CHAPTER ONE - FORENSIC ACCOUNTING

A. FINANCIAL TRACKING DOCUMENTS

There are several common financial tracking documents that an accountant should obtain when seeking to ascertain whether a party's assets and/or income are being distorted or are being intentionally hidden.

Obtaining large or unusual checks can provide useful information to a forensic examiner. An examination of the back of checks negotiated by the suspect party or subject business may show unknown bank accounts being used by the party or business. Payroll checks, for instance, may show a spouse's money being funneled through an employee. In addition, hidden liabilities and assets may be found by obtaining a credit report. A credit report which contains joint information can be obtained by either spouse; however, bear in mind that it is illegal to obtain or use an unauthorized credit report. Obtaining loan and leasing applications, prior divorce decrees, tax returns, and W-2s for the party oftentimes also provides useful information. With W-2s, specifically, examine each of the boxes as they contain important information regarding pension, deferred compensation, dependent care benefits, etc. From these documents, you should always attempt to determine whether the alleged income matches the lifestyle of the parties.

There are several business documents which can prove valuable in tracking assets or determining income. Comparative statements for as many years as possible can alert you to nonrecurring, unusual or extraordinary financial occurrences. The general accounts receivable and accounts payable ledgers of the business should be reviewed by your client for entries that appear out of the ordinary. Particular attention should be paid to the cost of goods sold, repairs,

outside services and expenses of the business. In addition, be sure to obtain any buy/sell agreements adopted by the business. Finally, attempt to determine whether personal expenses of the party are being paid by the business.

Any business documents obtained should be reviewed to determine whether the business is utilizing an accrual or cash basis of accounting since that may significantly alter income. For example, a business using the accrual basis of accounting can manipulate both its income and assets by simply making a journal entry that adjusts its accounts receivable. Other adjustments to income or irregularities hidden in the journal entries may also be discovered.

B. E-TRACKING

E-tracking has become an important device for financial tracking purposes to ascertain whether a party's assets and/or income are being distorted or are being intentionally hidden. Unlike paper documentation, electronic documents are not easily deleted or destroyed, may contain valuable information such as a creation date, what computer or person created the document, and may be easier to navigate using search functions in large volumes of documents.

Statutes

A. The Wiretap Act - 18 U.S.C. §§2510-2521

The Wiretap Act, 18 U.S.C. §§2510-2521, states in relevant part the following:

It is unlawful for any person to:

intentionally intercept any wire, oral, or electronic communication;

intentionally use any electronic, mechanical, or other device to intercept any oral communication;

intentionally disclose to another person the information contained in any wire, oral, or electronic communication when the person knows or has reason to know that the information

was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

intentionally use the information contained in any wire, oral, or electronic communication when the person knows or has reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

In other words, acquisition of a communication, such as email on a computer, during the transmission is a violation of the Wiretap Act. A defense to Wiretap Act violations is that a person had prior consent to such interception. 18 U.S.C. §2511(2)(d). Consent may be express or implied and if a party consents to the interception of a portion of a communication, a court must inquire as to whether the interception exceeds the scope of the consent. *In re Pharmatrak, Inc. Privacy Litig.* 329 F.3d 9, 23 (1st Cir. 2003).

Sanctions for violations of the Act include fines, imprisonment of not more than five years, or both. 18 U.S.C. §2511(4). An individual also may obtain relief in a civil action and obtain preliminary and other equitable or declaratory relief, damages (including punitive damages), and reasonable attorney's fees and court costs. 18 U.S.C. §2520(a)-(c).

The Circuits were previously split on whether there was an interspousal exception to the Wiretap Act. Today no Circuit recognizes an interspousal exception to the Wiretap Act therefore a spouse may be liable to the other spouse if they violate the Act. *Glazner v. Glazner*, 347 F.2d 1212, 1216 (11th Cir. 2003). There is an exemption called the extension phone exemption. That exemption allows for interception of any telephone instrument, equipment or facility "furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of business and being used by the subscriber or user in the ordinary course of business." 18 U.S.C. §2510(5).

The issue then becomes whether evidence obtained from a violation of the Wiretap Act is admissible in court. The answer is no. The Wiretap Act expressly prohibits the use of any wire or oral communication intercepted in violation of the Act from being admitted in any trial, hearing or other court proceeding. 18 U.S.C. §2515.

B. The Stored Communications Act - 18 U.S.C. §§2701-2711

The Stored Communications Act, 18 U.S.C. §§2701-2711, in relevant part makes it unlawful to:

1) intentionally access without authorization a facility through which an electronic communication service is provided, or

2) intentionally exceed an authorization to access that facility, and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system.

Just like the Wiretap Act, consent is a defense to Stored Communications Act violations. *In re Pharmatrak, Inc. Privacy Litig.* 329 F.3d 9, 16-17 (1st Cir. 2003). Sanctions include fines, imprisonment, or both. 18 U.S.C. §2701(c). In contrast to the Wiretap Act, evidence obtained in violation of the Store Communications Act may be admitted in any trial, hearing or other court proceeding unless the person provides an electronic communication service. 18 U.S.C. §2702(a). *Wesley College v. Pitts*, 974 F.Supp. 375, 389 (D. Del. 1997).

C. Federal Computer Fraud and Abuse Act – 18 U.S.C. §1030

The Federal Computer Fraud and Abuse Act (CFAA) prohibits intentional unauthorized access or access exceeding authorization of a protected computer and the protected computer is damaged (at least $5,000 of damage to one or more persons during a 1 year period). 18 U.S.C.

§1030(a). A protected computer is defined as computers "exclusively for the use of a financial institution or the United States Government" or a computer "used in or affecting interstate or foreign commerce or communication…" 18 U.S.C. §1030(e)(2).

A plaintiff has the burden of proving damage *or* loss in order to have a cause of action. *Bloomington-Normal Seating Co., Inc. v. Albritton,* 2009 U.S. Dist. LEXIS 40302 (C.D. Ill. May 12, 2009). The term "damage" means "any impairment to the integrity of data, a program, a system, or information." 18 U.S.C. §1030(e)(8). Merely copying data from a computer system does not satisfy the damage element. The court in *Cassetica Software Inc.* reasoned that the CFAA merely copying data does not necessarily in itself cause damage to the computer system which is required by the Act. *Cassetica Software, Inc. v. Computer Scis. Corp*., 2009 U.S. Dist. LEXIS 51589, 8-9 (N.D. Ill. 2009).

The term "loss" means any reasonable cost in responding to unauthorized access, damage assessment, and restoring data, programs, systems, or information to its original state. 18 U.S.C. §1030(e)(11). Loss also includes lost profits or costs associated with interruption of service or other consequential damages. *Id*. In other words, loss must relate to costs of investigating and repairing a computer system and not lost revenue that is cause by copying confidential information. *Cassetica Software, Inc. v. Computer Scis. Corp*., 2009 U.S. Dist. LEXIS 51589, 8-9 (N.D. Ill. 2009). *See also SKF USA, Inc. v. Bierkness*, 2009 U.S. Dist. LEXIS 34781 (N.D. Illl. 2009).

D. Illinois Eavesdropping Act – 720 ILCS 5/14-1 et. seq.

The Illinois Eavesdropping Act, 720 ILCS 5/14/2 states in relevant part that a person commits eavesdropping in the following three situations:

> 1) A person knowingly and intentionally uses an eavesdropping device for the purpose of hearing or recording all or any part of any conversation or intercepts,

> retains, or transcribes electronic communication UNLESS he does so with the consent of all parties to such conversation or electronic communication; or
>
> 2) A person manufactures, assembles, distributes, or possesses any electronic, mechanical, eavesdropping, or other device knowing that or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious hearing or recording of oral conversations or the interception, retention, or transcription of electronic communications and the intended or actual use of the device is contrary to the provisions of this Article; or
>
> 3) A person uses or divulges any information which he knows or reasonably should know was obtained through the use of an eavesdropping device.

Just like the Federal Wiretap Act, evidence obtained in violation of the Illinois Eavesdropping Act is inadmissible at trial unless the affirmative defense of consent applies. "The element of consent under the eavesdropping statute 'may be satisfied without a showing of the type of informed consent necessary for a defendant to waive a fourth amendment right.'" *People v. Ceja* 204 Ill.2d 332, 789 N.E. 2d 1228 (Ill. 2003). Consent may be express or implied. *Id.* Implied consent is consent in fact, not constructive consent and is inferred from the surrounding circumstances. *Id.* Factors considered include language or acts that shows a person knows that they are making otherwise private information available to others. *Id.*

Application to the Family Law Setting

For discovery purposes, the parties are entitled to full disclosure regarding any matter relevant to the subject matter involved in a pending action. Ill. Sup. Ct. Rule 201(b). This means that even if a spouse takes a computer of the other spouse, and that computer was used for both personal and business purposes, there may not be a violation of any statute. *Byrne v. Byrne*, 650 N.Y.S.2d 499, 500. In *Byrne*, the court analogized a computer's memory to a filing cabinet containing financial documents located in the marital residence which is "obviously subject to discovery." *Id.* at 500. *See also Etzion v. Etzion*, 796 N.Y.S.2d 844, 2005 NY Slip Op 25115 (2005).

The issue of whether a GAL may consider information obtained in violation of electronic communication statutes in order to make a determination of the best interests of the child has been in dispute. In Illinois, the Second District in *In re Marriage of Karonis,* the GAL listened to tapes that were arguably obtained through violations of the eavesdropping statute. *In re Marriage of Karonis,* 296 Ill.App.3d 86, 693 N.E.2d 1282 (2nd Dist. 1998). The court determined that a GAL could consider otherwise inadmissible evidence in their determination of a child's best interests because compelling reasons of public policy dictated that the GAL "perform duties essential to the health and welfare of the child." *In re Marriage of Karonis,* 296 Ill.App.3d 86, 92, 693 N.E.2d 1282, 1286 (2nd Dist. 1998). The *Karonis* court relied on *Scheib v. Grant* , 22 F.3d 149, 22 F.3d 149 (7th Cir. 1994).

Scheib v. Grant followed the Tenth and Second Circuit cases *Newcomb v. Ingle,* 944 F.2d 1534 (10th Cir. 1991) and *Anonymous v. Anonymous,* 558 F.2d 677 (2nd Cir. 1977). *Newcomb* and *Anonymous* took a broad reading of the phone exemption under the Wiretap Act where the "ordinary course of business" requirement extended to a person's home. *Newcomb v. Ingle,* 944 F.2d 1534, 1535 (10th Cir. 1991), *Anonymous v. Anonymous,* 558 F.2d 677, 678-79 (2nd Cir. 1977). Therefore, tape recording phone conversations of a child living in the home falls under the exemption in 18 U.S.C. §2510(5)(a)(i). The court in *Scheib* reasoned that the terms "subscriber" and "user" stated in the exemption must be read in conjunction with "ordinary course of business" and that a subscriber's conduct or business in raising their children falls within the exemption. *Scheib v. Grant,* 22 F.3d 149, 154 (7th Cir. 1994). The *Sheib* court held that because the defendant did not violate any statutes in the Federal Communications Privacy Act, there was no unlawful disclosure of the evidence to his attorney's and the GAL. *Id*. at 155. The court upheld the district court's finding that the attorney's and the GAL had absolute

immunity from damages under the Illinois Eavesdropping statute for "using or divulging the tape recorded conversations in a manner intimately associated" with the court proceeding and for not disclosing the recorded conversations beyond those intimately involved with the litigation. *Id* at 156-57.

Methods of Obtaining Information

- Keystroke/Spector Program (Spyware)
    - Records every keystroke and when it is made, received and sent emails, instant messages, chat room conversations, website browsing history, and screen captures without the user's knowledge.
        - Wife secretly installed spyware program on marital computer that intercepted and recorded husband's emails and instant messages by taking snapshots of what was on the computer screen and recorded websites visited. The court precluded the introduction of the evidence in the divorce proceeding because it was obtained in violation Florida's Security of Communications Act. *O'Brien v. O'Brien*, 899 So.2d 1133, 1134 (Fla. App. 5th Dist. 2005).
- Trojan Horse (Malware)
    - Virus allowing a hacker to access another person's hard drive.
        - No violation of the Wiretap Act when hacker used Trojan horse virus to copy information stored on a hard drive which then transferred the information to the Hacker's computer because no "real time interception" of information during transmission. *U.S. v. Steiger*, 318 F.3d 1039, 1049 (11th Cir. 2003).
- GPS Tracker
    - Small device that records data such as location within 8 feet, records speed every second, software can animate a car driving on a digital street map and generate reports which can be downloaded onto a computer where reports can be generated.
        - 720 ILCS 5/12-7.3: Crime of stalking requires putting someone under surveillance. The definition of surveillance includes "placing a tracking device on the person or the person's property." 720 ILCS 5/12-7.3(d).

C. FINANCIAL REPORTING DISTORTIONS

When reviewing financial statements, always make sure the financial statements correlate with the underlying books and records of the business. In addition, there are certain general financial abuses you should be looking for such as:

- The duplicate processing of income or expenses;
- The recording and reporting of transactions before they occur;
- The shifting of current income or expenses to a later or earlier period;
- Whether profits or losses are the results of non-recurring transactions;
- Whether income is being assigned to business partners, family members and/or close, personal friends; and
- Whether there are income timing differences due to accrual vs. cash basis of accounting.

There are also some common financial abuses that will not be recorded in the financial statements, underlying books and/or records of the business. These include:

- Unrecorded promises and commitments;
- Unrecorded or pending legal liabilities;
- Unrecorded sales, receipts and disbursements in separate, unrecorded accounts;
- Inadequate or incomplete disclosures;
- Use of funds for illegal payments and transfers;
- Hidden interests in joint ventures;
- Transfers at other than fair value; and
- Insider trading.

In addition, the following specific areas should be examined to protect your client's rights:

Specific Income Distortions

1. Cash vs. Accrual

    a. Accounts receivables

        (1) Watch for unreasonable write-off of accounts receivable as uncollectible.

        (2) View aged accounts receivable

(3) Are orders booked as accounts receivables when an order is placed or shipped

(4) Double dipping issue - asset or next months income

2. Compensation

a. Compensation for services

(1) Salary or wages

(a) Overtime

(b) Holiday pay

(c) Vacation pay

(d) Sick days

(2) Tips

(a) 10% of gross receipts; or

(b) IRS negotiates with restaurant to set the percentage based on local customs - ask for signed agreement with IRS

(3) Bonus

(4) Commission

(5) Severance pay

(6) Golden parachutes

(7) Cash payments

(a) Tips

(b) Side jobs

b. Cash register type business

c. Petty cash

d. Car and entertainment reimbursements

e. Paid with property

(1) Organizer of limited partnership receives partnership interest

(2) Give car title

f. Barter

(1) Contractors

(2) Barter clubs

g. Incentive stock options

(1) Salesmen and executives

(2) Not taxed when received

(3) Tax postponed until stock disposed of

h. Deferred compensation

(1) Is the W-2 box checked?

(2) Executive agreements

(3) Attorneys may arrange for their fee to be structured as part of the settlement

i. Employee benefits

(1) Accident and health plans

(2) Medical reimbursement plan

(3) Meals and lodging if:

(a) On employer premises

(b) Convenience of employer

(c) Employee must accept as condition of employment

(4) Dependent Care Plan - W-2 box checked?

(5) Commuter passes

(6) Parking

(7) Tuition reimbursement

(8) Moving expense reimbursement

(9) VITA program

(10) Professor family tuition waiver

(11) Employee achievement awards

(12) Employee discounts

(13) Group term life insurance a

(14) Cafeteria plans

(a) Choice between cash and tax-free benefits

(b) Flexible spending accounts

i) Group legal services

ii) Group life insurance

iii) Disability insurance

iv) Accident and health benefits

v) Dependent care

vi) Commuter passes

(15) Pensions

(a) Is the W-2 box checked?

(b) Employer plans

i) No FICA

ii) Profit sharing

iii) Money purchase

iv) Defined benefit: state or federal plans; union plans

(c) Employee plans

i) Employee controls level

ii) Watch for employer matching

iii) 401(k)

iv) 403(b)

3. Interest income

a. EE Savings Bonds

(1) Tax deferred until bonds mature or redeemed

(2) Not reported on tax return

(3) Often part of contents of safe deposit box

b. Federal obligations: not subject to state tax

c. State and local bonds

(1) Not subject to federal tax

(2) Add back to divorce net income

4. Dividend income

a. Constructive dividend

(1) Paying shareholders personal expenses:

(a) Home or cellular phone

(b) Company car used for personal use

(c) Personal meals & entertainment

(d) Reimbursing commuting expenses

(e) Withdrawals above salary without obligation of repayment

b. Bargain sale to shareholder

c. Do yearly comparative analysis of dividend: look for gifts, unreported sale of securities

5. Tax-free exchanges: spouse can arrange a non-simultaneous exchange of like-kind property around the judgment date

6. Rents

a. Examine leases

(1) Back loaded rental leases may give free year of rent up front for higher payments at the end of the lease

(2) Straddle income around divorce

b. Indirect payments of rent affect value of property

(1) Taxes

(2) Mortgage

(3) Tenant's improvements stipulated in lease

(4) Tenant perform services for lower rent

c. Relatives not paying fair market value

d. Security deposits in escrow

7. Pension income

a. Annuities not reported on tax return when purchased

b. Lump-sum distributions: watch for roll over to IRA or another qualified plan

8. Personal injury damages are usually tax-free, but the interest on tax-free amount still taxable will be reported on tax return so look for a sudden increase in interest

9. Illegal or unreported income: does cash flow match lifestyle?

10. Depreciating assets: examine prior year depreciation schedules for assets in the business

11. Other non-reported income

a. Life insurance proceeds, withdrawals and loans

b. Gifts and bequests

c. Scholarships and fellowships

d. Parsonage housing allowance

12. Schedules M-1 and M-2 on Form 1120, page 4 provide book vs. tax income (i.e., tax exempt interest, key man insurance, etc.)

a. Schedule M-1

(1) Add back book provision for federal income tax to net income per book to equal taxable income on Form 1120

(2) Add back capital losses in excess of capital gains

(3) Adjust for income subject to tax though not recorded on books

(4) Adjust for expenses reported on books though not deductible

(a) Adjustment for meals and entertainment (50% differential)

(b) Key person life insurance premiums

(c) Depreciation

(d) Contributions carryover

(e) Foreign tax credit

(5) Adjust for income recorded on books though not included on tax return

(a) Hidden income

i) Tax-exempt interest

ii) Key person life insurance proceeds

(6) Adjust for deductions not charged against book income

(a) Depreciation (Straight Line vs. Accelerated)

(b) Hidden tax benefits

i) Contribution carryover

ii) Capital loss carryover

b. Schedule M-2 -- Unappropriated retained earnings

(1) Opening and end of year balance figured on Schedule M-2 and entered on Schedule l

(2) Hidden income -- look for distributions and other columns

(a) Pending lawsuits

(b) Declines in inventory values

(c) Sinking fund for capital expenses

(d) Purchase of treasury stock

(e) Appropriations with bond holders or creditors

(f) Prior period adjustments for change in accounting principles

13. Examine all partnership and S corporation K-1s for amount distributed to partner which may not be the same amount as that reported as income

Expenses, Liabilities and Tax Credits That May Identify Undisclosed Assets

1. Retirement, Keogh and SEP contributions can be found in adjusted gross income section on Form 1040 and face of business tax returns. See if personal efforts are going into pension investment activities. Is compensation being diverted to pension? This is particularly important if it is a non-marital asset.

2. State tax deduction on IRS Form 1040 - Schedule A may identify undisclosed income in another state

3. Real estate tax deduction on IRS Form 1040 - Schedule A may identify undisclosed real estate

4. Investment interest expenses on IRS Form 1040 - Schedule A may disclose investment assets

5. Inventory in cost of good sold often approximated

6. General business credit on IRS Form 3800 may identify undisclosed assets

7. Foreign tax credit on IRS Form 1116 may identify undisclosed foreign assets

Specific Income/Expense Distortions

1. Shipping goods before a sale is finalized
2. Reporting revenue when important uncertainties exist
3. Recording revenue when future services are still due
4. Recording income on the exchange of similar assets
5. Recording funds from suppliers as revenue
6. Using bogus estimates on interim financial reports
7. Boosting profits by selling undervalued assets
8. Boosting profits by retiring debt
9. Failing to segregate unusual and non-recurring gains or losses
10. Improperly capitalizing costs
11. Depreciating or amortizing costs too slowly
12. Failing to write off worthless assets
13. Reporting revenue rather than a liability when cash is received
14. Failing to accrue expected or contingent liabilities
15. Failing to disclose commitment and contingencies
16. Engaging in transactions to keep debt off the books
17. Accelerating discretionary expenses into the current period
18. Writing off depreciation or amortization for future years
19. Do inventory or supply purchases make sense in light of revenue reported?

In closing, parties can effectively deal with the most simple and the most complex issues in divorce, by utilizing experts in the underlying fields associated with the mediation topics. In

divorces requiring the use of accountants, the accountant should determine the possible reasons why income from a business may be distorted. The accountant can then request the documents that may expose those distortions. Upon receipt of the documents, the accountant should identify specific deviations from the business income as presented by the opposing party's actual income. If the deviations are then presented in the divorce proceeding in an organized and understandable manner, you will often be able to persuade your opponent to adopt your client's theory.

D. HOW TO COMMUNICATE THE RESULTS OF A FORENSIC ANALYSIS

In the context of a financial investigation, the accountant can help the parties in numerous ways, such as:

- Deciding how to gather all the pertinent information;
- Understanding the scope of the property to be divided;
- Discussing the available choices for dividing the assets and the consequences of such choices;
- Ultimately helping the parties draft an agreement to present to their attorneys for review; and
- Can provide a neutral third party point of view.

One of the methods often used by attorneys to help parties resolve an impasse is to find an impartial way to generate a solution. On important issues such as valuation, taxes, tracing questions, characterization issues or related problems, an impartial solution may mean finding a professional whom or a method that both parties will trust or at least consider. In litigation, parties resolve (and sometimes create) such differences by using various kinds of experts. If the parties can agree on a single expert or a single method or approach to addressing the issue, they can lessen the controversy and also lessen the cost of finding the necessary information.

When one party in divorce believes that the other party is not providing full disclosure of information or is in some way distorting the information provided, it may be prudent for that party to retain a forensic accountant. Businesses often manipulate revenues, expenses, assets and liabilities on financial statements to conform to a specific purpose. Often, the reason(s) a business has for distorting income are legitimate and legal. Some of the common reasons why a business owner might understate a company's assets and revenues are:

- The owner intends to get divorced;
- To pay less federal and state taxes;
- To pay less rent when rent is based on revenue earned;
- To make future earnings look better when management is newly appointed; and/or
- To negotiate legal settlements.

Some common reasons why a business owner might overstate a company's financial strength and performance are:

- To obtain additional credit from lenders;
- To make the company more attractive to investors;
- To earn greater management bonuses and sales commissions;
- To establish a stronger track record of earnings;
- To lower costs of loans;
- To avoid filing bankruptcy;
- To induce prospective buyers; and/or
- To list the company on a stock exchange.

Commonly, business decisions relating to the operation of a business and reporting of income are decided long before a divorce is contemplated or without regard to a pending

divorce. Judges can consider the reasons why a party's income and assets as reported by a business should not be the same as the party's income and assets within the context of the divorce proceeding. Often such reasons provide a strong argument when attempting to eventually persuade a court to equitably divide assets and set a spouse's income level in a manner compatible with the accountant's theory of the case rather than as indicated by the records of the business.

In the event that financial issues are litigated, the courtroom presentation of evidence can be a deciding factor in a judge's decision. As such, it is imperative to remember the Boy Scout Motto – "Be Prepared". The attorney should spend adequate time preparing you for your testimony. It is important to sequence your testimony so it is easy for the judge to follow. This will also help lay the proper foundation for your testimony and paint a picture for the court. At all times you must remember that Judges are normally not financially sophisticated. Therefore, explain as much as possible in layman's terms and use demonstrative evidence to highlight the facts you relied on to develop your opinion.

There are several courtroom mannerisms that can affect the Judge's assessment of your credibility. First, be prepared, second, be confident, third, be professional, fourth, do not lose your composure, fifth, do not evade the examiners questions and finally, and most importantly, never lie. The attorney you work for will advise you to LISTEN to the questions asked of you, THINK about the answer to the question prior to answering it, and Answer ONLY the question asked of you and then STOP TALKING. In addition, if you do not know the answer to the question or do not understand the question asked of you, do not guess at the answer. Ask your examiner to repeat the question, to rephrase the question, or simply respond with the truth, "I do not know and I do not want to venture a guess."