



## Litigation Support

# Take the Stand Prepared and with Confidence

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**T**estifying as an expert witness requires both form and substance. For example, a report has required components, such as documents reviewed, exhibits used, compensation paid, and opinions made (form). But have you defined your opinion (substance)? Are you using facts or assumptions? The economist Thomas Sowell once said, “For every expert, there is an equal and opposite expert; but for every fact, there is not necessarily an equal and opposite fact.” This article will address some of the pitfalls CPAs encounter when they are not experienced in the world of expert testimony, do not follow the facts, and do not follow their own professional standards.

### AICPA Standards for Consulting Services

A competent expert witness must know the applicable AICPA consulting standards.

AICPA Consulting Services Special Report 03-1, *Litigation Services and Applicable Standards*, should be in every CPA’s tool kit if he or she wants to be an expert. Read it thoroughly. Litigation services are considered consulting services, and adherence to statements on standards for consulting services is required. This publication lists the code of conduct that is required to be followed.

**Professional Competence** – Practitioners should undertake only those litigation services that they can reasonably expect to complete with professional competence. The expert must have the knowledge, expertise, and skill to be an expert. The opposition will challenge you if your credentials are light or you do not have a lot of experience in the subject matter.

**Due Professional Care** – Due care must be exercised in the performance of

services, which also requires the critical analysis of all work. This means performing mathematical and fact checks on all work. Use proven methodology, not something new.


**Planning and Supervision** – While many people can assist the expert in research, model building, and report writing, the expert witness ultimately is responsible for the work performed. Be ready to answer questions about how much work you personally did compared with others. You must be able to testify that your report is your work product, not your firm’s.

**Sufficient Relevant Data** – Practitioners must obtain relevant data sufficient to provide a reasonable basis for conclusions. This also applies to the following:

- **Legal Evidence** – Depending on whether the proceeding is federal, state, or other jurisdiction, the rules in calculating damages, for example, will be different. Each type of case can also be different. Some CPAs don’t know the governing case law and make obvious mistakes. You must work with counsel to know the law as it relates to calculating damages within that jurisdiction.
- **Assumptions** – Experts can base their opinions on facts or assumptions. The expert must identify the source of the information and consider whether these assumptions are reasonable. Many expert reports have been thrown out because their assumptions were deemed not reasonable.
- **Documentation** – The practitioner needs to maintain documents, research, correspondence, and other records to form the basis of their opinion. This is where many dabbling CPA experts fall short – not having enough information to provide a balanced and supported opinion.

If you are missing many documents that should have been provided to you in the ordinary course of the case, or if you failed to do research, you will have an issue.

The AICPA publishes practice aids for performing services such as fraud investigations, determining lost profits, personal injury/wrongful death, and other matters. The standards discussed above are common to all litigation service engagements. When referring to the practice aids for specific guidance, remember these general standards govern them all.

Doing the financial analysis on any case is challenging enough. Ensure that you comply with all accounting and legal standards, or you will be an easy target. Remember, an expert is not an advocate for one side or another, but for his or her own opinion. 

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