

**MEMORANDUM**

TO: All Elected District Attorneys and Staff

FROM: Joseph John, Sr., Director of the North Carolina State Crime Laboratory

DATE: June 13, 2012

RE: Forensic Scientist Certification

Attached are copies of my previously issued Memoranda regarding Forensic Scientist Certification.

Prior to last Friday, it was my firm belief that the Memo dated January 13, 2012, had been delivered to all addressees and indeed was the reason several hearings had been conducted throughout the State on the analyst certification issue. Also attached for your reference is a copy of an Order entered in one such recent hearing. However, I learned on Friday that several District Attorneys had indicated they had not received this Memo.

Notwithstanding locating documentary evidence that the Memo was prepared early in January, that it clearly had gone through at least four drafts and was in final form (as reflected in the attached document), and that it was the unqualified intent of the Crime Laboratory that it be issued and distributed, I unfortunately have been unable to verify affirmatively that it indeed was sent out. As Crime Laboratory Director, any breakdown in the process of distributing this January 13, 2012, Memo is my responsibility and mine alone. I very deeply regret what now appears to have been an inadvertent failure and will again attempt to suggest means of addressing issues which may arise in recent Laboratory cases.

As noted above, the question of the new statutory requirement under Session Law 2011-307, Section 8, has begun to arise in court proceedings. The Session Law provides as follows:

“SECTION 8. Section 4 of S.L. 2011-19 reads as rewritten:

Section 4. Forensic science professionals at the State Crime Laboratory shall be required to obtain individual certification consistent with international and ISO standards ~~as soon as practicable, but no later than June 1, 2012,~~ within 18 months of the date the analyst becomes eligible to seek certification according to the standards of the certifying entity or by June 1, 2012, whichever occurs later, unless no certification is available. All such forensic science professionals shall have access to the certification process.”

Certification is a developing innovation in forensic science. It is my belief that North Carolina is in the vanguard of this process as the first state in the Union to adopt a statute similar to the above. Further, to my knowledge only a handful of analysts at best are certified in various forensic laboratories throughout the country.

In North Carolina as well as in most other jurisdictions, forensic scientists are qualified as expert witnesses in court proceedings on the basis of their educational background, their years of experience, their training on the job as well as in continuing education programs or courses outside of the laboratory, and the number of times they have previously testified as an expert witness. Additionally, in this state, North Carolina State Crime Laboratory forensic experts present testimony as to required proficiency tests in their discipline (administered biannually in Forensic Biology (DNA) and annually in other disciplines) and also regarding the 100% peer review process applicable to each examination conducted in the Laboratory.

The new statutory provision cited above in no way affects or negates any of these traditional bases supporting tendering a forensic scientist as an expert. The new statute simply represents an enhancement of a scientist’s professional credentials and absolutely does not determine competency as a scientist or as an expert witness. Indeed, Crime Laboratory forensic scientists would be accepted as expert witnesses in the other forty-nine states of the Union without even addressing the certification question. Lab scientists retain all the experience, skills, knowledge and commitment to accuracy that they possessed prior to December, 2011.

With the passage of S.L. 2011-19, the Crime Laboratory has moved diligently to afford its scientists the opportunity to achieve certification. It was determined that there were but a few reputable testing agencies (the “mail order” type of company was studiously avoided), and that several agencies would be required to cover all the forensic disciplines. Different testing agencies ultimately were selected. Interestingly, the sole agency which provides a certification test in Forensic Biology (DNA) also required a scientist to respond to questions covering additional disciplines.

In any event, each eligible Laboratory scientist was scheduled for an extensive, proctored examination in his/her respective discipline in December, 2011. Several are not yet eligible under the standards of the certifying agency by virtue of not having achieved a predetermined number of years of laboratory experience or of membership in the professional organization, etc. The Laboratory learned in early January, 2012, that some analysts unfortunately were unsuccessful on the examination. These analysts have been scheduled for retesting to ensure compliance with the statutory provision that certification occur “within 18 months of the date the analyst becomes eligible to seek certification.”

I note that the Laboratory currently is well within this statutory time frame and that it would not be unreasonable to contend that no disclosure whatsoever is required until expiration of that eighteen month period. Notwithstanding, the Crime Laboratory has not taken such a position.

That being said, the Crime Laboratory believes that an individual analyst's lack of success on the certification test is a protected privacy matter as well as a personnel interest under N.C.G.S. § 126-24. However, we also recognize that this information potentially may be considered by some as *Brady* material or be otherwise subject to discovery. Of course, determination of what information is covered by *Brady* is indisputably a prosecutorial or judicial decision, not one to be made by the Crime Laboratory.

In an attempt to facilitate resolution of the tension between these competing interests, I briefly suggested in the January 13, 2012, Memo methods of empowering you to satisfy what you determined might be your prosecutorial obligations under *Brady* and still respect the appropriate privacy and personnel interests of affected Laboratory employees. These methods included your securing a court order authorizing release of this information or making direct inquiry to the individual analyst.

In an abundance of caution and in a sincere attempt to work to the benefit of the criminal justice system as a whole in light of those employee interests, I will forward to you under separate cover within the next two days a disc containing the current CVs of Laboratory analysts as those CVs are reported in Forensic Advantage, the Laboratory electronic information system. I am informed that many of these analysts were successful on their certification examination; however, some are not yet eligible to take the exam and, as indicated previously, some analysts were unsuccessful.

In the event a court order is procured, the Crime Laboratory requests that the following conditions be placed upon use of information ordered produced: 1) the names of the listed analysts will not be released, disclosed or used by anyone in any way except in conjunction with the specific court proceeding in which the order has been entered; 2) only the names of analysts involved in such specific case shall be released or disclosed in that case; 3) no release or disclosure of the name of any analyst shall be effected except upon the determination that such disclosure is required by *Brady*, North Carolina discovery laws, or other applicable law.

The Crime Laboratory desires that any issues which may arise out of the new and unique certification requirement are resolved in a manner which is transparent and fair and equitable to all concerned. If you have specific questions about the contents of this Memorandum, please feel free to contact Joy Strickland, the Laboratory's legal counsel, at 919-662-4509, ext. 4400, or me at ext. 4509. Thank you for your cooperation.