



PROFESSOR LEX

BY HARVEY I. HAUER

Dear Professor Lex:

I have a client who wishes to begin a divorce proceeding. She believes her husband is having an affair. The client wishes to obtain proof of her husband's infidelity by placing a GPS tracking device on his vehicle. Would it be wise to advise the client to place the tracking device on her husband's vehicle?

Practitioner

Dear Practitioner:

In gathering proof of infidelity, the technological era has provided an individual with a host of options. This response, however, is specific to your question relating to GPS tracking devices. GPS tracking devices or "beepers" when placed in or on a vehicle can track its whereabouts via a radio signal. In 2010, the Michigan Legislature enacted MCL §750.5391, which prohibits the placement of GPS tracking devices in vehicles without the owner's knowledge and consent. MCL §750.5391 states in pertinent part,

(1) A person who does any of the following is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both:

(a) Installs or places a tracking device, or causes a tracking device to be installed or placed, in or on a motor vehicle without the knowledge and consent of the owner of that motor vehicle or, if the motor vehicle is leased, the lessee of that motor vehicle.

(b) Tracks the location of a motor vehicle with a tracking device without the knowledge and consent of either the owner or the authorized operator of that motor vehicle or, if the motor vehicle is leased, either the lessee or the authorized operator of that motor vehicle.

The statute provides several exceptions. One exception, M.C.L.A. §750.5391(2)(j) allows:

[T]he installation or use of a tracking device by a professional investigator or an employee of a professional investigator lawfully performing his or her duties as a professional investigator or employee of a professional investigator for the purpose of obtaining information with reference to any of the following... . Securing evidence to be used before a court, board, officer, or investigating committee.

Hopefully, this response will assist you in properly responding to your client's inquiry.

**Answer respectfully submitted by
Harvey I. Hauer, Hauer & Snover.**

Please send questions for Professor Lex to HHauer@hauersnover.com. Include "Professor Lex" in the e-mail's subject line.

The above response is not meant to serve as a solution to a case. That would require complete disclosure of all facts in the case, including client consultation. Rather, the intent is to provide informal guidance based upon the facts that have been presented. The inquiring lawyer bears full legal responsibility for determining the validity and use of the advice provided herein.

