Investigative Series:

Resources and Methods to Conduct a Background Check on an Opposing Party

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We operate in a globally competitive business climate, and when conducting a background investigation, the legal community must be well-equipped with the resources and skill-set to conduct a comprehensive background investigation expeditiously and economically. Attorneys and Clients will use these reports to make key decisions whether in connection with a business transaction or in anticipation of litigation.

Develop a Methodical Protocol

To start the investigative process, we must first develop a methodical protocol used as the foundation of any in-depth background investigation. The protocol needs to take account of the process in which to conduct the investigation and the resources needed to locate the information. Similarly, we need to ensure that certain key components are included in the Background Investigative Report such as: a robust profile on the subject's personal, academic and business backgrounds; a meaningful analysis of the subject's investment activities, asset holdings and liabilities; an in-depth examination of the subject's case history including for criminal convictions, regulatory investigations, civil litigation and insolvency proceedings; a methodical review of the press and social media; and a prospect reference list comprising contacts such as former employees, employers, clients and business partners.

Understand the Subject

When initiating a background investigation, we need to first understand the subject's overall profile. If the focus is on an individual, this means determining personal and professional jurisdictional ties and tailoring the investigative process to encompass those areas. For this preliminary sweep, we can obtain a profile report of the individual through such resourceful data providers as Tracers Information Specialists, Merlin Information Services, IRBsearch, ChoicePoint's AutoTrackXP, and Westlaw's PeopleMap. When the investigation focuses on a corporate entity, the jurisdictions where it transacts its business will dictate the direction of the research. Generally, the first place to look is the company website if there is one. Investigators can also gather initial corporate profile reports through various resources such as: Dun & Bradstreet's DNBi for privately held, for-profit companies; GuideStar for non-profit organizations; and EDGAR Online for publicly traded entities. While these may sound like a robust set of resources, the investigative process must continue onto a different set of research tools because as we understand the nuances associated with an investigation, we know that there are certain variables that adversely affect the information we strive to capture. To name a few pitfalls: there is no single resource that can produce all the information that a client seeks on a particular subject; databases, regardless if they are no-fee based or available through a paid-subscription, do not provide pure nationwide coverage; and natural language and Boolean queries are not viable search options through many resources. A partial solution to protect against these pitfalls is to subscribe to one or both of the dominating proprietary databases that have packaged information for the permissible use by the legal community. They are LexisNexis (a division of Reed Elsevier) and Westlaw (a division of West of Thomson Reuters). The benefit to these subscriptions is that we can run natural language and Boolean searches through thousands of databases, thereby capturing more information in one sitting than going to each and every source and running separate time-consuming searches. However, even these proprietary databases have gaps in information, and fortunately for users they are both very transparent on what is not covered through their subscriptions. As a rule, when conducting searches through databases, it is equally important to know what information is not available through your resources, as it is to know the types of information that is available. This will help decipher what alternative resources need further exploration.

Investigate Alternative Resources

Once we have examined the subject, ensured that we have ran the appropriate search strings, and analyzed the resources we have checked to date, we need to identify the alternative resources. Taking some of the key components of a Background Investigative Report as described above, here are some recommendations for locating and examining the other alternative resources. In creating a robust profile on an individual's personal, academic and business backgrounds, the social and professional networking websites are helpful in locating this information. A search engine tool which captures many of them is yoName, and it scours popular sites such as LinkedIn, MySpace, Twitter, Facebook, and Friendster using an email address, username, full name or phone number. We must keep in mind that much of the information that we find through the social and professional networking websites is self-reported. To independently verify an individual's information, with permissible purpose we can search a degree through the National Student Clearinghouse and employment through The Work Number. When using these types of resources, it is imperative to read the fine print of your contractual obligations, as often times the subject's consent is absolutely required to access this information. If the focus is a company, then we can obtain information through the relevant Corporate Commissions, many of which have accessible directly from their website for a nominal (or no) fee, the business registrations forms as executed by the directors and registered agent of the company. If tracking the history of the company, the Internet Archive Wayback Machine, which captures and stores archived web pages is a valuable resource. Licensure portals are also important when examining a subject's professional profile. If we observe that the subject is conducting business as an SEC-registered investment adviser, undertake a search of the known name variations, using the US Securities and Exchange Commission's (SEC) Investment Adviser Public Disclosure site. Similarly, search SEC-registered brokers and broker-dealers through the Financial Industry Regulatory Authority (FINRA). Again, knowing the nuances of these systems is important, as in this instance, if an individual's broker license has lapsed for more than two years, a search through FINRA may yield no record, when in fact during the course of the subject's license history there were numerous disciplinary actions against the broker.

Other Options for Research

In conducting an in-depth examination of the subject's case history, often times we must look beyond the robust databases. Once we have examined our databases and determined which relevant courts are not covered, a favorable resource to turn to is "The Sourcebook to Public Record Information" which is published by BRB Publications. The publication is available in electronic and hard copies, and encompasses thousands of resources, which include federal and state courts and other governmental agencies. The Public Access to Court Electronic Records (more commonly known as PACER) is also a reliable resource used directly by the federal courthouses. Generally, federal court pleadings filed in at least the last five years, are available in a downloadable format through PACER. Beyond the courts, there are disciplinary hearings filed with the agencies that govern a subject's licensure. For example, using the above instance where the subject is governed by the SEC, the SEC publishes on its website litigation releases, administrative or enforcement proceedings, regulatory actions and reports of investigations that otherwise would not appear through a court records search of a proprietary or non-proprietary database.

Overall, the Background Investigative Report is complex in its investigative process, analysis and reporting, and as investigators, paralegals and attorneys, we must continually evolve our models, stay informed and research new resources that will help better serve our clients and achieve their objectives. ◆