THE SUBPOENA IS SERVED, AND MAY BE PUNISHED BY FINE
OR CONFINEMENT OR BOTH.**

Issued on _____.

Issued by:

MCCLURE DUFFEE & EITZEN LLP
8115 Preston Road, Suite 270
Dallas, Texas 75225
Telephone: (214) 692-8200
Telecopier: (214) 682-8255

By: _____

MELINDA L. EITZEN
State Bar No. 00790637
TERESA C. EVANS
State Bar No. 24034159

ATTORNEYS FOR RESPONDENT

PROOF OF SERVICE

I, CUSTODIAN OF RECORDS for COMPANY NAME, INC., certify that on _____, 200__, I was served with the attached subpoena and that I agree to comply with its terms as required.

DATED: _____, 200__.

Received by: _____

I, _____, certify I am over the age of eighteen years and not a party to the above referenced action. I certify that a true and correct copy of the attached subpoena was served on _____, by _____ on _____, 200__, at _____ .m. I further certify that all witness fees required by law were tendered at the time of service.

Dated: _____, 200__.

Served by: _____

EXHIBIT A

This request relates to all records regarding OPPOSING PARTY whether individually or jointly with another person.

The terms “documents,” “writings,” and “records” are used in this exhibit in their customary broad sense and include without limitation the following items, regardless of origin or location, whether printed, recorded, filmed, or reproduced by any other mechanical process or written or produced by hand; whether or not claimed to be privileged on any ground; and whether an original, master, or copy.

If any of this information is solely in electronic or magnetic form, you must produce this information by providing the information on a 1.4 MB 3 1/2-inch or CD computer disks formatted for IBM-compatible computers with a notation identifying the computer program (including version identification) necessary to access the information.

The documents requested relate to documents prepared, received, or generated since _____ unless otherwise provided in this request. All requested documents, whenever actually prepared or generated, that relate to this period are to be produced.

You are to produce the following documents:

(Example for medical and psychological records)

1. Copies of any and all medical and psychological records and communications including, but not limited to: admission forms, history and physical consultations, written communications, documentation of oral communication, narratives, operation narratives, radiology reports, laboratory reports, nurses' notes, physicians' orders, diagnostic notes, progress notes, therapy summaries, physical therapy notes, medication lists and logs, and discharge summaries.

(Example for employment records)

1. All employment records relating in any way to OPPOSING PARTY, prior to, during and subsequent to employment with you, including but not limited to all past, present, and future employment contracts or agreements.
2. All documents reflecting the rate of pay and any and all changes in rate of pay for OPPOSING PARTY, including but not limited to documents evidencing OPPOSING PARTY's salary or other compensation.
3. All documents reflecting benefits, including but not limited to health, welfare, pension, vacation, travel, club memberships, and sick leave, that are available to OPPOSING PARTY, including all costs for such benefits and whether paid by you or by OPPOSING PARTY.
4. All documents relating to OPPOSING PARTY's overtime compensation; Christmas or other bonuses; deferred compensation; business expenses paid by the employer of OPPOSING

PARTY; life, hospital, and medical insurance; vacation and sick-leave benefits; severance pay; pension, retirement, Keogh, individual retirement plan, and profit-sharing plans, including the date participation began, current participation status, employee plan summary or handbook, current statement of account, and valuation or calculation of present value or actuarial equivalent value; and rights to purchase stock in employer corporation, including stock certificates relating to any stock option, stock, bonus, or employee stock ownership or purchase plan.

IN THE INTEREST OF
JOHN DOE, JR.
A CHILD

§ IN THE DISTRICT COURT
§
§ 1ST JUDICIAL DISTRICT
§
§ ANY COUNTY, TEXAS

AFFIDAVIT FOR ADMISSION OF BUSINESS RECORDS

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned, who, being by me duly sworn, deposed as follows:

“My name is _____ (printed name). I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

“I am the custodian of the records, or other qualified witness, of Company Name, Inc. Attached hereto are _____ pages of records from Company Name, Inc. These said _____ pages are kept by Company Name, Inc., in the regular course of business, and it was the regular course of business of Company Name, Inc., for an employee or representative of Company Name, Inc., with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the records or to transmit information thereof to be included in such records; and the records were made at or near the time or reasonably soon thereafter. The records attached hereto are either the originals or the exact duplicates of the originals.”

SIGNED on _____, 2003.

Affiant

SUBSCRIBED AND SWORN TO BEFORE ME on _____, 2003.

Notary Public, State of Texas

APPENDIX C

Release of Financial Records

RELEASE OF FINANCIAL RECORDS

RE: NAME: OPPOSING PARTY
SSN: 123-45-6789

TO WHOM IT MAY CONCERN:

I, OPPOSING PARTY, authorize banks, financial institutions, and credit card account holders to release all financial records and information to TERESA C. EVANS and/or MELINDA L. EITZEN and the law firm MCCLURE DUFFEE & EITZEN LLP. This authorization specifically includes, but is not limited to, the following:

1. The credit file, loan file, and copies or originals of all promissory notes, guaranty agreements, or other obligations and all financial statements, profit and loss statements, balance sheet statements, and operating statements submitted or executed by OPPOSING PARTY.
2. All signature cards, deposit-box rental agreements, deposit-box entry records, records of assets in safekeeping, bank statements, deposit records, withdrawal records of all checking accounts, savings accounts, certificates of deposit, or interest-bearing accounts maintained in the name of OPPOSING PARTY or on which that person had the right to draw for the period _____ to the date of production thereof.
3. All contractual agreements between your institution and OPPOSING PARTY, for the period _____ to the date of production thereof.
4. All statements and records of accounts maintained in the name of OPPOSING PARTY or on which that person had the right to draw for the period _____ to the date of production thereof.
5. All payment records for accounts maintained in the name of OPPOSING PARTY or on which that person had the right to draw for the period _____ to the date of production thereof.
6. All the above records maintained for the benefit of OPPOSING PARTY in the Trust Department.

A copy of this authorization has the same force and effect as an original. The authority granted herein remains in effect for a period of 180 days from the date hereon or until I revoke same in writing.

APPENDIX D

Open Records Request

McCLURE DUFFEE & EITZEN LLP

ATTORNEYS AND COUNSELORS AT LAW
8115 PRESTON ROAD, SUITE 270
DALLAS, TEXAS 75225
TELEPHONE (214) 692-8200
TELECOPIER (214) 692-8255

LISA G. DUFFEE
MELINDA L. EITZEN
KELLY G. McCLURE *
TERESA C. EVANS
AIMEE M. PINGENOT
CLINT J. WESTHOFF

COLLIN COUNTY OFFICE LOCATION:

5000 LEGACY DRIVE, SUITE 160
PLANO, TEXAS 75024
TELEPHONE: (972) 403-1200
TELECOPIER: (972) 403-1211

* BOARD CERTIFIED IN FAMILY LAW

Date

City Police Department
Records Section
1234 Street St.
City, Texas 00000

Re: Open Records Request
Any County District Court Case No. 03-00001
1st Judicial District Court
In the Interest of John Doe, Jr.

Dear Sir or Madam:

We represent CLIENT, the mother of the child, JOHN DOE, JR., the subject of this suit. We have reason to believe that Irving Police Department has incident reports, response records, and/or notes regarding the following:

OPPOSING PARTY a/k/a OPPOSING PARTY, SR.

-and/or-

CLIENT

-and/or-

JOHN DOE, JR.

-at-

4567 LANE LN. CITY, TEXAS

Please accept this letter as a formal request for unredacted reports, response records, or information under the Texas Open Records Act for certified copies of any and all records or documents that relate to the parties and/or address listed.

Please send certified copies of the requested documents, reports or information to my attention at the above address. Please send me your bill so that we may pay the expenses incurred

for your services, or if payment is necessary prior to sending the documents, please call me for immediate payment.

The enclosed business records affidavit is provided for your convenience, as execution of the affidavit will prevent the future need of having a person from your organization actually travel to court hearings to testify regarding the produced documents. Without the affidavit, if we have a court hearing, we will have no choice but to issue a witness subpoena directing a records custodian from your organization to appear in court.

This matter is set for hearing in a few days, so time is of the essence.

Thank you for your assistance in this matter.

Best regards,

McCLURE DUFFEE & EITZEN LLP

Teresa C. Evans

Enclosure

cc: Opposing Counsel, Esq.