

A. PURPOSE:

Court monitoring is a tool used to aid employees so that they can improve how they present themselves and the case facts when they testify, and to ensure that laboratory personnel are appropriately representing the laboratory in the legal environment. The DSS uses direct observation (technical review of testimony) of a sample of employees annually to monitor the quality and appropriateness of the testimony provided. Additional methods to gain review and to identify needs for improvement can include telephone interviews, court monitoring and review of transcripts.

Individuals testifying within the DNA Unit will be monitored at least one time annually for each year testimony is provided. This review may be through direct observation, review of transcripts or review from the courts (as documented on form GL 17.1 Court Monitoring or GL 17.3 Testimony Review –Direct Observation).

B. RESPONSIBILITY:

1. Managers: Responsible to provide direction to subordinate staff under their purview as indicated by the organization chart.
2. Supervisors: Responsible to provide supervision to subordinate staff under their purview as indicated by the organization chart.
3. FSE2: responsible as a working lead to subordinate staff as indicated on the organizational chart.
4. FSE1 and Lab Assistants: Responsible to adhere to this procedure as it pertains to their Unit.
5. ECO: Responsible to adhere to this procedure as it pertains to their Unit.
6. Support Personnel (however titled): Responsible to adhere to this procedure as it pertains to their Unit.

C. PROCEDURE:

1. Direct Observation: The DSS will periodically monitor the testimony of its employees through direct observation. The goal will be to monitor at least 1 analyst per discipline each year in which testimony is provided for that discipline.
 - a. Direct observation (or technical review of testimony) will be performed by someone that is competent in that discipline and is authorized to review testimony. This may be listed as authorized to perform technical reviews within a discipline on some authorization documents.
 - i. A member of the Quality Section or the Assistant Director or Deputy Director of a Section may perform a review by direct observation. This may occur as required for the needs of the DSS.
 - b. The first time an employee testifies as a representative of the DSS, a representative from the laboratory will be assigned to observe the testimony. Preferably this will be the Unit Supervisor or Lead but it can be another individual competent in the field.

- c. Direct observation will be used for moot court testimonies.
 - d. Direct observation will be used in cases where there is a significant complaint about an individual's testimony.
 - e. When direct observation is used, the monitor will complete a 'Testimony Review Direct Observation' form (GL-17.3). If the monitor is not the Unit Supervisor, the monitor will review the information with the Unit Supervisor. The form will be forwarded to the Quality Section.
 - i. The Quality Section will review the form and initiate a 'Court-Technical Review' workflow attaching the completed GL 17.3.
 - f. When performing a review of testimony the reviewer will consider all the topics as listed on form GL 17.3 including:
 - i. The analyst's ability to clearly and accurately communicate within the bounds of their area of expertise.
 - ii. Whether the analyst's testimony was consistent with the results as documented in the DSS report.
2. Review of Testimony Transcripts: In the event that there is not a 2nd person available or competent in a discipline transcripts can be obtained for the purpose of technical review of testimony.
- a. The Section Manager will be responsible to obtain the transcripts from the court. These will be provided to the individual designated to review to records.
 - i. In the case of disciplines having only 1 competent analyst the Deputy Director will arrange for an external reviewer and will additionally assign either the section Supervisor or other appropriate individual to review the transcripts for appropriateness.
 - ii. The reviewer will write a memo stating that the testimony was reviewed adding any notes or suggestions and identifying any problem areas. This will be provided to the Deputy Director and the Quality Section.
 - iii. The documentation/notification of the review will be through a 'Court – Technical Review' workflow. The reviewer's memo will be attached to the workflow to document the feedback.
3. Witness Evaluation form: These forms are used as a method of obtaining feedback from the customers of the DSS. These are supplemental to direct observation and will not replace that action.
- i. The individual testifying should provide the courts with witness evaluation forms each time they testify. These may be provided to the court inspector/investigator to be distributed to the judge, prosecutor and defense attorney.
 - (a) It is suggested that the testifying analyst complete the date, court, witness name, lab case number, type of case and defendant on the form prior to submission to the court – this is to make the process easier for DSS customers.
 - ii. Completed forms are submitted to the Quality Section.

- iii. The Quality Section will initiate a 'Court Monitoring Form Review' workflow.
 - (a) The review form will be scanned and attached to the review workflow allowing the analyst to review the feedback.
 - (b) If the analyst has questions concerning the evaluation they should direct the questions to their Supervisor/Lead or Unit Manager.
- 4. Telephone Contact with attorneys: this approach will be infrequently used due the inconvenience it may cause the reviewers. When used, contact will generally be made by the Unit Supervisor/Lead, Assistant Director or Deputy Director. Feedback regarding the quality of the testimony, specifically asking where improvements are needed will be requested.
 - i. The person contacting the attorney may use the witness evaluation form (GL-17.1) to document the review.
- 5. Review and Feedback:
 - a. All reviews, whether obtained through direct monitoring, review of transcripts, feedback from the courts or interview with the courts, will be directed through the Quality Section. All such monitoring documents will be scanned and attached to the appropriate Quality Management Software (QMS) workflow.
 - i. Notification will be sent through the QMS to the Supervisor/Lead, Deputy or Assistant Director and the testifying analyst to review the form.
 - ii. Upon receipt of a notification the analyst and Supervisor/Leads, Deputy or Assistant Director are responsible to review the form and document their review within the workflow.
 - b. Reviews which are not favorable may require further training; this will be assessed by the Supervisor/Lead with the Quality Section and Deputy and/or Assistant Directors for appropriate follow-up. The Director will be informed of all unsatisfactory reviews.
 - i. It is recognized that a witness evaluation may be affected by the reviewer's opinion of the factual content of the testimony and/or the outcome of the case. If a poor review is given and it appears that this has occurred a note may be placed with the review by the Deputy Director, Assistant Director, Supervisor or Lead, and/or Quality Manager.
 - c. Witness Evaluation forms or notes of direct observations will be maintained with the Quality Section within the QMS for a period of no less than 10 years. Employees need not officially maintain their copies of the Witness Evaluation forms.
 - d. Section Supervisors/Leads may choose to hold post testimony interviews with Unit employees to evaluate/address any concerns the employee or the Supervisor/Leads may have concerning specific case testimony.
 - e. The Quality Section will run a QMS report no less than once annually (usually as part of the internal audit) to determine if all the monitoring guidance has been met for the year. This includes:
 - i. Testimony review of all DNA analysts that have testified within the calendar year.

- (a) The review may be any of the types listed in this procedure.
- (b) The Quality Section will maintain a list of all DNA analysts, if they testified in the year or not and if they did testify, if a review was obtained of at least one testimony. Generally this will be through a review of the Subpoena Tracking workflow in the QMS but may also include an email query to Unit analysts to determine if they have testified in the calendar year.
 - ii. Technical review of testimony of a minimum of 1 analyst per discipline within the calendar year.
 - iii. Technical review of testimony of all new analysts providing their first testimony.
- f. Court Technical Review workflows will minimally capture:
 - i. Analyst's name
 - ii. Discipline in which testimony was given.
 - iii. Date of testimony
 - iv. Court
 - v. Case number (if applicable)
 - vi. The completed review form
 - vii. Documentation of review by the analyst, Unit Lead or Supervisor and Unit Manager.
- 6. Subpoenas and Court Appearances:
 - a. All subpoenas will be tracked using the QMS workflow "Subpoena Tracking". Any employee receiving a subpoena that has not come in through Case Management or the Quality Assurance Unit (QAU) must supply a copy to the QAU. In general the QAU will initiate the Subpoena Tracking workflow using the guidance in Appendix A below.
 - i. Generally the QAU will also send a notice via email to the analyst and the FSE2 or FSE3 of the unit.
 - (a) The FSE2 or FSE3 is responsible to inform the Unit Manager if the individual subpoenaed is on leave.
 - (b) The unit Manager is responsible to contact the issuer of the subpoena if the individual is not available.
- 7. Analysts shall ensure that the subpoena and court appearance information is updated in the workflow as appropriate.
- 8. When testifying for Federal Court an expert witness disclosure may be required by the courts. Templates for the letters to be used are found in the QMS under "Federal Rule 16 Letter Templates". There is a version for each discipline. This will generally be provided as part of the discovery packet for the case.

Appendix A: Subpoena Tracking Workflow:

This workflow is to be used whenever a new subpoena has been received. This allows the analyst, Supervisor and Managers to be informed of pending subpoenas within their Units.

1. Log into the QMS and go to the Workflow tab.
2. Pick the workflow 'Subpoena Tracking' to initiate a new workflow.
3. Enter the following fields:
 - a. Person the Subpoena is for – this is a pick list
 - b. DSS case number or other identifier – when possible this should be the DSS case number. If testifying where there is not a case involved add other identifier such as docket number.
 - c. Court – this is a pick list. There is an "other" option in case a court is not on the list, if this is chosen type the name into the text box 'sup – other'
 - d. Date – this is the projected date of testimony, pick from the calendar
 - e. Attach subpoena – attach the subpoena here
4. Click the blue button 'to Person subpoenaed' is issued to. They will enter:
 - a. Date informed – this is a calendar
 - b. Supervisors (FSE2/FSE3) – this is a pick list
5. Click the blue 'Notify Supervisor and Lead' button. They will enter:
 - a. Date informed – this is a calendar
 - b. Assistant Director and Deputy Director – this is a pick list
6. Click the blue 'Notify Manager(s)' they will enter:
 - a. Date informed
7. Click the blue 'to QM'. They will enter:
 - a. Date informed
8. Send back to Analyst. The workflow will stay with the analyst until they either testify, the testimony is canceled or the testimony is postponed and a new subpoena will be needed.

The analyst enters:

 - a. Status – this is a pick list. Choose from 'testified', 'canceled', or 'postponed new subpoena to be issued'.

If testimony does not occur or notice of cancellation does not occur within 3 months of the date listed on the subpoena the 'postponed new subpoena to be issued' should be chosen.
 - b. Date of testimony or cancellation date – this is a calendar
 - c. If testified over multiple days there is a text box to add the information
 - d. Text box available for other notes
 - e. Discipline in which you testified – this is a pick list
9. Click the blue 'Quality to close' button. QM adds the end date to close the workflow.