

*CONSULTING SERVICES
SPECIAL REPORT 03-1*

AICPA

***Litigation Services
and Applicable
Professional
Standards***

Member Innovation Team

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NOTICE TO READERS

This special report is designed as educational and reference material for American Institute of Certified Public Accountants (AICPA) members and others who provide consulting services as defined in the Statement on Standards for Consulting Services issued by the AICPA. It does not establish standards; other approaches, methodologies, procedures, and presentations may be appropriate because of the widely varying nature of consulting services as well as specific or unique facts about the client and engagement.

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LITIGATION SERVICES AND APPLICABLE PROFESSIONAL STANDARDS

INTRODUCTION

Purpose of the Special Report

1. The purpose of this Special Report is to provide practitioners with additional guidance on the existing professional standards and the related responsibilities that affect the litigation services practitioner (the practitioner). This Special Report supersedes Consulting Services Special Report 93-1, *Application of Professional Standards in the Performance of Litigation Services*.

Definition of Litigation Services

2. Litigation services are consulting services that ordinarily involve pending or potential formal legal or regulatory proceedings before a trier of fact in connection with the resolution of a dispute between two or more parties. A trier of fact may be a court, jury, regulatory body, or government authority or their agents; a grand jury; an arbitrator; or the mediator of a dispute.

Roles of the Practitioner

3. The practitioner may be retained in a number of roles. These include the following:
- a. *Expert witness*. A person designated to render an opinion before a trier of fact is an expert witness. If the practitioner is designated as an expert witness, all work the practitioner has performed related to the litigation is potentially discoverable.
 - b. *Consultant*. A person who is retained to advise about the facts, issues, and strategy of the matter is a consultant. The consultant does not testify about an expert opinion before a trier of fact, unless the consultant's role is changed to that of an expert witness at a later date. The consultant's work generally is protected from discovery by the attorney work-product privilege, which emanates by extension from the attorney-client privilege. CPA-client privilege is non-existent except in certain situations involving practice before the IRS. When engaged by a litigant, as opposed to the litigant's counsel, the consultant should confirm that the attorney's work product privilege remains intact.
 - c. *Other*. This can be a person who is retained in a number of different roles, including a trier of fact, special master, court-appointed expert, referee, arbitrator, or mediator.

The roles of the expert and consultant are different. The term *practitioner* is used when the CPA may be serving either as an expert or consultant. The terms *expert* and *consultant* are used in those instances to clarify the separate roles of the practitioner.

Scope of Services

4. Litigation services may include fact-finding (including assistance in the discovery and analysis of data), damage calculations, business valuation, document management, expert testimony, and other professional services required by the client or counsel. Examples of typical litigation services engagements are provided in Appendix A, "Typical Litigation Services."

Other Engagements of the Practitioner

5. Litigation services do not usually, but may, include the following engagements:

- Attest
- Audit
- Review
- Compilation

Separate professional standards apply to each of the above engagements.

A decision tree of the applicability of the various services is included as Appendix B, "Decision Tree to Determine the Application of Professional Standards."

Consulting Services Provided by the CPA

6. As the practitioner providing litigation services, the certified public accountant (CPA) may be involved as an expert; consultant; or provider of other services including acting as a trier of fact, special master, court-appointed expert, referee, arbitrator, or mediator. The types of services or functions are varied and depend upon the practitioner's expertise. Such services may include the computation of economic damages, analysis of professional standards, valuation, fraud prevention, detection, and investigation, work in the bankruptcy court system, tax analyses, and more. The functions that can be performed include identifying issues, locating other experts, fact finding, analysis, assisting and managing discovery, etc. The scope and breadth of the services and functions provided by the practitioner may be varied. Refer to Appendix A.

PROFESSIONAL STANDARDS APPLICABLE TO LITIGATION SERVICES

7. Litigation services are consulting services provided by CPAs and their employees, and, therefore, adherence to the Statement on Standards for Consulting Services (SSCS) is required. The CPA engaged in litigation services must also comply with the general standards of the accounting profession contained in the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct, as well as relevant standards established by the state boards of accountancy or other licensing agencies and by other professional organizations to which the practitioner may belong. The appropriate AICPA standards that apply are discussed elsewhere in this report.

The AICPA Code of Professional Conduct

8. The AICPA *Code of Professional Conduct and Bylaws* applies to all services rendered by AICPA members. The following sections of the Code of Professional Conduct have particular applicability to the practice of litigation services:

- Rule 102, *Integrity and Objectivity* (AICPA, *Professional Standards*, vol. 2, ET sec. 102.01)
- Rule 201, *General Standards* (AICPA, *Professional Standards*, vol. 2, ET sec. 201.01)
- Rule 202, *Compliance With Standards* (AICPA, *Professional Standards*, vol. 2, ET sec. 202.01)
- Rule 301, *Confidential Client Information* (AICPA, *Professional Standards*, vol. 2, ET sec. 301.01)