

32nd Annual Texas Forum

February 28, 2014

I know I Have Seen that Document

If I Could Only Find it Now!

J. Matthew Cross, Attorney, Smith Osborne Cross

Pam Faris, CFE, MAFF, P S Faris Financial Forensics.Analysis.Consulting

J. Matthew Cross
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Fort Worth, Texas 76107
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Employment

2013 - Present

Smith Osburn Cross, L.L.C.

Partner specializing in insurance, business and personal injury litigation and business risk management strategy

2003 - 2012

Smith & Cross, L.L.P.

Partner specializing in insurance, business and personal injury litigation and business risk management strategy

2000 – 2003

Smith & Maples, L.L.P.

Associate specializing in insurance defense and business litigation

1999 – 2000

Bourland, Smith, Wall & Wenzel, P.C.

Associate specializing in insurance defense and business litigation

1998 – 1999

10th Court of Appeals, Waco, Texas

Briefing Attorney: prepared opinions and managed appellate docket

1994 – 1996

Allergan, Inc.

Technical Specialist – Chemist, April 1994 to May 1996
Analyzed pharmaceutical composition; wrote FDA analytical reports; developed and wrote methods for the instrumental analysis of pharmaceuticals; supervised the production of polymers used to manufacture contact lenses

Education

Baylor University School of Law

Juris Doctor Degree, *cum laude*, August 1998

Concentration: General Civil Litigation

Activities: Baylor Law Review, Senior Notes & Comments Editor
Order of Barristers

Publications: *The Fifth Circuit Provides a Framework for the Reproducible Application of the Complete Preemption Doctrine*, 50 Baylor L. Rev. 205 (1998).



Pamela S. Faris, CFE, MAFF



EDUCATION

Bachelor of Business Administration
Management Information Systems
Texas Wesleyan University
Summa Cum Laude

PROFESSIONAL CREDENTIALS AND TRAINING

Certified Fraud Examiner (CFE)
Master Analyst in Financial Forensics (MAFF)
Collaborative Law Trained Neutral Financial Professional

PROFESSIONAL ORGANIZATIONS

Association of Certified Fraud Examiners
National Association of Certified Valuators and Analysts
Tarrant County Family Law Association (associate member)
Collaborative Law Institute of Texas
Texas Family Law Foundation
Collaborative Lawyers of Arlington & Mansfield
(financial professional)
State Bar of Texas Family Law Section (non-attorney member)

PROFESSIONAL AND CIVIC ACTIVITIES

Texas Academy of Family Law Specialists
Accountant & Web Page Consultant, 2007-
present
Texas Wesleyan University Forensic/Fraud Advisory
Committee
Member, 2013-present
Meals-on-Wheels of Johnson and Ellis Counties
Finance & Information Systems Consultant, 1993-
present
Meals on Wheels Association of America
Compliance Analyst, 2007-2011
CASA of Johnson County
Treasurer, 2004-2006

CONTINUING EDUCATION

Texas State Bar Advanced Family Law Conference
(2004, 2006-2013)
Texas State Bar New Frontiers in Marital Property Law
(2012-2013)
National Association of Certified Valuators and
Analysts Matrimonial Litigation Support Workshop
(2010)
Texas Academy of Family Law Specialists Trial Institute
(2008- 2009, 2011-2012, 2014)
Interdisciplinary Collaborative Law Training (2009)

CONTINUING EDUCATION (continued)

Texas State Bar Marriage Dissolution Institute (2007, 2009-2013)
Collaborative Law Conference (2006, 2009)
ACFE Fraud Conference (2007)
AICPA/ASA National Business Valuation Conference (2005)
AICPA National Conference on Fraud and Litigation Services
(2005)
Various courses in the Detection of Fraud and Characterization

PUBLISHED WORKS/SEMINARS/AWARDS

Marital Property Characterization, Southern Methodist
University, Dedman School of Law, 2012-2013, Guest
Speaker
You and Your Paralegal, State Bar of Texas, Advanced
Family Law Drafting Course, 2008 Co-author and
Panelist with Jim Loveless, Brian Webb, and Kay
Redburn
President's Award, Texas Academy of Family Law
Specialists, 2012

WORK EXPERIENCE

PS Faris LLC (2007 – present)
Rylander, Clay & Opitz, LLP - Partner (2012 – 2013)
Rice, Stewart, Faris and Co. - Partner (2007 – 2008)
Hartman, Leito, & Bolt LLP - Sr. Manager (2004 – 2007)
Bryan C Rice, CPA, PC - Analyst (2003 – 2004)

SIGNIFICANT EXPERIENCE

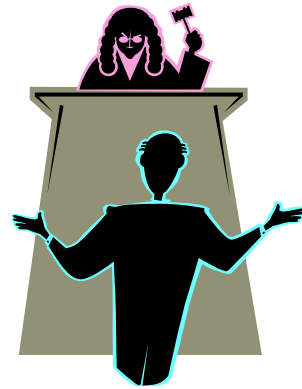
- Assist in mediation and settlement options
- Complex Tracing, Characterization and Forensic Analysis of financial transactions across multi- year periods and multiple accounts in family law, civil, probate and criminal matters
- The collection, organization, analysis, and interpretation of voluminous complex personal and business-related financial information, including innovation in Document Management and Case File Organization
- Presentation of complex financial matters as Trial Exhibits

Fort Worth Academy (1999 – 2003) - Director of
Operations
American Red Cross, Chisholm Trail Chapter (1995 –
1999) - Director of Finance & Information Systems
Bluebonnet Savings Bank, Mortgage Bank Division
(1991-1994) - Accountant/Assistant to the
Comptroller

What We Do

Attorney –

- Find claims
- Find defenses
- Find gaps
- Guide discovery

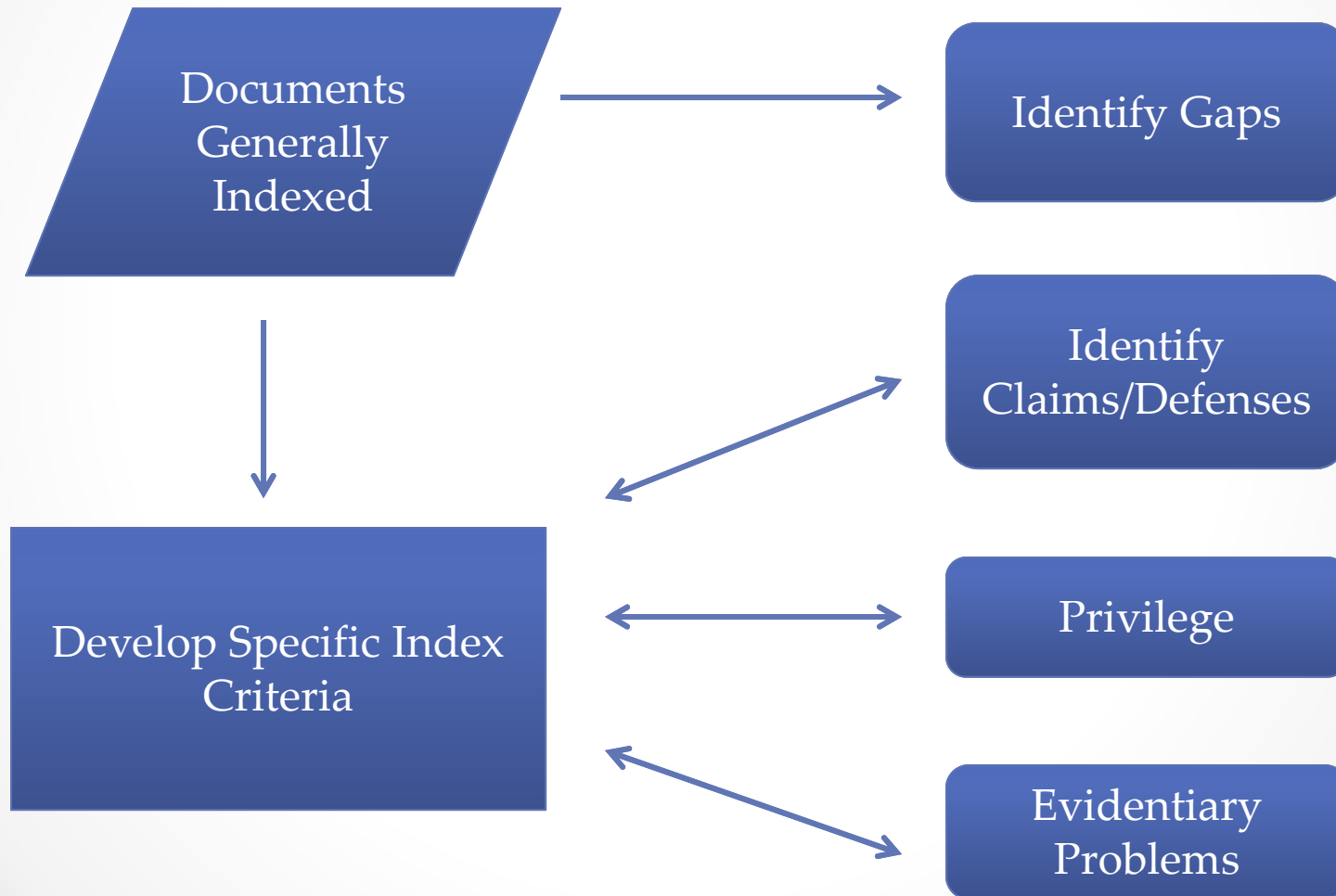


Document Management Professional –

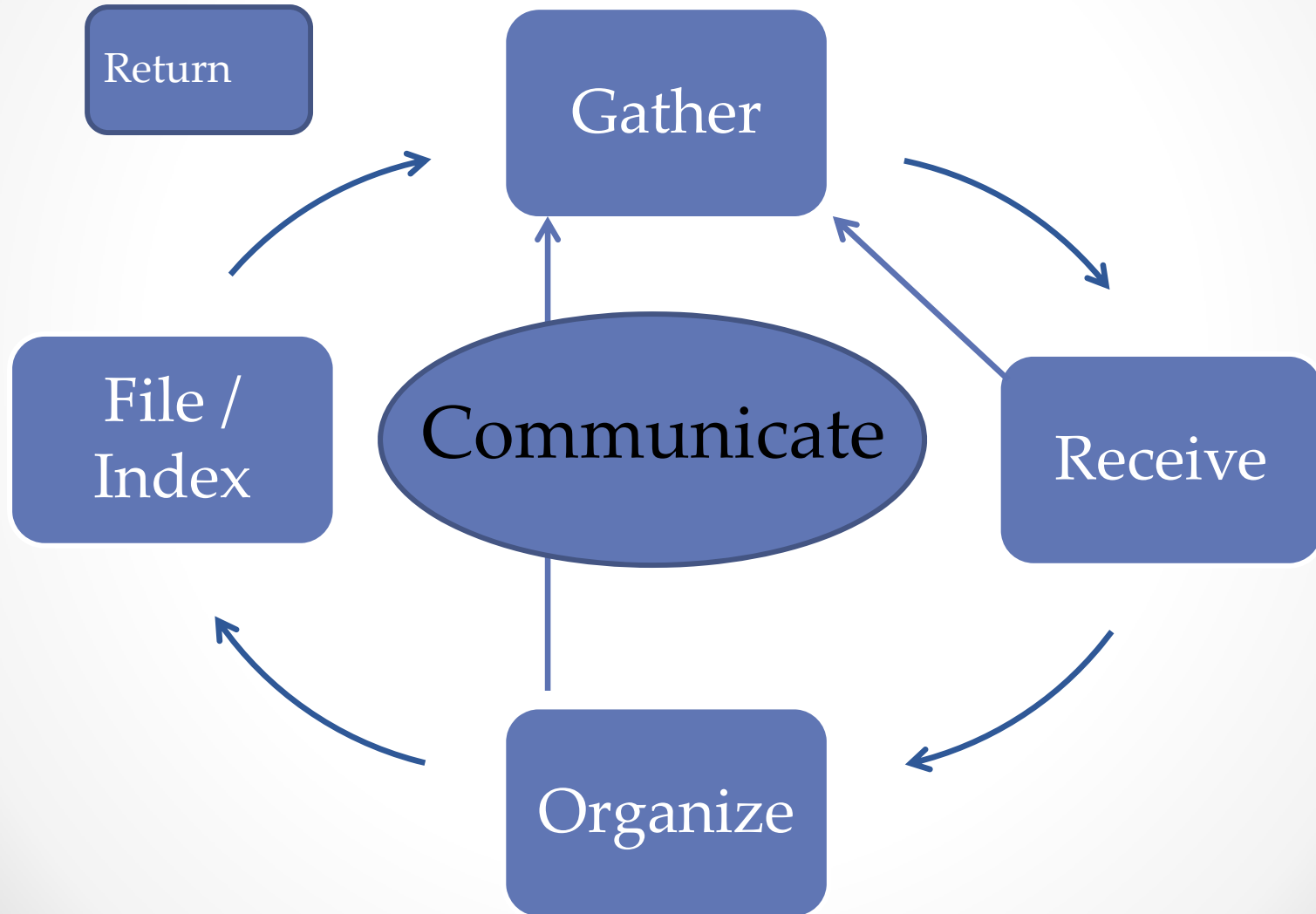


Turn documents
into Information

Attorney



Document Management Professional



Practice Tip #1

Electronic filing system
is no different
than paper file
cabinet system.



Practice Tip #2

System does not need to be the same as other firms' system.

There just needs to be a Firm System!

Advance Planning

- Develop the system outside of battle
- Incorporate system into the firm's culture
 - Self-explanatory conventions
 - Capable of implementation across practice areas
 - Platform independent
 - Site independent
 - Defined workflow
 - Tested collaboration
- Practice

Practice Tip #3

Your firm's system can be as unique as your firm's needs.

Practice Tip #4

Take a picture of documents received.

Practice Tip #5

Complete Document
Receiving Form
and store with originals
until originals are
returned.

Document Receiving Form Example



Document Receiving Form

Date: _____

Received from: _____

What received: _____

Client: _____

Received by: _____

Return to: _____

Circle: Original or Copy

Office use:

Original scan saved to: _____

Production: Yes / No

Bate #: _____

Notes: _____

Returned to: _____ Date returned: _____

Completed Document Receiving Form Example

Date: 2-14-14

Received from: Julia Heart

What received: 1 Purple Binder

Client: Valentine

Received by: KAW

Return to: Julia Heart

Circle Original or Copy

Office use:

Original scan saved to: Valentine. Heart, Original Documents,
2014.02.14

Production: Yes / No

Bate #: VAL 00001 - VAL 00482

Notes: Bank statements

Returned to: Julia Heart Date returned: 2/24/2014

Redundancy

- Maintain redundant version copies
- Maintain redundant site copies
- TEST

Practice Tip #6

Maintain a log of
incoming
documents.

Incoming Document Log Example

Client #	PSF Rec'd Date	How PSF rec'd	Media PSF Received	PSF Rec'd From	What PSF rec'd	Status	Moved to Storage	Bate Numbers	PSF Returned Date	PSF Returned to
1001	2/28/2012	E-mail	Attachment	Opposing Attorney	Production	Entered on Document Index	Yes	OPC 1 - OPC 20	N/A	N/A
1001	9/18/2012	Client Meeting	Flashdrive	Client	Production	Originals Scanned, Only Entered on this log	Yes	PSF 1 - PSF 35	N/A	N/A
1001	10/12/2012	Courier	Paper	Client Attorney	Court Documents	Originals Scanned, Only Entered on this log	Yes	N/A	N/A	N/A
1001	1/3/2013	U.S. Mail	Paper	Opposing Attorney	Production	Entered on Document Index	Yes	OPC 21 - OPC 23	N/A	N/A
1001	1/10/2013	U.S. Mail	DVD	Opposing Attorney	Production	Entered on Document Index	Yes	OPC 24 - OPC 506	N/A	N/A
1001	12/21/2011	Delivered	Paper	Client Attorney	Production	Bate stamped	Yes	PSF 36 - PSF 160	12/27/2012	Client Attorney
2001	2/9/2012	Courier	Flashdrive	Client Attorney	Court Documents	Originals Scanned, Only Entered on this log	Yes	N/A	N/A	N/A
1001	3/27/2012	Courier	Paper	Client Attorney	Production	Bate stamped	Yes	PSF 161 - PSF 500	Not Returned Yet	
2001	4/5/2013	Courier	Paper	Opposing Attorney	Production	Entered on Document Index	Yes	OPC 1 - OPC 1910	N/A	N/A
1001	6/9/2010	Courier	Flashdrive	Client Attorney	Production	Bate stamped	Yes	PSF 501 - PSF 650	Not Returned Yet	
2001	8/19/2012	Client Meeting	Paper	Client	Production	Originals Scanned, Only Entered on this log	Yes	PSF 1 - PSF 1010	Not Returned Yet	
1001	5/27/2012	Courier	Flashdrive	Client Attorney	Court Documents	Originals Scanned, Only Entered on this log	Yes	N/A	N/A	N/A
3001	2/27/2012	Courier	DVD	Opposing Attorney	Production	Entered on Document Index	Yes	OPC 1 - OPC 88	N/A	N/A
2001	9/18/2012	E-mail	Attachment	Client Attorney	Production	Bate stamped	Yes	PSF 1011 - PSF 1500	N/A	N/A

Practice Tip #7

Scan paper
received
exactly
as received.

Practice Tip #8

If kept, store original paper documents in one central, out-of-the-way location.

Do not touch until returned.

Practice Tip #9

File original electronic files separate from other client files.

Original folder on network drive or
Original sub-folder under client name

**Do not touch original
electronic files again.**

Storage Considerations

- NAS
- RAID
- Off-site
 - Immediate use
 - Disaster recovery
- Encryption
- Version Control

Practice Tip #10

Store electronic media device received in one place.

We use a binder & zippered pockets.



Practice Tip #11

Organize paper then scan again for easy bates numbering.

Practice Tip #12

Bate every
document you can.

Macro-knowledge

- Document management creates knowledge.
- Knowing gaps focuses discovery.
- Knowing document availability provides evidence-based case analysis.
- Knowing your production builds shield against attack.
- Knowing opponent's production enables pin-point strike.

Practice Tip #13

Maintain

Document Index

&

Discovery Index

for each case.

Document

Index

Example

Individual / Entity / Trust	Name (Individual / Entity / Trust)	Type	Document	Institution	Acct # / Form #	Date	Styling / Vehicle / Address	Bates Prefix	Start Bates	End Bates
Individual	Bob and Kathy Smith	Tax Information	Income Tax Return		1040	12/31/2014	Bob Smith and Kathy Smith	ABC	1	13
Entity	ABC Company, LP	Tax Information	Income Tax Return		1065	12/31/2014	ABC Company, LP	ABC	14	27
Entity	Box Company, LLC	Tax Information	Income Tax Return		1120	12/31/2014	Bob Company, LLC	ABC	28	38
Entity	ZYX Company, LLC	Tax Information	Income Tax Return		1120S	12/31/2014	ZYX Company, LLC	ABC	39	52
Trust	Bob Smith Trust	Tax Information	Income Tax Return		1041	12/31/2014	Bob Smith Trust	ABC	53	63
Individual	Bob Smith	Tax Information	Income Tax Return		709	12/31/2014	Mom of Bob Smith	ABC	64	68
Individual	Bob Smith	Fees Associated with Case	Redacted Invoice			9/30/2013	Matt Cross, Attorney of Bob Smith	ABC	69	71
Entity	Box Company, LLC	Tax Information	Income Tax Return		1120	12/31/2014	Bob Company, LLC	ABC	72	82
Individual	Bob Smith	Fees Associated with Case	Redacted Invoice			10/31/2013	Matt Cross, Attorney of Bob Smith	ABC	83	86
Individual	Bob Smith	Fees Associated with Case	Curriculum Vitae			Not Dated	Matt Cross, Attorney of Bob Smith	ABC	87	88
Entity	Box Company, LLC	Tax Information	Income Tax Return		1120	12/31/2014	Bob Company, LLC	ABC	103	113
Entity	ABC Company, LP	Bank Account	Statement	Wells Fargo	7890	11/30/2008	Henry Wells ABC Company	ZYX	1	2

Information
 Extracted
 from
 Document
 Index

Documents Produced	Bates #
Bob and Kathy Smith Income Tax Return Form 1040, dated 12/31/2014	ABC 1-13
ABC Company, LP Income Tax Return Form 1065, dated 12/31/2014	ABC 14-27
Box Company, LLC Income Tax Return Form 1120, dated 12/31/2014	ABC 28-38
ZYX Company, LLC Income Tax Return Form 1120S, dated 12/31/2014	ABC 39-52
Bob Smith Trust Income Tax Return Form 1041, dated 12/31/2014	ABC 53-63
Bob Smith Income Tax Return Form 709, dated 12/31/2014	ABC 64-68
Fees Associated with Case, Redacted Invoice, Matt Cross, Attorney of Bob Smith, 09/30/2013	ABC 69-71
Box Company, LLC Income Tax Return Form 1120, dated 12/31/2014	ABC 72-82
Fees Associated with Case, Redacted Invoice, Matt Cross, Attorney of Bob Smith, 10/31/2013	ABC 83-86
Fees Associated with Case, Curriculum Vitae, Matt Cross, Attorney of Bob Smith, Not Dated	ABC 87-88
Fees Associated with Case, Curriculum Vitae, Matt Cross, Attorney of Bob Smith, Not Dated	ABC 89-89
Bob and Kathy Smith Income Tax Return Form 1040, dated 12/31/2014	ABC 90-102
Box Company, LLC Income Tax Return Form 1120, dated 12/31/2014	ABC 103-113
Wells Fargo Bank Account 7890, Styled as Henry Wells ABC Company, 11/30/2008 Statement	ZYX 1-2
Bank of America Bank Account 1234, Styled as Bob or Kathy Smith, 09/20/2012 Statement	ZYX 3-7
Chase Credit Card 2934, Styled as Kathy C. Smith, 03/22/2012 Statement	ZYX 8-9

Discovery

Index

Example

Book	Tab	Document Name	Type	Dated	Requested / Filed / Originated By	Hearing Date (If applicable)	Team E-mail Date
		FILINGS					
		Affidavits					
1	1A	Affidavit of Financial Advisor	Affidavit	12/31/2016	PSF	N/A	2/7/2011
		Rule 11 Agreements					
1	2-A	Rule 11 Agreement Re: Deposition use of Hawaii House	Agreement	12/31/2016	PSF	N/A	2/7/2011
1	2-B	Rule 11 Agreement Re: Experts	Agreement	12/31/2016	PSF	N/A	2/7/2011
1	2-C	Rule 11 Agreement Re: Expert Data	Agreement	12/31/2016	OPC	N/A	5/19/2011
1	2-D	Stipulation regarding the admissibility of records	Agreement	12/31/2016	OPC		5/19/2011
1	2-E	Rule 11 Agreement Re: Photographs	Agreement	12/31/2016	Joint	N/A	5/19/2011
		Certificates					
1	3-A	OPC's Certificate of Written Discovery	Certificate	12/31/2016	OPC	N/A	5/19/2011
1	3-B	Certificate of Written Discovery	Certificate	12/31/2016	OPC	N/A	2/7/2011
1	3-C	Court Reporter Certificate of Deposition of Client	<i>Certificate</i>	12/31/2016	N/A	N/A	2/7/2011
1	3-D	Certificate of Written Discovery	<i>Certificate</i>	12/31/2016	OPC	N/A	2/7/2011
		Letters					
1	4-A	Letter Re: Attorney Vacation Dates	Letter	12/31/2016	PSF	N/A	2/7/2011
1	4-B	Letter Re: Opposing Attorney Vacation Dates	Letter	12/31/2016	OPC	N/A	2/7/2011
		Motions					
1	5-A	Original Petition for Divorce	Motion	12/31/2016	OPC		2/7/2011
1	5-B	Original Answer	Motion	12/31/2016	PSF		2/7/2011
1	5-C	Counter Petition for Divorce	Motion	12/31/2016	PSF		2/7/2011
1	5-D	Motion for Emergency Temporary Restraining Order and Temporary Order	Motion	12/31/2016	PSF		2/7/2011
		Subpoenas					
2	6-A	Subpoena: Client	Subpoena	12/31/2016	OPC	N/A	5/19/2011
2	6-B	Subpoena for Opposing	Subpoena	12/31/2016	PSF	N/A	5/19/2011
2	6-C	Subpoena: Financial Planner	Subpoena	12/31/2016	PSF	N/A	5/19/2011
		Responses					
2	7~A	Response to Motion for Emergency Temporary Orders	Response	12/31/2016	OPC	N/A	2/7/2011
2	7~B	Response to OPC Motion for Ruling on Personal Property	Response	12/31/2016	PSF	N/A	2/7/2011
2	7~C	Response to Motion for Discovery Control Plan 3	Response	12/31/2016	OPC	N/A	2/7/2011
		Objections					
2	8-A	Non-Party Objections & Responses to Subpoena DT	Objections	12/31/2016	N/A	N/A	2/7/2011
2	8-B	Objections and Response to Motion for Mediation	Objections	12/31/2016	PSF	3/14/2011	3/17/2011

Practice Tip #14

Use “Key” Fields
to help
identify
documents.

Example of Possible Key Fields

File Name
Individual/Entity/Trust
Name
Type
Document
Institution
Acct #/Form #
Date
Styling/Vehicle/Address
Bate Prefix
Start Bate
End Bate
Duplicate (Yes/No)
Document Note (not required)
Produced Date

Practice Tip #15

Limit terms used
in Field.

Field:
“Type”

Example
of
Possible
Limited
Terms

Bank Account
Closely Held Business Interest
Corporate Documents
Correspondence
Credit Card
Fees Associated with Case
Investment Account
Insurance
Legal Documents
Real Property
Tax Information
Vehicle

Term Use Focuses Case Analysis

- Guidance of Jury Charge
- Guidance of claim/defense elements

Practice Tip #16

COMMUNICATE

COMMUNICATE

COMMUNICATE

Example:

Notify members of team when new documents are available for review.

Document Production

- Prompt Production
 - Conveys power
 - Conveys client cooperation
 - Conveys client organization
 - Provides persuasive base to defend discovery challenges
 - Provides persuasive base to support discovery and dispositive motions
- Delayed Production
 - Risks sanctions
 - Conveys client disinterest or stonewall
 - Conveys dis-organization
 - Increases risk of discovery motions

Practice Tip #17

Maintain a log of documents produced.

Include:

- date sent
- bates numbers
- who sent to
- method of production.

Documents Produced Log Example

Date Sent	Sent to	Method of Production	Media Sent	Bate Prefix	Start Bate	End Bate
1/1/2016	Client Attorney	Courier	Paper	PSF	1	1607
1/15/2016	Client Attorney	Courier	Flash Drive	PSF	1608	1621
3/5/2016	Client Attorney	Courier	DVD	PSF	1622	2358
4/19/2016	Client Attorney	PSF Delivery	Paper	PSF	2359	4583

Practice Tip #18

Take a picture of documents sent out.

- originals returned
- documents produced

Access the Documents



PS FARIS
Financial | Forensics
Analysis
Consulting
psfaris.com

They claim
we haven't
produced
any
documents!

Bate Prefix	Produced Date	Total	
PSF	4/30/2010	5,369	
	5/4/2010	2,080	
	6/15/2010	1,567	
	8/12/2010	4,272	
	12/21/2010	1,705	
	11/10/2010	3	
	11/11/2010	2	
	7/2/2010	6,078	
	8/25/2010	2,515	
	9/22/2010	348	
	11/9/2010	483	
	1/13/2011	11,651	
	PSF Total		36,073
SOC	12/21/2010	12	
	8/25/2010	86	
	9/22/2010	6	
	11/9/2010	6	
	1/13/2011	6	
SOC Total		116	0.32%
Grand Total		36,189	100.00%

More Information

Pre Bate	Start Bate	End Bate	SOC Request	PSF Response	Dated	Pages
PSF	1	4174	1st RFP	1st Response	4/12/2010	4,174
PSF	4175	4699	1st RFP	1st Supplemental	6/4/2010	525
PSF	4700	4727	1st RFD	1st RFD	7/15/2010	28
PSF	4728	6663	1st RFP	2nd Supplemental	8/6/2010	1,936
PSF	6664	6850	1st RFP	3rd Supplemental	9/7/2010	187
PSF	6851	6871	1st RFD	1st Supplemental	9/7/2010	21
PSF	6872	7210	1st RFP	4th Supplemental	10/1/2010	339
PSF	7211	7249	2nd RFP	1st Response	9/8/2010	39
PSF	7250	7258	3rd RFP	1st Response	9/13/2010	9
PSF	7259	7388	1st RFP	5th Supplemental	10/1/2010	130
PSF	7389	7421	1st RFP	6th Supplemental	10/19/2010	33
PSF	7422	7774	1st RFP	7th Supplemental	10/22/2010	353
PSF	7775	7933	1st RFP	8th Supplemental	10/22/2010	159
PSF	7934	17950	1st RFD	2nd Supplemental	10/27/2010	10,017
PSF	17951	36073	1st RFP	9th Supplemental	10/27/2010	18,123
				Total		36,073

Litigation Planning

- Dollars spent outside of litigation pay dividends inside litigation
- Develop client document management systems
- Develop client document retention policy
- Know what you have
- Know where you have it
- Know the format

Questions

