

Public Comment Deadline: March 28, 2022

ASB Std 154, Standard for Training on Testimony for Forensic Biology

#	Section	Updated Section	Type of Comment (E-Editorial, T-Technical)	Comments	Proposed Resolution	Final Resolution
15	3.8		T	Need to include mitigation of culpability under the definition of "exculpatory evidence"	At the end add, "or the defendant's culpability."	Reject- Evidence that mitigates the defendant's culpability is already covered by the current definition.
5	3.9		T	A grand jury does not determine whether a person should "stand trial"; needs to add they investigate potential criminal conduct; also a person is not a defendant before they are indicted.	"A group of citizens empaneled to investigate potential criminal conduct or determine whether the accused should be charged."	Accept with modification- "or" changed to "and/or"
16	3.9		T	The role of the grand jury is to determine if there is probable cause to believe the suspect committed a crime, and that's sufficient for the definition	Erase "a defendant should be charged and stand trial for a criminal offense(s) or in some jurisdictions to determine if"	Accept with modification- definition changed to include the concept.
6	3.11		T	This is not an accurate definition of objection.	"A lawyer's objection about the legal propriety of a question, answer, or other evidence that violates the rules of evidence."	Accept with modification- The definition was changed to include other evidence
7	3.12		T	There are two types of subpoenas: one for documents and one for testimony.	Suggest editing this to define "subpoena duces tecum" and "subpoena ad testificandum"	Reject-The definition covers both types of subpoenas.
17	3.13		T	Voir dire doesn't necessarily have to be a preliminary examination	Delete "preliminary"	Accept
20	4.1		E	This section does not match 4.1 in previously published training standards.	Make all sections consistent throughout all training standards.	Accept
28	4.1.2 b	4.2.3-b	E	missing comma	insert comma after "e.g."	Accept
18	4.1.2(c)	4.2.3-c)	T	Include a duty to meet with both sides	Add "6) Duty to meet with both sides--the prosecution and the defense--upon request."	Accept with modification- Additional language was added to 4.2.3 (f) to cover this topic of communication with parties.
21	4.1.2.c.1	4.2.3 C1	E	Extra space between 'calls' and 'the'	Remove extra space.	Accept
1	4.1.2c3i-iii & 4.1.2e1-5	4.2.3 c3 I-iii and 4..2.3 e 1-5	?	Was the intent to read all of the cases completely or have a summary provided for the trainees?	Based on changes in 2022, I still am concerned this standard expands the focus of courtroom testimony to legal cases, with it being unclear how to include in the competency component. Suggest at the end of 4.1.2c, change to Relevant subjects may include, but are not limited to the following	Accept
22	4.1.2.c.4	4.2.3 c4	E	Extra period at the end of sentence.	Remove extra period.	Accept
27	4.1.2(c)(4)	4.2.3 c4	T	The revised section quite properly emphasizes the duty for testimony to include an explanation of limitations/uncertainties in the relevant methods and interpretations. Training on limitations should also include limitations on who can testify about different kinds of limitations and uncertainties. For example, the U.S. Supreme Court has held that the Confrontation Clause places certain limits and requirement on the qualifications and knowledge of a particular case a witness must have in order to testify on certain questions (see, for example, Bullcoming v. New Mexico, Melendez-Dias).	Modify either 4.1.2(c) or 4.1.2(e) to include training on who may testify or the qualifications and knowledge necessary to testify regarding differ issues, including the ability to respond to questions regarding limitations or uncertainties in relevant methods, principles, and procedures. Add Confrontation Clause, Bullcoming vs. New Mexico, Melendez-Dias.	Accept with modification- Confrontation clause training added to 4.2.3 g.

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26	4.1.2 (d)	4.2.3 d	T	"d) Cognitive bias. The trainee shall gain an understanding of how cognitive bias might affect the analysis, interpretation, conclusions, testimony or legal proceedings and how to testify in a manner that is truthful and unbiased". The change to this section fails to address the false suggestion made here that one can be trained to be unbiased and also fails to acknowledge the human factors that affect cognitive bias, conscious and unconscious. Instead this section should seek to impart an understanding of how human factors might impact the analysis, interpretation, conclusions and testimony, and prepare the trainee to acknowledge that human factors are a source of potential error and uncertainty.	Consult with the Human Factors Resource Group, Pate Skene, chair, (Pate.Skene@colorado.edu) for a rewrite along the lines of "(d) Human Factors. The trainee shall gain an understanding of how human factors might affect the analysis, interpretation, conclusions and testimony, and be prepared to acknowledge that human factors are a source of potential error and uncertainty."	Accept with modification- Human factors added to (d) and requirement strengthened.
29	4.1.2 g	4.2.3 g	E	the added word "appropriate" is ambiguous in this context	Suggest deleting "if appropriate" since "applicable" is already used. Or could say, "Any jurisdictional..." or "...case law, if any, applicable to forensic..." or change "if appropriate" to "as applicable" and delete "applicable."	Accept
30	4.2.1	4.3.1	E	unclear where "unless stated otherwise" applies and what it means in this context. Stated in the laboratory SOP? Stated in this standard? It is unclear why any of these requirements would be left out and not be included in the training program AND required for fulfillment of this standard.	Provide clarity to where this should be or is stated, and why any of the stated requirements should be disregarded.	Accept with modification- The words "unless otherwise stated" have been removed from the document.
2	4.2.2c	4.3.2c	T	If attending a trial, there is an opportunity to observe testimony from non-lab staff. However, due to the cost of transcripts and scheduling, trainees attending additional days of trial will be a burden on the lab in regards to travel, cost, and supervision concerns	Rather than "The trainee should", can this be modified to "if feasible, the trainee may". Should implies it isn't a requirement, but I think making this less strict is a good thing. Our normal courtroom training had to be scaled back during COVID, and trial observations were almost impossible for our trainees to experience.	Accept with modification- 4.3.2c changed to a note, not a requirement.
8	4.2.3(a)	4.3.3(a)	T	The experts should also know about any changes in policies and procedures after the analysis since this may impact the weight the jury should give to their testimony.	"review of relevant policies and procedures in place at the time of case analysis and any changes since the analysis"	Accept
19	4.2.3(b)	4.3.3(b)	T	Ensure the duty to disclose special case circumstances is mandatory	Add "mandatory" to the beginning of (b)	Reject- This is covered in 4.2.3 g)
9	4.2.3(d)	4.3.3(d)	E	Formatting should be the same -- either use the -ing suffix in (a)-(e) or don't	Change "working" to "work"	Accept
10	4.2.3(e)	4.3.3(e)	E	Formatting should be the same -- either use the -ing suffix in (a)-(e) or don't	Change "communicating" to "communicate"	Accept
24	4.2.3.e	4.3.3(e)	T	Effectively communicating with all parties in an unbiased and truthful manner and case record review including case-specific discovery documentation seem to be two separate topics.	make "case record review including case-specific discovery documentation" as a separate line 4.2.3.f	Accept
13	4.2.4	4.3.4	T	It is unclear who qualifies as an "instructor" or "designee." Make clear that this is a person from the laboratory and not an attorney.	Edit 4.2.4 to state: Oral exercises with instructor ([who is a member of the lab] or designee) to include the following:	Reject- This was worded to allow an attorney to help with the training. The wording was changed to allow for multiple instructors.
11	4.2.4(b)	4.3.4(b)	E	Made suggested edits for the sentence to flow better.	"presenting the underlying scientific principles in such a manner that the trier of fact will understand the subject matter of the testimony"	Accept

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3	4.2.4c	4.3.4c	T	Unclear if this standard is referring to learning how to present complex testimony in jury trials, bench trials, or depositions, or having the actual experience of doing all 3 in a mock setting. Our mock court is in jury setting atmosphere, we discuss presenting testimony in a bench trial, but do not provide practice on additional settings.	It is extremely rare for our lab to have analysts testify in depositions. We do cover bench vs. jury trials, and in the mock trial experience, they have practice with a jury. But I am still concerned this may be misinterpreted in an audit.	Reject- This is not a requirement because it is listed as an example "e.g."
12	4.2.4(h)	4.3.4(h)	T	Witnesses don't respond to objections	"responding appropriately to the judge's ruling"	Accept with modification- The word "objection" was left in to teach a scientist to be quiet.
4	4.3.2	4.4.2	general comment	Based on my understanding of this standard, the trainee will need to be questioned on 4.1's requirements, which would include policies related to testimony and responding to discovery or document requests, and literature assigned to the trainees, including case law. Am i correct in reading this as it would require a test, which we currently do not have on these topics. In addition to 4.1.1a and 4.1.1c, transcripts and recordings of testimony may also be part of the material that is tested. Am I reading this requirement correctly?	Have any of the OSAC training standards considered putting out generic quiz/test questions for labs to use?	Noted This is a question and not a suggestion. Question has been provided to OSAC Liaison to the ASB CB, but there is no such item in the works at this time.
23	4.3.2	4.4.2	E	This section does not match previously published training standards sections 4.4.2.	Make all sections consistent throughout all training standards.	Accept
14	4.3.3	4.4.2	T	It is unclear who will participate in this "mock trial." Will it be done with the assistance of prosecutors and defense attorneys?	Edit to clearly address the issue of who is should participate in these mock trials to ensure that they aren't biased.	Reject-Participants are up to the laboratory.
25	5		T	Missing conformance section	Add Section 5 "In order to demonstrate conformance with this standard, the laboratory shall meet the requirements outlined in section 5 of ANSI/ASB Std 022 Standard for Forensic DNA Analysis Training Programs"	Accept with modification- Section 5 was added to the document