

Forensic Accountant's Role In Litigation Support Services

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ABSTRACT

The objective of this paper is to theoretically examine the role which forensic accounting professionals could play in litigation support services within Nigeria. This paper examined concepts such as forensic accounting, role of forensic accountants in litigation support services, issues and challenges associated with rendering litigation support services by forensic accountant in Nigeria, while suggestions were proffered on the way forward. The methodological approach adopted in this paper is library based research, focusing on the review of relevant and related extant literature. The findings based on review of relevant and related literature revealed that there is immeasurable need of expert opinion given by the forensic accountants in the course of legal proceedings on certain issues to assist in trial and making judgements. It is further noted that there is a perceived gap created by traditional accounting and auditing system which does not guarantee absolute assurance on financial matters, thus precipitating the importance of forensic accounting and forensic accountants' role in aiding legal proceedings. The paper finally recommended the need for an empirical validation of this claim.

Introduction

The broad services rendered by forensic accountant have continually promoted the relevance of forensic accounting profession, thus making it to stand out amongst other specialisation in the accounting discipline. Forensic accounting scope covers fraud examination, taxation, litigation supports, financial reporting and others. Litigation support services is the use of accounting, auditing and communication skills to aid legal procedures and in this circumstances, the forensic accountant could be retained to serve as an expert witness, master or special master.

The American Institute of Certified Public Accountants (AICPA) issued a statement on business valuation/forensic litigation services (AICPA, 2015) which provides guidance to professionals could act on issues bordering on these engagements. According to Akkeren, Buckby, and MacKenzie (2013) the services for forensic accounting is on the increase in Australia, as a result of which many accountants who have limited knowledge of what forensic accounting actually entails, noting that forensic accounting is not all about fraud contrary to the belief of most accountant. The assertion by Akkeren et al. (2013) further emphasizes the importance of forensic accounting services and its uniqueness in terms of comparison with other branches of accounting. Similarly, Hao (2012) sees forensic accounting as an intersection between accounting framework and legal framework.

Alabdullah, Alfadhil, Yahya, and Rabi (2014) noted that the development of forensic accounting in premised on different factors which includes widespread use of false accounting information amongst others. This presupposes that there is inherent limitation in conventional auditing processes, hence a justification for the dire need of forensics and possibly litigation support services. Litigation Support Services (LSS) involves a wide range of activities that may require a forensic accounting professional to testify as skilled witness or acting in the capacity of master or special master either during pre-trial, trial or post-trial depending on the instance under which his services has been retained by the client. Forensic accounting practices have gained so much recognition in terms of practice in developed economy of the world such as United States of America, Canada, and Britain. In Nigeria, the issue of forensic accounting is still in a virgin state, owing to the fact that there is yet to be established framework for it regulation either in terms of standards or legislation. Secondly the practice of LSS by forensic experts/accountants in Nigeria could be hindered by the fact that Nigeria is not so much a litigious environment as the necessary court apparatus needed to entertain expert deposition might

be currently lacking. Finally there is the presence of both bench and jury systems in developed countries like the United States of America (USA), thus creating room for litigants in such climes to opt for either of the two systems, contrary to the Nigerian scenario wherein the bench system is the only court system still in practice till date. In the same vein, the existence of high tech equipment in aiding litigation proceedings in developed climes makes forensic accountants function optimally in those climes while this may not be the case in Nigeria.

The issues raised above in the preceding paragraph constitutes the major motivation for this paper; thus determining whether forensic accountants in Nigeria can render litigation supports services is quite debatable. However, the objective of this study is to theoretically examine litigation support services and forensic accounting in Nigeria. The remainder of this paper is structured as follows: Section two is literature review on forensic accounting, section three deals with the literature review on litigation support services of forensic accountant, section four examines the challenges of litigation support services and forensic accounting, section five suggests the way forward, while section six is conclusion and recommendations.

Literature Review

Forensic accounting

Ezejiolor, Nwakoby, and Okoye (2016) defined forensic accounting that aspect of accounting which provides relevant information that would be suitable for court or legal matters; thereby, offering a reasonable level of assurance in the legal processes. In the same vain, Dubey (2014), is of the view that forensic accounting should be seen as that specialized domain of the accountancy profession that focus on investigating fraudulent concerns by an analysis of financial data required to support legal proceedings. Forensic accounting therefore, is a tripartite practice that combines the application accounting and other skills like auditing etc to assist elucidate court procedures and legal matters. These definitions suggest that with the proliferation of fraudulent intentions amidst the quest of government to curb corruption in Nigeria, there may definitely be increasing demand for forensic accounting services sooner or later. Forensic accounting uses accounting, auditing, and investigative skills to conduct investigations into theft and fraud. "Forensic" means "suitable for use in a court of law", and it is to that standard and potential outcome that forensic accountants generally have to work.

It is in view of the aforesaid that Bhasin (2013), averred that the required sets of skills needed by forensic accountants should include communication skills in addition to knowledge in accounting,

business, auditing, psychology, criminology, technology, meta-thinking and courtroom behaviour.

History of Forensic Accounting.

Oberholzer (2002) gave two historical account of forensic accounting origin. Firstly, he noted that a circular of 1824 is suggestive of the fact that a certain James McClelland of Glasgow, Scotland render services having a semblance of forensic accounting wherein he prepare reports for onward presentation before arbiters, courts or council in a period where legal duties constituted a substantial part of accountant services. Oberholzer (2002) further submitted that there was increased activities of forensic accountants in the early twentieth century with litigation support becoming a fraction of their client services, an indication that contend the fact that forensic accounting in not a new specialty in accounting but rather a return to accounting roots.

In the work of Oberholzer (2002), it is evident that the second account of history on the origin of forensic accounting points to Maurice E. Peloubet in 1946, as he was credited as the first person to coin the phrase “forensic accounting” when he was a partner in a public accounting firm of Pogson, Peloubet & Co in New York. Peloubet however submitted that “during the war both the public accountant and industrial accountant have been and are now engaged in the practice of forensic accounting”. In terms of prominence, Oberholzer (2002) submitted that forensic accounting gained prominence in the 1930s during the trial of Al Capone, a known notorious gangster. Elliot Ness, an agent of with the Prohibition Bureau and Elmer Ireyboth played key roles in prosecution of Capone over tax evasion, thus with Irey emerging as the first high profile forensic accountant in USA. They constituted a team of investigators who were referred to as silent investigators and ended up using their investigative and analytical skills to expose Al Capone's financial malfeasance.

It is obvious from the account given above that forensic accounting came from developed society and that it is a specialty in the accounting discipline. In the same vein, it can be said to be a borderline discipline between law and accounting and thus involves litigation support services, fraud examination and special investigation. It requires the use of high tech investigative tendency and analytical processes in the financial reporting environment.

Forensic accounting scope

Forensic accounting is very broad in terms of its scope. Accordingly, Dubey (2014) identified the following areas that forensic accountants could function effectively:

- (i). Employee Fraud: Cases of fraudulent engagement of employees in activities that may have led to the acquisition of assets through the defalcation of stolen funds
- (ii). Criminal Investigation: In the institution of civil and other criminal actions by the court or relevant bodies, forensic experts are mostly engaged in the process of investigating white-collar crimes.
- (iii). Insurance Claims' Settlement: The need to obtain precise and copious assessments of the relevant claims by third parties/policy holders necessitates the engagement of the services of forensic accountants

In addition to the above, forensic accountants are involved in arbitration services, matters relating to dispute settlement and/or professional negligence amongst others.

Forensic Accountants' Role as an Expert Witness in LSS.

Akkeren et al. (2013) observed that forensic accountants' roles in LSS included tax determinations, fraud examination, auditing, investigative accounting, provision of expert testimony, etc. Forensic professionals can resolve litigation problems before any expert trial testimony is required. Similarly Ojo (2012) noted that expert opinion as provided by the forensic accountant sometimes could compel businesses to possibly restructure their operations to avert colossal losses. Akkeren et al. (2013) further submitted that forensic professionals can resolve litigation problems before any expert trial testimony is required. Okoye and Akamobi (2009) noted that forensic professionals may sometimes need to testify as an expert witness if the dispute escalates to a court hearing and the judges and juries do not have specialized knowledge to reach the conclusion without their. The privilege was granted for forensic accountants to testify their conclusions based on their knowledge and experience and is governed in Australia by a number of regulatory documents that vary from state to state (Kranacher, Morris, Pearson, and Riley, Jr., 2008)

Fenton, Jr. and Isaacs (2012) indicated that as an expert witness the forensic accountant in the course of aiding litigation support services could be asked about the scope of the assignment, current employment, educational background, professional licenses, work experience, memberships in professional organizations, publications and lectures, fields in which the accountant is qualified as an expert, other work performed as an expert witness or other litigation consultant, the amount of compensation being received (and what percentage is derived from

testifying as an expert witness), what opinions have been formed, and the bases for those opinions. If the forensic accountant is not engaged as a testifying expert, then the development of deposition questions places him or her in the role of a non-testifying or consulting expert, and therefore would be permitted to be present during depositions and trial proceedings.

Heitger and Heitger (2008) showed area of valuable experience to student for purpose of litigation support and expert witnessing to include: responding to an attorney in written and oral communications regarding being retained in connection with the litigation of a new case; evaluating business and accounting information relating to pending litigation; understanding basic legal issues relating to providing litigation support services and a clear understanding that forensic accountants render no legal opinions; understanding the role of forensic accountants in both testifying and non-testifying capacities; understanding the differences between the two types of harm: tort and breach of contract; formulating the appropriate damage model given the circumstances of the case; being assigned or choosing the role as litigation support/expert witness in support of the plaintiff or in support of the defendant in the case so that students can experience the adversarial nature of the litigation process; having attorney/expert consultations to experience essential communications skills; assimilating case materials and identifying relevant data for evaluation and analysis in the case; developing an appropriate analytical framework given the issues and objectives in the case; assisting the attorney in determining the accounting documents and other information that should be requested in the discovery process of "request for production of documents; identifying and understanding the nature and purpose of commercial damage models; understanding the nature of business valuations including the valuation of closely held businesses; preparing an expert report to describe and support opinions the expert witness has developed in the case; assisting the attorney in evaluating the expert report of the expert witness representing the other side in the case; additional role-playing in consultations with the attorney about an upcoming deposition in which the opposing attorney would depose the expert on his/her expert report; getting deposed by the opposing attorney with the primary emphasis being on defending the expert's report; role-playing activities with the attorney related to trial testimony; trial testimony including both direct testimony and cross-examination so that students have an opportunity to present and defend their expert opinions; and understanding and applying economic concepts essential to evaluating

and analyzing economic damage cases such as wrongful death or personal injury cases.

Issues and challenges of forensic accountants' role in litigation support services in Nigeria

The inherent challenges of forensic accounting practice and litigation support services are largely functional in different issues. First the issue of virtually no regulatory framework such as legislation, standards, professional forensic accounting bodies and other sources of authority could hamper the growth of this discipline in the accounting profession in the Nigerian environment. A mere reliance, adoption and importation of sources of authority developed for the practice of forensic accounting and litigation support services in developed economies may not be capable, suitable and reliable of achieving the desired result as it could suffer problems in an attempt to domesticate such standards to suit Nigerian environment. Furthermore, forensic accountants in Nigeria may also have difficulties in trying to interpret the provisions of standards and legislations used in the practice of forensic accounting such as in USA, Britain and Canada.

Secondly the issue of litigation supports by the forensic accountants may also be affected by the general flaws in Nigeria legal system such as the issue of corruption in the judiciary, lack of sophisticated gadgets to aid legal proceedings, as well as the problem of having only the bench system of trial compare to the USA which have both the bench and jury system. The implication here is that litigant and expert witness will be limited to using only one option of justice dispensation or trial as the case may be.

Finally, since the issue of corruption has continued to thrive in the Nigeria public system particularly among public office holders, hence being a substantial beneficiary of the proceeds of corrupt practices, the will and desire to promote legislations and standardisation of forensic tools through government institutions by those occupying the said public offices might be lacking due to the fact that the political office holders could perceived such development as a boomerang which will be set out to work against them while in office or in the later part of their life after leaving office.

The way forward

The way forward could be for the Financial Reporting Council of Nigeria (FRCN), professional accounting bodies to wake and develop relevant standards and legal framework to promote the use of forensic accounting services in Nigeria environment. Furthermore, the relevant organs of government

should as a matter of urgency come up with the needed legislative backing making it mandatory for the application of forensic accounting services including litigation support services in the Nigeria financial reporting systems, while efforts should be made to provide the needed gadgets and enabling environment for expert testimony to be entertained in the Nigeria court systems.

Conclusion and recommendations

The focus of this study is theoretically examined the role of forensic accountant in litigation support services. The need for expert testimony in aiding legal opinion on matters bothering on professional issues cannot be over emphasized irrespective of the discipline on which the subject matter relates. However, based on the issues and challenges identified in the extant literature review in this paper, there is no doubt for the need of expert opinion given by the forensic accountants in the course of legal proceedings on certain issue to assist the trial of fact in making judgements. It is pertinent to state further that there is a perceived gap created by traditional accounting system which does not guarantee absolute assurance, thus precipitating importance of forensic accounting and forensic accountants' role in aiding legal proceeding. It is therefore recommended for the need for empirical validation of the claim on the role of forensic accountant in aiding litigation support services.

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