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Selecting and Utilizing a Private Investigator In Your Law Practice.

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Introduction

One of the significant decisions an attorney makes during his/her career is how to choose and utilize a private investigator. A good investigator can often be the difference between a favorable and profitable or a dismal outcome. The major point we will make here is to NOT limit your thought process, but you should open up to options that you might never have thought about before. As experienced private investigators and owners of licensed private investigative agencies, we will attempt to provide not only advice on how to select a qualified investigator, but also how to ensure that they are reliable and be able to use that insight to expand your business. Unfortunately, developing business practices and marketing are not subjects that are emphasized in law school. Most of that is learned through the school of experience. If there was one principal guideline that we'd offer when it comes to selecting an investigator, we strongly suggest that you not delegate this process to any subordinate or any individual that isn't a decision maker in your litigation or trial process or to anyone who has little or no experience conducting research or dealing in government bureaucracy.

First of all, we'd like to ask how many of you would be interested if you can free up an hour or two per day so that you could use that time to bring in a new client? Maybe your practice is enough that you don't want to add more clients but you might want to take that extra time per day and use it to be with your spouse and family. Maybe you need to spend an hour marketing your practice so that more people will know what services you provide. Or maybe you don't want any of the options above; and you want to use some of that time out on the golf course, yet you want to continue to have at least the same standard as you have right now.

How many of you have been in situations where you needed to find someone that was important to one of your cases, but you only had a short period of time to locate them? How many of you feel you are particularly well qualified to do this? How many of you feel that you might not have asked all the questions you need to during an interview or that you need to re-interview people a second or third time to get facts that you should have developed during the first interview? Have you ever attended a professional interviewing or interrogations course? Are you comfortable with interviewing someone that might be a witness that could corroborate your case but they just weren't being cooperative? Would the study of kinesics have been of value to you? Are you trained in the detection of deception; or better yet, are you comfortable in that role? How many of you have the time, energy and resources to learn the proper way to conduct complex interviews of a variety of subjects, including fraud, death investigations, elder abuse, computer crimes, email tracing, pedophilia and the like? Unfortunately we have seen many transcripts of depositions that could have been improved upon with the help of someone that has experience in that area.

How many of you are Certified Fraud Examiners who know the subtleties of fraudulent activities and how to defend against them? How many of you are experts at evaluating law enforcement agencies and evaluating their investigative practices? Do you simply rely on your basic skills when you run across a police agency that you suspect hasn't been following their own internal procedures and their actions might have adversely affected your client?

Do you know where to go to find out about all these things?

One of the biggest barriers that we encounter is overcoming the misconception that many people have about what a private investigator does. We don't all lurk around trying to find what husband or wife is cheating on each other or what boyfriend or girlfriend is cheating on each other. As a matter of fact, some investigators don't advertise that they handle domestic cases. That's not to say that they don't. They are just not interested in getting in between adults that are having relationship problems. If the couple has gotten past that stage and has engaged an attorney or has filed a petition for divorce, then that's a different story. Modern-day investigators do not reflect Hollywood characters such as Sam Spade or Matlock and there are numerous television programs that just love to catch cheating lovers. Chances are the next time you are sitting in a restaurant enjoying a nice meal and good conversation, there could be some type of investigator within "ears-reach" of you or observing someone close by. In order to remain inconspicuous, private detectives always dress accordingly and use props that enable them to blend in with their surroundings. A good detective will have the ability to quickly adapt to a specific environment, or engage an associate who may be better suited for the task.

What Private Investigators Do

- Did you know that it was a Private Investigator that provided Michael Jackson's defense team with the real story on his accuser's past?
- I recently worked a death case where I corroborated the suicide findings; however I identified the possible cause as a well known drug that is currently in litigation because of the "many deaths it has caused".
- A Private Investigator recently investigated injuries to a Power & Light worker. The woman was merely doing her job when she was attacked by four pit bull dogs last year. The settlement was a whopping \$1 million.
- A Private Investigator was able to uncover evidence that had been intentionally withheld by prosecutors in the death penalty case of a robbery/homicide case. The investigation led to identifying a second related person and the sentence was reversed. He is now a life prisoner, not a death row inmate.
- A Private Investigator wouldn't accept the initial findings into a physician performing unnecessary surgery on a 16 year old girl. The result was an award of almost \$800,000.

- I found over \$506,000 in possible assets hidden by a defendant in a civil case.

Did you know that many PI's are true professionals that have years of training and experience and are dedicated to their work?

Did you know that we are:

- Certified Fraud Examiners?
- Experienced polygraphers?
- Surveillance specialists?
- Interrogators and interviewers?
- Background investigators?
- Asset searchers?
- Homicide/death investigators?
- Accident reconstructionists?
- Expert witnesses?
- And we find people when you can't?

We might first ask the question: Are all police reports that you see impartial, fair, without bias and completely accurate? That might be one simple way that we can help you.

An experienced private detective can provide a vast array of services to a law firm. Especially in today's "high-tech" society, many detective agencies specialize in providing computer-based research such as locating debtors (or "skip-tracing"); conducting pre-employment and pre-marital checks; identifying hidden and moved assets; and criminal background investigations. Private investigators are routinely engaged in domestic cases; service of process and subpoenas; working undercover (such as in a corporate environment); providing information in preparation for litigation; and providing assistance in criminal defense cases including juror profiling and trial preparation.

New technologies such as GPS tracking devices allow not only a professional to conduct surveillance, but anyone with the means (and a little practice) can determine the whereabouts of any individual at any given time. Gone are the days of simply paying an informant for information and following subjects only by car or on foot. However, it is important that you as an attorney and your investigative team are fully aware of current laws concerning the use of GPS tracking devices.

Several investigative agencies use aerial photography to help resolve property disputes or for investigating accident scenes.

The service of subpoenas and process are an ever-increasing market for investigative agencies. Some companies designate certain employees to become appointed "permanent process servers" in several jurisdictions within a metropolitan area. Permanent, or standing orders, enable an agent to quickly and efficiently serve someone for an attorney. Standing orders allow the detective to immediately begin locating the subject, which increases the chances a subject can be served before they become aware of any potential

litigation. Sometimes, the subject may choose to flee the jurisdiction once he or she becomes aware of the filing by a law firm. This may hinder the courts' ability to successfully serve a defendant through the local sheriff or constable. The likelihood of a uniformed officer perfecting service on such a defendant is improbable. Because law enforcement is so overwhelmed with this task, they are unable to take the time or expend the additional funding necessary to develop a strategy designed to predict and then surprise these defendants with service. The vast majority of process service requests many investigative agencies receive are from law firms who have been unable to serve the defendant or respondent by conventional means. It is not uncommon for a defendant who has experience in due process to avoid the local authorities. Perfecting process on troublesome subjects is a skill, and hiring a detective in a timely manner may ensure that process is made before a statute of limitations could bar your action.

Most private investigators are also seasoned in the art of surveillance. With today's technology, it is not only much easier but expected by attorneys that investigators secure video footage of numerous civil indiscretions. Parents wanting their minor children observed during prom night and other social occasions; suspected acts of infidelity; and allegations of an "unfit parent" during a custody battle are but a few instances where surveillance can be practical. Private investigators routinely conduct surveillance on insurance claimants to determine the validity of an injury, or to ensure that the applicant is not supplementing their income while drawing benefits.

It is also customary for investigative agents to video tape or photograph defendants who are alleged to be unstable during any attempt to serve process. Quality video or photographic evidence can make months or even years of legal work worthwhile to both you and your client. Depending on the type of practice, most trial attorneys will eventually need an investigator to conduct some sort of surveillance on an opposing party.

We would like to help you expand your practice. We can demonstrate examples where we've been invited into conferences with clients and have become an integral part of the attorney's team. By sitting in on these conferences we can add to the strategy and successful outcome. Search out a private investigator that you feel comfortable with, one that meets your standards of excellence and discretion. Find an investigative agency that produces results. Talk to them about what it is you want to achieve and what your expectations are. Tell them that you want them to take on the investigative processes that you go through on a daily basis and allow you to go back to doing what you do best - practicing law.

Begin Your Search - A Reliable Starting Point

Depending on jurisdiction, private detectives are trained, schooled, licensed, and regulated in many different ways. In Arkansas, private investigators are licensed through the state under the Arkansas State Police under the Arkansas Private Investigators and Private Security Agencies Act (17-40-101 - 107 & other associated statutes) Private investigative agencies must have a licensed owner and each investigator must be licensed. In Texas, private investigators are licensed through the state under the Texas Department of Public Safety's Board of Private Security. Private investigative agencies

must have a licensed owner, provide proof of liability insurance, and have each investigator fully licensed. No managers or investigators must have been arrested and convicted of a criminal offense Class B misdemeanor or higher. Private investigative agencies in Texas are responsible for complying with Section 1702 of the Texas Occupations Code.

Surprisingly, states still exist that do not require an investigator or investigations agency to obtain a license, or work under regulations. If you as an attorney are considering engaging the services of any private investigative agency, contact the licensing authority of your state in order to ensure that the individual (or company) is certified and is in “good standing.” By making this simple inquiry, your law firm may be able to eliminate a number of prospects simply because of their failure to comply with governmental regulations or because of possible legal or ethical indiscretions. The Arkansas Association of Professional Private Investigators or the Texas PI Associations will gladly let you know if the person is a member of their associations. Moreover, if the company is incorporated, contact the secretary of state’s office to inquire as to its status. We recommend also checking places like the Better Business Bureau or the local Chamber of Commerce to see if they subscribe to other business standards that will be in your best interest.

Qualifications - Formal Education

If your candidate is properly licensed and holds a valid business permit, the next step is to check his/her credentials. Do not be apprehensive when asking about an individual’s work experience, educational background, or additional training received. The more formal education a private investigator has, the more likely he/she can assist your law firm with a variety of fundamental tasks. For example, a private investigator who is familiar with search and seizure laws, stalking, and hearsay will be more methodical during the course of his/her investigation, during trial preparation and be better prepared for both direct and cross-examination. An educated private investigator will also be more likely to refrain from committing certain tortuous acts if they have the foresight to apply the elements and repercussions of those acts. Although most states require private investigators to be licensed, the education and training requirements are minimal at the most. Usually the best investigators come into the profession after being trained and educated by public safety and law enforcement organizations and have at least a four-year college education. An attorney should also keep in mind that he/she is seeking an *investigator*. There is a vast difference between those “investigators” who have only a uniformed police officer/patrol background and those who have spent their careers conducting complex investigations.

Practical Experience

Scholastic credentials alone do not make an exceptional detective. One thing that can separate investigators from one another is the ability to quickly and efficiently acquire information through the use of informants and even a few uncommon means. Private detectives are extremely adept at the artful task of gathering information that is either unknown or unavailable to the nonprofessional (including paralegals). Although it is wise

to have an investigator with an educational background, there can be no substitute for resourcefulness and experience. Your task as is to find an effective balance between the two qualifications so that your law firm gets the best of both worlds.

Interview the Candidate

It is recommended that you conduct a formal interview with the prospective investigator. Depending on your area of law practice, comprise a list of questions that relate directly to your area of law. If an investigator tells you he/she has ten years experience only in criminal defense; and your main area of practice is divorce and family law, you may want to look elsewhere. Private detectives, like attorneys, usually specialize in specific areas of law, and will devote much of their time and subsequent education in that chosen area. Make sure that before you continue with the interview, the candidate answers your questions to your complete satisfaction. You can safely assume that an applicant who shows signs of uncertainty is not being candid and you should look elsewhere. If you are interviewing an investigator regarding a particular matter, there are some questions that should be asked relative to every case. These questions insure there are no misunderstandings and everyone has a full understanding of what is needed to assist the client, be it an attorney or an individual. Those questions include:

- The client's reference number or claim number if applicable?
- The purpose of the investigation?
- The scope of the investigation?
- The elements that need to be proved?
- Determine if there has been any previous investigation.
- Determine deadlines.
- Procedures for contacting client?
- Interviews (should they be recorded, sworn, signed, etc)?
- Other potential parties to the case?
- Reporting requirements (how often, schedule, personal or mail, etc).
- Is this case already budgeted?
- How is it to be billed?
- What rates or costs are involved?

Affiliations and Certification

Private detectives are sometimes affiliated with one of several organizations that pledge to the public that their members are following certain standards and guidelines. Be wary of placing too much emphasis on such affiliations. Most organizations have very little, if any authority to strictly monitor or compel members to conform to certain standards or even expel the investigative agency if it should become formally charged or impoverished due to complaints or legal troubles. Your best bet is to contact the obligatory governmental agencies mentioned above to exclude prospects.

Referrals

Lastly, contact other attorneys and other professionals who have used private investigators and obtain recommendations. Although the majority of companies advertise in the local telephone directory and other publications, there is no substitute for a referral. The vast majority of our new cases come from either an attorney referral or recommendation by a past customer. Contrary to popular belief, ethical standards and reputation are extremely important in this field; and no circumstance can exist that could motivate an honest detective to jeopardize his/her license and standing in the legal community.

Relationship / Employment

Once you have narrowed the field to one or two possibilities, you should begin to address how this individual will be associated with your law firm. Whether you directly employ or subcontract the company, liability should be a major concern. Unfortunately, in the course of any investigation, even a good detective can be falsely accused of committing various acts such as trespass, invasion of privacy, and stalking. Depending on how your relationship with the investigator is structured, there is a consensus that a detective's actions can give rise to liability not only on the part of the detective, but also on the employer. Before commencing with any assignment, always insist on proof of adequate liability and Errors and Omissions insurance coverage. Any arrangement should be memorialized along with any subsequent issues such as the duties, responsibilities, and financial obligations of each party. Remember, when you hire an agency to conduct an investigation, they are doing so on **your behalf** and with **your approval**. For example, when conducting a criminal defense investigation, we often distribute our own business card as well as that of the case attorney because witnesses, victims, and other people will often ask whom we are working for or whom we represent.

Costs and Fees

The costs for an investigator will vary greatly depending on the types of services desired. Rates for surveillance and special investigative work will generally be greater than that for servicing process or conducting research. Costs for conducting research will fluctuate depending on the type and number of databases that are accessed, the cost of informants, and the speed at which the information is needed. As we all know, most clients want the information "yesterday" which causes the investigative agency to prioritize its list of jobs in order to accommodate their clients.

The main reason surveillance and investigative work may be more expensive lies with one word – manpower. When an individual investigator is "in the field," he is considered immobile; that is, he is unable to engage in any other activity other than the task at hand. On the other hand, an investigator who is conducting research may be able to complete several jobs at one location or even while in limbo, such as waiting to testify. Moreover, a detective who possesses a specialized service or has completed expert training may command a higher rate. This is sometimes necessary to cover infrequent and costly expenses such as special insurance, use of rare and sophisticated equipment and even providing expert testimony. Just as your client has come to your law firm seeking

professional advice, do not be disgruntled if an investigator informs you that a certain service will be at a premium, especially if his/her credentials justify it.

Compensation

This can be the most confusing and yet a very important area in any business arrangement. First, you must decide who will be responsible for compensating the investigator. With regard to civil matters, there are two ways to accomplish this, both of which will affect the privilege of attorney-client work product. For instance, if the attorney hires an investigator subsequent to the filing of a divorce action by the opposing party, and absent a showing of necessity and justification by the position, the information compiled by the investigator may be protected. In general, once the attorney-client relationship is established as to a particular matter, the attorney may hire an investigator or obtain statements taken under his direct instruction, which may be deemed a part of what the attorney has done, and thus a part of his/her work product.

If your client elects to hire, or has already hired an investigator, it may be too late to consider invoking the privilege. Many times our companies are hired before an attorney is contacted. It is not uncommon for clients to employ the services of a private detective in order to determine if an attorney will be necessary. Many times, a client is contacting us because they have no idea how to proceed with an issue, and will not require legal services should we report their suspicions are erroneous.

Conclusion

Finding the right private investigator for your law firm can be an exhaustive and frustrating task, which sometimes leaves attorneys and other clients discontented. Due to the fact that quality investigators are rare, you may find yourself searching far and wide for a reliable company. However, we believe that if you follow a few simple guidelines, incorporate some common sense, ask for referrals and trust your instincts, your search, when concluded, will have been worthwhile.

Biographical Information:

Claude Bookout is a 22 year veteran of the Texas Department of Public Safety (1973-1995), Mr. Bookout has served as a narcotics lieutenant & Assistant Commander of the Special Weapons and Tactics Team (SWAT) with the Texas DPS. He is trained in high risk tactical operations involving controlled substances, dangerous drugs, hazardous chemicals, explosive devices, and covert electronic surveillance. Mr. Bookout is also experienced in loss and extortion prevention, crisis management, critical incidents, executive protection, hostage rescue and negotiations, improvised explosive devices, personal protection, electronic countermeasures, surveillance and industrial espionage. He has served as an adjunct professor of Criminal Justice at St. Edward's University in Austin, Texas. He is currently the owner of United International Investigations located in Austin, Texas.

Michael West is a former local police officer, state investigator and federal investigator with over 26 years experience. Michael is a Certified Fraud Examiner and has recently opened his investigative agency in Little Rock, Arkansas. He is an expert in the evaluation of law enforcement agencies, their polices and their investigative practices. His is trained in fraud investigations, computer investigations, counter-terrorism, surveillance, executive and persona protection services, financial crimes and asset searches. He has served as an investigator with the United States Attorney's Office and as a Training Instructor with the National White Collar Crime Center. As well as conducting these type investigations, he has instructed over 2000 investigators, police officers and insurance investigators in a variety of subjects, primarily basic and advanced fraud investigations, disaster fraud investigations, Financial Analysis, Internet Fraud Analysis, computer search & seizure, and computer forensics.

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