

Comments  
 Deadline: 27-Dec-21  
 Document: ASB Standard 168, Standard for Testimony Monitoring in Friction Ridge Examination.

#	Section	Type of Comment (E-Editorial, T-Technical)	Comments	Proposed Resolution	Final Resolution
29	General	T	Consider adding a procedure to enable the witness to file a written statement disputing or responding to statements of the monitor.	Add "The FSP should allow the examiner-witness, upon request, to file a written statement in response to the statements of the monitor, to be kept as part of the same file."	Accept with modification - added the following language to the end of 4.6: "The witness may produce a written response to the statements of the reviewer. The response shall be retained with the testimony review."
32	General	E	This standard seems to be more general than specifically for Frictin Ridge. Would this standard not be better as an interdisciplinary standard that applies to all forensic disciplines/OSAC SACs?	Remove "Frictin Ridge Examination" from title, and other references to "Friction Ridge" and make it a general standard that applies to all forensic disciplines.	Reject - outside the scope for the Friction Ridge Consensus Body
31		T	What should an agency consider doing if an examiner doesn't testify in a given year?	Suggest agency has a policy in the event that an examiner doesn't testify in a given year. Ex. "At minimum, an evaluation of the analyst's responses to typical/commonly encountered testimony related questions will be conducted. Documentation of the evaluation will be retained."	Accept with modification - 4.8 modified to require FSP to document if an examiner does not testify in a given year.
36	1	T	it is common that not all examiners may testify within the given time frame listed in FSPs policy; however, this document does not address this at all	scope should include a note that the document is not going to address what a FSP should do if an examiner hasn't had an opportunity to testify within the FSPs time frame for reviews	Accept with modification - 4.8 modified to require FSP to document if an examiner does not testify in a given year.
37	3.3	T	definition should not include how an examiner is deemed competent (that should be addressed in a training document). Term should just be defined	remove "...by observing and interpreting data, making decisions, forming conclusions and opinions, issuing reports and/or providing testimony."	Reject - definition comments to be submitted to the TR 016 working group.
38	3.3	T	definition contains a "NOTE" in the last statement that is not a part of the definition	separate last sentence to be a "NOTE" instead of including it within the definition for clarity (see 3.2)	Reject - definition comments to be submitted to the TR 016 working group.
1	4.1	T	4.1 Testimony is about communicating to layman. Communication, such as speaking loud enough, slow enough, appropriate dress, etc., cannot be appropriately reviewed by reading a transcript.	<b>Recommendation:</b> Change this to be "shall be reviewed by direct observation or by video". Remove the option of reviewing transcripts.	Reject - When direct observation or video review are not practicable, transcript review is acceptable (and better than no review at all). Section 4.5 covers those things that can only be reviewed by direct observation or video, such as appearance and verbal communication.
2	4.1	T	An alternative needs to be suggested for those who do not testify for years, or if direct observation is not feasible.	<b>Recommendation:</b> Add "Interviews, with preplanned questions, may substitute for testimony reviews".	Accept with modification - 4.8 modified to require FSP to document if an examiner does not testify in a given year.
3	4.2	T	4.2 There is no reason for the reviewer to be competency tested in the discipline. Being able to arrive at solid conclusions has nothing to do with reviewing how others articulate ideas (this is a twist in logic). In other words, a reviewer does not need to be competent in order to judge the items listed in 4.4 and 4.5 (the items suggested to be reviewed).	<b>Recommendation:</b> Remove that the reviewer needs to be competency tested.	Reject - individuals that have been competency tested in friction ridge examination are more qualified than those outside the discipline to determine if the witness testified within the scope of their expertise and appropriately explained results and limitations.
30	4.2	T	Consider making more flexible - to include laboratory managers, quality managers, or officers of the court. This also applies to situations where hearings or trials are closed (ex. grand jury) where direct observation is not allowed/transcripts are not released, or analyst is testifying remotely via zoom etc.	Evaluation shall be by direct observation, questionnaire, review of court transcripts, or telephonic solicitation by laboratory staff to one or more officers of the court for responses to the controlled evaluation form	Reject - individuals that have been competency tested in friction ridge examination are more qualified than those outside the discipline to determine if the witness testified within the scope of their expertise and appropriately explained results and limitations.

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21	4.2 Testimony reviews shall be completed by FSP-authorized individuals who have been competency tested in the discipline of	E	Examiners should not be prohibited from reviewing their own testimony. In general, passive voice is undesirable.	Replace with "4.2 An FSP-authorized individual who has passed competency testing for the subject matter being testified to shall observe the testimony and prepare a report on it."	Accept with modification - changed 4.2 to "An FSP-authorized individual who has been competency tested in the discipline of the subject matter being testified to shall complete the testimony review. Examiners may not conduct the official review for their own testimony(ies)."
18	4.3 Documentation of testimony monitoring shall be completed and retained (sample form in Appendix A) according to FSP policy.	T	What needs to be documented is not the mere fact that testimony monitoring occurred; rather, the content of the report of the monitor should be written and made available on request. The standard should offer guidance on how long to retain the report (presumably at least 5 years, the time within which most appeals of convictions are complete) rather than leaving it to an undefined "FSP policy."	Replace with "Written reports on the testimony that is monitored (a sample form is in Appendix A) shall be retained for at ten years after the conclusion of the hearing or trial and any direct appeals."	Reject - The requirement is to document the testimony monitoring, not just the occurrence of the testimony monitoring. In addition, different agencies in different jurisdictions have different requirements for retention. Retaining "in accordance with FSP policy" is appropriate.
5	4.4	T		<b>Recommendation 2:</b> Add "e) did the examiner convey information in words understandable to layman?"	Accept - added recommended language
6	4.4	T		<b>Recommendation 3:</b> Add "f) did the examiner imply interpretations and/or conclusions were stronger than they are (absolute, accurate, definitive)?"	Reject - already covered under 4.4 b and c asking whether examiner stayed within the limits of their expertise and whether they conveyed appropriate limitations.
15	4.4	T	Section 4.4 needs an additional category to address common (and critical) questions typically asked of examiners on cross and redirect examination about consensus reports, literature reviews and published research relating to latent print examination.	Add a category "e) If questioned about the state of the discipline, including about the content of consensus reports, relevant literature, and published research relating to latent print examination, did the examiner show appropriate knowledge and understanding of these references and provide accurate and forthcoming answers to the questions about them?"	Accept with modification - added "f) If questioned about relevant literature and published research relating to friction ridge examination, did the examiner show appropriate knowledge and understanding of these references and provide accurate answers to the questions about them?"
19	4.4 a Did the examiner accurately describe their qualifications, duties, and examinations per	E	Does the phrase "per FSB policy" apply to the qualifications, duties and examinations or to the accurate description of them? Does not "duties " include "examinations"?	Replace with "Did the examiner accurately describe his or her qualifications and duties in the testimony and any supporting exhibits?"	Accept with modification - deleted "per FSP policy"
20	4.4 b Did the examiner accurately convey their results, opinions, and/or interpretations of the evidence within the limits of their	T	"Results, opinions, and/or interpretations" is prolix, and "limitations" involves both individual expertise and discipline-wide knowledge as well as restrictions imposed by the court.	Replace with "Did the examiner accurately describe the items studied and the findings about them within the limits of his or her qualifications and the established knowledge in the discipline, and any rulings of the court restricting the testimony and made known to the witness?"	Reject with modification - All three terms are OSAC Preferred Terms and may apply to friction ridge examinations. Section 4.4 c covers limitations of the discipline. Added "e.g., court imposed limitations" to the end of 4.4 c.
10	4.4.b	E	The results are of the examination, not the examiner.	Change to "their results" to "the results of the examination"; either edit to attribute "opinions, and/or interpretation" to the examiner or consider deleting them altogether.	Accept - Changed to "Did the examiner accurately convey the results of the examination, to include their opinions and/or interpretations of the evidence, within the limits of their expertise?"

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22	4.4 c Did the examiner convey appropriate, scientifically supportable results and/or other limitations?	T	"Scientifically supported" is not the same as "scientifically supportable," and "other limitations" needs more specificity. How does this sentence relate to the "limits of ... expertise" in § 4.4(b)?	Use the proposed replacement to § 4.4(b) and delete this subsection or rephrase as "Did the examiner present scientifically supported results without overstating their significance or implications?"	Reject - Section 4.4 b deals with limitations associated with the examiner's expertise (e.g., friction ridge expert may not testify about footwear results), while 4.4 c addresses scientific, discipline-specific, and/or court imposed limitations (e.g., expert may not state zero error rate).
4	4.4c	T	4.4 c. The reviewer can not tell if the results are scientifically supported by reviewing testimony. Determining if the results are scientifically supported is the task of a technical reviewer.	<b>Recommendation:</b> remove, "Did the examiner convey appropriate, scientifically supportable results".	Reject - The language used to convey results must be scientifically supportable and within the limitations of the discipline.
7	4.5	T	4.5 These are important concepts in verbal and non-verbal communication.	<b>Recommendation:</b> Change should to shall.	Accept - changed "should" to "shall"
11	4.5.b	E	verbal communication can be monitored from a transcript	Delete "verbal and" or consider deleting section 4.5 altogether.	Reject - verbal communication involves more than just the words used (e.g., tone and inflection). These aspects of verbal communication cannot be monitored from a transcript.
23	4.5 c Did the examiner present appropriate demonstrative exhibits, if applicable?	E	The tag-along "if applicable" is unclear, and "demonstrative exhibits" seems like an amalgam of "demonstrative evidence" and "exhibits."	Replace with "If the examiner used charts, photographs, diagrams, videos or other demonstrative evidence to explain methods or results, were they accurate, clear, and helpful to a judge or jury's understanding of the testimony?"	Accept with modification - Changed to "If the examiner used demonstrative evidence (e.g., charts or photographs) to explain methods or results, were they accurately conveyed?"
12	4.6	E	Unclear whether this refers to documenting the testimony review (which is already stated in 4.3) or the discussion.	Clarify.	Accept with modification - Added language to clarify that discussion needs to be documented if a non-conformance has occurred.
33	4.6	T	requirement addresses 2 items that are not equivalent and should be separated into two different statements	update wording for 4.6 to say "the testimony review shall be documented according to FSP policy." and address discussing with examiner as a separate section	Accept with modification - Added language to clarify that discussion needs to be documented if a non-conformance has occurred. Documentation of the review is outlined under 4.3.
34	4.6	T	discussing testimony review with and examiner should only be a shall if there is a non-conformity.	split from 4.6 and make 4.7 - "The testimony review shall be discussed with the examiner if a non-conformity is noted."	Reject - outcome of all reviews should be discussed with the examiner.
24	4.6 The testimony review shall be discussed with the examiner and documented according to FSP policy.	T and E	The second clause is insufficient and unnecessary. It is insufficient because the standard just do more than leave things to the FSP's undefined policy. It is unnecessary because § 4.53 already require "testimony review," which is the subject of this sentence, to be documented. Moreover, because of passive voice, the first part of the sentence does not specify that the reviewer should discuss the review with the witness.	Replace with "The FSP reviewer shall discuss the written review with the witness. The record of the review shall document whether this step was completed."	Accept with modification - Added language to clarify that discussion needs to be documented if a non-conformance has occurred.
8	4.7	T	4.7 This statement has a shall and a should.	<b>Recommendation:</b> reword to, "The FSP shall have a policy that prescribes the appropriate action (preventive or corrective) <del>that should be</del> taken if a non-conformance has occurred."	Accept with modification - changed "that should be" to "to be"
13	4.7	E	According to 3.6 preventive action can only be taken before a non-conformance occurs.	Delete "appropriate action (preventive or" and insert "action" after "corrective"	Accept - changed as recommended
16	4.7	T	The FSP policy should be a written policy.	The FSP shall have a <b>written</b> policy that prescribes the appropriate action . . .	Accept - added "written"
9	4.8	T	Testimony needs to be reviewed on a schedule to ensure the examiner remains proficient.	<b>Recommendation:</b> Change should to shall.	Accept with modification: Section rewritten based on other comments, with shall statements.
14	4.8	E	Standards should have shall statements. This is not a secondary requirement.	Change "should" to "shall"	Accept with modification: Section rewritten based on other comments, with shall statements.

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17	4.8	T	The standard should require a policy on frequency and set a minimum period for testimony review for once a year.	The FSP shall have a policy that prescribes how often testimony monitoring occurs and shall monitor testimony at least once a year or document that the examiner did not testify in any jurisdiction in that year.	Accept with modification - changed 4.8 to "Testimony monitoring shall occur at least once per year. The FSP shall document if an examiner does not testify in a given year."
35	4.8	T	staff need to be aware of policy expectations including frequency	change "should" to "shall"	Accept with modification - changed 4.8 to "Testimony monitoring shall occur at least once per year. The FSP shall document if an examiner does not testify in a given year."
25	Annex A Sample Testimony Technical Review Form	T and E	The testimony monitoring goes beyond "technical review" as defined in § 3.7.	In the title, replace "technical review" with "monitoring." Elsewhere, replace "technical reviewer" with "testimony reviewer."	Accept - changed as recommended
26	Annex A Sample Testimony Technical Review Form	T and E	The form should reflect the criteria in the standard as revised in light of the public comments.	Change the form to reflect the suggested changes to the parts of the review discussed in our comments.	Accept - copied questions from 4.4 and 4.5 into sample form
27	Annex A Sample Testimony Technical Review Form	T	The question "did the inaccuracy fundamentally impact the perception of the information that was presented?" cannot necessarily be answered on the basis of a transcript or even a video of the testimony. Furthermore, a significant inaccuracy is cause for concern even if did have not a "fundamental impact."	Delete this question.	Accept - question deleted
28	Annex A Sample Testimony Technical Review Form	T	The form requires the examiner to sign it. Why? What if the examiner disagrees with parts of it?	Have a separate document in which the witness simply acknowledges (1) that he or she read the monitor's report, and (2) that the monitor discussed it with the witness.	Reject - this standard requires discussion and the examiner's signature is documentation of that. Added language to end of 4.6 allowing witness to provide a written response to the review.