



RECENT PUBLICATIONS

Jeffrey Gibraltar, CPA/ABV/CFF, CFE of Klein Liebman & Gresen, LLC has written an article titled "Documents Required for Financial Asset Tracing." This article was published in the June 2012 eNewsletter of the American Bar Association Section of Family Law.

To view a copy of this article, please [CLICK HERE](#)

MATRIMONIAL CASE OF INTEREST

PD v. LD (Supreme Court, Westchester County) - The plaintiff-husband, during the marriage, invested \$25,000 of marital funds to become a 50% owner of a hair salon. A Court appointed neutral determined that the husband's 50% interest of the business was \$106,000 and wife sought equitable division of this asset. Beyond the initial monetary contribution of marital funds, no evidence was presented by wife to deem that she had any involvement in the subsequent appreciated value of the business interest. The wife and husband both shared in the responsibility of taking care of the family. As such, the court awarded 50% of the initial investment to the wife (\$12,500) and of the remaining \$81,000 in appreciation of value; the court awards the defendant 30% of the appreciation.

[LINK TO DECISION](#)

ENHANCED EARNINGS CASE OF INTEREST

Mojdeh v. Jamshid (Supreme Court, Kings County) - A court appointed neutral determined value of the wife's internal medicine license at \$361,000 and its value was accepted by both parties. The husband's contention that he is entitled to an equitable distribution of this asset resulted in an award of 5% of the enhanced earnings value totaling \$18,050. This was substantiated by the fact that the defendant-husband made minimal financial contributions to the marriage and failed to provide evidence of the contrary. The court determined that the plaintiff completed medical school in India prior to meeting the defendant and passed the U.S. Medical Licensing Exam based on her own ability and perseverance. Additionally, the wife's completion of a gastroenterology fellowship, although commenced during the marriage, was completed post commencement of the action and the EEC valuation did not include such a calculation of this enhanced education. The husband is denied any distribution of this asset.

[LINK TO DECISION](#)

ESTATE & GIFT TAX CASE OF INTEREST

Estate of Clyde W. Turner v. Commissioner (US Tax Court) - The primary issue for decision was whether the transferred property from Clyde Turner Sr. (decedent) to the Turner & Co. FLP is included in his gross estate. Decedent and wife (Jewell) formed Turner & Co. FLP in

April 15, 2002 prior to his death with Clyde Sr. and Jewell each owning 0.5% GP interest and 49.5% limited interest after each contributed \$4.33 million of assets to the FLP in 2002. The Court determined that the value of properties transferred to Turner & Co. should be included in the gross estate under section 2036(a) because the transfer of the assets to the FLP did not constitute a bona fide transfer. Clyde Sr. was on both sides of the transaction, created the FLP without any meaningful bargaining or negotiation with Jewell or any of the other anticipated limited partners and furthermore, co-mingled personal and partnership funds when he used partnership funds to make personal gifts. Lastly, the transfer of assets to Turner & Co. did not occur for at least 8 months after the formation of the partnership.

[LINK TO DECISION](#)



COMPUTER FORENSICS · DIGITAL EVIDENCE · eDISCOVERY · DATA RECOVERY

COMPUTER FORENSIC & eDISCOVERY ARTICLES OF INTEREST

Is Self-Help Discovery by Employees Protected Activity? - "It is increasingly common for employees pursuing claims against their employer to use their access to files and databases to gather, in blatant violation of company policy, confidential documents and data that they believe are relevant to their claims. Counsel often becomes aware of this misconduct during an internal investigation or after litigation is commenced, often when the employee or former employee's work computer is imaged and analyzed. But an employer may not become aware of misconduct until after the employee has filed a charge or a lawsuit, when confidential company documents are referenced in the charge or complaint, or even attached as an exhibit to a pleading." This article discusses the rights of employers and employees in regards to information gathering for litigation as well as suggesting best practices for business owners to avoid these issues in the first place.

[LINK TO ARTICLE](#)

Challenges of Conducting E-Discovery on Ephemeral Data - "Federal and state discovery rules rarely limit their application to certain types of electronic data. Rather, they apply broadly to all forms of "electronically stored information." ESI encompasses documents themselves -- and information about the documents, the metadata -- but also computer code, and information that the computer retains to allow for a better user experience. Increasingly courts are confronted with situations where parties seek access to a computer's slack or unallocated space; temporary Internet files; metadata that is updated automatically (such as last-opened dates); and other ephemeral data that require extraordinary measures to preserve and collect."

This article examines two recent cases, one in Tennessee and one in New York, involving the recovery of Internet browser histories. In NY, the appellate court held "that a nonparty can be required to produce data that has been deleted if 1) the information is recoverable, and 2) a cost/benefit analysis of the facts concludes that the needs of the case warrants retrieval of the data. *Tener*, 931 N.Y.S.2d at 554-57."

[LINK TO ARTICLE](#)

10 Tips to Keep Social Networking in Line With ABA Ethics - "For legal professionals, social media offers a powerful and economical set of tools for marketing, research, networking, collaboration and more. But as with any emerging media, there are uncharted pitfalls as well... [S]taying out of trouble when using social media is not difficult provided you are aware of the dangers, and use some common sense."

[LINK TO ARTICLE](#)

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