

## Forensic Accountants' Expert Testimony in Litigation Support: A Case of Investigative Objectivity

\*Ejoh, Ndifon Ojong (Ph.D.)

Department of Accountancy, Cross River University of Technology, Calabar, Cross River State, Nigeria;

Corresponding Author: Ejoh, Ndifon Ojong (Ph.D.)

---

**Abstract:** *The need for sworn expert testimony in litigation engagement has been on the increase. This expert testimony is the treasured investigation result of the forensic accountant which is central to the success of litigation. This study addresses the role of the Forensic Accountant's sworn expert testimony in the successful. The survey design was used in the study with a sample size of 100 consisting of accountants, auditors, and legal practitioners. The simple random technique was utilized in selecting the sample size, while the ANOVA (F-test) was employed in the data analysis. The findings of the study revealed that that the forensic accountants' ability to provide sworn expert testimony is integral to forensic examinations because it affects the objectiveness and neutrality of forensic accountants during forensic investigations and examinations. It was thus recommended that Forensic accountants should invest whatever is necessary to acquire investigative skills to add to their professional skills of financial analysis and uphold the quality of honesty and objectivity which will remove any emotional affiliation and interest in the outcome of any litigation process or case thereby making their sworn expert testimony invaluable to the litigation process.*

**Keywords:** *Forensic Accountant, Forensic examinations, Litigation Process, sworn expert Testimony, Certified Public Accountant (CPA).*

---

Date of Submission: 29-07-2017

Date of acceptance: 05-09-2017

---

### I. Introduction

Forensic accounting applies every branch of accounting knowledge to investigations that may lead to legal confrontations. The Random House College Dictionary (Random House, 1984) defines forensic as "pertaining to, connected with, or used in courts of law or public discussion and debate." Forensic accounting applies accounting, statistical, research, and economic concepts and techniques to legal problems or potential legal problems. The forensic accountant must understand the legal process because the investigation may lead to court action, requiring the corporate forensic accountant or an outside expert to give testimony as an expert witness. The outside expert could be a Certified Public Accountant (CPA), a management consultant, a university accounting professor, or an economist.

Civil litigation commences when one party, termed the plaintiff alleges in a lawsuit some detrimental action or failure to act by another party, the defendant. The defendant is alleged to have caused the harm or loss. Most litigation is settled out of court after discovery of all information, including that supplied by the forensic accountant and other experts. In a forensic accounting investigation, the accountant uses auditing and other investigative skills to analyze what happened, develop assumptions about what might have happened, and explain these assumptions in a written report that usually measures damages to an injured party. Sometimes this report is presented in the courtroom if the case goes to trial. Auditing skills are valuable in this process, but additional investigative techniques are required because the process goes well beyond the testing that is the basis for audit.

Many CPA firms have developed forensic accounting expertise. A party to litigation may seek assistance of the CPA on the issue of measuring damages arising from some unfortunate event. For example, an employee of a small business may have forged checks over a period of time, and the CPA is asked to measure damages to the small business. The damage estimate would be used to seek restitution from the employee if caught. Otherwise, restitution may be sought from the small business firm's auditor if there was one. Alternatively, the small business may have insured against these possible losses, and the forensic accountant's report would be used to collect from the insurance company. In this situation, the forensic accountant is working for the plaintiff. The attorney for the defendant in the case, or potential case, will also need a forensic accountant to analyze the plaintiff's expert's report. With litigation on the rise, this practice area has been growing for many CPA firms. While forensic accounting deals predominantly with civil litigation, it also encompasses some areas of criminal law. In the case of fraud, potential criminal penalties may be a factor. FBI investigators may use the forensic accountant's findings from the civil aspects of the case to build a criminal case. Criminal cases include

deeds such as arson, price fixing, and bid rigging with related payoffs. In these cases, the forensic accountant can measure the economic consequences of the crime, helping the prosecutor establish motive.

Corporate accountants with forensic accounting expertise can help make a case economically viable. They can team up with the outside expert and provide assistance in the many roles described earlier. The corporate forensic accountant has the advantage of understanding the firm's accounting and management information systems. Making a preliminary damage assessment is an important role for the corporate forensic accountant. The potential damage claim will be identified by management and the facts will be presented to the corporate forensic accountant, often by corporate in-house legal counsel. The corporate forensic accountant can investigate the potential case using forensic accounting techniques. A preliminary damage estimate will result in a written report. This report may include an opinion about the merits of the case, providing a basis for a decision on whether to pursue the matter with outside legal counsel. Corporate forensic accountants can provide valuable assistance in matters that are highly unlikely to become lawsuits. Their expertise can be used to investigate wrongdoing by employees, and their findings can be used to decide whether an employee should be dismissed for not following company procedures.

Since the forensic accountant may be required to give a sworn expert testimony, or act as an expert witness in a litigation process, then he or she must be prudent and objective in their investigations, as their reports and analysis can ultimately determine the outcome of the civil litigation. Hence, the need for this study.

Against the backdrop, this study examines the relationship between the likelihood of forensic accountants giving sworn expert testimony and the objectiveness of their investigations. The researcher has formulated a hypothesis for testing in the null form:

Ho: The possibility of providing sworn expert testimony does not affect the objectiveness of the forensic accountant's investigations

## **II. Literature Review**

### **2.1 Forensic Accounting Roles**

Forensic accounting in its present state can be broadly classified into two categories encompassing litigation support and investigative accounting. These two major categories form the core around which other support services that traditionally come within the sphere of investigative services revolve - including corporate intelligence and fraud investigation services. However, it would also be remiss not to define what encompasses litigation support and investigative accounting. Litigation support - is the provision of assistance of an accounting nature in a matter involving existing or pending litigation. It is primarily focused on issues relating to the quantification of economic damages, which means a typical litigation support assignment would involve calculating the economic loss or damage resulting from a breach of contract. However, it also extends to other areas involving valuations, tracing assets, revenue recovery, accounting reconstruction and financial analysis, to name a few.

Litigation support also works closely with lawyers in matters involving, but not limited to, contract disputes, insolvency litigation, insurance claims, royalty audits, shareholders disputes and intellectual property claims. Investigative accounting - in contrast, investigative accounting is concerned with investigations of a criminal nature. A typical investigative accounting assignment could be one involving employee fraud, securities fraud, insurance fraud, kickbacks and advance fee frauds. No doubt in many assignments, both litigation support and investigative accounting services are required. In many cases, the combination of these services will not be adequate to address the problem unless there is in place an effective programme for fraud risk management and control. Creating an ethical work environment with a vigorous anti-fraud culture, implemented seriously by senior management through the promotion of a clear anti-fraud policy, is the only viable option if management is serious about preventing or reducing the recurrence of corporate fraud in its various guises (Cabole, 2009, [1]).

(Wallace, 1991, [2]) assert that these roles can more specifically highlighted as:

- a. Investigative accounting**
  1. Reviewing the factual situation and providing suggestions on alternative course of action
  2. Assisting in the preservation, protection and recovery of assets
  3. Coordinating with other experts, including private investigators, expert document examiners, consulting engineers and other industry specialists
  4. Assisting in the tracing and recovery of assets through civil, criminal and other administrative or statutory proceedings.
- b. Litigation support**
  1. Assisting in securing documentation necessary to support or rebut a claim.
  2. Reviewing relevant documentation to provide a preliminary assessment of the case and identify potential areas of loss and recovery.

3. Assisting in the examination and discovery process, including the formulation of relevant questions regarding financial evidence.
4. Attending to the examination and discovery process to review the testimony, assisting with understanding the financial issues and formulating additional questions for counsel.
5. Reviewing the opposing expert's reports on damages and the strengths and weaknesses of the positions taken.
6. Assisting in settlement meetings and negotiations.
7. Attending the trial to hear testimony of opposing experts and assisting in the cross-examination process.

## **2.2 A Tale of Two Cultures: Forensic accounting science and law enforcement**

The occupational culture of the forensic examiner is not framed by a single cohesive group with uniform professional or scientific values. As already suggested, it is routinely suffused with conflicted goals, directives, and expectations. Specifically, the objective and impartial creed of the forensic examiner is often at odds with the culture, code, and conduct engendered by the organizations that tend to employ them. Police crime laboratories have traditionally employed the majority of forensic scientists, primarily because of law enforcement dominion over the crime scene and a subsequent responsibility for physical evidence collection and testing (O'Hara and Osterburg, 1972, [3]).

Despite the growth of private forensic laboratories, the regular and increased outsourcing of government forensic services to the private sector and some court mandated funding for independent forensic examinations brought about by *Ake v. Oklahoma* (1985) and its progeny, this occupational dominance remains. The publication of the National Academy of Science Report on forensic science was referenced with respect to demonstrating the need for the present research. Among the findings in this watershed evaluation of the forensic sciences was the resolution that a true scientific culture cannot develop or even exist subordinate to law enforcement agency. The NAS Report explains that the resulting conflicts are fiscal, organizational, and cultural, resulting in the wrong kind of examiner pressure. Scientific and medical assessment conducted in forensic investigations should be independent of law enforcement efforts either to prosecute criminal suspects or even to determine whether a criminal act has indeed been committed. Administratively, this means that forensic scientists should function independently of law enforcement administrators. The best science is conducted in a scientific setting as opposed to a law enforcement setting. Because forensic scientists often are driven in their work by a need to answer a particular question related to the issues of a particular case, they sometimes face pressure to sacrifice appropriate methodology for the sake of expediency (Greenwood, 1977, [4]).

Pressure to achieve results is nothing new in scientific endeavor; however, the context is quite different for the forensic examiner. As already discussed, the forensic examiner is often working in a pro-law enforcement environment that is at odds with, and even hostile towards, their scientific mandate. Moreover, strong evidence has emerged over the past two decades revealing consistent and inappropriate influence exerted by the U.S. Department of Justice, and the FBI in specific, over the forensic science community. In any case, when contradictory cultural directives strain the work of the forensic examiner, the dominant (and controlling) culture is best situated to prevail. The NAS Report was not the first to raise this issue, or to recommend cultural separation.

Forensic examiners are meant to be objective and impartial scientific instruments- for use in educating investigative and then legal proceedings. This places upon them the requirement that they conduct themselves in such a manner as to preserve scientific integrity while also maintaining stringent personal ethics. However, the majority of forensic examiners work for law enforcement or government agencies on behalf of the police and prosecution. This work arrangement, which arises from the peculiar evolution of forensic science in tandem with law enforcement, creates competing cultural pressures that have been acknowledged but remain uncritically unexamined in the professional forensic literature until recently (Cable, 2009, [1]).

## **2.3 Forensic Accountants' Expert Testimony**

Forensic examiners are separated from other scientists by the likelihood that they will be called upon to present and explain their findings, under oath, in a court of law. Subsequently, they will be asked to explain how their findings were derived and what they mean. The single feature that distinguishes forensic scientists from any other scientist is the expectation that they will appear in court and testify to their findings and offer an opinion as to the significance of those findings. The forensic scientist will, or should, testify not only to what things are, but to what things mean (Lyman, 2002, [5]). Consequently, the anticipation of sworn expert testimony and the offering of sworn expert testimony are distinctive traits possessed by the forensic examiner. The ability to provide sworn expert testimony being integral to forensic examinations, a trustworthy character requirement is also presumptively invoked. This is true for majority of those working in the justice system. Mistakes or lack of professional standards by forensics professionals can lead, in a worst-case scenario, to wrongful convictions (Lyman, 2002, [5]).

The Task Force suggests that candidates, as well as those still in college who wish to become forensic scientists, be better informed that any association with criminal activity or lack of personal responsibility could preclude them from future employment in a crime lab. Forensic examiners of every kind, like members of law enforcement, must achieve and maintain the trust of the court in order to be allowed the privilege of giving sworn testimony. This includes avoiding activities or affiliations that evidence criminality; a propensity for dishonesty; or poor character – whether past or present. If it can be shown that a forensic examiner cannot be taken at their word, or that they have a propensity for criminal activity, then the court may exclude their testimony (Cleary, and Thibodeous, 2005, [6]).

### III. Research Methodology

This study employs the survey research design. The data was obtained from both primary and secondary sources, where the data analyzed were collated using the questionnaire instrument administered on a sample size of 100 respondents randomly selected from accountants, auditors and legal practitioners. To verify the reliability of the measuring instrument (questionnaire) developed for the purpose of this study, it was subjected to pre-trial tests. The reliability of the questionnaire instrument was revealed by the accuracy of the questions formulated and the degree to which different respondents give consistent answers.

The data collected were presented in tabular forms after summarizing and classifying them. The tabulated data was then analyzed using the simple percentage method to compare the responses. A higher percentage mean acceptance while a lower percentage means rejection and the formulated hypotheses tested using the Analyses of Variance (ANOVA) statistical method at 5% level of significance.

The formula for Anova is given as follows:

$$F\text{-Ratio} = \text{Mean of Squares between (MSb)} / \text{Mean of Squares within (MSw)}$$

Where:  $MSb = (SS_b) / (SS_b \text{ DF})$

$$MSw = (SSw) / (SSw \text{ DF})$$

**NOTE:**

1. Sum of Squares Between ( $SS_b$ ) =  $\{ [(\sum X)^2/n] + [(\sum Y)^2/n] + [(\sum Z)^2/n] - [(\sum T)^2/N] \}$   
 $SS_b \text{ DF} = K-1$
2. Sum of Squares within ( $SSw$ ) =  $\{ [ \sum X^2 - ((\sum X)^2/n) ] + [ \sum Y^2 - ((\sum Y)^2/n) ] + [ \sum Z^2 - ((\sum Z)^2/n) ] \}$   
 $SSw \text{ DF} = N-K$

**Where:**  $\sum X$ ,  $\sum Y$  and  $\sum Z$  = Sum of each group

$\sum T$  = sum of the total column;

$\sum X^2$ ,  $\sum Y^2$  and  $\sum Z^2$  = Sum of the square of the items in each group

K= number of groups

N = Rows X Column ie number of items in each group X number of groups

**Decision Rule:**

1. If F-calculated is greater than the F-tabulated, reject the null hypothesis ( $H_0$ ) and accept the alternative hypothesis ( $H_1$ ).
2. If F-calculated is less than the F-tabulated, accept the null hypothesis ( $H_0$ ).

**Level of significance:**

The level of significance is 0.05

### IV. Data Presentation And Discussions

#### 4.1 Data Presentation and Analysis

**Table 1:** The forensic accountants' ability to provide sworn expert testimony is integral to forensic examinations

Response	Accountants	Auditors	Legal Practitioners	TOTAL	Percentage (%)
SA	10	6	10	26	26
A	6	6	14	26	26
D	4	4	6	14	14
SD	4	0	10	14	14
U	6	4	10	20	20
TOTAL	30	20	50	100	100

Source: Field work, 2016.

**Table 2:** Forensic Accountants must be capable of demonstrating that they have no emotional, professional, or financial stake in the outcome.

Response	Accountants	Auditors	Legal Practitioners	TOTAL	Percentage (%)
SA	12	10	20	42	42
A	10	5	20	35	35
D	0	0	1	1	1
SD	0	0	0	0	0
U	8	5	9	22	22
TOTAL	30	20	50	100	100

Source: Field work, 2016.

**Table 3:** Forensic examiners are meant to be objective and impartial in legal proceedings

Response	Accountants	Auditors	Legal Practitioners	TOTAL	Percentage (%)
SA	10	6	15	31	31
A	15	10	24	49	49
D	0	0	6	6	6
SD	0	0	2	2	2
U	5	4	3	12	12
TOTAL	30	20	50	100	100

Source: Field work, 2016.

From table 1, a total of 52 percent of the respondents agreed, a total of 28 percent disagreed while 20 percent were undecided that the forensic accountants' ability to provide sworn expert testimony is integral to forensic examinations

From table 2, a total of 77 percent of the respondents agreed, a total of 1 percent disagreed while 22 percent were undecided that Forensic Accountants must demonstrate that they have no emotional, professional, or financial stake in the outcome.

From table 3, a total of 80 percent of the respondents agreed, a total of 8 percent disagreed while 12 percent were undecided that Forensic examiners are meant to be objective and impartial in legal proceedings

#### 4.2 Test of Hypothesis

Ho: The possibility of providing sworn expert testimony does not affect the objectiveness of the forensic accountant's investigations

Hi: The possibility of providing sworn expert testimony positively affects the objectiveness of the forensic accountant's investigations

**Table 4:** The forensic accountants' ability to provide sworn expert testimony is integral to forensic examinations

Response	Accountants	Auditors	Legal Practitioners	TOTAL
SA	10	6	10	26
A	6	6	14	26
D	4	4	6	14
SD	4	0	10	14
U	6	4	10	20
$\sum X$	30	20	50	100
$\sum X^2$	204	104	532	

Source: Computation from responses Research Questions

**Table 5:** ANOVA analysis of the importance of the forensic accountants' ability to provide sworn expert testimony to forensic examinations

Source of Variation	DF	SS	MS	F-Ratio	F- Critical
Between Group Treatment	2	93.33	46.665	7.00	3.89
Within Groups Treatment	12	80	6.67		
Total	14	173.33			

F- Critical value of 5% level of significance with degree of freedom 2 to 12 is 3.89

Source: Researcher's computation.

#### Decision/ Inference:

Since the calculated value of 7.00 is greater than the critical value of 3.89, we reject the Null hypothesis (Ho) and accept the Alternative Hypothesis (Hi). Therefore, the possibility of providing sworn expert testimony positively affects the objectiveness of the forensic accountant's investigations. This finding reveals that that the forensic accountants' ability to provide sworn expert testimony is integral to forensic examinations because it affects the objectiveness and neutrality of forensic accountants during forensic investigations and examinations

## V. Conclusion

Forensic accountants utilize investigative skills to answer the questions "Where is the money?" "What caused the damages?" and "What were the damages?" Their expertise is effective in investigating corporate fraud by management, suppliers, contractors, employees, and customers. Their investigations typically result in reports that identify causes and measure damages. Attorneys use forensic accountants in many types of civil cases ranging from contract disputes to massive antitrust cases. Corporate forensic accountants perform investigations of fraud and other wrongful acts that may or may not result in lawsuits. They can assess potential damage claims so that corporate legal departments can decide whether to pursue the litigation process. At some stage in civil litigation, attorneys will engage expert witnesses. Forensic accountants as expert witnesses can provide valuable services at various stages of the litigation process.

Forensic fraud is a major concern for the criminal justice system. It results in a significant cost from retesting evidence, overturned cases, dismissed cases, and civil actions for wrongful convictions. It can also simultaneously destroy the lives of innocent defendants, the careers the forensic examiners involved, and the credibility of their employers and co-workers by association.

The following recommendations are proffered:

1. Forensic accountants are to get equipped with legal parameters of each case before proceeding in the litigation process or investigation. This would help them understand the steps necessary and acceptable for admissibility of evidence obtained.
2. Forensic accountants are to invest whatever is necessary to acquire investigative skills to add to their professional skills of financial analysis. This combination will inevitably make them ready for any litigation engagement.
3. Finally, the quality of honesty and objectivity is to be upheld in the profession of forensic accounting. This will remove any emotional affiliation and interest in the outcome of any litigation process or case thereby making their sworn expert witness invaluable to the litigation process.

The researcher suggests that a study be conducted to examine daunts to credibility, honesty and ingenuity of forensic accountants in a litigation process and how they can be contained.

## References

- [1]. N. Cabole, Forensic accounting: A paper presented in the Hilton Hotel Lagos, 2nd June, 2009 Certified Public Accountant (CPA)Journal New York. Available at <http://c:/user/document>,
- [2]. A. Wallace, The role of Forensic Nigerian Accountant. November 1991
- [3]. C. E. O'Hara, and G. L. O'Hara, Fundamentals of criminal investigation, 5th ed. (Springfield, IL: Charles C. Thomas, 1980)
- [4]. P. W. Greenwood, J. Chaiken, and J. Petersilia, The criminal investigation process (Lexington, MA: D. C. Heath and Company, 1977).
- [5]. M. D. Lyman, Criminal investigation: the art and the science, 3rd ed. (Upper Saddle River, N.J.: Prentice Hall, 2002).
- [6]. R. Cleary and J. C. Thibodeous, Applying digital analysis using benfords law to detect fraud, auditing: A Journal of practice and theory, 2005, 77-81.

Ejoh, Ndifon Ojong . "Forensic Accountants' Expert Testimony in Litigation Support: A Case of Investigative Objectivity." IOSR Journal of Business and Management (IOSR-JBM) , vol. 19, no. 9, 2017, pp. 85–90.