

MISSISSIPPI BUSINESS JOURNAL

Mississippi's Essential Source for Business News since 1979

Litigation support: CPAs providing value to litigators in state

There is probably nothing that is more at odds with the perception of a typical CPA than the work connected with providing litigation support to attorneys. As the stereotype goes, a CPA likes to make sure reports are correct, financial statements are presented “fairly” or tax information is properly presented on a tax return. A CPA’s task of assessing events that never occurred, formulating an opinion as to its economic effect had it occurred and then defending the conclusion to attorneys, judges and juries is quite a contrast to the stereotype.

Still, many CPAs provide litigation support and expert witness services. To most, this means economic damage calculations, forensic accounting or fraud investigations. For the more experienced, their menu of services may include white collar crime and e-discovery. Regardless of the services, the underlying tenants are the same — understanding what you are being asked to do and fully grasping the accepted standards that govern the work being performed. This threshold knowledge is a requirement for providing litigation support services.

Many attorneys I have talked with would agree that the most common error made by experts is becoming a mouthpiece for the attorney or a party to the lawsuit. This can be deadly on the witness stand.

It is important to understand

the role of the expert, the attorney and the underlying client. The attorney is an advocate for their client. Simplistically, their responsibility is to advocate for their client’s position. If they are the plaintiff they generally assert a wrong that has harmed their client. Conversely, if they are the defendant they rebut the acquisition levied against their client. Experts are only advocates for their opinion — their job is to educate the judge or jury on complex issues, which should be based on independent work and conclusions. This CPA/client juxtaposition takes experience to balance.

An important factor for any litigation support engagement is understanding the timeline of the case. The point at which a consultant is engaged varies from case to case, but to be effective knowing the case timeline is vital. Know what depositions are to be taken, and the dates and status of discovery. This allows the expert to use the litigation process to get the information needed to formulate the best opinions possible, and bring the most value to the attorney.

The plaintiff brings the suit so their expert must be the first to determine damages. Consequently, the defense expert knows the damages claimed and how they were determined. Often they learn what information the plaintiff’s expert had access to, and equally as important, what

potential damages they did not assert. The plaintiff’s expert is deposed first and the defense often has access to their workpapers before the defense expert must make their work known.

The defense expert may have a variety of charges. One may be to critique the plaintiff’s expert report. This may take the form of providing a written report or simply preparing the defense attorney for deposition or cross-examination of the expert.

Regardless of the timeline, before an expert begins calculating or investigating, they should have a clear vision of what they are trying to accomplish. The form of their ultimate work product is often directed by the attorney, but its contents may be set by the Federal Rules of Civil Procedures, state procedural rules or rules of a specific court.

Ultimately, understanding and meeting the burden of proof required in the specific case is what it is all about. To that end, the most important parts of an expert’s work are developing the methodologies, assumptions, and computations to be used in reaching their opinions. It is key to understand what information is available or could be obtained, and to use it to develop solutions that follow accepted rules and are grounded in relevant data. Regardless of the opinions reached - good or bad — a good litigation consultant should bring value to the engagement.



Robert Alexander

MBJ contributing columnist Robert Alexander of Jackson-based HORNE LLP serves as a financial expert in litigation settings in both federal and state courts and has testified numerous times at depositions and trials and has represented both plaintiffs and defendants. He also has extensive business valuation experience both in litigation and non-litigation settings and has performed hundreds of valuations in a wide variety of industries. He is licensed as a CPA in Mississippi and Tennessee and is Accredited in Business Valuation (ABV) by the American Institute of Certified Public Accountants and is an Accredited Senior Appraiser (ASA), credentialed by the American Society of Appraisers. He frequently speaks and writes on topics including business valuation and litigation support services and has presented to professional groups, continuing education programs and others.