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PRACTICE & PROCEDURE**Matrimonial Asset Searches:
Your Client Knows More than She Thinks**

BY PHILIP SEGAL

Introduction

We are often asked by matrimonial lawyers how to spot “red flags” that someone is hiding assets. The sad news is that if someone does a good job at hiding their money, the red flags won’t be there.

Good asset concealment goes under bland, unassuming names of companies registered by lawyers. The companies are registered to a lawyer or agent you’ve never heard of at an address never before associated with the person hiding the assets.

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Yet, the search is not hopeless because most people hiding assets make a mistake somewhere along the way. The thing that often surprises our clients is that the best person to help us spot those mistakes is the spouse who suspects something is being hidden.

Any good asset search starts with a great briefing, and who better to brief an investigator than the person who has lived for years or even decades with the person being investigated? Spouses have a ton of information that can jump-start an investigation, but so often they (and their lawyers) think they can’t help. Lawyers often don’t know how to ask their clients the right questions that get an asset search up and running, and that is a serious problem.

Here’s how a great asset concealer might work (let’s call him Harry Husband), and some of the questions a good lawyer or investigator would need to ask his client (call her Willa Wife) to try to uncover those assets.

No Personal Names

Harry knows that the first rule for good asset concealment is that he should have his name nowhere near the name of the companies he creates. Those companies will hold assets Harry has acquired—perhaps with cash or through his business—but Harry can’t have those companies associated with him or else it will be easy to trace the beneficial ownership of the assets from the company right back to Harry.

Just because you don't see mail for Harry from banks in Jersey or the British Virgin Islands is no reason to think he hasn't put money into a secret company. A Delaware company will do nicely. Of course, since Harry doesn't want links with that company, he will not incorporate the company himself. Instead, he will pay an incorporator to do that. Even though online there's hardly any official information about a Delaware company, you can easily retrieve the incorporation documents. If Harry's smart, he will pay a few dollars to let someone else incorporate the company.

The other thing Harry won't do is register the company outside of Delaware if he can help it. If he used the company holding his assets to do business that would be a problem, since in New York, for example, if you do business through an out of state company you have to register that "foreign corporation" with the Secretary of State. But Harry won't do that, so there will be no association on databases between this new company and Harry's known New York address.

Questions for Willa: What might Harry name his new company? What are the names of your children, your pets, and the street Harry grew up on? Does Harry have hobbies that would lead to names of companies? One client of ours told us that her husband liked naming things after composers, for instance.

We would also ask Willa to name all of Harry's existing companies. People get lazy, and sometimes, when forming a company in a different state, will copy the name of their old company. So, Acme Consultants of Ohio, which Willa knows about, could lead to Acme Consultants of New York, which she doesn't.

Could Harry's Name Be Different?

Databases can mix up two Edward Millers very easily, so date of birth and middle initial are crucially important. Also, has Harry ever used any other names? What about other married names or variations of their current names? (E.g. using their middle name or initials instead of their first.) We look at all of this, because a clerk who files something by middle name instead of first name is not going to notice such a mistake or help you figure things out when the document you're pretty sure you should find just isn't in the registry.

This is especially true of some Asian names. Is it Wang Li or Li Wang? Don't expect the data entry clerk in Trenton or Albany to get it right, so check both. And while you're at it, check Wong and Lee too, both variations. There could be a million dollars riding on the outcome.

Questions for Willa: What is Harry's full name? What other names or variations of his names has he used? Is the name commonly misspelled?

Anonymous or Unknown Address

Of course, Harry could use compliant relatives to be the front people for a new company he controls, and it can take a long time to sort through lists of relatives in an asset search. But ideally he will have no trace linking the company to him at all. That means that if he needs an address for service of process, he will hire a company to accept service. If he has to list officers of the company in his state, he will hire a lawyer to be an officer. And not the normal lawyer he uses for his other

corporate work—the lawyer Willa knows about. He will choose a new lawyer who won't ask questions.

Brand New Lawyer Preferred

Questions for Willa: You need to ask Willa whether Harry knows any other lawyers who could have helped him set up the companies. Does he have friends in the same position (going through a difficult divorce)? Maybe he used the same lawyer his friend did. In some jurisdictions, you can look up companies according to where they are registered. We once found companies controlled by a man after checking at all 160 companies set up by his favorite lawyer.

Why would Harry want a lawyer who doesn't know him or Willa and won't ask too many questions? Because if he is arranging a fraudulent conveyance, his regular lawyer would know he's helping to transfer assets in anticipation of litigation. That's a no-no. But how could a new lawyer know about that if Harry doesn't tell him, and instead pretends that he's moving the assets as part of a sound pre-emptive and legal asset protection project?

Later on, Willa can always try to impose a constructive trust and reverse the fraudulent conveyance. That can spell plenty of time and money in litigation, but if the money is still there, she could have a shot at it. It can also give Willa a nice big club to use in hurrying Harry into settling more favorably.

More Questions for Willa: Does Harry have a best friend or close relative who could have recommended a lawyer for Harry to use? We could look for whatever structures that friend or relative has tended to use with his own holdings and then see whether Harry has copied these. People in a hurry often resort to copying whatever has worked in the past. Or, does Harry have a mistress? Her address could be one where he gets his new company's mail.

Stay Out of Court

If he's smart, Harry will keep his secret companies out of court. When you do business through a company, it often turns out that your counterparties get to know you. If things go bad and the other side sues your company, they'll often sue you too. If we did a full litigation search on Harry, we would have a good chance of turning up cases in which he's not the lead plaintiff but is sued along with his company.

This is a step that many investigators somehow skip over. Litigation searching sounds easy and it's not rocket science, but it does involve retrieving documents from a courthouse and then having a competent person analyze them. Knowing which courthouses to search is part of the skill a lawyer or investigator brings to the client.

Questions for Willa: Has Harry ever been sued? In what jurisdiction?

Political or Charitable Contributions

We can search political contributions by candidate. And charities are sometimes a great source of information since their tax returns are public information. If Harry is smart, he won't list his secret company or its address as the base for any political or charitable con-

tribution, but he might make a mistake and do just that. Also, charitable organizations are in the habit of thanking the people who give to them. They are good people to talk to about their favored donors.

Questions for Willa: We would want to ask Willa if there are any favorite political candidates or other charities Harry would give to.

Other Tip-offs

If Harry is clever, he won't borrow money and sign a security agreement on behalf of his new company, because we can search UCC security agreements by debtor. He won't associate any professional license with an address that is the same as the one associated with his company.

Questions for Willa: Has Harry taken out any loans? Does he have any professional licenses or is he a member of any professional association?

Tips for Investigators—Secrecy Helps You Too

Harry will assume Willa is looking for his money, but don't let him know how close you're getting to finding it. Overconfidence that he's gotten away with it is what Willa wants, because Harry's more likely to let his guard down at some point. We once found someone hiding out in a nominally empty apartment, but he got lazy and signed up for electricity in his own name. The databases caught up to him, and we were then able to figure out what else was being run out of that apartment.

Special Rules for Searching in Small Towns

If Harry appears to be based in a small town, your freedom of information request about some of his government records could get right back to him from the friendly clerk who knows everyone. For small town searches, we like to hire people from a different state to make the information request: say Harry and Willa live in Maryland and the suspected assets are in Virginia. If a request were made for court documents about Harry, four of his neighbors, and two other people on another street in the town, it wouldn't be as obvious that Willa's lawyer was doing an asset search as if the request came in for Harry alone. It would be even better if the request came from a company based in Texas.

Other Questions

There are many other questions for Willa that shouldn't go unasked, since you can search for companies or track them down in several different ways, even without first knowing their name (reverse phone and address searches, for example).

- Where does Harry bank? Who's his broker?

- What phone numbers and addresses are associated with Harry?

- What is Harry's litigation history? Who has sued him and who has he sued? Did those cases settle? Did they go on long enough that there was discovery of Harry's business or personal information?

- Have you and Harry used other investigators or attorneys who could be granted leave to speak to you about critically important information?

- Who are Harry's business partners, current and former? We also want to know about partners' wives. We recently found a business revived under a new name after dissolving to avoid creditors. The partners didn't revive it, but one of their wives did. Without searching for her, we wouldn't have found it.

- What could Harry be using as email handles and social networking names? If he's Harryw1252 on one site, he could go by that name on a dozen others. It happens that way all the time. A search of email addresses may lead to information about a company with which that email is associated.

- Where does Harry like to travel? How frequently has he gone there? Might he own property there? Could he have called his new company the name of the family summer home or a favorite vacation spot?

Be Ready for a Longer Interview —And Follow Up

All of this doesn't mean you ask Willa "tell me everything" and leave it at that. If clients don't know the value of the information they have about their spouses, why should they know what to tell you? You have to ask her, but you also have to remember that good interviewers are good listeners. The last thing you want to do is to power through the checklist of things you need without listening to the answers. Be prepared to break from the order you have on the sheet in front of you. If Willa is answering a question about lawyers and veers off into talking about Harry's mistress and where she lives, don't push her off with "we'll get to that later." Let her talk and find out who the mistress is and where she lives and works.

As important as that first interview is, follow-up is critical. You will probably come across a wealth of information about Harry in the course of your investigation, some of it useful and some of it not. Even though Willa has briefed you, let her know you may have follow-up questions. If you come across three names of people associated with Harry at some new address, pick up the phone and ask Willa if those names ring a bell. Even if you told her to give you the name of everyone she can think of who knows Harry, she may have missed a few. One of those names—or some other seemingly tiny piece of information—could be the key to finding the money.