

LOM04 – Practices for Court Testimony Monitoring

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1. Background

- 1.1. DFS employees must be able to successfully convey the importance of their testing and conclusions to the Court when providing expert witness testimony. When called upon to testify, it is incumbent upon the analyst to ensure their expert testimony is delivered in an impartial, understandable, and professional manner.
- 1.2. These practices establish requirements and methods for monitoring testimony that are designed to aid in identifying opportunities for improving an individual's testimony, when necessary.
- 1.3. These practices also ensure compliance with 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 the supplemental standards set by the FSL's accrediting body.

2. Definitions

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

DCN: Document Control Number

DFS: Department of Forensic Sciences

DOM: Departmental Operations Manual

FSL: Forensic Science Laboratory

LOM: Laboratory Operations Manual

OGC: DFS Office of the General Counsel

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 Unit Manager or designee of the request for testimony (e.g., subpoena, phone request, etc.), as well as keep information regarding estimated date(s) of testimony up-to-date (including notification that testimony is no longer needed).

- 4.1.1.1. Ensure that the DFS Office of the General Counsel (OGC) has received a copy of the subpoena and/or has been notified of a phone, email or courier delivery request to testify.

- 4.2. The **Unit Manager** will:

- 4.2.1. Seek to ensure each qualified analyst's testimony is evaluated using an *Internal Evaluation of Testimony* or *External Evaluation of Testimony* form at least once per calendar year.

- 4.2.2. Review the evaluation (Internal or External) with the testifying individual and ensure the form has been appropriately signed and dated.

- 4.2.2.1. Obtain and subsequently review a transcript of an individual's testimony that occurred during the calendar year when an analyst has testified but no *Internal Evaluation of Testimony* or *External Evaluation of Testimony* form has been completed for this individual.

- 4.2.3. Generate a memo documenting the names of any individuals who did not testify in the calendar year.

- 4.2.4. Forward all original testimony review forms to the FSL Quality Specialist once completed.

- 4.3. The **FSL Quality Specialist** will:

- 4.3.1. Maintain records of testimony review including a spreadsheet to track the status of testimony monitoring for all staff.

- 4.3.2. Ensure scans of testimony monitoring forms are uploaded to the FSL Quality drive as soon as practicable after receipt.

- 4.3.3. Serve as a resource for Unit Managers to assist with ensuring annual testimony monitoring tasks are completed in a timely manner.
 - 4.3.4. Serve as a resource for the Deputy Director of Quality to ensure testimony monitoring information is available for review and, at the direction of the FSL Director, ensure the Deputy Director of Quality is apprised of any critical quality issues.
- 4.4. The **Deputy Director of Quality** will:
- 4.4.1. Provide oversight with respect to the FSL's court testimony monitoring program.

5. Practices

- 5.1. It is the responsibility of the Unit 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 Unit Manager will strive to ensure that a minimum of one testimony per calendar year for each analyst is monitored by direct observation.
 - 5.2.1.1. The testifying individual's Unit Manager, supervisor, peer or another DFS employee may monitor testimony by direct observation.
 - 5.2.1.2. The observer must complete an *Internal Evaluation of Testimony* form.
 - 5.2.1.3. The Unit Manager will review the evaluation with the individual. Both individuals will sign and date the form to document their review.
- 5.3. External Evaluation by a Court Official
 - 5.3.1. In the event that direct observation of an analyst's testimony was not possible and the employee's testimony has not been evaluated that calendar year, as soon as possible following the testimony the Unit Manager or designee will provide a court official or court officials (e.g., prosecutor, defense attorney, etc.) with an *External Evaluation of Testimony* form, request that the court official(s) complete the form, and return the completed form directly to the Unit Manager.
 - 5.3.1.1. The accompanying email will inform the court official that the completed/signed form must be returned to the attention of the

Unit Manager and may be sent through the mail, the interoffice courier system (typically used for discovery compliance), or as a scanned document e-mail attachment.

5.3.1.2. By the end of October, if no internal testimony evaluation has been conducted for an analyst and an *External Evaluation of Testimony* form has not been received for analysts who have testified, the Unit Manager or designee will contact the appropriate court official and attempt to obtain the necessary documentation.

5.3.2. The Unit Manager will review the evaluation with the individual. Both individuals will sign and date the form to document their review.

5.4. Transcript Review

5.4.1. The Unit Manager may review an official court transcript of the individual's testimony in the event an *External Evaluation of Testimony* form is not received and no internal evaluation of testimony was conducted.

5.4.2. Efforts to obtain a transcript of testimony should begin by the end of November and be coordinated with the FSL Quality Specialist and/or the DFS General Counsel.

5.4.2.1. Ideally, review of any transcript when necessary for annual court monitoring purposes will be completed no later than January 31st (for the previous calendar year).

5.4.3. The Unit Manager or their designee must complete an *Internal Evaluation of Testimony* form.

5.4.4. The Unit Manager will review the evaluation with the individual. Both individuals will sign and date the form to document their review.

5.5. Upon completion of the Unit Manager's review of a testimony monitoring form with an employee, the Unit Manager will provide the original copy to the FSL Quality Specialist.

5.5.1. The FSL Quality Specialist will place a scan of the completed form in the FSL Quality drive and update the testimony monitoring spreadsheet, as needed.

5.6. Unsatisfactory Performance / Corrective Action

5.6.1. If the evaluation of the individual's testimony indicates unsatisfactory performance in any category and the Unit Manager, in consultation with the FSL Quality Specialist and/or the FSL Director and/or the DFS Deputy Director of Quality, has determined that a corrective action is necessary, a *Quality Corrective Action Report* will be initiated as set forth in *DOM07 – Practices for Corrective Action*. The root cause analysis will largely dictate

the selected action steps. In general, however, subsequent testimony (regardless of whether or not a *Quality Corrective Action Report* has been initiated) will be evaluated using the following processes:

- 5.6.1.1. All efforts will be made for the Unit Manager, Unit Supervisor, the FSL Quality Specialist and/or the FSL Director or a Directorate-level staff member to directly observe the individual's next testimony.
 - 5.6.1.2. If the next monitored testimony is evaluated as satisfactory, no further action is needed.
 - 5.6.2. If the next monitored testimony is unsatisfactory, the Unit Manager, in concert with the FSL Director and Quality Specialist (and Deputy Director of Quality when necessary), will ascertain if additional action steps should be added to the *Quality Corrective Action Report*. Additional action steps may include, but are not limited to:
 - 5.6.2.1. Additional moot court training
 - 5.6.2.2. Further direct observation of the individual's testimony for a set period of time
 - 5.6.2.3. Professional appearance counseling
 - 5.6.2.4. Review of transcripts of previous testimonies
 - 5.6.2.5. Removal of the individual from casework
 - 5.6.2.6. Review of all relevant case files
- 5.7. Documentation of No Testimony
- 5.7.1. The Unit Manager will generate a memo during the first week of January documenting the names of any individuals who did not testify in the previous calendar year.
 - 5.7.1.1. The memo will be addressed to the FSL Director and Quality Specialist, and copied to the DFS Deputy Director and Deputy Director of Quality.
 - 5.7.1.2. All Unit employees who did not testify, regardless of their job title, will be listed (including the Unit Manager, if applicable).

6. Documentation

- 6.1. The following records may be generated and will be retained by the FSL Quality Specialist:

- 6.1.1. *External Evaluation of Testimony* form [DCN 1324]
- 6.1.2. *Internal Evaluation of Testimony* form [DCN 1323]
- 6.1.3. *Quality Corrective Action Report* form [DCN 1276] (if applicable)
- 6.1.4. Memorandum with list of individuals who did not testify in a calendar year
- 6.1.5. Court transcript

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. *Forensic Quality Services Supplemental Requirements for Forensic Testing*, FQS ANSI-ASQ Accreditation Board, Tampa, FL (current revision)
- 7.3. *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).
- 7.4. *Quality Assurance Standards for Forensic DNA Testing Laboratories*, Federal Bureau of Investigation, (current revision).
- 7.5. *Forensic Science Laboratory Quality Assurance Manual* [DCN 1300] (current revision)
- 7.6. *DOM07 – Practices for Quality Corrective Action* [DCN 1275] (current revision)