

LOM04 – Practices for Court Testimony Monitoring

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1. Background

- 1.1. These practices establish requirements and methods for monitoring testimony that will aid in identifying opportunities for improving an individual's testimony. These practices also satisfy the requirements of the Department of Forensic Sciences (DFS) Forensic Science Laboratory (FSL) *Quality Assurance Manual*, the accreditation standards under ISO/IEC 17025:2005, and any supplemental standards.

2. Definitions

- 2.1. For purposes of this document, the following terms shall have the designated meanings:

DFS: Department of Forensic Sciences

DOM: Departmental Operations Manual

FSL: Forensic Science Laboratory

LOM: Laboratory Operation Manual

3. Scope

- 3.1. These practices apply to FSL employees who provide testimony in a courtroom as part of their job duties.

4. Responsibilities

- 4.1. Individual(s) providing courtroom testimony will:

- 4.1.1. Inform his/her supervisor of the request for testimony (e.g., subpoena, phone request, etc.)
 - 4.1.2. Ensure that an External Evaluation of Testimony form is provided to a court official in the event a peer or supervisor is unable to monitor testimony by direct observation.
- 4.2. The **Laboratory Manager** will:
- 4.2.1. Perform or assign designee to monitor testimony by direct observation using an Internal Evaluation of Testimony form.
 - 4.2.2. Review evaluation (Internal or External) with the testifying individual and, if necessary, ensure appropriate corrective action is taken.
 - 4.2.3. Ensure each qualified analyst is evaluated at least once per year.
 - 4.2.4. A memo will be generated to document the names of any individuals who do not testify in a calendar year. Documentation will be forwarded to the Deputy Director of Quality and maintained in each employee's personnel file.
 - 4.2.5. Forward all documentation of testimony review to the Deputy Director of Quality.
- 4.3. The **Deputy Director of Quality** will:
- 4.3.1. Maintain records of testimony review.

5. Practices

- 5.1. It is the responsibility of the Laboratory Manager to ensure that the performance of an individual's testimony is monitored at least once per calendar year. The preferred monitoring method is by direct observation; however, any of the monitoring methods described below will be acceptable for meeting the annual testimony evaluation requirement.
- 5.2. Direct Observation / Internal Evaluation
 - 5.2.1. The testifying individual's Laboratory Manager or a qualified analyst may monitor testimony by direct observation. After watching the individual testify, the observer must complete an *Internal Evaluation of Testimony* form. The Laboratory Manager will review the evaluation with the individual.
- 5.3. External Evaluation by a Court Official

5.3.1. The testifying individual will provide a court official (e.g. prosecutor, defense, etc.) with an *External Evaluation of Testimony* form and request that he/she complete the form after observing the testimony. The court official may return the form through the mail, e-mail or by faxing it to the number provided. If an *External Evaluation of Testimony* form is not received by the end of the calendar year for each testifying individual, the appropriate manager will contact a court official and attempt to obtain the necessary documentation. The Laboratory Manager will review the evaluation with the individual.

5.4. Transcript Review

5.4.1. The Laboratory Manager may review an official court transcript of the individual's testimony in the event an *External Evaluation of Testimony* or *Internal Evaluation of Testimony* form is not received. After reviewing the transcript, the reviewer must complete an *Internal Evaluation of Testimony* form. The Laboratory Manager will review the evaluation with the individual.

5.5. Corrective Action

5.5.1. If the evaluation of the individual's testimony indicates unsatisfactory performance in any category and the **Deputy Director of Quality** has determined that a corrective action is necessary, subsequent testimony will be evaluated using the described methods. If the next monitored testimony is evaluated as satisfactory, no further action is needed. If the next monitored testimony is unsatisfactory, then the Laboratory Manager or **Deputy Director of Quality** will review all relevant case files and evaluation forms to determine the nature of the problem. A *Correction Action Report* will be issued if a corrective action is required (*DOM07 – Practices for Corrective Action*). A Level 1 nonconformity is a situation or condition that directly affects and has fundamental impact on the quality of the testimony. A Level 2 nonconformity is a situation or condition which may affect the quality of the testimony but does not, to any significant degree, affect the fundamental reliability of the testimony. Corrective actions may include, but are not limited to:

5.5.1.1. Additional moot court training.

5.5.1.2. Further direct observation of the individual's testimony.

5.5.1.3. Professional appearance training.

5.5.1.4. Removing the individual from casework.

6. Documentation

6.1. The following records may be generated and will be retained for at least one accreditation cycle:

6.1.1. External Evaluation of Testimony

6.1.2. Internal Evaluation of Testimony

6.1.3. Corrective Action Report (if applicable)

6.1.4. List of individuals who have not testified in a calendar year

7. References

7.1. *ISO/IEC 17025 – General Requirements for the Competence of Testing and Calibration Laboratories*, International Organization for Standardization, Geneva, Switzerland (current revision).

7.2. *ASCLD/LAB-International® Supplemental Requirements for the Accreditation of Forensic Science Testing and Calibration Laboratories*, American Society of Crime Laboratory Directors/Laboratory Accreditation Board, Garner, NC (current revision).

7.3. *Quality Assurance Standards for Forensic DNA Testing Laboratories*, Federal Bureau of Investigation, (current revision).

7.4. *Forensic Science Laboratory Quality Assurance Manual* (current revision)

7.5. *Unit-specific Quality Assurance Manual* (current revision)