



Forensic Accounting Today

Newsletter of Ron J. Anfuso, CPA/ABV - An Accountancy Corp.

Ron J. Anfuso, CPA, ABV, CFF, CDF, FABFA*
Phone: (310) 378-6606 • E-mail: rja@anfusocpa.com
Website: www.anfusocpa.com



Issue 8

Forensic Accountant Testimony: The Intangible Quality

When you ask a Forensic Accountant to appear in court to deliver expert witness testimony, you presume your witness will suitably present himself and serve as an asset for your client. You expect the CPA to thoroughly prepare for the case. If he is considered a credible witness in the eyes of the judge, all the better. There is, however, one additional asset you hope your CPA possesses—a strength so essential it can make or break the success of his testimony. Successful litigators certainly possess this crucial forte. Unfortunately, most CPAs do not.

It is rare to come by a Forensic Accountant who consistently thrives on the witness stand under adversarial conditions. When confronted with tough cross-examination, you will probably shudder if your CPA becomes anxious and flustered. Rather, you yearn for your witness to remain enthusiastic, confident and to welcome even the most demanding challenge.

To achieve this, your testifier must possess the ability to remain unwaveringly extroverted—attention focused on the opposing counsel rather than on himself. This CPA will more likely stay alert and instantly draw from his knowledge of forensic accounting and the case to respond accurately, effectively and succinctly. When under cross examination aimed at reducing the sharp CPA's credibility, most attorneys' attempts at dishonoring him will rarely succeed, leaving the attorney fettered with only the following words left to utter... "*No more questions Your Honor.*"

I enjoy opportunities to present expert testimony. I know my field, I believe in myself and I always thoroughly prepare for court.

Ron J. Anfuso CPA, ABV, CFF, CDF, FABFA

The Use of Forensic Accounting Experts in Court: Why, When and How

By Ron J. Anfuso, CPA, ABV, CFF, CDF, FABFA*

In many marital dissolution cases, a forensic accountant is not required. So when does a forensic accounting expert become necessary?

In any case in which there is a small, closely held business that needs to be valued or when a cash flow analysis for purposes of support is essential, a forensic should be consulted. In addition, if there are cases in which clients have co-mingled accounts (i.e. separate property and community property in the same account), a tracing is required to preserve separate property assets. A forensic accountant will be necessary to perform this service.

When Should You Hire a Forensic Accountant to Serve as an Expert Witness?

While 90 to 95 percent of the cases where an accounting expert is involved will be resolved without the necessity of a trial, five to ten percent of them will go to trial. In these cases, your forensic accountant will need to qualify as an expert witness before the court.

The role of the expert witness should be as an advocate for the expert's well-reasoned opinion. His or her function is NOT to be an advocate for your client, and the expert should not argue your case. This is the job of the attorney. However, the attorney should work closely with the expert beforehand to plan for testimony.

To ensure the expert is adequately prepared, the attorney should hire him or her prior to the close of discovery. This will enable the accountant to identify and then receive appropriate documents for his or her analysis and subsequent testimony.

How to Work with Your Accountant Expert Witness

The preferred method of communication with the expert should be phone calls and face-to-face meetings because written communication with the expert is discoverable. Therefore, suggest that note-taking be kept to a minimum during these meetings.

Also, do not detail tasks to be performed in an engagement letter or subsequent communication. In addition, avoid sending substantive information or findings in e-mails, and do not request drafts to be sent to

* For an explanation of these titles, please visit our website or request a copy of Issue 3 of Forensic Accounting Today.

LA County Bar Family Law Symposium

May 19, 2012



Everything you wanted to know about
pay stubs and support calculation*
(*But were afraid to ask)
Panel Chair— Ron J. Anfuso

Discover how
Ron J. Anfuso, CPA/ABV,
will **OUTPERFORM**
YOUR CURRENT
FORENSIC
ACCOUNTING FIRM

Spend just one
hour with Ron.
Enjoy breakfast
or lunch on him.

That's all it
takes to find
out why Ron J.
Anfuso, CPA/
ABV is the
better choice.



The Use of Forensic Accounting Experts in Court: Continued from page 1

you, since, as mentioned, these documents are then discoverable. Maintain heightened sensitivity toward drafts.

Once the expert has conducted his or her analysis, have the expert double check the work product for mistakes, flaws in logic and consistency with source data. This step avoids later implications that analysis should not be relied upon. Then meet with the expert to prepare for testimony.

During this meeting, discuss the content and order of questions to be asked. Although the expert should be well versed to answer the questions the attorneys on both sides of the case may ask, it is important that he or she not memorize responses before the testimony. Rather, the expert should think before answering each question, keeping aware of tactics designed to trip him or her up.

For example, the expert should be wary of questions that involve absolutes, such as “Has the expert identified ALL of the documents reviewed?” or “Are there ANY other facts the expert relied upon?”

Your Forensic Accountant's In-Court Strategy

Your expert witness should also beware of opposing attorneys' attempts to develop an informal, but rapid, questioning style that may be designed to elicit answers from the expert without careful thought, and attorneys who jump from subject to subject. An opposing attorney might also try to ask the same question in different ways, attempting to get the expert to provide inconsistent answers.

The expert should listen carefully to each objection the attorney on his or her side makes. The attorney may be trying to alert the expert to a trick question or to factors that should be considered.

During direct examination testimony, it is okay for the attorney to lead an expert. However, the attorney should not coach answers.

The expert's presentation should proceed as follows:

1. Start with the conclusions.
2. Go into the details, such as the documents reviewed and how the analysis was derived.
3. End with the conclusions.

The expert's demeanor and tone of answers should be the same during both direct testimony and cross-examination. He or she should provide direct responses to each question, but only answer the questions asked and not volunteer extraneous information.

It should go without saying that the expert should always tell the truth. Those who are not truthful risk damaging their reputation—the most important attribute of an effective accountant expert witness.

This newsletter and the accounting content herein does not constitute legal advice. Copyright © 2012 Ron J. Anfuso CPA, ABV, CFF, CDFA, FABFA. All Rights Reserved.

“That “tough” opposing counsel LAUGHED when I sat down at the witness stand—until she heard my testimony”

There are several reasons why Ron J. Anfuso is so effective in court. One that sets him apart from other forensic accountants is how much he welcomes being challenged by the most difficult circumstances. It's all about his confidence, preparation, credibility and experience.



Ron J. Anfuso, CPA, ABV,
CFF, CDFA, FABFA

Ron J. Anfuso,
CPA/ABV
An
Accountancy
Corporation

