



**DIVORCE LITIGATION  
SUPPORT  
THE  
EXPERT WITNESS**

2012 ANNUAL CSPA CONFERENCE

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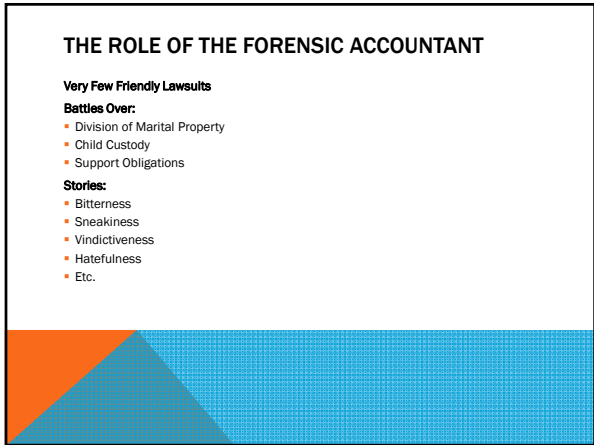
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**THE ROLE OF THE FORENSIC ACCOUNTANT**

**Very Few Friendly Lawsuits**

**Battles Over:**

- Division of Marital Property
- Child Custody
- Support Obligations

**Stories:**

- Bitterness
- Sneakiness
- Vindictiveness
- Hatredfulness
- Etc.

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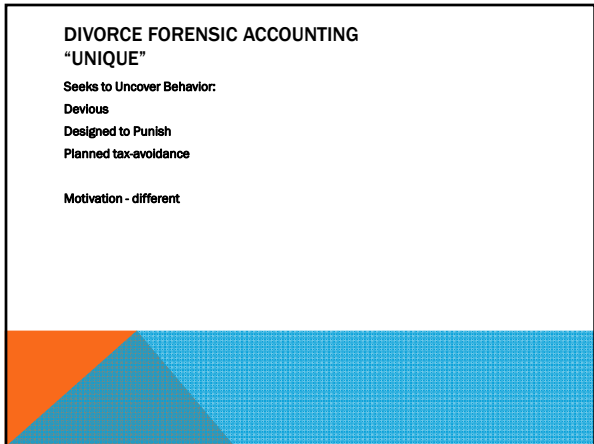
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**DIVORCE FORENSIC ACCOUNTING  
"UNIQUE"**

**Seeks to Uncover Behavior:**

**Devious**

**Designed to Punish**

**Planned tax-avoidance**

**Motivation - different**

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**EXPECTATIONS OF A FORENSIC EXPERT**

Primary financial investigator  
Uncovering unreported income and assets  
Expert witness – testimony  
Advisor to attorney:  
• Finance  
• Tax  
• Business Practices



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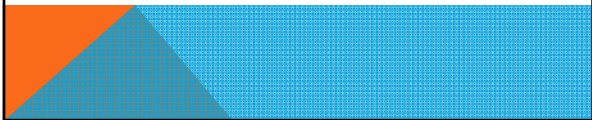
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**PROFESSIONAL RELATIONSHIPS WITH MATRIMONIAL ATTORNEYS**

What is attorney looking for?  
Credentials  
Experience  
Reputation  
Demeanor



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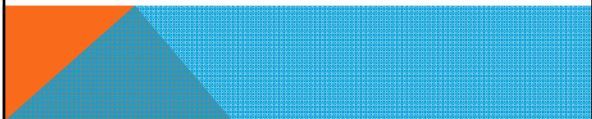
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**ATTORNEYS**

Attorneys – few have the working knowledge of business, tax and accounting matters that accountants do!



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**THE ACCOUNTING EXPERT**

**Accounting expert:**

**More Current:**

- Matters of business accounting
- Techniques used by business people
- May be less expensive
- Understand tax matters



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**ACCOUNTANTS AS EXPERT WITNESSES**

\*Accountants as expert witnesses can be very useful because of their ability to testify on a broad range of financial, tax and business practices.\*



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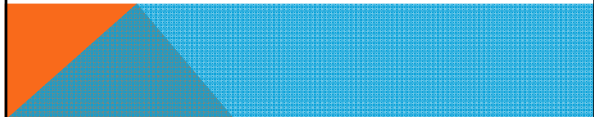
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**WRITTEN REPORT AND FORMAL DECLARATIONS**

Forensic expert must have decent writing skills  
Report will be introduced into court as evidence  
Report must be a model of clarity  
Least amount of "accountant-speak"



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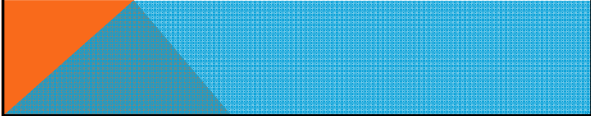
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**TESTIMONY IN COURT**

A written report, in and of itself, is not admissible as evidence in a court of law.  
Technical term – it is hearsay.  
To be accepted – expert must testify



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**ENGAGEMENT CONSIDERATION**

**Conflicts of Interest and bias**

- Non-divorce related services to one of the spouses
- AICPA Code of Conduct
- Related parties
- Opposing Counsel
- Disqualification

**Keep an open mind to avoid bias**

**Cooperation of the parties**

**Location**

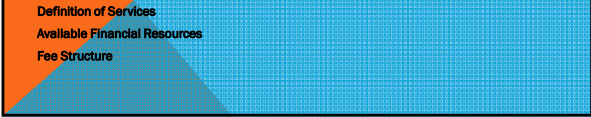
**Appropriate Skills and Experience**

**Timing and Due Dates**

**Definition of Services**

**Available Financial Resources**

**Fee Structure**



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**WHO IS YOUR CLIENT?**

**Retained by attorney**

- Attorney-client privilege
- Attorney-Work-Product privilege

**Party's expert**

**Neutral expert:**

- Court's expert
- Mediator's expert
- Joint expert

**Engagement Letter and Retainer Agreement**



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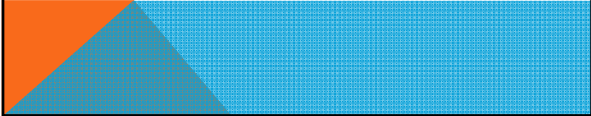
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**ENGAGEMENT LETTER**

- Nature of the relationship
- Parties to the agreement
- Party responsible for payment
- The limitations on the number of hours or fees - "no fixed fee".
- Forensic accountants exact duties
- Allowance for withdrawal



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**UNDERSTANDING THE PROCESS**

- Property rules in various states
  - Community
  - Marital
  - Separate Property
  - Equal or Equitable Distribution



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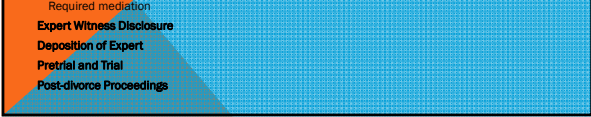
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**BASIC MATRIMONIAL LITIGATION PROCEDURE**

- Preliminary Phase
- Fault or No-Fault State
- Discovery
- Demand for Documents
- Financial affidavit
- Interrogatories
- "Taking the Fifth"
- Depositions
- Third-Party Subpoenas
- Request for admissions
- Local rules of court
- Required mediation
- Expert Witness Disclosure
- Deposition of Expert
- Pretrial and Trial
- Post-divorce Proceedings



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**FORENSIC EXPERTS' ROLE IN COURTROOM**

**General Provisions**

- Educate
- Jury and Judge
- "Everyman's Language"
- Explain your work
- Try to make yourself likeable

**Dress Code**

**Addressing the Court, Other Counsel and the Jury**

**Testimony Demeanor**

**Papers and Organization**



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**TESTIFYING**

**Preliminary Qualification**

- Credentials
- CV or resume
- Waiving expert credentials

**Direct, Cross and Redirect Examinations**

**Objections**

**Visual Aids**

**Depositions**



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**MARITAL PROPERTY**

**Valuation**

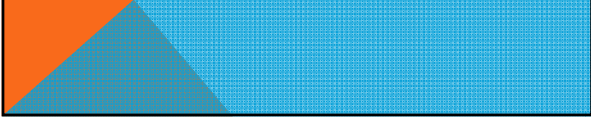
**Characterization**

**Division**

**Marital Agreements**

- Prenuptial Agreements
- Standard of Conduct Between Spouses

**Trust and Estates**



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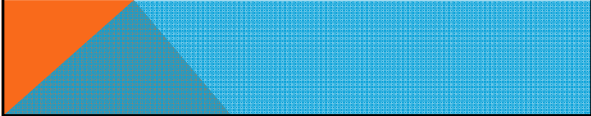
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**MARITAL FRAUD**

Definition of Fraud  
Why Spouses Commit Fraud  
Standard of Conduct



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**BADGES OF FRAUD**

Behaviors  
Conditions  
Evidence  
Lifestyle Issues  
Diverted or Hidden Income  
Inappropriate Transfers  
Business  
Wild Goose Chase



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**INVESTIGATING BUSINESS ASSETS**

Role-Evaluation of the Business  
Perks  
URI  
Depreciation methods  
• Bonus  
• Section 179  
Valuation Expert  
Buy-Sell Agreements  
Real Value  
Active vs. Passive  
Gift Tax Returns - Discounting  
Tax Fraud



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**BEGINNING THE INVESTIGATION**

- Obtaining the Necessary Documentation
- Business Tax Returns
- Business Agreements and Contracts
- Corporate Ownership Records
- Company Financial Statements
- Appointment Book - Calendar
- "Documentation Durability"
- Loan Documents
- Insurance Papers
- Bank Records
- Financial Statement Manipulation



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**"URI"  
UNREPORTED INCOME**

- Personal Lifestyle Investigation
- Concealing assets or income



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**"PROCESS FOR FINDING URI"**

- Evaluate Income Tax Returns
- Gift Tax Returns
- Trust Income Tax Returns
- Bank Records
  - Compare Sources of Income
- Cancelled Checks
- Bank Deposits
- Income Expected but not Included
- Gifts and Inheritances
- Personal Expenses
- Nonmarital Real Estate
- Nonmarital Personal Property
- Payment of Credit Card Bills
- Second Rental or Utility Bill
- Credit Card Records
- Safe Deposit Box Records
- Brokerage Account Records
- Loan Applications and Financial Statements



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**MARKETING YOUR SERVICES**

**Identify your Market**

**Methods of Generating Business**

- Referrals
  - Personal
  - Fellow Professionals
  - Existing Clients

**Seminars and Other Speaking Engagements**

**Website**

**Business Cards**

**Brochures**

**Newsletters**

**Giveaways**

**Endorsement Letters**

**Direct Mail Solicitation**

**Advertising**



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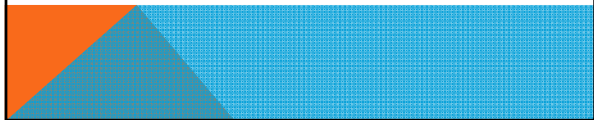
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**NOW YOU CAN BE  
AN EXPERT  
WITNESS!**

**Just be Careful!**

**Don't Get Shot!!!**



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