



# NATIONAL COMMISSION ON FORENSIC SCIENCE



## Bylaws as Amended, March 21, 2016

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### **Section I: Purpose:**

The purpose of the National Commission on Forensic Science (Commission) is to provide recommendations and advice to the Department of Justice concerning national methods and strategies for: strengthening the validity and reliability of the forensic sciences (including medico-legal death investigation); enhancing quality assurance and quality control in forensic science laboratories and units; identifying and recommending scientific guidance and protocols for evidence collection, testing, analysis, and reporting by forensic science laboratories and units; and identifying and assessing other needs of the forensic science communities to strengthen their disciplines and meet the increasing demands generated by the criminal and civil justice systems at all levels of government.

### **Section II: Authority**

The Commission is established under Agency authority as the Attorney General has determined that its establishment is in the public interest. The Commission is governed in accordance with the provisions of the Federal Advisory Committee Act (FACA), as outlined in the charter filed with the Congress on April 23, 2015.

### **Section III: Role of Commission Officials**

**A. Co-Chairs:** A representative of the Department of Justice and a representative of the National Institute of Standards and Technology (NIST) shall serve as Co-Chairs. The Co-Chairs work with the Vice-Chairs to establish priorities and identify issues to be addressed by the Commission.

**B. Vice-Chairs:** A representative of the Department of Justice and a representative of NIST shall be designated by the Co-Chairs to serve as the Commission's Vice-Chairs. The Vice-Chairs facilitate Commission meetings and fulfill the duties of the Co-Chairs in their absence. The Vice-Chairs are responsible for the day-to-day operations in support of the Commission's charter. The Vice-Chairs shall serve as members of the Subcommittee on Procedures and Operations ("SPO"), as defined in Section IX.A.

**C. Designated Federal Officer (DFO):** The DFO will work with the Co-Chairs/Vice-Chairs to administer the Commission in accordance with FACA. The DFO serves as the government's agent for all matters related to the Commission's activities. By law, the DFO must: (1) approve or call the meeting of the Commission; (2) approve agendas; (3) attend all meetings; (4) adjourn

the meetings when such adjournment is in the public interest; and (5) chair meetings of the Commission, when so directed by the Co-Chairs/Vice-Chairs.

In addition, the DFO is responsible for providing adequate staff support to the Commission, including the performance of the following functions: (1) notifying members of the time and place for each meeting; (2) maintaining records of all meetings; (3) maintaining the roll; (4) preparing the minutes of all meetings of the Commission's deliberations; (5) attending to official correspondence; (6) maintaining official records and filing all papers and submissions prepared for or by the Commission; and (7) preparing and handling all reports, including the annual report as required by FACA. The DFO shall serve as a member of SPO, but the DFO's inclusion on the SPO shall not in any way reduce the authority vested in the DFO pursuant to FACA.

Collectively, the Co-Chairs, Vice-Chairs, and DFO comprise the "Commission Officials."

#### **Section IV: Commissioners**

**A. Types of Commissioners.** The Commission shall consist of approximately 30 "regular members" and up to 10 "*ex officio* members" (collectively, "Commissioners"). *Ex officio* members are excluded from voting on any matter relating to a Commission Work Product, but shall be entitled to otherwise fully participate in all Commission Business.

**B. Selection and Replacement.** On an annual basis, Commission Officials shall confer with each Commissioner to confirm his or her continuing availability and interest in serving on the Commission. If one or more vacancies arise, Commission Officials shall confer with the SPO regarding the needs of the Commission and the Commission's efforts to retain a general balance of backgrounds, experiences, viewpoints, and expertise in scientific, legal, law enforcement, academic, and advocacy professions. Commissioners are appointed by the Attorney General, or his or her designee, in consultation with the Director of NIST and the Vice-Chairs. Appointments are not transferrable and may be subject to renewal if the charter is renewed. Membership includes the responsibility to attend Commission meetings personally. The Department of Justice reserves the ability to replace any Commissioner who misses more than one meeting in a calendar year. Commissioners are required to comply with all ethics requirements.

**C. Proxies and Remote Participation.** In the event that a Commissioner is unable to attend a meeting, the Commissioner may request that the Department of Justice allow either (1) the designation of a similarly qualified individual as a proxy to represent his or her interests in the meeting, provided that any such request be received no later than 20 calendar days in advance of each meeting and include enough information about the proposed proxy to allow the Department to evaluate any potential conflicts of interest and determine whether permitting the individual proxy would support the work of the Commission, or (2) remote participation by way of video, telephonic, or Internet-based conferencing, as available. Commissioners will attend meetings in person and only request proxies or remote participation in rare circumstances.

## **Section V: Commission Work Products**

The Commission shall prepare Commission Work Products, which can take two forms: “Recommendations to the Attorney General” (Recommendations), or “Views of the Commission” (Views Documents). Recommendations propose specific acts that the Attorney General could take to further the goals of the Commission. Views Documents reflect the collective views of the Commissioners and do not request specific action by the Attorney General. Commission Work Products may be developed by any Subcommittee (other than the SPO). Commission Work Products shall be submitted to the Commission Officials no later than 21 calendar days in advance of the meeting where the Commission Work Product is to be presented and voted on.

Commission Work Products do not include NCFS Guidance Documents, which are prepared by the Department’s Commission staff and provide guidance to the Commissioners on administrative work and preparatory work.

## **Section VI: Meeting Procedures**

The Commission will meet quarterly, or as required. Meetings will be called by the DFO in consultation with the Co-Chairs/Vice-Chairs according to the following considerations:

**A. Agenda.** The Co-Chairs/Vice-Chairs or their designees will develop meeting agendas in consultation with the SPO. A draft agenda will be made available to Commissioners, no later than 14 calendar days prior to each meeting. A synopsis of the agenda will accompany the Notice of Meeting published in the Federal Register. Items for the agenda may be suggested by any Commissioner or member of the public. Pursuant to FACA, the DFO must approve agendas.

**B. Quorum.** For the purposes of conducting a meeting and voting on Commission Business, more than seventy-five percent of regular members must be participating in the meeting to establish a quorum (including remote participants).

**C. Open Meetings.** Unless otherwise determined in advance in accordance with applicable regulations, all meetings of the Commission shall be open to the public. Once an open meeting has begun, it shall not be closed for any reason, except as described in Section VI.D. All materials brought before, or presented to, the Commission during the conduct of an open meeting shall be available to the public for review at the time of the scheduled meeting.

Members of the public may attend any open meeting and may, at the determination of the Co-Chairs/Vice-Chairs, offer oral comments during the designated public comment period. The Co-Chairs/Vice-Chairs may decide in advance to exclude oral public comment during a meeting, in which case the meeting announcement published in the Federal Register shall note that oral comment from the public is excluded and invite written comment as an alternative. Members of the public may submit written statements to the DFO at any time.

**D. Closed Meetings.** Meetings of the Commission may be closed when the DFO determines that discussions will involve matters about which public disclosure would be harmful to the interests

of the government, industry, or others; and the Attorney General and the Department of Justice, Justice Management Division, Office of General Counsel (OGC) approves 30 calendar days in advance of the session. If the Attorney General and the OGC approve, the DFO shall publish an advance notice of a closed meeting in the Federal Register citing the applicable exemptions of the Government in the Sunshine Act. The notice may announce the closing of all or just part of a meeting.

If, during the course of an open meeting, matters inappropriate for public disclosure arise during discussions, the Co-Chairs/Vice-Chairs will order such discussion to cease and will schedule a closed session in consultation with the DFO.

**E. Minutes and Records.** Commission Officials shall review minutes of each Commission meeting and make them available to the Commission. Minutes of closed Commission meetings shall be available to the public upon request, subject to the withholding or redaction of matters about which public disclosure would be harmful to the interests of the Government, industry, or others, and which are exempt from disclosure under the Freedom of Information Act (FOIA). The minutes shall include the time, date, and place of the meeting; a record of the persons present (including the names of Commissioners and names of staff and any member of the public who presented oral or written statements); a complete and accurate description of the matters discussed and conclusions reached. Records associated with open Commission meetings, except those protected by copyright, and minutes of open meetings will be made available to the public.

## **Section VII: Voting**

All Commission votes must be called by the Co-Chairs/Vice-Chairs. Proxies shall have the same voting authority as the Commissioner for whom they are serving as proxy.

**A. Subcommittee Work Products.** Commission Work Products developed by a Subcommittee must be approved by that Subcommittee by consensus vote in the affirmative prior to presenting the Commission Work Product to the full Commission. The Co-Chairs of the Subcommittee that developed the Commission Work Product shall determine the number of votes necessary to achieve Subcommittee consensus, using a simple majority at a minimum. The Subcommittee Co-Chairs should record all votes and the manner in which the votes were collected.

**B. Commission Work Products.** Prior to voting on a Commission Work Product, one or more Commissioners shall present to the full Commission on the substance of the Commission Work Product, a summary of the public comment adjudication process, and any modifications made as a result of adjudication. The Co-Chairs (or their designee) of the Subcommittee that developed the Commission Work Product shall conduct the presentation. After the presentation, and once a quorum for the purposes of voting has been established, a Vice-Chair shall call for a vote. Electronic voting tools will be used to record and tally votes on Commission Work Products, the results of which will be made available for public inspection. After a quorum is established, a two-thirds majority of regular members (to include proxies and remote participants) must vote in the affirmative in order to adopt a work product. Abstentions are included in the required quorum, but will not be counted toward the required two-third majority affirmative vote. Any

proposal to make minor editorial amendments to a Commission Work Project prior to a vote to adopt a final Commission Work Product shall be voted on in the same manner.

**C. Commission Business.** Administrative work or preparatory work that does not relate to the development, modification, or adoption of Commission Work Products shall be considered “Commission Business.” Votes related to Commission Business can be called by a Vice-Chair on an *ad hoc* basis and do not require written documentation or 14 calendar day advance notice. Once a quorum is established, a simple majority of voting Commissioners (including proxies, remote participants, and *ex officio* members) is required for the passage of votes associated with Commission Business. If a Commissioner believes that a matter has been improperly classified as preparatory work or administrative work, he or she shall notify the DFO, who shall make a determination regarding the proper classification.

### **Section VIII: Expenses and Reimbursement.**

Expenses related to the operation of the Commission will be borne by the Department of Justice. Expenditures of any kind must be approved in advance by the DFO or his or her designee. No Commissioner or member of any subcommittee shall be compensated for their participation in the Commission. Travel expenses associated with Commission meetings or subcommittee meetings shall be reimbursed in accordance with federal guidelines and policies.

### **Section IX: Subcommittees**

**A. Subcommittee on Procedures and Operations (SPO).** The Subcommittee on Procedures and Operations (SPO) is a standing Subcommittee of the Commission comprised of a total of eight members: four Commissioners selected by the Commission reflecting a balance of professional experiences and perspectives, as well as the Vice-Chairs, the DFO, and a representative of the White House’s Office of Science and Technology Policy.

The SPO will provide support and counsel to the Co-Chairs/Vice-Chairs on administrative work and/or preparatory work raised by Commissioners or Commission Officials, including but not limited to: (1) the preparation of Commission meeting agendas and topics; (2) the drafting or revision of NCFS Guidance Documents designed to assist Commissioners in the performance of their duties; (3) the establishment, dissolution, and scope of other Subcommittees; (4) any revisions of the Commission bylaws; and (5) make non-substantive revisions to reconcile adopted Commission work product documents. The members of the SPO will serve as liaisons to the Commissioners, and the Commissioners may request guidance from the SPO on any matter affecting Commission Business. Upon the recommendation of the SPO, the Co-Chairs/Vice-Chairs may, at their discretion, refer a matter to the Commission for a vote, pursuant to Section VII C.

The SPO shall convene as soon as practicable, but no more than two weeks, after each Commission meeting to discuss Commission Business.

**B. Other Subcommittees.** With the exception of the SPO, Subcommittees provide a mechanism for in-depth analysis of specific issues and the development of Commission Work Products.

Subcommittees also serve as a mechanism to allow for broader input through the engagement of stakeholders external to the Commission. Subcommittees shall submit Commission Work Products to the Commission for deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the Commission and may not report directly to the Federal Government or any other entity.

Subcommittees are temporary in nature and, in consultation with the SPO, the Co-Chairs/Vice-Chairs may establish or dissolve Subcommittees for purposes consistent with the Commission's charter.

*1. Co-Chairs.* The Vice-Chairs, in consultation with the SPO, shall select two Commissioners to serve as Co-Chairs of each Subcommittee. Subcommittee Co-Chairs shall confirm that they have the time to commit to, and shall be responsible for managing the work of the Subcommittee, including conducting Subcommittee meetings, overseeing the adjudication of public comments, and reporting to the Commission on the status of Commission Work Products under development by the Subcommittee. Co-Chairs should not act unilaterally of one another. On an annual basis, Commission Officials shall confer with each Subcommittee Co-Chair to confirm his or her continuing availability and interest in serving as a Subcommittee Co-Chair.

*2. Membership.* In addition to the Subcommittee Co-Chairs, Subcommittees shall be comprised of Commissioners and members of government and the public to ensure proper subject matter expertise and balance of perspective. When the need arises, the Subcommittee Co-Chairs may nominate new Subcommittee members, in consultation with the other Commissioners serving on that Subcommittee. New members must be approved by Commission Officials; however, substantial deference shall be given to the recommendations of the Subcommittee Co-Chairs. Subcommittees should be no larger than 20 members, but may be expanded to 25 members when necessary for a specific purpose and with the consent of Commission Officials. After consultation with Commission Officials, the Subcommittee Co-Chairs may remove members for lack of participation or other cause.