OSAC 2026-N-1009
Standard Practice for Training Forensic Science Practitioners on Law-Related Topics Relevant to Their Practice

Forensic Science Standards Board (FSSB) Legal Task Group
Organization of Scientific Area Committees (OSAC) for Forensic Science

DRAFT

OSAC Proposed Standard

OSAC 2026-N-1009
Standard Practice for Training Forensic Science Practitioners on Law-Related Topics Relevant to Their Practice

Prepared by
Forensic Science Standards Board (FSSB) Legal Task Group
Version: 1.0
November 2026

Disclaimer:
This OSAC Proposed Standard was developed by the Organization of Scientific Area Committees (OSAC) for Forensic Science. It is a completed work product of the OSAC and has been approved for listing on the OSAC Registry. This OSAC Proposed Standard will be submitted to a standard developing organization and is subject to change.

This OSAC Proposed Standard has completed an open comment period and a rigorous technical and quality review by the originating OSAC unit (e.g., subcommittee), their parent body (e.g., scientific area committee), and the OSAC Standards Review Panel.

OSAC encourages the forensic science community to implement this OSAC Proposed Standard in practice, as it represents the best guidance available and is approved by OSAC.

There may be references in this OSAC Proposed Standard to other publications under development by OSAC. This OSAC Proposed. The forensic science community may use the Standard before the completion of such companion publications.

Any identification of commercial equipment, instruments, or materials in the OSAC Proposed Standard is not a recommendation or endorsement by the U.S. Government and does not imply that the equipment, instruments, or materials are necessarily the best available for the purpose.

Visit OSAC's website for more information about the Registry approval process.

DRAFT

Standard Practice for Training Forensic Science Practitioners on Law-Related Topics Relevant to Their Practice

1. Scope

1.1. This practice covers the minimum requirements for Forensic Service Providers (FSPs) training Forensic Practitioners (FPs) on the law-related rules and concepts associated with their duties within the criminal justice system.

1.2. This standard sets forth required subjects and learning objectives. In addition, suggested resource materials and discussion topics are provided.

2. Referenced Documents

2.1. *ASTM Standards:*

E620 *Standard Practice for Reporting Opinions of Scientific or Technical Experts*

E1732 Terminology

E2917 *Standard Practice for Forensic Science*

WK77530 *Propose New Standard for Forensic Integrity Training*

3. Terminology

Note: For every law-related definition or process described below, there are likely jurisdictional variations and the FSP should adapt terminology accordingly.

3.1. *Definitions*:

3.1.1. *accurate, adj*—correct in all details.

3.1.2. *Clear, adj*—free from jargon and understandable to persons who do not have specialized expertise.

3.1.3. *Discovery*, *n*—the process by which the prosecution and defense share evidence in their possession, or in the possession of individuals working with them (e.g., experts, agents, police officers).

3.1.3.1. *Discussion*—Certain disclosures are mandated by legal and ethical rules. Parties can voluntarily disclose information beyond what is required in accordance with agency and local practice.

DRAFT

3.1.4. *expert witness*, n—a person who is permitted to testify to a specialized opinion (see opinion testimony below).

3.1.4.1. *Discussion*—Whether the witness is qualified to testify to their opinion is a determination made by the judge based on the background and qualifications of the specific witness.

3.1.5. *fact finder, n—a judge or jury designated to evaluate facts in a case*

3.1.6. *false evidence*, n—any physical, documentary, digital, or testimonial evidence that is fabricated, altered, planted, and knowingly presented as authentic.

3.1.6.1. *Discussion*—False evidence is distinct from test results commonly labeled as false (e.g., false indication, false positive, false negative).

3.1.7. *favorable defense evidence, n—information that is in possession, custody, or control* of the state that is helpful to the defense.

3.1.7.1. *Discussion*—For example, that prior testing or examination produced a different result may be favorable evidence, and that there was a disagreement in review or verification over the opinion may be favorable defense evidence. Also known as "exculpatory evidence."

3.1.8. *forensic science practitioner, n*—an individual who (1) applies scientific or technical practices to the recognition, collection, analysis, or interpretation of evidence for criminal and civil law or regulatory issues; and (2) issues test results, provides interpretations, or opinions through reports or testimony with respect to such evidence.

3.1.9. *forensic science Service provider, n*—an organization or individual that provides forensic science services.

3.1.10. *hearsay*, n—Testimony about another person's out-of-court statements offered to prove the truth of the matter asserted.

3.1.10.1. *Discussion*—For example, testimony from an FP that a verifier agreed with their opinion about the source of the evidence may be hearsay. On the other hand, testimony from an FP that a verifier disagreed with their opinion about the source of the evidence may not be hearsay because it is not being offered for the truth of the matter asserted (e.g., the items did not originate from the same source), but instead to show the fact of a disagreement and that the FP was aware of the disagreement.

DRAFT

3.1.11. *impeachment evidence, n—evidence that, if credited, tends to cast doubt* on the credibility of a witness or reliability of the government's evidence.

3.1.11.1. *Discussion*—For example, the FP's recording of an unsatisfactory result on a proficiency test or sustained conduct complaints may be impeachment evidence.

3.1.12. *in limine ruling, n*—the court's ruling on a "motion in limine" (see "motion in limine").

3.1.13. *mitigating evidence*, n—evidence that, if credited by the fact-finder, tends to diminish the accused's culpability.

3.1.13.1. *Discussion*—For example, that the decedent had PCP in their system at the time of an altercation may be mitigating evidence.

3.1.14. *motion in limine, n*—a pretrial motion that seeks the exclusion of specific evidence or arguments from being presented during a trial.

3.1.15. *opinion testimony*, n—testimony that expresses a witness's opinion rather than testimony about observations or actions.

3.1.15.1. *Discussion*—For example, describing the method used to test the composition of the trace evidence is factual testimony; testimony about the reliability and accuracy of the method is opinion. Testimony about how the evidence was packaged would relate facts; testimony about how the evidence should be packaged would provide an opinion. Identifying the features used in a comparison would offer facts, stating there was (not) sufficient agreement in the observed features to support a source identification would offer an opinion.

3.1.15.2. *Discussion*—In criminal cases, witnesses may only provide an opinion under strictly defined circumstances. The decision of whether the testimony is an opinion and whether to permit opinion testimony and the scope of the opinion testimony is made by the judge pursuant to the rules of the jurisdiction and in consideration of the facts of the specific case.

3.1.16. *results*, n—the product of the Forensic Service Provider (FSP).

3.1.16.1. *Discussion*—This term is broad and includes observations, data, calculations, interpretations, and opinions.

DRAFT

3.1.17. *rules*, n—the Constitution, statutes, case law, local rules, and ethical rules (for both lawyers and FPs) that govern criminal proceedings.

3.1.18. *subpoena*, n—a court order that requires the recipient to attend a court proceeding on a particular date and time.

3.1.19. *subpoena duces tecum*, n—a court order that requires the recipient to attend a court proceeding on a particular date and time and bring with them designated documents or physical items.

3.1.20. *Transparent, adj*–providing the factual basis for results (observation, data, calculations, interpretation, and opinions), including any facts or findings that would contradict those results. And providing the limitations and the performance metrics (e.g., measurement uncertainty, error rate) for any method or technique employed during the examination.

3.1.20.1. *Discussion*—A transparent account enables attorneys, judges, and jurors to follow all steps taken or not taken by the FP in examining or testing the evidence and interpreting the data and forming opinions from that examination. A transparent account (i.e. including limitations and performance metrics) also allows attorneys, judges, and jurors to evaluate what weight to give the results of the method or technique.

3.1.21. *Truthful, adj*–answering questions honestly and forthrightly without obscuring the facts.

3.1.22. *voir dire*, n—questioning by lawyers and judges exploring a witness' expertise and the scope of their expertise before the witness is permitted to give opinion testimony evidence.

4. Significance and Use

4.1. This standard is intended for use by personnel responsible for training FPs within FSPs.

4.2. This document forms part of discipline-specific training-to-competency programs, in accordance with Practice E2917.

4.3. This standard can be used to develop continuing education and professional development opportunities, in accordance with Practice E2917.

DRAFT

4.4. The purpose of this standard is to ensure that trainees understand the following:

4.4.1. The overarching legal principles of the criminal justice system that frame the context of FSP policies and procedures,

4.4.2. How their role in the criminal justice system is distinct from that of the lawyers, judges, and jurors, and

4.4.3. How to conduct job functions in a manner that promotes consistency with legal rules and minimizes the risk of running afoul of those rules in everyday practice.

4.5. This standard is not a substitute for policies and procedures that guide FPs in their work and does not encompass training on FSP policies and procedures. Training on internal FSP-specific policies may be conducted in conjunction with the legal training addressed in this standard or separate from it.

4.6. This standard is not a substitute for either a lawyer's or a FP's obligations under legal and ethics rules.

4.7. This standard does not address civil, administrative, or other non-criminal legal proceedings.

4.8. This standard does not address the specific content of testimony or reports (see E620).

4.9. This standard does not address discipline-specific documentation necessary to permit the disclosures discussed below. This level of detail is appropriate for discipline-specific standards as the requirements are likely to vary by discipline.

5. Trainer Responsibilities

5.1. Training provided by the FSP shall include all the subjects listed in section 6. While an FSP's training program may repeat topics over the course of competency training to reinforce its training on that topic, at least one session on each topic shall be a joint defense, prosecution, and FSP presentation. All training should focus on the FSP's responsibility to conduct and report on scientific testing without favor to any party in the proceeding. The FSP shall:

DRAFT

5.1.1. Identify individual legal trainers with litigation experience as prosecutors or defense lawyers who can collectively represent prosecution and defense perspectives and have jurisdiction specific knowledge relating to each of the subjects in this standard.

5.1.1.1. Discussion: Resources for identifying legal trainers include the following: the institutional prosecuting authority (e.g., the U.S. Attorney, District Attorney, County Attorney), the institutional defender agency (e.g., Federal Defender, Public Defender), legal scholars at local universities, the judiciary, and private bar organizations.

5.1.1.2. Discussion: Legal trainers should have experience litigating serious felony cases (as lawyers or judges), hold positions as supervisors or trainers within their institutions or teach the topics covered.

5.1.1.3. Discussion: The necessary prosecution and defense perspectives typically will be best represented by those who currently practice criminal law as prosecutors or defense attorneys. However, if it is not possible to secure a prosecutor or defense lawyer, trainers can look to the judiciary or to legal scholars for individuals who, because of past positions, can represent the missing perspective.

5.1.2. Include both local and federal level prosecution and defender perspectives for FSPs whose employees routinely appear in both federal and local courts.

5.1.3. Identify FSP trainers with knowledge of the FSP policies, quality control, and quality assurance program(s).

5.1.4. Work with legal and FSP trainers to create joint presentations (i.e., including prosecution, defense, and FSP personnel at the same training) on the subjects in Section 6 below incorporating local rules, terminology and practices and including hypothetical case scenarios to generate discussions and test comprehension.

5.1.4.1. Discussion: The presence of all three perspectives (prosecution, defense, and FSP) at presentations on legal issues ensures a more complete representation of the legal system and the expected role of the FP within it and encourages discussions that connect the rules with the FSP's policies and case work practices.

DRAFT

5.1.5. The FSP shall document if circumstances prevent the inclusion of a representative from each perspective (e.g., unavoidable scheduling conflicts, refusal of an institutional entity to engage in joint training) and the effort made by the FSP to present the missing perspective.

5.1.6. Work with the legal trainers to develop presentations on the subjects in Section 6 that are oriented to a non-legal audience, that convey the general framework of the rules and that use hypothetical examples related to the trainees' everyday practice to generate discussions.

5.1.6.1. Discussion: Trainees should not be expected to interpret case law, argue case law, become familiar with all the cases related to a specific topic, or to stay current on the law for every topic listed in section 6. That is the responsibility of the lawyers.

5.1.7. Work with all three trainers, prosecution, defense and FSP, to include both lecture style presentations and interactive conversations with trainees.

5.1.7.1. Discussion: Section 6 below lists the required subjects to be addressed in the training as well as recommended discussion topics to engage with trainees.

5.1.8. Work with trainers to ensure that FSPs shall be trained to adhere to their role as a witness, by answering the questions put to them accurately, clearly, truthfully, and transparently; by deferring to the lawyers to choose the questions and to make arguments for a specific outcome; by clarifying answers and providing additional information when necessary to avoid misleading the court or factfinder; and by respecting the role of the judge to render an opinion based on the law, the facts of the specific case, and the totality of the evidence. FSPs shall be trained not to make legal arguments or to be advocates for particular legal outcomes.

5.1.8.1. Discussion: This does not mean that the FP cannot firmly resist challenges to the quality of their work in a specific case (e.g., sampling, measurements, calibration, documentation), their character (e.g., memory, honesty, thoroughness), or answer questions about the scientific underpinnings of the method (e.g., external and internal validation studies, black box studies, white box studies) provided that their testimony remains accurate, clear, transparent, and truthful.

5.1.8.2. Discussion: The phrase, "accurate, clear, transparent, and truthful," is used at several points in this document. The phrase was adopted from an Organization of Scientific

DRAFT

Area Committees (OSAC) Forensic Science Standards Board (FSSB) guidance document on reporting and testimony that listed these four concepts as the overarching principles for reporting and testimony. For specific definitions for each see the terminology section.

5.2. Develop a means for testing the trainees' comprehension of the required subjects and the learning objectives for each.

5.2.1. A combination of oral and written exams shall be used.

5.2.2. Exams shall include realistic hypotheticals that test the trainee's ability to apply or demonstrate concepts, as required below, in addition to explaining or stating various principles or concepts.

5.2.3. Oral exams in the form of mock interviews and trials should be used to test a trainee's ability to apply many of the topics identified below within the context of an adversarial proceeding as well as testing topics related to courtroom protocol.

5.2.4. A trainee shall not be evaluated based on their persuasiveness on behalf of a particular side, but instead on the accuracy, transparency, clarity, and truthfulness of their answers to the questions asked.

5.2.5. The training syllabus, study materials, tests, and test results shall be documented and maintained consistent with the FSPs personnel records policies.

5.2.6. Criteria for successful completion of this training shall be established and documented in advance of the training and testing.

6. Subjects that shall be addressed as part of law related topics:

6.1. Introduction

The legal trainers shall provide a brief introduction to the training on legal issues that explains the Constitutional framework for the criminal justice system including the requirement of due process, the burden of proof, the right to counsel, and to confront witnesses, explaining how these elements serve to ensure fairness and accuracy in legal proceedings and promote a more equitable administration of justice.

6.2. Legal Issues Related to Evidence Collection, Testing, and Preservation

6.2.1. *The trainee shall meet the learning objectives below:*

DRAFT

6.2.1.1. Understand the legal rules relating to preservation of evidence and apply them to an example using the trainee's discipline(s).

6.2.1.2. Understand the legal rules relating to the presentation of false evidence and apply them to an example using the trainee's discipline(s).

6.2.1.3. Identify FSP policies that help ensure the preservation of evidence.

6.2.1.4. Identify FSP policies that protect against the presentation of false evidence.

6.2.2. *Presentation(s) shall include the following subjects:*

6.2.2.1. The potential case and professional impact of false documentation and reporting.

6.2.2.2. The potential case and professional impact of the failure to preserve evidence.

6.2.2.3. The potential case impact and professional impact of contaminating, spoiling or destroying evidence.

6.2.3. *Suggested training resources:*

6.2.3.1. Ex Parte Joseph Colone Applicant, Cause # 10-10213-A, Agreed Findings of Fact and Conclusions of Law, (TX

6.2.3.2. 2024).Arizona v. Youngblood, 488 U.S. 51 (1988)

6.2.3.3. Henning v. Comm'r of Correction, 219 A.3d 334 (Conn. 2019)

6.2.3.3.1. Discussion: The trainees' review of these cases should focus on the facts, the case repercussions, how policies and procedures might mitigate the destruction of evidence, mishandling evidence, and false documentation and reporting, and how individual FPs and managers can mitigate the chance of these events happening.

6.2.4. *Presentations should include discussions on the following topics:*

6.2.4.1. Practices and policies for FSPs and individual FPs to minimize and uncover misconduct described in the resource materials.

6.2.4.2. Discipline specific techniques and procedures for evidence preservation (e.g., swabs, slides, shell casings, trace materials).

6.2.4.3. Reporting unintentional destruction or spoliation of evidence.

6.2.4.4. Reporting potential or suspected evidence destruction or tampering by others.

6.2.4.5. Reporting potential or suspected false documentation.

DRAFT

6.2.4.6. Case file retention policies and the potential duration of a criminal case including post-conviction proceedings.

6.3. **Legal Issues Related to Disclosure and Documentation**

6.3.1. *Trainees shall meet the following learning objectives:*

6.3.1.1. Explain the role chain of custody plays in authenticating evidence.

6.3.1.2. Articulate the role of documentation in furthering the ability to comply with pre-trial disclosure requirements.

6.3.1.3. Articulate how documentation is necessary to provide accurate, clear, transparent, and truthful testimony.

6.3.1.4. Explain how the preservation of examination records (e.g., notes, sketches, photographs, instrument data, bench notes) facilitates the ability to comply with disclosure requirements and fulfills the responsibility to provide accurate, transparent and truthful testimony.

6.3.1.5. Explain how maintaining laboratory logs and documenting unexpected events and results furthers compliance with disclosure requirements.

6.3.1.6. Define the concepts “favorable evidence,” “impeaching evidence,” and “mitigating evidence,” and provide examples of potentially disclosable information in the context of the trainee’s discipline.

6.3.1.7. Demonstrate the ability to document potentially disclosable information in a case file.

6.3.1.8. Demonstrate the ability to communicate with lawyers about potentially disclosable information.

6.3.1.9. If applicable in the jurisdiction, draft a Rule 16 notice for a hypothetical case involving the trainee’s discipline.

6.3.1.10. If applicable in the jurisdiction, list the documents in a hypothetical case covered by Fed. R. Crim. P. 26.2 that might not be maintained in the case file.

6.3.2. *Presentation(s) shall include the following subjects:*

6.3.2.1. The “Brady” Rule.

6.3.2.2. Court discovery rules.

DRAFT

6.3.2.3. Jurisdictionally relevant rules (e.g., case law, statutes, ethics rules) relating to disclosure including post-conviction disclosure.

6.3.2.4. Ethics rules for lawyers relating to disclosure.

6.3.2.5. Forensics-specific ethics rules relating to disclosure and transparency.

6.3.2.6. If applicable, Fed R. Crim Pro. 16 (or the jurisdiction-specific rule on expert notice).

6.3.2.7. If applicable, Fed. R. Crim. P. 26.2 (or the jurisdiction-specific rule on prior written statements).

6.3.3. *Suggested trainee resources:*

6.3.3.1. Clark v. Louisville-Jefferson County Metro Government, No. 24-5061 (6th Cir. 2025)

6.3.3.2. Ex Parte Joseph Colone Applicant, Cause # 10-10213-A, Agreed Findings of Fact and Conclusions of Law, TX 2024

6.3.3.3. Cone v. Bell, 556 U.S. 449 (2009) (Section V for its discussion of the Brady Rule and the direction to err on the side of disclosure).

6.3.3.4. Brady v. Maryland, 373 U.S. 83 (1963)

6.3.3.5. NCFS Rules of Professional Responsibility available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.justice.gov/ncfs/file/839711/dl?inline.

6.3.3.6. Jurisdiction-specific ethical rules for lawyers and FPs related to disclosures.

6.3.3.7. Local court or statutory rules relating to disclosure, expert notice and prior recorded statements.

6.3.3.7.1. Discussion: The trainee's review of these rules and cases should focus on disclosure and the concepts "favorable evidence", "impeaching evidence," and "mitigating evidence" in relation to their discipline(s).

6.3.4. *Presentation(s) should include discussions on the following topics:*

6.3.4.1. Circumstances under which unexpected results, inconclusive results or other results, often considered non-probative (e.g., unsuitable), might be regarded as favorable or impeaching evidence.

DRAFT

6.3.4.2. Other evidence (e.g., proficiency test results, corrective actions, audit findings) relating to the laboratory or the individual practitioner that might be considered favorable or impeaching evidence.

6.3.4.3. Discipline-specific examples of potentially favorable or impeaching evidence

6.3.4.4. Potential impact on cases of the failure to disclose favorable, impeaching, or mitigating evidence.

6.3.4.5. The role of laboratory logs in disclosures when contamination or unexpected results occur.

6.3.4.6. Policies and procedures for documentation that help FPs remember their actions, decisions, and judgments months and years later.

6.3.4.7. Identifying and preserving bench notes, reports, emails, or other recorded (e.g., direct messaging, texts) statements addressing subjects related to potential testimony.

6.3.4.8. The value of erring on the side of disclosure of potentially favorable, impeaching, and mitigating evidence.

6.3.4.9. Strategies for timely, clear, and documented communications with lawyers about information that may need to be disclosed.

6.3.4.10. Policies for elevating any concerns about disclosures within the FSP.

6.3.4.11. The practitioner's obligations to a case even when they leave the employment of the laboratory.

6.4. **Subjects that shall be addressed for Legal Rules and Requirements Related to the Admissibility and Presentation of Opinion Testimony from Expert Witnesses**

6.4.1. Expert qualification and opinion testimony.

6.4.1.1. *Trainees shall meet the following learning objectives*:

6.4.1.1.1. Distinguish factual testimony from opinion testimony using examples from the trainee's discipline.

6.4.1.1.2. Describe the role of voir dire for testing and establishing a person's expertise before being permitted to provide opinion testimony.

DRAFT

6.4.1.1.3. Define the scope of their expertise, including limitations on that expertise and demonstrate the ability to resist being pressed to provide opinions outside of their area of expertise.

6.4.1.1.4. Draft an accurate CV and demonstrate the ability to accurately, clearly, transparently, and truthfully describe their education, training, and experience.

6.4.1.2. *Presentation(s) shall include the following subjects*:

6.4.1.2.1. Jurisdiction minimum requirements for a witness to be qualified as an expert.

6.4.1.2.2. Scope of qualification.

6.4.1.2.3. Specialized knowledge.

6.4.1.2.4. Voir dire.

6.4.1.2.5. In limine rulings.

6.4.1.3. *Suggested trainee resources*:

6.4.1.3.1. Fed R Crim Pro 702 or the jurisdiction-specific rule

6.4.1.3.2. Jules Epstein, The Testifying Forensic Discipline Expert: A Primer, available at https://onlinelibrary.wiley.com/doi/epdf/10.1002/wfs2.1320

6.4.1.3.3. McCormick v. Parker, 821 F.3d 1240, 1248 (10th Cir. 2016) (finding nondisclosure of SANE nurse's actual certification and her decision to bolster her credentials in another trial amounted to a Brady violation).

6.4.1.4. *Presentation(s) should include discussions on the following topics*:

6.4.1.4.1. Creating and regularly updating their CV to provide an accurate, clear, transparent, and truthful presentation of their education, training, prior testimony, and experience.

6.4.1.4.2. The scope of the trainee's expertise and any limitations.

6.4.1.4.3. The parts of an FP's work that constitute factual testimony when presented to a court and the parts that would be presented as opinion testimony.

6.4.1.4.4. Pre-trial preparation and the responsibility to explain one's training, experience, and expertise and any limitations to the lawyer sponsoring the testimony.

DRAFT

6.4.1.4.5. How to continue to provide accurate, clear, transparent, and truthful responses to questions when one's qualifications having evaluated and challenged in an adversarial setting.

6.5. **Subjects that shall be addressed for Pre-Trial Hearings Addressing Admissibility of Forensic Evidence and the Scope of Expert Testimony**

6.5.1. *Trainees shall meet the following learning objectives:*

6.5.1.1. Define the limitations of the disciplines/methods/tests the trainee will use in case work.

6.5.1.2. Demonstrate an ability to provide accurate, clear, transparent, and truthful information that does not exceed the limits of the discipline/method/test using an example from their discipline.

6.5.1.3. Differentiate the duty of the lawyers to advocate for specific positions on the law (e.g., whether a Daubert factor has been met, whether the Frye standard has been met) and the role of a witness (e.g., to describe the standards applicable to the method, to describe what entities employ the method).

6.5.1.4. Identify examples of when an FSP is improperly acting as an advocate (e.g., creating visual materials to accompany their testimony that include legal arguments or case law references

6.5.1.5. Describe the exclusive province of the judge to make admissibility decisions and to set limits on opinion testimony.

6.5.1.6. Demonstrate the ability to adhere to a judicial ruling on the scope of acceptable opinion testimony.

6.5.1.7. Describe how, if needed, to seek guidance during testimony if an FP is unsure of how to answer a question consistent with the court's ruling.

6.5.2. *Presentation(s) shall include the following subjects:*

6.5.2.1. The "Daubert" test,

6.5.2.2. The "Frye" test, or

6.5.2.3. Jurisdiction-specific requirements for admissibility.

DRAFT

6.5.2.4. Jurisdiction-specific and discipline specific prohibitions of certain phrases or terms (e.g., “zero error rate;” “match;” “reasonable degree of scientific certainty” or variations on it; identification “to the exclusion of all other sources”).

6.5.3. *Suggested trainee resources:*

6.5.3.1. The binding case in the jurisdiction on the standard for evaluating the admissibility of scientific or technical evidence.

6.5.3.2. Jules Epstein, The Testifying Forensic Discipline Expert: A Primer, available at https://onlinelibrary.wiley.com/doi/epdf/10.1002/wfs2.1320

6.5.4. *Presentations should include discussions on the following topics:*

6.5.4.1. How to continue to provide accurate, clear, transparent, and truthful responses to questions when one’s discipline/method/technique is challenged and evaluated.

6.5.4.2. How to continue to provide accurate, clear, transparent, and truthful responses to questions when one’s work in a specific case is challenged and evaluated.

6.5.4.3. How to articulate the limits of disciplines/techniques/methods using the trainee’s discipline/technique/method as an example.

6.5.4.4. How to articulate the scientific basis for disciplines/techniques/methods using the trainee’s discipline/technique/method as an example.

6.5.4.5. How to articulate the performance metrics (e.g., measurement uncertainty, error rates) for disciplines/techniques/methods using the trainee’s discipline/technique/method as an example.

6.5.4.6. How to engage with the sponsoring lawyer pre-trial to explain the limits of the discipline/technique/method and the scientific basis for the discipline/technique/method and correct any false assumptions or misunderstandings.

6.5.4.7. How to work with lawyers when preparing a direct examination to ensure the lawyer’s questions do not contain false assumptions and do permit the FP to provide accurate, clear, transparent, and truthful answers about the results, any limitations of the method used, and the method’s performance metrics (e.g., measurement uncertainty, error rates).

DRAFT

6.6. **Subjects that shall be addressed for Responding to Subpoenas, Subpoenas Duces Tecum, Interview Requests, and Depositions (for Jurisdictions that Permit or Require Depositions of Expert Witnesses in Criminal Proceedings)**

6.6.1. *Trainees shall meet the following learning objectives:*

6.6.1.1. Explain the basic requirement to appear when subpoenaed and to bring the requested documents identified in the subpoena.

6.6.1.2. Articulate how to seek advice to determine if the subpoena has been properly served and if the items requested need to be provided.

6.6.2. *Presentation(s) shall include the following subjects:*

6.6.2.1. Local rules and practices relating to subpoenas and subpoenas duces tecum.

6.6.2.2. Rules relating to lawyers discouraging or preventing access to witnesses by opposing counsel.

6.6.3. *Suggested trainee resources:*

6.6.3.1. NCFS Rule of Professional Responsibility Rule 15 available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.justice.gov/ncfs/file/839711/dl?inline

6.6.3.2. NCFS Recommendation to the Attorney General Transparency of Quality Management System Documents available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.justice.gov/ncfs/file/839706/dl?inline

6.6.3.3. WK77530 Proposed New Standard Practice for Forensic Integrity Training

6.6.3.4. ABA Discov. Std. 11-6.3 (Investigations Not to Be Impeded)

6.6.4. *Presentations should include discussions on the following topics:*

6.6.4.1. The rules, if any, about providing interviews to the lawyer (typically the defense) who is not calling the FP as a witness.

6.6.4.2. Benefits for the witness and benefits to the criminal justice system in being responsive to the lawyer who is not calling them as a witness.

6.6.4.3. Concerns and fears about talking with lawyers before a trial.

DRAFT

6.6.4.4. The differences between a deposition and court supervised testimony (if depositions are used in the criminal system in the jurisdiction).

6.7. **Subjects that shall be addressed for Rule Against Hearsay and the Confrontation Clause, in the Forensic Context**

6.7.1. *Trainees shall meet the following learning objectives:*

6.7.1.1. Explain the general prohibition against hearsay statements and articulate discipline specific examples of what might be hearsay.

6.7.1.2. Demonstrate the ability to avoid making hearsay statements during mock testimony.

6.7.2. *Presentation(s) shall include the following subjects:*

6.7.2.1. Hearsay.

6.7.2.2. Right of Confrontation.

6.7.3. *Suggested trainee resources:*

6.7.3.1. Smith v. Arizona, 144 S. Ct. 1785 (2024)

6.7.4. *Presentation(s) should include discussions on the following topics:*

6.7.4.1. Examples of statements that could be considered hearsay in the context of describing the work done on a case.

6.7.4.2. Examples of statements that are generally not considered hearsay.

6.7.4.3. Using pre-trial conferences to discuss possible hearsay testimony with the sponsoring lawyer.

6.7.4.4. Practices for avoiding hearsay testimony when answering questions.

6.8. **Subjects that shall be addressed for Courtroom Protocol**

6.8.1. *Trainees shall meet the following learning objectives:*

6.8.1.1. Define perjury.

6.8.1.2. Explain the differences between direct, cross, and redirect examination.

6.8.1.3. Explain how to seek guidance on the legal rules governing interactions between witnesses and between witnesses and lawyers during a pretrial hearing.

DRAFT

6.8.1.4. Explain how to seek guidance on the rules governing the rules on interactions between witnesses, between witnesses and jurors, and between witnesses and lawyers during the trial.

6.8.1.5. Explain the role of objections.

6.8.1.6. Demonstrate the ability to respond appropriately when an objection is raised.

6.8.1.7. Describe the role of judges, lawyers, jurors, fact witnesses, and expert witnesses with respect to rulings, advocacy, factual information, opinions, factual determinations, and credibility findings.

6.8.2. *Presentation(s) shall be provided on the following topics:*

6.8.2.1. The oath.

6.8.2.2. Perjury.

6.8.2.3. Objections.

6.8.2.4. Rule on witnesses.

6.8.2.5. Interactions with jurors.

6.8.2.6. Direct, cross, and redirect examination.

6.8.2.7. Pretrial hearings v. trials.

6.8.2.8. Bench trials v. jury trials.

6.8.2.9. Physical evidence, exhibits, and demonstrative aids.

6.8.3. *Suggested trainee resources:*

6.8.3.1. Expert Working Group on Human Factors in Forensic DNA Interpretation (2024). Forensic DNA Interpretation and Human Factors: Improving Practice Through a Systems Approach. National Institute of Standards and Technology, Gaithersburg, MD, NIST IR 8503. Chapter 6 Pre-trial Preparations and Testimony. https://doi.org/10.6028/NIST.IR.8503.

6.8.3.1.1. Discussion: While the Report is DNA-specific the concepts discussed in Chapter 6 apply to all disciplines.

6.8.4. *Presentation(s) should include discussions on the following topics:*

6.8.4.1. Concerns and fears about testifying and strategies to help mitigate concerns.

6.8.4.2. The oath and how it is typically administered in the jurisdiction.

6.8.4.3. How to address any religious objections to the oath.

DRAFT

6.8.4.4. What constitutes perjury and how to correct testimony if the trainee believes they made a mistake or misspoke.

6.8.4.5. Practices for providing accurate, clear, transparent, and truthful testimony under stressful conditions.

6.8.4.6. Answering questions when an FP does not know the answer or is not sure of the answer.

6.8.4.7. What materials an FP should bring with them to a court proceeding and when and how to refer to those materials during testimony.

6.8.4.8. How direct, cross, and redirect examinations differ and the role of each.

6.8.4.9. Local practices and rules governing the interactions between witnesses, lawyers, and the public during pre-trial hearings and during trial.

6.8.4.10. How to get guidance about interactions in specific cases.

6.8.4.11. Strategies for avoiding interactions with jurors outside of the courtroom and how to report interactions, even if inadvertent. .

6.8.4.12. What to do if the FP recognizes a juror.

6.8.4.13. The role of objections and what to do as a witness if a lawyer makes an objection to a question or objects while the witness is speaking.

6.8.4.14. Handling and displaying physical evidence.

6.8.4.15. Exhibits and how they are introduced and used on direct and cross examination.

6.8.4.16. Demonstrative aids and their use during evidentiary hearings and trials.

6.8.4.17. How to answer questions about exhibits (e.g., articles, reports) that may not be familiar to the FP or that the FP may not recall in whole or in part.

6.8.4.18. Strategies for engaging with the sponsoring attorney prior to a hearing or trial to address any concerns and procedural questions.

6.8.4.19. The differences between pre-trial hearings, jury trials, and bench trials.

6.8.4.20. The distinct roles and duties of judges, prosecutors, defense lawyers, witnesses, and jurors in a criminal trial.

6.8.4.21. Considerations when testifying remotely (e.g., managing the technology, reviewing and referencing exhibits, reports, and other materials).

DRAFT

7. Keywords

7.1. competency; continuing education; forensic science; professional development; training; legal

DRAFT