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Accounting, Audit & Corporate Finance Library

Editorial Materials

Business Valuation and Small Business Consulting

Litigation Support Services

Chapter 1 Introduction to Litigation Support Services

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100 Introduction

100.1 Statistics show that most U.S. citizens, at some point in their lives, will be involved in some way in the litigation process. Moreover, because the financial aspects of some of these cases can be quite complex, attorneys often engage CPAs as *experts* to assist with those cases. By virtue of the training and experience they typically receive, CPAs are uniquely qualified to provide important services in legal disputes. This *Guide* is designed to help CPAs in public practice capitalize on these profitable engagement opportunities.

For Whom Is This *Guide* Written?

100.2 Many CPAs in public practice are involved in providing litigation support services in some way, even if they do not consider themselves to be litigation experts. These practitioners provide litigation services in varying degrees and can be divided into the following categories:

a. *Practitioners Who Actively Seek New Business Opportunities in Litigation Support and Spend a Great Deal of Their Time Working in the Litigation Arena.* These practitioners serve as expert witnesses and often testify in depositions and trials. They recognize that litigation services can be very rewarding—both professionally and financially. CPAs who participate in the litigation process as experts are sometimes referred to as *forensic accountants*. The term *forensic* refers to activities that pertain to or are used in a court of law.

b. *Practitioners Who Would Like to Start Offering Litigation Services, But Are Relatively New to This Area and Have Little or No Prior Litigation Experience.* These practitioners need help in starting and building their litigation practices as well as in providing litigation services.

c. *Practitioners Who Do Not Offer Litigation Services in the Normal Course of Business, But Respond to Client Needs for Assistance in This Area as They Arise.* For example, a business client who files for bankruptcy protection often wants its CPA to help prepare the various forms and schedules that are required. CPAs are often hired to assist their clients in divorce and other matters as well.

100.3 The guidance provided in *PPC's Guide to Litigation Support Services* has been designed for all CPAs who periodically become involved in litigation matters, from the experienced litigation support practitioners who often serve as expert witnesses in complex disputes to the audit and/or tax practitioners who merely respond to their clients' needs as they arise.

The CPA's Role in a Lawsuit

100.4 In many lawsuits, the plaintiff tries to prove the following:

a. *Liability*. First, the plaintiff's attorney must prove to the trier of fact¹ that the plaintiff has been damaged and that the defendant is at fault.

b. *Damages*. Once the plaintiff's attorney has proven liability, the next step is to establish and quantify the plaintiff's damages. If the case involves a breach of contract, for example, the plaintiff might try to prove that it lost a certain amount of profits as a result of the defendant's breach. Generally, the plaintiff must prove that the damage was proximately caused (that is, directly caused) by the defendant's act. On occasion, the CPA may also have the appropriate expertise to opine on causation issues in addition to the amount of damages.

A CPA may be hired by either the plaintiff or the defendant in a lawsuit. For example, a plaintiff's attorney might hire a CPA-expert to determine the extent of damages suffered by the plaintiff as a result of the defendant's action (or lack of action). A defendant's attorney might use a CPA-expert to find fault with the analysis prepared by the plaintiff's expert. In some cases, a defendant's attorney will have the financial expert prepare an alternative (and presumably lower) damage estimate. It is also common for the defendant's expert to calculate damages relating to counter claims made by the defendant. In this case, the plaintiff's expert will be evaluating the damages claimed by the defendant, probably in addition to calculating the plaintiff's damages.

100.5 Typically, CPAs will serve either as consultants to the clients' attorneys or as expert witnesses—but not both on the same engagement. These terms can be defined as follows.

a. *Expert Consultant*. As a consultant, the CPA is engaged by the attorney to develop information that will be used by the attorney in a variety of ways, such as during settlement negotiations with the opposing side. In these engagements, the CPA is usually not expected to testify, and documents he or she creates may be protected by attorney-client privilege. This means that they may not have to be made available to the opposing side.

b. *Expert Witness*. When a CPA is engaged as an expert witness, the CPA will often have to provide deposition and courtroom testimony, and all of the documents created by the CPA,

including reports relating to the case, are subject to “discovery” by the other side.

100.6 CPAs also serve as triers of fact (typically serving as arbitrators) or mediators. For more information on these roles, see Chapter 15 of this *Guide*.

100.7 In situations where the court believes it needs the benefit of a CPA's expertise, it will appoint a CPA as a special master or the court's expert. Typically the CPA appointed by the court will write a report or provide findings to the court but will not be the decision maker. However, roles for experts that have the confidence of the court and the parties are frequently defined creatively to assist with a particular situation.

100.8 It is also becoming common, especially in family law matters, for CPAs to be appointed or selected as joint experts. In these situations, each of the parties may also hire another CPA expert.

Practice Development Opportunities

100.9 No CPA needs to be told that the public accounting profession is highly competitive and that competition is increasing each year. The following factors illustrate why so many accounting firms view litigation services as a unique practice development opportunity.

- a. The number of lawsuits filed in the United States each year continues to increase. More importantly, the damage awards continue to escalate.²
- b. There has been an increase in regulatory enforcement actions requiring forensic accounting services.
- c. The financial analyses involved in estimating damage awards are complex.
- d. Lawyers must increasingly rely on the assistance of experts to reduce the possibility of legal malpractice.
- e. The hourly billing rates for many litigation services generally exceed those for the more traditional accounting, auditing, and tax compliance services.
- f. The business generated by a litigation support practice can fill in a firm's off-peak months after the tax or audit season ends.³ On the other hand, trial dates can change or supplemental

services such as affidavits can be required with short notice. As a result, any commitment to take on expert witness engagements must acknowledge the possibility of demands that must be met during peak times as well as off-peak times.

The recent AICPA Survey on International Trends in Forensic and Valuation Service indicates that as a result of factors that include increased litigation and regulatory enforcement actions, demand for forensic services will increase over the next two to five years. Areas in which there is expected to be growth in the need for forensic accounting services are electronic data analysis, damage calculations, family law, valuation, bankruptcy/insolvency issues, financial statement misrepresentation, and fraud. Section 202 discusses practice development programs in more detail.

- 1** The trier of fact is typically the jury that will hear the evidence and render a verdict. In a bench trial, the trier of fact will be the judge.
- 2** Several state legislatures are considering placing a cap on damage awards for pain and suffering in medical malpractice cases. Pain and suffering awards often significantly exceed awards for economic damages. If the pain and suffering awards are capped, this will place greater emphasis on the reliable calculation of economic damages. Since CPAs can calculate economic damages, this might increase the role CPAs can play on medical malpractice personal injury cases.
- 3** Before accepting a litigation services engagement however, firms providing auditing services should consider whether their performance will affect the firm's independence. See the discussion in section 201.

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Litigation Support Services

Chapter 1 Introduction to Litigation Support Services

101 Overview of the Litigation Process

101 Overview of the Litigation Process

Civil versus Criminal Cases

101.1 In most cases, a CPA is brought into a civil litigation matter that results in a civil trial. In some cases, however, especially with the fraud engagements discussed in Chapter 10, the CPA's involvement leads to a criminal trial. Although there are some similarities between civil and criminal cases from the CPA's perspective, there are also some important differences, including the following.

- a. *Terminology.* Certain terminology is the same regardless of whether the action is a civil lawsuit or a criminal prosecution. For example, the party against which the lawsuit or prosecution is brought is generally referred to as the defendant. Certain other terms will differ depending on whether the action is civil or criminal. For example, in a civil action, the party that files the complaint is known as the plaintiff. The complaining party in a criminal action is usually referred to as the prosecutor.
- b. *Burden of Proof.* Civil actions generally require that the *preponderance of the evidence* (which is usually interpreted to mean more than 50%) support one side of the action. The burden of proof needed to obtain a criminal conviction is much higher. For a criminal conviction to occur, the guilt of the accused party generally must be established *beyond a reasonable doubt*.
- c. *Number of Jurors Who Have to Agree.* Depending on the jurisdiction, in a civil action there may be fewer than 12 jurors, and a unanimous jury decision may not be necessary. In criminal cases, the jury's decision must be unanimous in most jurisdictions.
- d. *Severity of Punishment.* In a civil case, a losing defendant is usually required to make restitution of the amount of damages to the plaintiff. Punitive damages may be assessed in

certain circumstances. In a criminal case, the guilty defendant may be sentenced to incarceration, required to pay a fine, or subjected to some other form of punishment.

Although CPAs are sometimes brought into criminal cases, the overwhelming majority of cases they participate in are civil. Therefore, most of the guidance in this *Guide* relates to the CPA's involvement in civil cases. However, an area where a CPA may have specific expertise of use to the trier of fact is in the sentencing phase of a criminal trial. The sentencing guidelines provide parameters to the trier of fact as to what factors to consider in determining the sentence. The CPA's expertise may be useful in evaluating the number of infractions, the losses to the victim, the number of victims, the available monies for restitution, etc.

Malpractice Cases

101.2 CPAs are often asked to assist in malpractice cases against other professionals, including attorneys. In these cases, the work performed generally is similar to the work being done in either damages or lost earnings cases. In malpractice claims against attorneys, the work can be complex because in effect there is a case within a case. If the plaintiff lost a case or received a reduced award because of alleged malpractice, then, in addition to calculating damages, there is the effort by the plaintiff to prove that, but for the malpractice, the plaintiff would have prevailed in the original case.

Steps Involved in a Typical Lawsuit

101.3 Exhibit 1-1 illustrates the steps that are usually performed in a typical lawsuit. These steps may vary somewhat from one jurisdiction to the next. In addition, the steps vary from one type of case to the next. For example, the steps involved in bankruptcy and divorce cases differ from those shown in Exhibit 1-1. CPAs or other experts are often hired to assist in performing most of the steps that are included in the exhibit. The CPA's involvement in these steps is discussed in the following paragraphs. In addition, each of these steps is discussed in more detail in Chapter 13 of this *Guide*.

Exhibit 1-1

Overview of a Typical Lawsuit

Investigation and Pleadings

The plaintiff hires an attorney to seek restitution of damages from a defendant.

The plaintiff's attorney investigates the case (possibly with the assistance of a CPA or other expert—especially in malpractice cases where many states require a professional in the same practice area provide comfort to the attorney that the claim is worthy of investigation prior to the filing of the complaint).

The plaintiff's attorney demands restitution from the defendant.

If the defendant refuses to pay, the plaintiff's attorney files a lawsuit

(which may also be called a complaint or initial pleading).

The defendant responds to the complaint with a motion or an answer.

Discovery

Each party requests documents from the opposing side.

Each party issues interrogatories to be answered by the opposing side.

Each party submits requests for admissions to the opposing side.

Each party holds depositions of opposing witnesses.

Motion Practice and Negotiation

Throughout the litigation process, each side will seek rulings from the court regarding a variety of motions.

At any time during the litigation, the parties may negotiate a settlement.

Trial and Appeal

The case will be litigated and a verdict will be rendered.

The losing party may appeal the verdict to a higher court.

101.4 Investigations and Pleadings

Many attorneys believe that it is best to hire experts early in the litigation process. This is especially true if the client has the financial resources to pay the expert's fees throughout the litigation ordeal. A CPA-expert can often provide a great deal of assistance during the pre-filing investigation. For example, based on the expert's preliminary estimate of the amount of damages that the plaintiff has suffered, the litigation team may decide that it is not even worthwhile to pursue the claim. In any event, the more information that the client's attorney has, the more effective the plaintiff's complaint and the defendant's answer will be.

101.5 Discovery

CPAs are often brought into lawsuits during the discovery phase. This is the time when each side of the controversy attempts to learn as much about the opposing side's case as possible. Without adequate discovery, neither side could effectively negotiate a settlement or present a case in court. An expert can usually be of immense help during the discovery phase of the litigation process.

101.6 A number of discovery tools can be used to learn information about the other side's case.

Among those are the following.

a. *Requests for Documents from the Opposing Side.* CPAs can provide significant assistance in preparing written requests for financial information because of their knowledge of the types of business and accounting records normally maintained. In addition, CPAs can assist in evaluating the adequacy of the documents supplied by the opposing side.

b. *Interrogatories.* CPAs can often provide assistance in drafting interrogatories by suggesting relevant questions. CPAs may also assist in answering interrogatories received from the opposing side by ensuring that the answers are consistent with the presentation that the CPA will make at trial.

c. *Requests for Admissions.* Sometimes, both sides can agree to certain matters that are not in dispute during the discovery phase. A request for admissions asks the opposing party to admit certain facts relevant to the litigation. CPAs can sometimes provide assistance in drafting and responding to such requests.

d. *Depositions.* Depositions can be very effective discovery tools, especially if the CPA-expert is involved in the process. Generally, the expert helps the client's attorney prepare questions to be asked during the deposition of the opposing expert. An even better approach, however, is to have the expert present during the depositions of opposing witnesses. If the expert is not engaged until after the opposing witnesses have already been deposed, the expert might read and analyze the deposition transcripts to provide suggestions to the client's attorney based on such review that will help the attorney during settlement negotiations or the subsequent trial.

101.7 Motion Practice and Negotiation

Throughout the litigation process, both sides to the dispute file various motions with the court. For example, a defendant may file a motion for summary judgment in which the defendant requests the court to rule that all or a part of the claim should be dismissed. The CPA-expert may be asked to provide support for one or more motions filed by the client's attorney.

101.8 The vast majority of lawsuits are settled before the cases go to trial. Settlement negotiations may start before the formal complaint has been filed and will usually continue throughout the litigation process. The expert might attend (and perhaps even participate in) settlement negotiations with the opposing side. The CPA might also be asked to prepare various analyses upon which negotiations will be based.

101.9 Trial and Appeal

If settlement negotiations fail, the case will go to trial. Expert witnesses will generally testify in support of their findings at trial, and their testimony will be subject to cross-examination by the opposing attorneys. The expert witness's testimony is intended to help the judge and jury understand the technical issues involved in the case. In addition to providing trial testimony, the expert witness may assist in developing questions that will be asked of the opposing expert during cross-examination by the client's attorney.

101.10 In presenting testimony in court, the CPA-expert must be aware that a number of factors affect the judge and jury's perception of the expert's presentation. Among those factors are the following.

a. *Strength of the Evidence.* Not all evidence presented in court has the same value. For example, direct evidence is usually more credible than circumstantial evidence. In some cases, one piece of direct evidence may be more convincing than many pieces of circumstantial evidence. These terms are defined as follows.

(1) *Direct Evidence* supports the facts of the case. For example, in an embezzlement scheme in which an employee has altered the names of the payees on company checks, the paid checks that support the fraud would be considered direct evidence.

(2) *Circumstantial Evidence* helps support the culpability (guilt) of the suspect. For example, an employee's bank records that show deposits of unknown origin going into the employee's account around the time a fraud was committed would be considered circumstantial evidence of the employee's guilt.

b. *The Witness's Presentation Skills.* To some extent, expert witness work is similar to a public speaking presentation. The witness should practice his or her expected testimony beforehand to ensure that the information and its delivery is appropriate for the intended audience—the judge and jury. The judge and jury may discount the value of an expert's testimony if the expert presents his or her opinion in a boring fashion or attempts to present too much detail.

c. *The Expert's Qualifications.* The competence of an expert witness to testify is a question of law to be decided by the judge. After taking the stand, the witness will generally be able to testify about his or her major credentials, including education, general experience, and specific technical experience relating to the case at hand. The process of qualifying a witness to testify in a case is referred to as foundational testimony, and questions that challenge an expert's qualifications are called *voir dire*.⁴ Usually, the more impressive an expert's background, the

more credence the judge and jury will place in the expert's testimony.

101.11 After the jury (or judge, in the case of a bench trial) has returned its verdict, the losing side has a specified period of time in which to appeal the matter to a higher court. An appeal usually relates to matters of law and not to the facts of the case. For this reason, the CPA-expert often will not be involved in the appeals process. However, the appellate attorney might seek the CPA's advice in creating some "real world" examples to illustrate key points in the attorney's argument or seek advice on similar matters.

⁴ An opposing expert's ability to testify may be challenged at various points in the litigation process. See the discussion beginning in paragraph 1301.33.

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Litigation Support Services

Chapter 1 Introduction to Litigation Support Services

102 Organization of PPC's Guide to Litigation Support Services

102 Organization of *PPC's Guide to Litigation Support Services*

102.1 This *Guide* has been designed for practitioners who provide a wide range of litigation services, regardless of their levels of expertise. It contains an in-depth discussion of the administrative aspects of litigation engagements, including an analysis of the various professional standards that CPAs who provide these services should consider. This *Guide* also contains step-by-step guidance on computing various types of damages and participating in various types of cases. The remaining chapters of *PPC's Guide to Litigation Support Services* are summarized in the following paragraphs.

Chapter 2—Administering a Litigation Services Practice

102.2 Chapter 2 discusses the administrative aspects of a litigation practice that should be considered by all firms offering these services. It starts out with a discussion of the professional standards that should be considered in providing litigation services. The chapter then provides useful guidance on starting and maintaining a litigation services practice. In this section, the authors have included marketing tips designed to help new as well as experienced litigation support professionals bring in new work.

102.3 Chapter 2 divides a litigation engagement into the following three phases:

- Pre-engagement and planning phase.
- Data-gathering and analysis phase.
- Reporting and wrap-up phase.

102.4 Pre-engagement and Planning Phase

The procedures often performed during the pre-engagement and planning phase of a litigation support engagement are similar to other engagement procedures. For example, the CPA firm should start a new prospective engagement by gathering information that will enable it to make an informed engagement acceptance decision. Once an engagement has been accepted, the expert often develops a work program and a preliminary time and fee estimate. Before beginning the engagement, many firms obtain a signed engagement letter from the client or the client's attorney. Each of these steps is discussed in more detail in Chapter 2. In addition, Chapter 2 contains a number of optional practice aids to help practitioners document the pre-engagement and planning process.

102.5 Data-gathering and Analysis Phase

Once the pre-engagement and planning procedures are complete, the expert performs the actual litigation services. The suggested procedures, which are discussed in more detail in Chapters 4-17, vary from one engagement to the next. Chapter 2, however, provides guidance on procedures that are generally common to all engagements.

102.6 Reporting and Wrap-up Phase

The procedures that should be performed during this phase of a litigation engagement typically vary from one engagement to the next. However, the authors have developed certain quality control procedures that should be considered on each engagement. Suggested reporting and wrap-up procedures that should be considered are discussed in this chapter.

Chapter 3—Practice Engagement Trends and Tools

102.7 Many practitioners have a general litigation practice and provide litigation services along with non-litigation services. However, as the litigation support environment has become even more specialized, it is becoming difficult to offer a broad spectrum of services while continuing to offer quality litigation support services. Chapter 3 discusses trends in the litigation services practice environment, available electronic tools, and their application to litigation services.

Chapter 4—Lost Profits Analyses

102.8 Businesses lose profits for a variety of reasons. A lost profits claim may relate to a breach of contract. For example, a CPA may breach a noncompete agreement that causes the CPA's former firm to lose profits. Alternatively, a lost profits claim may relate to a tort committed by a defendant. In a tort claim, the plaintiff alleges that the defendant owed and breached a legal duty to the plaintiff. For example, a plaintiff might sue a rival corporation for the profits it lost when the rival infringed on the plaintiff's patents or trademarks.

102.9 Chapter 4 discusses the various types of actions that may result in lost profits. It also presents a step-by-step approach to computing damages that relate to lost profits claims. To help users better understand the lost profits guidance provided in this chapter, the authors have prepared a

comprehensive case study designed to illustrate the concepts discussed in Chapter 4.

Chapter 5—Damage Studies Involving Individuals

102.10 While Chapter 4 relates to damages sustained by companies, Chapter 5 discusses damages involving individuals, including the following.

- *Personal Injury.* A lawsuit may arise whenever a productive laborer is injured and is unable to work. For example, assume a crane operator at a construction site loses control of the crane, and it strikes and injures a pedestrian walking on an adjoining street. The pedestrian may sue the crane operator, the crane manufacturer, the general contractor, and others in an attempt to recover damages for the injury. The pedestrian's attorney may hire a CPA or other financial expert to compute the value of earnings the pedestrian lost as a result of the injury.
- *Wrongful Death.* Premature deaths that result from the actions of others often lead to lawsuits. For example, if a healthy man dies during a routine surgical procedure not considered to be life-threatening, the decedent's survivors or his estate may sue the surgeon, the anesthetist, the hospital, and others. A CPA may be brought in by either side to determine the present value of the man's lost future earnings, which will be one of the components of the damage estimate.
- *Wrongful Termination.* People who lose their jobs sometimes sue their former employers for wrongful termination. CPAs or other financial experts may be used in such cases to quantify the amount of damages sustained by the terminated employees.

102.11 Chapter 5 discusses the types of damages that individuals typically seek to recover in personal injury, wrongful death, and wrongful termination cases. It then addresses the general concepts upon which damage computations may be based. The remainder of the chapter is organized around a step-by-step program that can be followed by practitioners who are hired as either expert consultants or expert witnesses. Like other chapters in this *Guide*, the guidance in Chapter 5 is supported by comprehensive appendixes and practice aids.

Chapter 6—Intellectual Property Damages

102.12 Intellectual properties such as patents, trademarks, copyrights, and trade secrets are often the most valuable assets of a commercial enterprise. Accordingly, the owners of such properties, to whom the law grants certain exclusive rights, bear a responsibility to defend those rights against infringement. This chapter discusses court recognized methods to establish intellectual property infringement damages and will help you to properly choose between a lost profits or reasonable royalty measure. For those circumstances when a lost profits measure is appropriate, this chapter will provide you with the framework to perform that analysis. Alternatively, the discussion will help

you understand the factors the court will consider in arriving at a reasonable royalty and provide various approaches to quantify an appropriate rate.

Chapter 7—Present Value of Damages

102.13 This chapter provides guidance on calculating present value of damages. Case law and statutes surrounding prejudgment interest and discounted damages are complex and vary by jurisdiction. Issues include the selection of the *ex post* or *ex ante* method, the identification of the relevant statute or case law defining the use of simple or compound interest, the identification of the applicable rates, and the application to the damage model.

Chapter 8—Bankruptcy Services

102.14 The federal bankruptcy laws are complex—even for attorneys who regularly work with such cases. Nevertheless, practice development opportunities exist for CPAs who wish to specialize in this challenging niche. Chapter 8 provides guidance on how to identify troubled companies, implement corrective actions, and, if all else fails, provide a wide range of services in a bankruptcy proceeding. Although the chapter is written from the CPA's perspective, not the attorney's, it nonetheless discusses bankruptcy laws to enable the CPA to understand the nature and timing of the various requirements. It also provides guidance on the unique fee considerations of these engagements.

Chapter 9—Claims against Accountants

102.15 Legal liability for CPA firms is a relatively new phenomenon. Liability claims against CPA firms prior to 1970 were rare events. Since then, however, such claims are not uncommon. In fact, litigation services result in more than 10% of all consulting claims filed against AICPA Professional Liability Insurance Program policyholders. Whenever a lawsuit is brought against a CPA firm, both sides typically hire CPA-experts. Chapter 9 of the *Guide* provides guidance in the following areas:

- a. Special engagement acceptance considerations unique to legal disputes involving a CPA's services. These considerations supplement those discussed in Chapter 2.
- b. The litigation consultant's role in an auditor-related case.
- c. Developing evidence in an auditor-related case.
- d. An overview of the auditor's legal liability.

- e. Claims involving compilation and review services.

- f. Claims involving consulting services, including litigation services.

- g. Claims involving tax services.

Chapter 10—Employee Fraud Engagements

102.16 American companies lose billions per year from employee embezzlement, which represents just one type of fraud. Because of their audit backgrounds, CPAs are often engaged to find employee fraud and to quantify the extent of losses. Chapter 10 discusses types of employee fraud and presents commonly used means of detecting them. Some types of fraud addressed in this chapter are the following:

- a. Embezzlements involving cash, including “less cash” schemes and diversions of cash receipts.

- b. Lapping of accounts receivable receipts.

- c. Investment fraud, including fictitious investments and theft of investment interest or gains.

- d. Accounts payable schemes involving false vendors.

- e. False expense reports.

- f. Phantom employees and other payroll fraud.

- g. Vendor kickbacks.

This chapter also discusses the unique aspects of participating in criminal trials as well as civil

actions.

Chapter 11—Criminal Tax Cases

102.17 CPAs are sometimes engaged to assist their clients and others in criminal actions brought by the U.S. Internal Revenue Service. Chapter 11 discusses the CPA's role in these cases. The chapter gives an overview of criminal tax offenses then discusses the elements of tax crimes and the tax investigation process. The chapter discusses methods of proving income, that is, the government's methods of proving unreported taxable income, including the direct method and several indirect methods such as the net worth, expenditures, and bank deposits methods. The accountant working for the defense must understand these methods to help the attorney develop a theory of defense and counter the government's allegations. The chapter also covers the various services the CPA can provide and engagement administration issues unique to criminal tax cases.

Chapter 12—Valuing Closely Held Businesses and Professional Practices

102.18 Many court cases involve business valuation services. For example, a lost profits analysis computed as described in Chapter 4 assumes that the closely held business has been injured or temporarily impaired. If the business has been fully destroyed, however, damages should be based on the fair market value of the business on the date of loss rather than on past or future lost profits. If one of the marital assets encountered in a divorce (as discussed in Chapter 17) is an interest in a closely held business, the value of that interest must usually be estimated before the marital assets can be divided between the divorcing spouses.

102.19 Chapter 12 of this *Guide* discusses the process of estimating the value of an interest in a closely held business. It presents a number of valuation methods that may be used and demonstrates how an estimate can be fine-tuned for such adjustments as minority interest discounts, control premiums, and marketability discounts. The step-by-step procedures discussed in this chapter were specifically designed for use by CPAs who provide valuation services in a litigation setting.

Chapter 13—Providing Expert Witness Services

102.20 The vast majority of lawsuits are settled before they ever go to trial. A CPA who provides litigation services may therefore go months or even years without testifying as an expert witness. Whenever a CPA accepts an expert witness engagement, however, he or she should be prepared to testify if the case does not settle. Presenting expert witness testimony takes special skills. Chapter 13 of *PPC's Guide to Litigation Support Services* discusses those skills and provides dozens of pointers to effectively communicate the CPA's opinions during depositions and courtroom testimony.

102.21 This chapter gives an overview of the litigation process, then provides specific suggestions to improve the CPA-expert's presentation of opinions to the judge and jury at each step. The authors suggest the expert witness read through Chapter 13 before each deposition or court session. The tips and suggestions will help even the most seasoned witness do a better job on the stand.

Chapter 14—Providing Services to the Trier of Fact (or Facilitator) or as Joint Expert

102.22 A growing area of practice involves engagements where the CPA is retained to provide services to the trier of fact or facilitator or is retained jointly by litigating parties. Because of their accounting, tax, and analytical backgrounds; objectivity; and understanding of many aspects of business and economic issues and disputes, CPAs in these roles can provide valuable assistance to the triers of fact or facilitators and to the parties themselves. Chapter 14 in this *Guide* describes the many roles CPAs can assume, including the administrative and reporting issues.

Chapter 15—Alternative Dispute Resolution

102.23 Instead of going to trial to solve a dispute, parties to a legal action may try to resolve their differences through alternative dispute resolution methods, such as mediation, arbitration, and others. Mediation is a nonbinding process in which the mediator helps the parties arrive at their own resolution to the dispute. Arbitration is a binding process during which the parties submit the matter to the judgment of an arbitrator or panel of arbitrators. Chapter 15 of this *Guide* discusses the CPA's role in mediation, arbitration, and other alternative dispute resolution processes.

Chapter 16—Insurance Claims

102.24 Businesses attempt to reduce their risk of loss from catastrophic events by purchasing property damage and business interruption insurance. These policies are contracts between the insurer and the insured. Unfortunately, terms and conditions frequently are not spelled out in the policies. This leads to potential conflict between the insurer and insured as to what is covered by the policy. The conflict may be settled via negotiations or litigation.

102.25 Due to the complexity of the claims and the potential for fraud, CPAs may be asked to help either the insurer or insured estimate a claim. This chapter gives an overview of how to prepare property damage and business interruption claims and provides an example business interruption case.

Chapter 17—Divorce Services

102.26 CPAs are often engaged by their clients (or their clients' attorneys) to assist in divorce cases. In fact, many CPAs who offer no other litigation services routinely assist their clients with divorces. Chapter 17 addresses the various types of services that CPAs usually provide for divorcing spouses. These services typically involve the following major topics:

- a. Alimony and child support.

- b. Division of marital (or community) property, including asset tracing.

c. Forensic examination procedures that find hidden assets and/or income.

102.27 This chapter covers every major step in the divorce process from the CPA's perspective—from the initial stages of the engagement through the final decree. It was designed to assist CPAs who provide extensive expert witness services as well as those who merely prepare the tax returns of their divorcing clients.

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