

DISCOVERING AND VALUING CONCEALED PROPERTY AND INCOME

by Mike Gregory and William F. Neal

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Introduction

You are feeling pretty good. A new client has just left your office and hired you as their lawyer. The retainer has been paid, the contract signed, and for the now the client thinks you are the best thing since sliced bread was invented. The euphoria wears off pretty fast as you begin to look over your interview notes and think about the case. You suddenly realize that you have the spouse that knows nothing about all the property, business, assets and liabilities of their estate. The other spouse handled all the money, paid all the bills, and did all the “business” side of the marriage. He or she can’t even tell you how much the mortgage payment is on the house they live in. Oh well, you think, I can get most of what I need with the Inventory they will have to file and through discovery. Just as you are beginning to feel better about your strategy in the case you find the part in your notes where your client told you that their partner in marriage told them on more than one occasion that they will never get anything and your client believes based on knowing this person for the entire length of the marriage and during the courtship that he/she is of the ilk to not be honest and forthcoming about the finances. In other words, if he/she can get away with it - they will hide, lie, cheat, and steal about what they own. You start feeling poorly again. You really didn’t get a large enough retainer to hunt down every conceivable shady deal or transaction that might have gone on during their marriage by traditional methods of discovery. To compound the problem, you realize that with the other side in control of most of the financial information and with a mind set to “hide the hat then help you look for it” the normal reliance on Inventories and Discovery will not work adequately to fully represent your client. You then realize that you will have to roll up your sleeves and go to work. If you can catch your opponent in one untruth or omission, then the Court will peg him/her for what they are and you will be in the cat bird’s seat as to settlement or trial. A smile creeps over your face but again turns to a frown when you start wondering - where do I start? What can I do that won’t involve them knowing what I am doing? How do I find these “forgotten” or “misplaced” assets? If I find them, how do I get a value for them? This paper is aimed at quelling that anxiety and puzzlement. It is intended to give you some tools and some procedures that can dig out those assets and liabilities that may be right in front of your client but she/he doesn’t know what to look for. If you can’t get some leads from what your client does have, then this paper will hopefully give you some actions to take that will allow you to find those properties from your office chair.

It begins with the Client

The information you need, or the seeds to such information, begin with your client. Start by getting all the information you can from the client. Does the client have tax returns, bank statements, correspondence, access to the spouse’s computer at home or at the office, brokerage statements, credit card statements, tax appraisals, letters from financial planners, estate planners or bankers, loan applications or information on the house purchase or refinancing? Does your client remember over hearing telephone conversations with business associates, brokers, or

bankers? Did the spouse ever come home giddy one day and momentarily gloat in the euphoria of a big deal? Does he or she have a close good friend that would “understand” the problems with a divorce and be willing to “help” avoid the inequity and injustice usually done in a divorce? Begin your hunt for any hidden assets by scheduling an office conference with your new client soon after you are hired. Even if you covered this area in the initial consult or intake conference, get them back in for an in depth interview on what they might know. A good and thorough property intake form or inventory package is a must at the front end of the case. This accomplishes two purposes. It gives you a working paper to start your hunt based on what might be known and establishes early in the case the level of information your client did have or know at the start of the case. It also helps you decide exactly what you might need to request at any temporary hearing in terms of releases and initial production before the other side may have a chance to think about it. We give to our clients that hire us a form package on preparation of an Inventory and Appraisal. A copy of that Form Package is included in Appendix A. It is based on the Texas State Bar Family Forms but has been edited to provide comments and help to the client in filling it out. It highlights documents that the client should bring to you with the finished Inventory. Most naive spouses won't have the ability to complete all this information so early in the case but it can give them a road map for what will be needed. Most importantly, it can give them a list of documents you need right up front to review. The following documents are extremely valuable in attempting to ascertain where assets may be or where they have been.

Tax Returns. Have your client get as many years as they can. Anything that has the term “Internal Revenue Service” printed somewhere should be brought to you. Tell them to gather them up, take them to Kinko's for copies, bring you the copy and put them back.

Employer Related Statements or Correspondence. Large employer's will usually send out annual or semi annual statements showing all the benefits the employed spouse has with the company. Even brochures on benefits without the statements can point you in a direction. Have the client gather up all they can find.

Closing documents on real property transactions. The key to these documents is not the loans or purchasing information on the house or lake lot, but finding out who made the loan. If your client had to sign the note put in front of her by her spouse then you can get those loan applications directly from the broker or Lender who made the loan.

Any documents or correspondence from a stock broker or brokerage house. Many times after opening an account with a broker or brokerage house promotional information is routinely and uniformly sent out to the house address. Locating a potential source for a hidden account will help to verify other information you may receive when utilizing other sources set out later in this paper.

The Home or Office PC. Even if your client knows nothing about computers, this can be the major source of concealed or hidden assets. Men are notorious for keeping spreadsheets, Quicken Accounts, Microsoft Money, Excel or the like on their computers. Also, unless the other spouse is well schooled in computers the cache or temporary directories may contain the web addresses to financial sites he or she visits to keep up with the stock market. More importantly, it might provide access to information concerning credit cards that are owned which

are accessed via the computer, email from credit card companies notifying of a recent statement or payment, on line trading accounts, and information for employer related benefits like 401k and pension information. There are Forensic Computer Investigators that you can turn over a copy made of the computer's hard drive and with sophisticated software all this information can be obtained. Making a hard drive image of the host computer is not that difficult to do and with portable Zip Drives and CD Rom Read/Write units it is just a matter of plugging it into the right socket (or port) and following the directions. It would be unwise for you to actually do the copying, but investigators can be hired that will do it for you if you can get the CPU to your office. It takes a short time to copy the hard drive and the computer can be returned in about an hour. Usually your client has a friend or associate who is savvy in the use of computers and if you can get your client to enlist their services to make the copy then you have the best source of evidence anywhere. Unless you hire a forensic computer investigator or firm to make the hard drive copy, the predicate and chain of custody evidence may be difficult to prove in Court to be able to use your copy. However, knowing where the assets were will give you the route to take in serving subpoenas and depositions to locate the asset or start tracing its movement. Care and thought needs to be given in these uncertain times and law surrounding the computer world as to the accessing of this computer. Suits for invasion of privacy (installing computer software that records all key strokes and surreptitiously sends them to an email address) are beginning to make their way into appellate decisions around the country (none yet in Texas on this exact issue). Also, Texas Penal Code §33.02 regarding Breach of Computer Security might throw a wrench into this plan. This statute makes it a Class B Misdemeanor (range of penalties being up to 180 days in jail and \$2,000.00 fine or both unless damage or deletion of data, harm, fraud or a benefit to another occurs, in which case the punishment increases in tandem with the dollar value of the amount involved which could put you into a 1st Degree Felony with punishment range of 5-99 years or life and a \$10,000.00 fine). The question will turn on who was the "owner" of the computer. Owner is the person with title to the property, possession of the property (whether lawful or not), or a greater right to possession of the property than the actor. If no divorce on file and no order as to use of personal property then query who has the greater right of possession. However, if temporary orders have been entered or the computer is on "loan" from the business then a real problem is possible. Be careful if you decide to enlist this method of unearthing assets and ask all the right questions to avoid a problem under this statute. Another method to try if you are sure that everything you need to establish the assets of the estate are on that soon to be ex-spouse's computer is to file a very benign motion for relief (or include it in your initial pleadings) in which non specifically and without tipping your hand you request the Court's relief as to matters which will aid the Court in the disposition of this case. When you get to the Court, ask the Court to issue an instant order allowing your forensic expert to accompany the other party to the home, or office, or laptop location to get a mirror image of the hard drive on the computer. If someone is available to the other party who they can call to delete files or crash the hard drive, then thought should be given to getting an order to turn in all cell phones until the computer can be accessed and copied. You will need to have some evidence to support your contention that the computer does house information vital to your case but if the other side is not aware of what is coming the authors believe that casually establishing that the party does maintain records on his computer relative to the estate of the parties will be sufficient to warrant the Court issuing such an order. Utilizing this method will certainly take out of consideration the problems with any criminal statutes.

Credit card statements. Get your client to bring as many and as dated as they have. While this source won't usually yield large assets, it can identify personal property purchases and spending habits. It will sometimes show set up fees or other incidentals. And on rare occasions with people making large incomes who have large credit card limits, we have found the purchase of automobiles and down payments on real property.

Tax Appraisals. County Tax appraisals and statements can identify both real property and personal property. They are especially important for non urban counties. Counties such as Dallas, Harris, Denton, Collin, Bexar, and Tarrant have online access to do searches for title holders and property addresses. Since this information is kept county by county any information that can limit the nature of your future searches will save money and time. Obviously, these statements are useful in assessing at least the particular counties' valuation which usually is not the real fair market value.

Estate Planning Documents. Was a will or estate plan ever done for the client. If so, information as to the assets and liabilities that existed at that time should have been provided to the planner. Since this was a joint undertaking the person who did the estate plan or will must provide both parties any copies of their own documents that were kept. Get your client to go to that planner and request copies of all the documents that were provided at the time the plan was formulated.

Bank Statements. Getting your hands on the family joint bank account statements or the other spouses separate account statements will unearth all sorts of tidbits for you to trace. Sometimes, it locates an asset in and of itself. How to handle the bank records you do get from the other side in discovery is covered later in this paper, but having copies of those statements before they are later produced will lead you where to look depending on what is missing from the other sides production responses when received. If the spouse owns a business, then analyze the checks carefully and especially the people to whom the checks are being sent. One of the authors located a fake company to which the husband was mailing "consulting" checks on a monthly basis by checking on the company name and then following the endorsements on the back of the checks. An educated guess was made that this consulting company was a front for the owner of the business when a review of the history of Vendors of the company showed this to be a new one (within the last year), the amounts paid to the Consultant went up right before the filing of the divorce, and a check of d/b/a records showed no such company but the Secretary of State showed a recent incorporation under that name. A subpoena to the bank where the checks were deposited turned up a large account with the signature cards containing the owners signature.

The Friends of the Couple or business associates of the Spouse - and the jilted ex-lover. Don't ever forget this source of information. Often friends of the couple have had some forewarning of the problems in the marriage. Men stick with men and women stick with women. Many times the friends have talked between themselves and wondered about the situation and compared notes on what each told the other. Have your client ask these friends if they know of anything going on before the divorce was filed. Have your client talk directly to the partner or co worker to find out if they will help under the auspices of anonymity. If put directly to them sometimes the wall of silence will come down and information will spew forth. Also, don't

forget the disgruntled ex employee that was fired by the spouse/owner of the business. If they will talk to you there will be a wealth of information. This former employee or outside bookkeeper may have been the one to write up the fake invoices on cash sales or pay the credit cards or make the reservations or simply just open the mail. Never forget the jilted ex lover. While it may be hard to fathom the idea of calling this seemingly hostile witness on the telephone or visiting them you can get information you never would have found if they will talk to you. And they just might do that if the spouse who was cheating with them has now moved onto someone else. One of the authors was able to locate a six figure account in an out of state bank deposited in the spouses mother's name due to a blind call to this ex lover and a followup meeting outside the office. The "pillow talk" from the philandering spouse to his ex girlfriend turned out to be more costly than he had originally envisioned. While definitely a long shot it is worth the try.

Timing is often the arbiter of whether the documents your client can gather up for you will help. If your client got into see you before his or her spouse filed or visited with an attorney then the possibility you can get these documents early and before they are removed is realistic. If your client is the "last to know" that a divorce is imminent, then the chances any of these documents are available or will prove useful is greatly diminished. Don't get depressed if your client either doesn't have access to any of this information or what you get is not useful. You have only begun to dig.

Before the Temporary Hearing is held

_____ There are things that can be done early that will pay benefits down the road. First, get off a letter to the spouses employer's Human Resources Department and/or Benefits Office requesting information on all benefits the other spouse is provided by his employer. A sample letter that makes such a request is attached as Appendix B. Many times you will be ahead of the curve and the office personnel of the company will simply respond to your request. An added benefit is that with most large companies the letter will serve to put a freeze on all retirement plans and some stock option plans.

If your client was unable to get you the tax returns, get Form 4506 (Request for Copy or Transcript of Tax Form) and get it sent off. To get an exact copy of a previously filed return it can take 60 calendar days to get it back from the IRS. The cost is \$23.00 for each tax year requested. The sooner you get it mailed off the faster you will get it back. A transcript is free and you can get it back within 10 work days after the IRS receives it. A transcript only shows line items from the original return and is only available for 1040 forms. A copy of Form 4506 is attached as Appendix C. Don't forget to check the box at the end of 8 d to get it certified for later use in Court to beat the hearsay exception. If an accountant, CPA, or Tax Filing Service was used, then get your client to their office to request copies of the past returns. The professional may have an ongoing relationship with the spouse who has been in charge of the finances but they are duty bound to deliver a copy of the joint return they prepared for your client and spouse.

Start to gather up what credit card information you might want. Attached as Appendix D is a list of all the major credit card companies, their toll free number, the information they require to get you copies of past statements, and the turn around time. If your client is a named

cardholder then he or she can make the request provided they have the information needed to access the account. If they are not on the account, then the access information and a release will probably be required. However, most credit card companies and the Banks in whose name MasterCard or Visa is carried have online accounts. If the spouse who has the account in his or her name has not set up an online access account with the financial institution then it is possible your client could do so. Again, the client would have to know the original identification used to set up the account. If it can be accomplished, then your client can download the statements and actually track the usage during the divorce.

Send your client to the financial institution or broker that refinanced the house loan or made the mortgage for the house. Do the same for any wills or estate plans that were done for the couple. Have the client request and bring back to you all the paperwork on the loan but particularly the loan application. As we all know, getting a loan one wants will make that applicant list everything they have and maximize their income. Getting a listing of assets and liabilities in the handwriting of the opposing party and signed by him or her is the best indication of what was owned at the time of the financing and what that person represented the value to be. Remember it is a federal offense to falsify a loan document so at least as of that point in time there will be little argument over the fact an asset or liability existed and what it was worth.

If trickery is not beyond your methodology, send your client over to the stockbroker or brokerage house offices to reconnoiter and inquire about the accounts that are there. This works especially well when your client is the wife. Even though it may be a shot in the dark, if an account exists there your client will probably verify that fact even if the precise account information or amounts can not be verified.

In the Pleadings and at the Temporary Hearing

If you file pleadings for temporary relief, include in your request for ancillary relief a general and an unobtrusive request for execution of any and all necessary releases required to obtain any discovery allowed by the Texas Rules of Civil Procedure. These form and stock requests are contained in almost all divorce petitions filed in this State and such a request is authorized by Texas Family Code §6.502 in that the Court is empowered to require the production of books, papers, documents, and tangible things. Generally, the request goes unattended to by either party during the negotiations that precede any hearing and the hearing itself. Be prepared and have with you a release for the Respondent's employer, a release for banking documents, and a release for credit card information. The allegation to include in your petition, the letter to the employer, the releases for these documents are attached to this paper as Appendix E. Lawyers tend to think in stages and at the temporary hearing stage the primary focus is going to be on matters such as how much money will be paid as support, who gets the house, conservatorships and possession. Discovery is a stage that is down the road. Have these releases ready to go at the hearing. Present them to opposing counsel and request they be signed. If the request is refused, present them during the hearing and ask if the opposing party objects to signing them. Get the Court to order the execution of the releases then and there. If the case settles, don't leave the courthouse without an agreement that the releases will be signed or better yet, have them signed right there as part of the settlement. Which would you rather have - a signed release by the other side authorizing you to get the information or wait to see what they

produce in response to discovery then have to file a Motion to Compel or fight some objection or Protective Order Request. Compare the costs and the time involved in both avenues. If a huge fight ensues over the signing of the releases then you will know that more than likely there is something out there they don't want you to find out and weren't going to voluntarily let you in on. Presenting the Releases early in the case will save you and your client money and time. Send the Business Records Affidavit with any request for information you seek with the use of the releases, it makes the records you get admissible and saves the time later down the road getting them admissible. Remember, even with a consent the financial institution does not have to produce the documents before fifteen (15) days after it receives the consent and if you have to issue a subpoena for the same records at a trial or hearing then count on the institution using all twenty four (24) days to respond to records production. Texas Finance Code § 59.006.

Finding the Assets without Help from Anyone but You.

You have gone through the meeting with your client and he or she hasn't helped one iota. The Court or the opposing party didn't comply with your requests for releases. Where do you go from here?

Private Investigators. The first place to consider is the hiring of a private investigator to run an asset check or people investigator for you. The private investigator you use in your practice can normally do such searches. A sample price list and menu of services from the Investigator used by one of the authors is attached in Appendix F. These people are trained just like you in finding people and assets. They know the tricks of the trade. They have several procedures they follow in trying to hunt down assets. Most of what they do you could do if you had the time and the tools. Most are online directly with several state databases to get information such as linking a name with a car registration. The problem you have as an individual is that using your local County Tax Assessor/Collector's office requires that you give them a license plate or Vehicle Identification Number in order for them to perform the search. It costs \$2.00 per lookup in the home county of the authors and you will get an answer right then. Running a person through a service such as Publicdata.com often will turn up an automobile license number that you can then cross check. The other often used reason for this source is to run the license plate on the suspected girlfriend or boyfriend's car and find out who is the registered owner. Also, when you get back the information it will tell you who holds the lien on the car. This now becomes a source to check out for bank records as it is usually required that the person who is taking out a loan have an account with that financial institution before he loan will be approved.

An investigator, at your direction, can cover UCC Filings at both the State level and County level. One of the problems in locating assets in Texas is that much of the information you need is recorded only at the County level. It is, to say the least, an insurmountable task to check out each of the 254 Counties in the State of Texas. So, you have you guide the investigator somewhat based on information you have as to what counties might yield some useful information. While many UCC filings are done at the local level a large majority will make it to the Secretary of State's filings. While checking out the automobile you know the spouse may not seem like it will help, many times a check on the lienholder to the automobile will give you a bank or financial institution to check for accounts - like a car loan through a

credit union. Have the investigator run a Social Security Number Check. Have him or her run a Credit Check. What you get with a credit check is credit header information which shows basically names and addresses listed or used or reported to that individual. You might get lucky and find an additional address linked to that credit header. If so, it will give you a county in which you can focus on running some checks? Running checks by the investigator on parents and close friends might turn up a lead for you. Water Craft registration is now centralized in Austin and an Investigator can run a check for you through Austin on the spouse or girlfriend/boyfriend. Some of the search methods detailed later in this article allow you to do the same but the problem is you have no way to verify if the search you did online reached all the sources correctly. The authors suggest, based on the money your client has to spend, that you do your own online search first and if you hit on anything then have a private investigator specifically follow up on what you found. You can most effectively control, direct, and manage the cost of your investigation in this manner.

You can also go to the World Wide Web on the internet to find one. Open any internet browser (Internet Explorer or Netscape) and click on search. Use any search engine you want and you will get thousands of hits for “asset search” , “asset location”, or similar terms with those search engines. You will find most of the hits you get back on your search will be from investigation firms. For illustrative purposes only, several web sites have been printed off and are attached as part of Appendix G. These investigation firms have not been used by the authors and no opinions are given or intended as to their effectiveness. The costs range from hundreds of dollars to less than a \$100.00. On most they have online access so you can do your ordering with a credit card and get instant feedback. Be sure and check their database availability (which is usually hidden on the site) to make sure that Texas (or the state you think the asset may be) is within their search capabilities. Also, federal law now requires a judgment to get bank account information so be wary of any firm still advertising they can get you bank account numbers and balances without you providing a judgment. In most divorce cases you will not have such a judgment so this information will not be available to you.

Doing the Gumshoe Work Yourself. As indicated above as to motor vehicles, you can go to your local county offices and run some of these checks in person yourself. You can also do a Grantor-Grantee check in the real property records. Most counties are now computerized and in Denton County, the authors home county, you just give the name of the person and they will run such a check for free and give you all the property they have in their database registered to the person on whom you are checking. Of course, this information is also online through the tax appraisal offices. Several web sites now have many of the Texas County appraisal districts online. One is www.txcountydata.com (but does not have Dallas, Harris, Bexar to name a few) and the other is

<http://home.austin.rr.com/graf/index.html> which does have all the major counties online (79 total) but also links to txcountydata site. Remember though, doing this type of research requires, under Texas Law, a private investigators license. There is an exemption granted to attorneys but if you delegate this work to a paralegal, law clerk, or legal secretary you are going to strain the exemption. This is a Class A Misdemeanor and the Texas Commission on Private Security does take it seriously. See V.T.C.A., Occupations Code § 1702.388. As the local county sites expand you will be able to do more searching for local filings online. Dallas County has just launched their new website, dallascounty.org Dallas County does have propriety software that

you can obtain for free to access the records of the County. It requires a dial up process, login and some specialized commands to work your way through the various screens and menus. You are charge on your telephone bill and it can get very expensive - especially if you are making mistakes in finding what you want. Dallas uses a Program called Procom and it can be obtained through the District Clerks office. Presently, there is little that can be searched such as the Assumed Name Certificates which means you will have to go down there yourself. Case filings in Probate, Lawsuits and Criminal cases will be soon be online. In Denton County, filings are online and you can search by case number or name to find previous filings in the courts, bond and arrest records. Harris County is also online at <http://www.co.harris.tx.us> . The District Court uses a subscriber service to access court records both with specialized software as in the case of Dallas County and now through the internet. It has searchable databases at the County level without sign up for assumed names, lawsuits, Uniform Commercial Code Filings, Marriages, miscellaneous Personal Records (hospital liens, etc). The website for this seminars home county can be found at <http://www.co.galveston.tx.us> . The only searchable section of this web site is the tax appraisal district searches.

Finally, there are services that you can hire that will run for you in the Counties you desire what are called “name runs” or “grantee/grantor” runs. These services are fee based will run for you the name of an individual to find out for a set period of time whether that person has been a grantor or grantee on any real property transactions. The fees vary and depend to a great extent on the volume of the business you might run through them.

Internet Sites. There are also internet sites you can use that are cheap and often very productive. One such site is Publicdata.com. A pricing sheet for this site can be found in Appendix H together with some a sample page of the type of searches that can be done. Dallas County Civil Court records are online through 1998. You can obtain driver’s license number and addresses, criminal information, owners of automobiles if you know the Vehicle Identification number or the license plate number, FAA aircraft information. Each search will yield other information such as other parties who live at the same address and the names of people on the same street. You need to be general in your names and not too specific since it is total name sensitive meaning if you have wrong initial or wrong first name (Bill instead of William) it will show no hit. The other problem with this site is that they are out of Anguilla, British West Indies. The only real way to contact them is by email. Also, they only report what is given to them and deciphering what the information means in terms of codes and the actual record is sometimes difficult. However, as a beginning search tool to find basic information for a cheap price it is very useful. If you want to explore using the internet further there has been excellent articles done in the past that cover this subject fully and give other sites you can explore.

Another inexpensive but productive fee based web site is KnowX.com. The sign up for this site is free with a credit card and your name. The names you put in do not have to be exact and they can pull up D&B Reports, Experian Business Reports, Divorce Records, Professional licenses, corporate records, Owners and Officers, Lawsuits, liens, UCC’s, FAA information, and evaluate Assets searches. It will tell you if there is a hit on any names you put in then will tell you how much it will cost you to view the report. The costs range from \$9.95 to \$57.00 . It found the co-authors residence but it did not find his joint ownership in another piece of real property in which title to the property was held in Trustee Name. A search under the

Trustee/Partners name located the property in a tax record. The cost for each search was \$12.95. A search using all jurisdictions will yield a substantial number of hits and many times you will get only the last name and first initial thereby leaving you in the lurch as to whether record contains information on your client's spouse or somebody else. The UCC check is not free in that you put in the name and to get to see the list of hits costs \$1.50 after which you can purchase individual records. The search found old UCC filings from a previous legal partnership. There was nothing current to find since no debt existed to the co-author except for liens on his automobiles. A search of the lien records gave no hit. The bankruptcy records in Texas start in 1992 and a search of a known former client who had filed bankruptcy provided a correct hit. This is another record search that costs you \$2.95 to get to see the list of hits. The cost for a single record was \$6.95. Overall this is a very good site. It is fast and from our searches over 90% reliable. Care again has to be given in how you put in the name for which you are searching and will return some generic hits that you must determine if it is worthwhile to purchase that specific record. A copy of the Site Map, price list, Counties in Texas that provide records, and a sample record report for an aircraft, real estate, judgment and water craft hit is provided in Appendix I.

Some attorneys have some excellent web sites in which they have pulled together a great compendium of links to other helpful sites. A few of those are <http://craigball.com/hotlinks.html>, Howard Nations web site found at <http://www.howardnations.com/hlli.html>, and the site for Raggio and Raggio in Dallas at <http://www.raggiolaw.com/other1.htm>. Perusing these sites can put not only provide further sources to check out but may stimulate the creative side of your brain when trying to figure out how to find that asset you know the other side is hiding.

The Secretary of State can get you some basic information on corporations organized or operating in Texas. A free online search is available which, if you hit something, will give you the name of the corporation, the taxpayer ID#, the zip code, a Certificate of Account Status, and any officers or directors if they were listed. Sample search results for a well known company is included in Appendix J. For publicly traded corporations you can use the SEC web site which is contained and listed on many of the links shown in the appendices to this article. If you have a publicly traded company and the spouse is a high executive with such company, using financial services online can provide you access to certain filings dealing with insiders and news as to those corporations.

Software Search Programs. The internet also has lots of programs you can buy that claim they can find people, things and information that normal search engines can not find. The authors purchased a program called Net Detective for trial. This program costs \$29.00 and is basically a compilation of search engines under categories. A simple search for the one of the authors located his record then allowed a further search for all information which would have cost \$59.00. It was fast and could be used as a basic tool in one place to start your searches to find information on the spouse. It has links to state information both online and offline. The major advantage to one of these programs is that it brings together in one place all the search tools available on the web - something that you would not have the time to accumulate. This program also advertised that it could search the "deep web" which are sites that most normal search engines used can not find due to the dynamic nature of the content on the website. The "deep web" is beyond the scope of this article but Net Detective has a tutorial and much

information about it. The program also had foreign search capabilities and web information and a nice little investigators tool box to keep up with your project and a tab called “Professional Tips” which puts at your fingertips some ideas on searching for people and things. If you purchase one of these tools, the authors advise starting with the Help section and working your way through the various sub parts to the program. A good tool at a cheap price for bringing together in one place lots of tools for doing internet searching.

Westlaw and Lexis Nexis Each of these legal services have access to online databases to check and search for people, assets, watercraft, corporate filings and the like. A sample search for one of the authors on Westlaw brought up more verifiable information than the web based search engines such as KnowX.com. Furthermore, Westlaw allowed the researcher to find automobiles with only a name and thereby relieving you of the task of locating a VIN number or License Plate. Westlaw can be accessed through the web at <http://web2.westlaw.com/signon/default.wl?newdoor=true> You can also get Westmate to load on your computer for a direct connection. The problem with the use of these premier sites is the expense. Westlaw offers both individual (transactional and hourly) and Pro Plan rates. The service used for this paper was a plan so individual searches were not billed on an item basis. Each database has a particular transactional cost and a cost per record. The costs were substantially higher than the web based information. To check the costs of searching a particular database just put in the name “Subscriber” under the Database to be searched and then put in the particular database that you are contemplating searching for assets in the database identifier and you will get a pricing guide for that database. Searching through Westlaw you start with Public information, Records and Filings and under that heading you have a plethora of available data bases to check - everything from Asset Locator which can be searched all inclusive or by particular states or particular assets to insider stock transactions. Under the general heading of Business and Corporate Information you can find bankruptcy filings, state registration records, and corporate filings. Westlaw’s Business Tracker includes Canadian records. You can access Dun & Bradstreet records under that heading or Fictitious Business Records. There is a heading entitled License records which includes sales and use tax licenses and one called Dossier Service (which was outside even the author’s pro plan. Under the heading Litigation and Court Records there is bankruptcy filings, UCC filings, lawsuit records, and liens/judgments. It is easy to use and captured much information when searched by the authors.

Lexis Nexis has similar searching capabilities and databases but are organized differently. To these authors it is set up with more of a business tilt. Lexis can be accessed directly on the web at <http://www.lexis-nexis.com>. They have a credit card service which allows use of the services and databases on a per occurrence basis once the credit card has been logged into the site. Lexis has extensive references for collection professionals which fits fairly well into what the lawyer is doing in trying to find hidden assets. Their service entitled Site Licensed Data has many of the databases one would want to check out to find assets belonging to a particular spouse.

The primary problem with these services outside of the cost, and to a certain extent with all web based searches is the amount of data you may get back with common names - such as Smith. Putting in a search for a Bob Jones could capture thousands of documents which would take hours to decipher as to whether what you hit was relevant to your case or not. Erring on the

other side by being too specific - like Robert C. Jones, III - may miss something if the person on whom you are checking goes by Bob Jones. Identifying as best you can from what information your client gives you as to business travel, business associates, friends, and family can steer you to smaller locales than just the United States of America. Searching only Texas, or knowing that there has been a lot of travel to Oklahoma City, can narrow your focus, save you time and lessen the cost. Information as to databases and products of Westlaw and Lexis Nexis are attached as Appendix K to this article.

Stumbling around with what you got

Tax Returns Review and analyze the tax returns carefully. You can find leads in the 1040's that the parties have filed. If you were able to get older tax returns - back before the parties started having marital problems and the mind set of "pointing" towards a divorce was not present - look at the Schedule B on the old returns. What financial institutions were paying the parties interest or dividends? If those same banks are no longer being reported on later tax returns then maybe funds were moved and this could serve as a starting place or maybe the money that was there was moved into another account under a relative's name. Look for insurance company dividends being reported to find a life insurance policy with cash value. Study carefully any Schedule C's for businesses claimed to be owned and operated by either party even if originally set up for a tax shelter for the parties. Schedule D's can provide information as to investments that were there and no longer show up. They will also show any stock options that might have been exercised in the past which would lead one to believe there might be more unexercised. If there are any K-1 worksheets then you have at least identified that there was a partnership interest sometime in the marriage. Study any depreciation schedules in the tax returns. If it was being depreciated then it had to have some correlation to income. While it is difficult sometimes to determine exactly what the depreciable asset is considering how these items are reported on the tax returns, the CPA or accountant that prepared the returns would have to have some back up paperwork of the original purchase in order to set up the schedules of depreciation. See if you can get them from the bookkeeper. Look for older schedules or entries in the parties tax returns that are no longer part of the current tax returns such as installment sale forms (6252), Investor reporting of tax shelter number (8271), net operating losses carry-overs, rental income, and entries revealing a one time cash out or distribution from a retirement account (IRA, SEP, or employer plan). If you sent away early to the IRS for these returns then you will have these older returns to compare to the more recent ones that the other side knows they will have to produce. If you are not well versed in tax then get your accountant to review them for you and give you his/her opinion on odd or unusual entries in the returns. If you have done your homework and scrutinized the old returns carefully, then the other side won't be prepared for the questions you will have as to these older and now extinct assets that once showed up on a tax return but are no longer a line item on the parties' returns.

Bank Account Records How many times have you had delivered to your office, or seen stacked at the other attorneys office after the rule changes, boxes of checks and bank statements. Months and even years of cancelled checks in envelopes stuffed in boxes for YOUR review. Unless you are blessed with the proverbial photographic memory even writing down large checks you find to have been written or the changing balances on the statements on your trusty

yellow pad won't allow you to see the big picture or even guess at what might be missing. For a relatively cheap investment in money and time you can run all those checks and statements through software that is available and then be able to run a myriad of reports and compilations that can let you look at those same checks and bank balances from different views. The well known Quicken software or Microsoft Money can be used to list all the check numbers, amounts, dates, categories, and memos into the electronic register and then sort anyway you can imagine - by payee, amount, date, check number. There is also a very good little program sold by Owl Software Inc out of Angleton, Texas. It is written by an attorney and is a program designed for the organization and analysis of bank accounts. The bank statements, checks, deposits and bank charges can be entered in any order. The program will organize the statements by date. It will organize the check and deposit items by date, item number, reason and payee. Filters can be applied to group check reports and to limit items reported to a certain range of amounts. You can quickly see the relationship between the monthly statements and the individual items which were furnished. You will be able to find checks that are missing, deposits that don't add up, patterns of check writing and to whom. In short, by spending a little investment of time by your secretary or legal assistant inputting all the unorganized (intentionally or not) bank information into one of these programs you can sit back and click away on your computer building different looks and scenarios until patterns or further questions arise. Instead of spending time moving to compel discovery for something is missing you will know precisely what is missing, how much, and possibly what for. The mess they gave you now has some meaning and usefulness. Remember too that the same analysis can be made to credit card purchases and most of the statements that you can get online can be directly imported from the website into either the Quicken or Money software programs.

Net Worthing This method of finding non disclosed income is simple in theory but difficult in execution. It is nothing more than the old IRS procedure for proving unreported income. You have to get all the information on what the other side claims they have in income which shouldn't be very hard since it will be as low as they can support. With the help of your investigations and review of the spending patterns derived from a review of the bank statements and assets they will own up to, you merely assign an expense amount to each current or long term liability and match it up with the income they report. If the outgoing monies exceed the declared received income then the shortfall has to be made up from somewhere. The most common response is that the expenditures are estimates per month based on annualized expenditures. While this answer at superficial level seems logical at the monthly level there will still be a shortfall on an annual level unless money is infused into the community estate from somewhere. Are parents making gifts or loans? Bank loans being made? Living off credit cards? Or is there bonuses being paid that haven't been disclosed? Or stock options being exercised that haven't been disclosed? If you can get hard and declared numbers for the expenditures and the income so there is little wiggle room, then you shift the burden of explanation back to the other side and expose previous inconsistencies in their positions. If caught off guard and not prepared you will either get the truth or more "inconsistencies". Remember, the legal theory of constructive trust doesn't require that you pinpoint the exact asset to which the missing money went. Mazique v. Mazique, 742 S.W.2d 805 (Tex.App.-Houston [1st Dist.] 1987, mand. overruled), If unexplained and in the control of a party, the constructive trust theory under Texas Law allows the judge to treat such missing asset or income as wasted and give a money judgment to the aggrieved spouse or better, treat it as an asset capable of

division and award the lost money to the managing spouse. The other side just might get awarded a bank account or sum of money that is no longer in existence and your client the IRA or Savings Account that still is.

Valuation

The bulk of this paper has been aimed at finding the hidden or concealed assets. Let's face it - you can't put a value on anything until you know what it is. Much of the work detailed in the previous pages of this paper will yield values if you find the asset. Using the appraisal district searches on the web will give you that counties' tax roll appraisal for the property you find. In Appendix A you will find several references to sites that will help give valuations for certain types of property such as Blue Book values on cars and stock quote services to ascertain stock prices. You can purchase for under \$100.00 the N.A.D.A. guides for cars, boats, motorcycles, recreational vehicles, airplanes, manufactured housing or classics. See www.nadaguides.com A cheap way to ascertain values of real property is to ask a real estate agent to give you a "market analysis" of a particular piece of property. These are usually free with the expectation the agent will get the listing and usually come with comparables for other property in the surrounding area from which you can determine cost per square foot.

Another excellent resource to purchase and use for valuation is entitled "Valuing Specific Assets in Divorce" by Robert F. Feder and published by Aspen Law & Business. This looseleaf book covers closely held businesses, professional practices, real estate, pensions, and unique personal property evaluations. It covers specific closely held businesses such as automobile dealerships, high tech and high growth companies, bars and restaurants, gasoline stations, automotive service shops, construction companies, gems, oriental rugs, and fine arts appraisals. It gives you information on the basics of the evaluation as to the specific asset, resources, experts in the field for that asset, and documents you need to do the proper evaluation.

The one major stumbling block in any divorce case is usually the valuation of the businesses. If you find that partnership or minority interest of the other spouse in an ongoing business, how do you come up with a representative value to use for settlement or evaluation purposes. The ins and outs and complex legal issues that go into a valuation of a business is behind the scope of this article but some excellent articles have been previously written on this subject. See Blue Sky or Book Value? Complex Issues in Business Valuation by J. Kenneth Huff, Jr. and Richard Orsinger, 2001 Advanced Family Law Course. "Valuation of Business Interests - Addressing Common Errors" by Patrice Ferguson, Milton Frankfort, J. Kenneth Huff and Richard Orsinger, 2001 Advanced Family Law Course, and "Valuing and Dividing the Community Business" by Edwin J. Terry, James W. Larue and J. Kenneth Huff, Jr. . However, to just obtain a basic number that has some credence for your use in filling out the inventory or discussing settlement, there are software programs you can buy that will give you this unscientific number for use. Just such a program was found on the web by doing a simple search for "Valuation". The authors have not purchased or used the program but for \$67.00 it is certainly more cost effective than a \$3500.00 retainer to a business evaluator. One of the authors had purchased a more expensive software program from John Wiley & Sons, Inc. called Business Evaluations Systems. The cost was \$350.00. You answered 72 questions about the business and can value the business ten different ways. When combined with the Bizcomps

software (cost \$ 295.00) which tracks a collection of approximately 5,000 privately brokered sales of small businesses under a million dollars, you can come up with a close approximation of the value of that small business. The program purchased has since been updated and is no longer available but nevertheless replaced by a better one called Business Evaluation Systems Pro. The programs are designed primarily for business brokers and do take some time and require some inside information to adequately project a value and the determine the correct industry code but, when done properly, can allow you to establish a number for use in your case for that small business venture. Information on these programs and a list of internet related sites dealing with evaluation information are attached as Appendix L.

Summary And Conclusion Finding and locating concealed or non disclosed assets is a daunting task that should make both you and your insurance carrier nervous. The other side has usually been in charge of the financial side of the marital estate for some time and if they are the one that have initiated the divorce proceedings then there surely has been some thought given to planning the outcome. However, understanding your predicament at the front end and putting getting your client to work as soon as fast can shorten the lead. With the advent of the internet and software programs we can now today do things that ten years ago would have been impossible. Do your homework early and then customize your discovery without tipping your hand to get information that you can use to find the hidden or concealed assets. Point for the deposition or court hearing where the other spouse is under oath and subject to your cross examination and then bring all that you have found and gathered without them knowing to his attention. Remember, the bad news is that at the start if the other side is bent on a course of non disclosure you, as the attorney representing the unknowing spouse, are facing a huge uphill battle. The good news is that if you find that one acorn that has been hidden or concealed then more than likely the judge is not only going to award that asset fully to your client but in all likelihood will follow your suggestions and positions on the myriad of other valuation and division issues in the case. Once exposed as a person who has been hiding, secreting, and obstructing the fair disclosure of the assets of the marital estate, that spouse will never make it back to the level playing field he or she would have enjoyed had the truth been told up front. The reward to you is not only that you have a happy client but you know that you have done what lawyers are suppose to do - use every able source, your knowledge, and your training to represent fully and vigorously the interests of your client.

Appendix A

Appendix B

Appendix C

Appendix D

Appendix E

Appendix F

Appendix G

Appendix H

Appendix I

Appendix J

Appendix K

Appendix L