

THE Witness Chair

Leading-edge Ideas for CPAs Providing Litigation and Dispute Resolution Services

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Ask Not for Whom the City of Bell Tolls; It Tolls for Thee

by Michael Spindler, CPA
and Mikhail Reider-Gordon, CAMS

Bell, Vernon, Maywood, Compton, South Gate, Commerce, El Segundo, Beaumont. These and other municipalities have recently found themselves at the center of scandals involving allegations of corruption, excessive compensation and influence peddling. Beyond the cringe-inducing media headlines and seemingly endless nightly news footage of various city executives doing the “perp walk,” what lies behind these investigations and what lessons are there to be learned?

In July California Attorney General Jerry Brown launched a joint investigation with CalPERS into the compensation paid by local governments throughout the state. The likelihood that Bell is the only city in California that allowed its executives unchecked pay raises is remote. Additionally, cities and public agencies that are recipients of state and federal grant monies earmarked for special programs, such as anti-terrorism or school construction, must be mindful that in times of budget crises and lower tax revenues, pots of money from outside sources may be too tempting to resist by municipal management and local agency authorities.

Without well-planned controls and regular monitoring of expenditures, cities may find themselves exposing their municipalities and taxpayers to excessive risk.

City officers who do not take steps to actively monitor how their entities spend their money can expose themselves as individuals to charges of fraud, civil conspiracy, waste of public funds and breach of fiduciary duty. Perhaps even more alarming are the attendant risks the

municipalities run of driving themselves into bankruptcy. In 2008, Vallejo became the largest city in California to declare Chapter 9 bankruptcy, largely caused by excessive salaries and pension expenses for which the city could not bear the cost.

Municipalities and public agencies that don't monitor the actions of their elected officials and executives and managers can find themselves on the verge of collapse if financial misdeeds such as misappropriation of public funds are found.

The city of Bell is a recent example, as it faces the prospect of near collapse with few remaining council members or executives to operate and manage city affairs. The Los Angeles County Board of Supervisors has asked Los Angeles County auditors to conduct a comprehensive review of Bell's finances, including its cash position, contracts, outstanding debts and authorized and issued bonds, to determine whether the city is still solvent.

A year ago, it was San Jacinto that experienced a similar scandal with a majority of its council members arrested and charged, leaving but one council member and a city without an operable government. The loss to a city's coffers from millions of dollars being misappropriated or misused can severely hinder its ability to operate or pay for basic services and, as noted above, can result in bankruptcy.

Forensic audits can examine the pay of the top wage earners in a city or municipality, as well as top pension draws and the pension benefits to those who have retired early or who draw multiple retirement allowances; assess whether the salary and benefit levels have been

appropriately authorized; and help cities make decisions over raises when negotiating with unions, as knowing how much a city spends can either help justify increases or provide evidence of why city coffers can't afford requested increases. Possessing accurate figures can even help defend against unfair compensation packages.

For example, an analysis of the city of San Diego conducted by the California Foundation for Fiscal Responsibility this year found examples of former officials earning more in retirement than for the budgeted positions they once held; several individuals under the age of 48 who were drawing retirement allowances; and former city officials who were current state officials, but drawing a city of San Diego pension, a state official salary and a state per diem.

Forensic examination can include data not typically examined by an auditor, such as contractors who earn more than municipal employees who perform similar tasks; help to advise on controls; facilitate in creating means by which to keep the decision-makers from having control over their own compensation packages; and assist in the detection of conflicts of interest or influence

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Section Action

Business Valuation

by John Misuraca, CPA

Like most valuation firms, we rely on referrals for most of our projects. We appreciate all referrals and always desire to return the favor when possible. In the past, this usually only happened when a client asked us if we knew of anyone in a certain field of business because they were unhappy with their service provider or they needed help in a new area.

We wanted to become better at referring to others in our network, so we brainstormed and created a checklist of additional questions to ask our clients. We started asking if they had needs or problems in areas where people in our network could help. Our goal was to find potential work for others, but we found that it made us better valuation consultants.

The questioning led into areas of the companies that we may have touched on lightly in the past. We found we were learning new information that should be included in our reports. For owners interested in increasing company value, we could provide better advice or point them to specialists who could help them improve certain areas of their companies.

Improving our questioning has led us to meeting with our network of people to learn even more about their services. What are their specialties? In what areas do clients need the most assistance? What are the signs that a company needs help?

Work closely with your network and you will find it will help them—and benefit your clients and your work product.

John Misuraca, CPA is Business Valuation Section chair and managing partner with Avalon Advisors, Inc. in Laguna Hills.

Economic Damages

by Craig M. Enos, CPA

Does your library contain a copy of Judicial Council of California, Civil Jury Instructions, commonly referred to as CACI?

CACI is a two-volume set published by various vendors and available at www.courtinfo.ca.gov/jury/civiljuryinstructions/juryinst.htm. The instructions are the work

of a task force appointed by Chief Justice Ronald M. George in 1997, consisting of justices, judges, attorneys and other advisers.

The instructions were approved by the Judicial Council as the state's official jury instructions pursuant to the California Rules of Court. The Rules of Court provide that the use of these instructions is strongly encouraged.

Following each jury instruction, CACI provides Directions for Use and Sources and Authority. The Directions for Use alert the user to special circumstances and may include references to other instructions. The Sources and Authority set forth the primary sources that present the basic legal principles that support the instruction.

For example, if you have a case involving lost profits, you should refer to CACI No. 3903N, *Lost Profits (Economic Damage)*. The instructions related to lost profits are:

“To recover damages for lost profits, [name of plaintiff] must prove it is reasonably certain [he/she/it] would have earned profits but for [name of defendant]’s conduct.

To decide the amount of damages for lost profits, you must determine the gross amount [name of plaintiff] would have received but for [name of defendant]’s conduct then subtract from that amount the expenses [including the value of the [specify categories of evidence, such as labor/materials/rents/all expenses/interest of the capital employed]] [name of plaintiff] would have had if [name of defendant]’s conduct had not occurred.

The amount of the lost profits need not be calculated with mathematical precision, but there must be a reasonable basis for computing the loss.”

The Directions for Use note that this instruction is not intended for personal injury cases, which are instead covered under CACI No. 3903C, *Past and Future Lost Earnings (Economic Damage)*.

Under the Sources and Authority section of CACI No. 3903N, you are informed that “the measure of damages in this state for the commission of a tort, as provided by statute, is that amount which will compensate the plaintiff for all detriment sustained by him as the proximate result of the defendant’s wrong, regardless of whether or not such detriment could have been anticipated by the defendant. It is well established in California, moreover, that such damages may include loss of

anticipated profits where an established business has been injured.”

The section goes on to provide the case law that supports the instruction.

If your library has a copy of CACI, review the Preface, Guide for Using CACI and the Table of Instructions. If your library does not have a copy of CACI, I strongly encourage you to access a copy online.

To learn more about resources available to assist you in your practice and to network with your peers, I urge you to attend the various Litigation Sections meetings.

Craig M. Enos, CPA, ABV, CFF, CFE is Economic Damages Section chair and a partner with Ueltzen & Co. in Sacramento.

Family Law

by Robert O. Watts, CPA

Financial aspects of family law continue to grow and develop through theoretical and technical decisions and changes in the Family Law Code and case law. These changes help guide forensic CPAs in drawing their conclusions. Recent procedural case law decisions and legislative changes are also shaping our profession in non-technical areas.

Two significant events in the area of discovery affect us in preparing a case procedurally. *In re Marriage of Feldman* mandates full disclosure of all information and facts by parties to the case and, more recently, California’s Electronic Discovery Act, Assembly Bill No. 5, Ch. 5, establishes procedures to govern the discovery of electronically stored information (ESI) in state courts. The Act was signed into law in June 2009 and tracks the 2006 amendments to the Federal Rules of Civil Procedure.

When considering the direct impact of *Feldman* and the Act, *Feldman* is client focused, while the Act is inclusive of the financial professional. The Act defines ESI as “information that is stored in an electronic medium.” Electronic is broadly defined as “relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.” [Cal. Code Civ. Proc. Secs. 2016.020(d) and (e)].

What does ESI mean to the client? Think of anything stored electronically: e-mails, text messages, TIFF files, PDF files, computer program data files, digital voicemail formats and picture image formats.

What does ESI mean to the expert? It could mirror everything listed above for the client, but additionally it may mean

work product files and the data written and contained within developed formulas of in-house programs.

Are live files and data written in common programs, such as Excel and Access, that an expert's firm has spent time, knowledge and resources developing, outside of discovery and exempt as proprietary? It would appear not, based upon the language within the Act. But we will see as the rules begin to get applied and challenges are made.

There are limitations written into the bill on the production of data sources, such as undue burden, accessibility or cost, with cost shifting an available recourse. Nevertheless, this new law is fairly broad and encompassing, and open for interpretation.

Robert O. Watts, CPA is Family Law Section chair and a partner with GurseylSchneider LLP in Los Angeles.

Fraud

by Barbara J. Gottlieb, CPA

While mortgage and loan fraud schemes are nothing new, the economic conditions are causing a record rise in occurrences. As such, both professionals and consumers need to be aware and able to identify red flags for some common loan fraud schemes.

First, "foreclosure rescues" prey on desperate homeowners, promising to save them from foreclosure. The schemes typically involve steep up-front fees, deed transfers and forged deeds to manipulate the chain of title. Fraudsters further encumber the property or sell it for their personal gain, stripping the homeowner's equity. Beware of deals that sound too good to be true.

Another booming scam is fraudulent loan modification. While there are legitimate companies offering valuable services, fraudsters are permeating the marketplace. Be skeptical of companies touting themselves as "certified," "experts" or "specialists."

In California, loan modifications can only be negotiated by licensed real estate brokers, California attorneys or the property owners. Before retaining services, homeowners should verify the broker's license with the Department of Real Estate and be wary of up-front fees or fees paid outside of escrow.

Finally, the newest foreclosure fraud is originating with the lenders themselves. Because the banking crisis resulted in the transfer of many loans from one financial institution to another, lenders struggle to provide original documentation to establish clean chains of title.

Message From the Chair

by Daniel W. Ray, CPA



In my first column as the incoming chair of the Litigation Sections Steering Committee, I introduced you to other committee officers and the chairs of the four Litigation Sections. My goal for this column is to provide additional details about the benefits of membership and active participation in the sections.

The Steering Committee and the various Sections were formed in 1996. Since that time, the Steering Committee's many members have met regularly, typically four times per year, to discuss developments and create education and training opportunities for members of the Sections. The Litigation Sections bylaws, which can be found at www.calcpa.org, describe the role of the Sections as follows:

The Litigation Sections (Sections), as part of the California Society of CPAs (CalCPA), exists to provide an expanded forum to facilitate participation by CPAs interested in the exchange and dissemination of ideas and resources, to identify relevant current events and trends and to explore technical issues and applicable professional standards.

The bylaws identify additional benefits of Litigation Sections participation, and also provide information about membership in the Sections, the Litigation Sections Steering Committee and the duties and responsibilities of both entities.

Since their formation, the Litigation Sections have been responsible for developing various Practice Aids, Checklists and other literature and guidance. The Sections meetings have helped satisfy continuing education requirements by providing hundreds of hours of continuing education. The Sections have developed a number of conferences, with cumulatively thousands of participants, including the Advanced Litigation, Family Law, Business Valuation and Bankruptcy Conferences and IP Damages Institute, among others.

In addition to continuing education, conferences and *The Witness Chair*, I advocate that the greatest benefit is the opportunity to network with both peers and other professionals. In today's technology-driven era, the ability to obtain continuing education by watching a computer screen in the privacy of your home or office is a two-edged sword: it's convenient, but impersonal. The challenge we face is finding the right blend of embracing technology, while preserving good old-fashioned face-to-face human interactions.

There are many factors to consider in deciding how we invest our time and education and marketing dollars. I have always viewed active participation in the Sections as marketing and education opportunities as opposed to simply obtaining necessary continuing education credit. I would encourage everyone to do the same.

— **Daniel W. Ray, CPA, CFE, CFF** is a director with Hemming Morse, Inc., CPAs, Litigation and Forensic Consultants in San Francisco.

To circumvent the legal process, they engage in "robo-signing" and falsifying documents. The consequences are far reaching: from the homeowner losing the property, to the title insurance companies falsely guaranteeing clean title, to the purchaser of the foreclosed property holding questionable title, and, ultimately, the court system losing integrity.

Attorney generals from all 50 states are jointly investigating these procedural

defects, stating that the use of robo-signers "may constitute a deceptive act and/or unfair practice or otherwise violate state laws."

Hopefully, as the economy improves, the opportunity for and occurrences of loan fraud scams will decrease. In the meantime, awareness, knowledge and education are our best defenses.

Barbara J. Gottlieb, CPA is Fraud Section chair and a partner with Laffer & Gottlieb, CPAs in Beverly Hills.



Unravelling the Burdens of Expert Discovery in Federal Cases

by Rachel Williams, CPA

Effective Dec. 1, 2010, barring intervention from Congress, Rule 26 of the Federal Rules of Civil Procedure (FRCP) will be amended and extend work-product protection to cover communications between experts and counsel and draft reports.

The 1993 amendments to FRCP Rule 26 that greatly expanded the scope of expert discovery have caused considerable practical limitations on how lawyers and expert witnesses work together, and have resulted in significant increases to the cost of litigation. It is for these reasons that the 2010 amendments are widely supported throughout the legal community. The plaintiff and defense bars, the judicial bench and bar associations generally agree that the changes will have a positive impact on discovery, how experts perform their analyses and how attorneys litigate cases.

Impact of the 1993 Amendments to Rule 26(a)(2)

The amendments implemented in 1993 to Rule 26 have been broadly interpreted by the courts, allowing for wide discovery of information from testifying experts that has notably included all communications with legal counsel and drafts of experts' analyses and reports. The expanded scope of discovery under the 1993 amendments has resulted in increasingly complex expert discovery that often requires experts to produce everything related to a case, including all scraps of paper, notes, e-mails, phone messages and electronic and hardcopy versions of analyses and draft reports.

In turn, testifying experts and legal

counsel have learned to take elaborate steps to avoid the creation of discoverable materials. Consequently, it is more difficult and expensive for experts and legal counsel to serve their clients.

While the intent of the 1993 amendments was to promote the exchange of information during the expert discovery process, it has resulted in unintended consequences, including:

- 1) An explicit effort to limit communications between expert and counsel;
- 2) Attorneys and experts employing a variety of tactics to avoid creating discoverable information; and
- 3) The burdensome process of having to produce an increasing amount of information, given the advent of the information age and electronic discovery.

All of these have resulted in wasted court time and rising litigation costs, without any noticeable improvement to the quality of the expert's work or the trier of fact's ability to understand the information presented at trial.

The broad discovery allowed of expert communications has caused attorneys and experts to limit their communications because the expert may be required to discuss such communications under oath in deposition and at trial. This prevents attorneys from consulting with testifying experts about preliminary analyses, case theories or legal strategies for fear that it will have to be disclosed to the other side. This may result in legal counsel not fully developing their strategy with respect to damages or minimizing the expert's role, which may impact the quality of the expert's work and how it fits into the presentation of the case.

One of the many tactics used to avoid discovery of expert drafts or communications is for legal counsel to work directly with the expert's staff, building a so-called wall around the expert so the expert is not exposed to such communications and strategies. Another tactic is for attorneys to hire consulting experts to work up the preliminary analysis of the case and provide strategic advice to counsel. This second consulting witness is hired as a privileged consultant and is protected under the work-product doctrine and the work of the consulting expert can therefore avoid discovery.

The 1993 amendments could not have predicted the significant impact that e-mail and electronic discovery have had on the

litigation process, causing increasingly burdensome demands on all parties involved, including expert witnesses. The reality that electronic information such as e-mail is often required to be retained causes experts to employ taxing processes and procedures to avoid creating discoverable e-mails or electronic information.

Regardless of the multitude of tactics taken by attorneys and expert witnesses to avoid creating discoverable communications and drafts, opposing counsel will often conduct widespread discovery of the opposing expert's communications and draft work product. This often includes requesting the production of all e-mails from the expert and their staff and all electronic data related to the matter, with this occasionally requiring the use of hard-drive imaging and deleted data recovery methods.

Opposing counsel then spends significant time in deposition and at trial questioning the expert about the responsive information to try to impeach the expert or to confuse the jury. Consequently, the jury learns more about what words the expert changed in the draft report, what was meant by a staff person's e-mail and the math errors in preliminary analyses instead of learning about the expert's opinions and if they are reliable based on the facts of the case.

It is rare that counsel discovers a smoking gun e-mail or draft report in which an expert admits that their analysis is wrought with problems or unsupported by the facts. One notorious exception is *Synthes Spine Co., L.P. v. Walden*, 232 F.R.D. 460 (E.D. Pa. 2005), a case in which a damages expert was successfully questioned at length in his deposition about an e-mail he authored stating that the documents in his possession did not provide a sufficient basis to calculate damages, and that any damage calculation would be speculative.

But in almost all cases experts and counsel go to great lengths, and successfully so, to avoid discovery of tested theories, difficulties and how these were overcome. As a result, the expensive inefficiencies that are created by this standard impact almost all litigation in which experts are involved, as counsel is often obligated to seek this information—even if the smoking gun is almost never found.

The bottom line is that the discovery rules have resulted in:

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AICPA Alert

by D. Paul Regan, CPA

The AICPA has been encouraging and guiding the new Federal Rules of Civil Procedure. The history of how these rules have impacted experts is discussed in the accompanying article by Rachel Williams, CPA. The new rules will simplify the discovery process and provide an opportunity to enhance the quality of expert reports. The critical changes and their intended impacts are shown in Figure 1.

Experts will continue to be required to disclose:

1. Compensation received;
2. Facts or data considered that were provided by counsel; and
3. Assumptions relied upon that were provided by counsel.

Experts will also continue to be subject to all of the other Rule 26 requirements, including the disclosure of a complete statement of opinions to be provided at trial and the witness' qualifications and prior testimony.

Implementation Considerations for Experts

These amendments will not be implemented retroactively. It is likely that this rule will apply to discovery requests after Nov. 30, 2010. However, if this issue is relevant to you, consider discussing

the request with counsel. While the new Rule 26 language protects "communications between the party's attorney," it may not protect communications with the client or third parties to a matter, such as other testifying experts.

It will also continue to be important for an expert to be familiar with any nuances in the venue of a particular case—particularly for matters not in Federal Court.

Figure 1

Amendments to:	Prior Rule	December 2010 Amendments	Intended Impact(s)
Drafts of expert reports	Virtually all drafts shared with counsel were discoverable regardless of form.	Drafts are no longer subject to discovery.	More refined and persuasive reports and the reduction of time spent examining an expert about the development of opinions.
Communications with counsel	Virtually all communications were discoverable.	Protected regardless of form with three exceptions (see nos. 1-3).	Reduce the need to avoid the creation of a discoverable record, including retention of both testifying and consulting experts.
Information considered by an expert	Experts were required to disclose "data or other information" considered.	Experts will be required to disclose only "facts or data considered."	The broad interpretation of "other information" will be limited.

D. Paul Regan, CPA, CFE, CFF is chair of Hemming Morse, Inc., CPAs, Litigation & Forensic Consultants. He is a member of the AICPA's Forensic and Valuation Services Executive Committee.

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peddling by public agency officials. Think about the \$35 million that could have been saved for the citizens of the city of South Gate if they had detected then-city treasurer Albert Robles' illegal influence peddling years before the FBI and IRS arrested him.

While striving to stay competitive with the private sector to lure quality leaders to key positions, municipalities must weigh their obligations to taxpayers for fiscal responsibility. Accounting professionals can help municipalities issue annual salary and benefit schedules. Compiled or audited by neutral third parties, these can be useful tools for municipalities and all public agencies seeking to provide accountability and transparency in their financial governance.

A lack of transparency can lead to fraud, waste and abuse. A refusal to implement policies that annually disclose key figures, such as compensation packages for public employees, and to implement controls over these types of spending is a red flag that officials may be committing acts of malfeasance. As the city of El Segundo is experiencing, questions of excessive

compensation and refusal to provide taxpayers with a complete accounting of all perks and benefits given to city executives may result in more than just bad press. It may lead to taxpayer lawsuits or criminal charges.

Also, because the distinction between bad judgment and illegal behavior at the local public official level in many instances is not always clear, municipalities need to consider implementing written policies that prohibit certain transactions, behaviors or conflicts, and then retaining third parties to conduct periodic forensic reviews to determine that the policies are being followed.

Such reviews could reveal whether the sources of campaign contributions have been hidden or obfuscated to avoid disclosing conflicts of interest or bribe taking, contribution limits that may have been exceeded and if there is evidence of buying favors or other potential Fair Political Practices Commission violations.

Additionally, municipalities should regularly monitor special programs that receive state or federal grants or monies, as the failure to adequately provide books

and records that account for the spending of these earmarked funds can result in the forced repayment of the monies and a loss of certain tax-free benefits that come with these programs.

Take the \$1.9 billion in federal anti-terrorism grants that poured into California between 2003–09. In an inspection, officials from Madera County were unable to produce adequate paperwork to indicate how they had spent \$1.4 million of the grant monies.

Municipalities and public agencies will be under greater scrutiny in 2011 because of the scandals and indictments of so many California city officials in 2010. Municipal officials should seek to analyze city expenditures to ensure their cities do not become the next target of the growing scandal. Forensic accountants have the right skill sets, tools and techniques to assist in this effort.

Michael Spindler, CPA, CFE, CFF, CISA is executive director—Litigation and Forensics with Capstone Advisory Group, LLC in Los Angeles and **Mikhail Reider-Gordon, CAMS, CFCI** is managing director with Capstone Advisory Group, LLC in Los Angeles.

HAPPENINGS

LITIGATION SECTIONS MEETINGS

Business Valuation	Thursday, Feb. 10, LAX Thursday, May 19, OAK
Economic Damages	TBD February, LAX Wednesday, May 11, OAK
Family Law	Friday, Feb. 11, LAX Friday, May 20, OAK
Fraud	TBD February, LAX Tuesday, May 3, LAX

You may register online or download a registration form at www.calcpa.org/LIT. For more information, call (818) 546-3506.

EDUCATION FOUNDATION CONFERENCES/COURSES

(800) 922-5272 or www.educationfoundation.org

Fighting Fraud Using Data Analysis	Monday, Jan. 31, SF
Financial Fraud Investigation Methodology	Friday, Jan. 14, OC
Valuation for Mergers and Acquisitions Transactions	Friday, Feb. 18, SJ

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- 1) Unnecessary burdens on the expert;
- 2) An inefficient process under which experts and attorneys have to conduct their work;
- 3) A potentially lesser quality of expert reports and analysis; and
- 4) Misuse of experts within the legal process.

The cost of litigation has increased as expert and attorney time is spent complying with the discovery demands, generating volumes of paper, electronic information and motion practice and related professional fees, creating more work reviewing arguably irrelevant information in the case and causing extended deposition and trial testimony time.

Proposed Amendments to FRCP Rule 26(a) and Rule 26(b)(4)

Under the much anticipated amendments, discovery of communications between experts and counsel will be limited to facts or data considered by experts in forming their opinions, with three exceptions:

- 1) Communications between the attorney and the expert regarding the expert's compensation to prepare their opinions;

- 2) Data or facts the litigating party's attorney provided to the expert that the expert considered in forming their opinions; and
 - 3) Assumptions provided by the party's attorney to the expert that the expert relied upon in forming their opinion.
- The amendments extend work-product protection to other communications between the expert and the hiring attorney and to the expert's draft reports.

While the amendments leave some room for interpretation by the courts as to what should be protected, the Committee on Rules of Practice and Procedure, which proposed the amendments, clarified that the intent was to considerably reduce the quantity of information experts are required to disclose.

Impact of Proposed Amendments

Impacts of the amended rules include:

- 1) A more streamlined and efficient discovery process;
- 2) Attorneys will no longer need to hire two sets of experts and instead can discuss legal strategy and preliminary analyses with the testifying expert;

- 3) Expert reports should be more on point and refined to address the key issues in the litigation because the attorney and expert can work more closely together; and
- 4) Lower litigation costs.

A looming question is in which states similar amendments will be adopted. Many states have adopted guidelines that mirror FRCP Rule 26 and have indicated that they will adopt similar amendments to those proposed. New Jersey has enacted rules similar to the proposed amendments and practitioners have reported that discovery has improved, with no decline in the quality of information about expert opinions.

California's civil procedures do not follow the FRCP Rule 26 guidelines with respect to expert reports, opinions or discovery. Experts who practice in California, if Superior Court rules remain unchanged, will have to employ different procedures and tactics when dealing with state and federal court venues.

Rachel Williams, CPA, CFE, CFF is a principal in LECG's Century City Office where she specializes in performing forensic accounting investigations, providing litigation support, calculating economic damages and consulting in complex finance and accounting matters.

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