



The Forensic Accountant's Role in Litigation

By: Mark S. Warshavsky

For many attorneys, retaining the services of forensic accountants has become an integral part of resolving their clients' legal disputes, either before or during litigation. This need for forensic accountants in litigation matters is a result of financial issues that require specialized knowledge in multiple financial disciplines that a forensic accountant possesses.

Attorneys can use forensic accountants to assist in translating complex financial issues into a more understandable manner. Frequently, these financial issues are a key factor in the ultimate outcome of the lawsuit. In today's computerized society, the attorney's deployment of forensic accountants to inquire, identify, investigate, test, examine, analyze and interpret financial documents and data is required more than ever before.

With the forensic accountant's acumen in the financial arena, and a sleuth mentality, this brand of accountant has been compared to Sherlock Holmes, the fictional London based detective famous for his astute logical reasoning and adept forensic science skills. Similarly, the forensic accountant is proficient at investigating, identifying and analyzing financial information, in conjunction with determining the people associated with the case, in an effort to follow the money. Ultimately, the financial forensic results could uncover hidden assets, identify unreported income, determine lost profits, or aid the attorney in whatever specific financial issues the case requires.

There are several definitions of forensic accounting, one such definition being the art & science of investigating people & money. In this manner, financial forensic tools, techniques, and methodologies are employed in tandem with an investigation of the people, many of whom may initially appear to be unrelated to one (or both) of the litigants. Often, the money-related

deception, which can occur through journal entries, financial statement manipulation, and other fraudulent methods, cannot be detected without the forensic accountant having an understanding of the people involved.

The application of forensic accounting involves a combination of special financial skills, such as accounting, auditing and finance, along with certain non-financial qualities, such as persistence, creativity, judgment, discretion and concise communication skills. This collection of attributes, combined with an inquisitive mind, enables the forensic accountant to investigate and assess the financial merits, as well as the integrity, of the distinct aspects of a litigation case for the attorney. By integrating these varied disciplines, the forensic accountant's examination of both the financial and non-financial information can furnish the retaining attorney with invaluable insight at every juncture during the case, as additional events occur or facts become known.

Some of the types of litigation cases where the forensic accountant can be of assistance include shareholder or partner disputes, matrimonial dissolutions, breach of contract, lost profits and damage calculations, white-collar criminal investigations, breach of fiduciary duty, estate litigation and in the bankruptcy arena.

The timing of when the forensic accountant is hired can play a vital role in the outcome of the case. Hiring the forensic accountant as early as possible allows the forensic accountant to assist the attorney in a variety of ways, including making a preliminary determination as to the merits of the litigation.

Due to the unique circumstances of each case, the forensic accountant's role can differ from one assignment to another, and may even change as a case

advances through the litigation process. There are many different facets within each litigation case where an attorney can benefit from the services of a forensic accountant, and these can be divided into four general phases:

- (1) Foundational - provide assistance in the case development and discovery stages, and assist in defining the financial framework of the case. Assess the quality of the documents to determine what might be relevant;
- (2) Interpersonal - conduct interviews to aid in the planning and execution of case data collection, and perform background research on the people and entities relevant to the matter;
- (3) Data collection and analysis - accumulate the data, and marshal the necessary analytical tasks to either support or refute the theories presented. If requested, assist in any hearings, conferences and settlement negotiations;
- (4) Expert report and trial - aggregate all of the forensic **accountant's conclusions during** the assignment, followed by the submission of an expert report, and possibly testify at deposition or trial. If requested by the attorney, the forensic accountant can critique the **opposing expert's report.**

This is only an abbreviated list of assignments that the

forensic accountant can perform. In addition, each of these tasks can be expanded to encompass a greater role for the forensic accountant. As an example, when providing assistance in the discovery phase, the forensic accountant could collaborate with the attorney to determine the appropriate universe of data required for the specific engagement. Thereafter, the forensic accountant would continuously evaluate and interpret the documents that were received from the opposing party, along with their relevance and reliability.

In the data collection and analysis phase of the case, the forensic accountant would investigate the financial documents received, perform research, and apply financial forensic tools and techniques such as trending, benchmarking, and ratio analysis. Depending on the case requirements, the forensic accountant may deploy digital analysis techniques by using data mining software to test for anomalies by examining case specific digit patterns and other relevant characteristics.

Litigation attorneys can often attain dramatic leverage at the negotiating table and in the courtroom by being able to present quantifiable data in clear, cogent terms. A case that is substantiated by indisputable testimony will most often be received favorably. A skilled forensic accountant in the litigation arena can act as powerful support to the retaining attorney by helping the attorney to present or defend claims.



Mark S. Warshavsky

CPA/ABV/CFE, CVA, CBA, ASA, CFE, MAFF, DABFA, MBA

Partner-in-Charge, Business Valuation & Litigation Services Group

Contact:

516.364.3390 x 121

mwarshavsky@gettrymarcus.com

To learn more about Gettry Marcus visit www.gettrymarcus.com

The information contained in this communication is provided for informational purposes only, and should not be construed as legal or accounting advice on any subject matter. It is not intended or written to be used, and it cannot be used, for a particular matter. These articles are prepared to present matters of general interest relating to business valuation, forensic accounting and litigation support topics. They do not render an opinion by Gettry Marcus CPA, P.C. (Gettry Marcus), its partners, or employees on any technical matter; but rather are of an educational nature. Gettry Marcus disclaims all liability with respect to actions taken or not taken based on any or all of the contents of this communication.