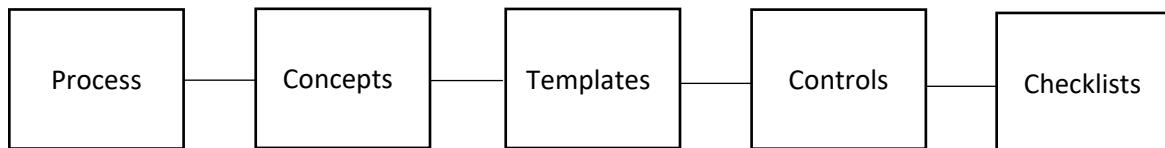


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**TYPES OF ARTIFACTS USED IN CATAPULT FORENSIC ACCOUNTING IN LITIGATION  
BEST PRACTICES V1.0**



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## 1. INTRODUCTION<sup>1</sup>

Forensic accounting requires knowledge and skills in many different areas including accounting, auditing, investigative, digital forensics, accounting information systems, risk analysis, communication, psychology, information technology, communication, problem solving and legal. Opportunities in forensic accounting include investigative services, fraud risk management, expert consulting, expert testimony, and business valuation. Additionally, a forensic accountant is knowledgeable about how to structure and manage investigations, the types of evidence that may be collected, how to maintain the chain of custody, the legal rights of those under investigation, how to identify different types of fraud schemes, how to conduct interviews, and how to detect deception.

## 2. FORENSIC ACCOUNTANTS AND CIVIL PROCEDURE

It is not uncommon for a firm to conduct its own internal investigation in cooperation with and in parallel to a regulatory or law enforcement agency. Such investigations often entail at least the assistance of outside professionals, such as lawyers and forensic accountants. Any internal investigation raises many questions that may be considered: (i) could the alleged misconduct involved lead to a criminal investigation or prosecution, (ii) who might be the target of such an investigation, (iii) is the alleged misconduct publicly known, (iv) is there potential firm or corporate civil or criminal liability, (v) is the alleged misconduct the result of whistleblowing, (vi) can the alleged misconduct result in a qui tam action under the Federal False Claims Act, (vii) Can the alleged misconduct result in an action under the Foreign Corrupt Practices Act (FCPA), (viii) Should the alleged misconduct be investigated internally or externally, (ix) what is the likelihood that present internal controls are deficient, (x) does the firm have a duty to report the alleged misconduct to an insurer?

It is crucial that investigation and litigation situations have both legal and forensic accounting perspectives to attain the optimal outcome. A forensic accountant may focus on the detail of accounting records or inconsistencies between a witness's event description and the proper understanding of business controls and processes. In a document collection, forensic accountants are comfortable with quantitative data and target accounting as well as bookkeeping records and transaction-related documents. Forensic accountants who possess more knowledge and have a better understanding of laws applicable to forensic accounting, structure of federal and state court systems, and the procedural aspects of criminal and civil cases are in a better position to assist lawyers and clients and make more valuable contributions to the investigative or dispute resolution team.

## 3. US COURT SYSTEM

Before a lawsuit can be filed in federal or state court, certain judicial criteria have to be met. These various criteria are jurisdiction, standing to sue, and venue. Jurisdiction refers to the authority of a court to entertain a particular case. The person or entity being sued becomes subject to the court's jurisdiction when served with a complaint and summons. A complaint specifies the factual and legal basis for a civil suit. The summons is a court order that notifies the defendant of the lawsuit and indicates how to respond to the complaint. Services of process is the means by which courts present the complaint and summons to a defendant. In some instances, a court can exert authority over a nonresident defendant through a

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<sup>1</sup> This Artifact is based directly on Essentials of Forensic Accounting Crain, Hopwood, Pacini, Young. AICPA. 2015.

state long-arm statute. For various entities, such as corporations or LLCs, the minimum contacts requirement is met if the entity does business within the state.

Federal Rules of Civil Procedure contain a provision similar to a long-arm statute. Rule 4 sets forth when a federal court may assert personal jurisdiction over a defendant outside the area served by the court, included within 100 miles of the courthouse. Jurisdiction over property or in rem jurisdiction means that a court can exert authority over real or personal property within its boundaries. A court can also exercise quasi in rem jurisdiction over a person's property. Subject matter jurisdiction refers to the type of cases a court can hear or, if you like, a limitation on the types of cases a court can consider. An example of a federal court of general jurisdiction is a US district court. Trial courts at the state level go by various names. An example of a state court of limited jurisdiction is traffic court.

The federal court system has exclusive jurisdiction over a few types of cases: (i) patent, (ii) trademark, (iii) copyright, (iv) admiralty, (v) bankruptcy, (vi) federal criminal, (vii) claims against the US, (viii) lawsuits in which one state sues another, (ix) cases involving treaties with foreign countries. State courts have jurisdiction over all cases that do not fall within the exclusive jurisdiction of the federal courts. States do have exclusive jurisdiction over a limited set of cases such as those dealing with wills, adoption, divorce, and juvenile matters. Federal courts can also hear cases that are based on the US Constitution, a treaty, or a federal statute because these raise federal questions. Federal district courts can also exercise jurisdiction over cases involving diversity of citizenship. When both state and federal courts have jurisdiction over a case it is called a concurrent jurisdiction. In these cases the plaintiff initially selects the court system in which the case is filed. Once a case is in the proper court system, venue determines which trial court in the system will hear the dispute.

Before a person or entity can start a lawsuit in court, the party must have a sufficient stake in the matter to justify seeking relief. A party must have a legally protected interest at stake in the litigation to have standing (or standing to sue). The party initiating a lawsuit must have suffered a harm or injury or been threatened by the action about which the suit is concerned. Standing to sue also requires that the controversy at issue be real and substantial, not hypothetical or academic.

The federal court system is a three-tiered model consisting of US district courts or trial courts as the lowest level, circuit courts of appeal or intermediate appellate courts, and the US Supreme Court. There is at least one federal district court in each state. Trial courts have the power to hear and decide cases when a lawsuit is first filed. In trial courts, disputing parties call witnesses and present evidence. Appellate courts have the authority to review decisions and findings of trial courts. Appellate courts do not conduct trials, do not hear witnesses, and do not consider new evidence. The highest level of the three-tiered federal court system is the US Supreme Court. It is the court of last resort. About 99 percent of petitions to a writ of certiorari are denied.

No uniform state court structure exists as each state is free to design its own court system. Most states have a trial court of general jurisdiction in each county, district, or circuit. The decisions of each state's highest court on all questions of state law are final. A state's highest court can only be overruled by the US Supreme Court when a federal issue or question is involved.

#### 4. STEPS IN CIVIL LITIGATION

The US litigation system is an adversarial one: a neutral fact finder (judge or jury) that receives evidence and hears arguments presented by opposing sides and then decides the case by applying law to the facts.