Date: September 18, 2018

To: Ronny J. Coleman, Chairman
    Statewide Training and Education Advisory Committee
c/o State Fire Training

From: Chris Fowler, Supervising Deputy State Fire Marshal

Subject/Agenda Action Item: Fire Investigations Job Performance Requirement #29
    Expert Witness Testimony (Alternative Method)

Recommended Actions: Motion to Approve the Expert Witness Testimony (Alternative Method)
    for Fire Investigations Job Performance Requirement #29

Background Information:
On February 26, 2018, Strategic Aid Partners (through the City College of San Francisco) presented an Alternative Method Course Plan to State Fire Training. Chief Andrew Henning directed Chris Fowler, Supervising Deputy State Fire Marshal to assemble an ad-hoc committee from the recent Fire Investigations cadre to review the proposed course plan.

Committee Members:
Chris Fowler, CALFIRE State Fire Training
Tom Oldag, Retired Annuitant, CALFIRE Training Center, Ione
Sue Wilson, Deputy District Attorney (Retired) County of Sacramento
John Bardsdale, Supervising Investigator, Sacramento Metropolitan Fire District
Terry McMahon, Fire Marshal, Nevada County Consolidated Fire District
Mike O’Brien, Fire Chief (Retired) Suisun City Fire Department

Authors:
Brendan O’Leary, Company Office Program Coordinator, City College of San Francisco
Andrew Clark, District Attorney, City of San Francisco District Attorney’s Office

Analysis/Summary of Issue:
The ad-hoc committee evaluated the intent of the recent cadre and the JPR course proposal. We recommend a motion to approve the addition of the Expert Witness Testimony Course.

When an investigator is presented with the opportunity to testify in court, that meets the JPR. This Strategic Aid Partners course provides an additional opportunity for those candidates seeking certification but don't have an opportunity to testify in court to complete the requirements. The current methods of satisfying JPR #29 are well supported, however the National Fire Academy alternative (80 hours) course is closely aligned with (or repeats) the subject material that is presented in both Fire Investigation 1A and 1C. With few exceptions, the California Conference of
Arson Investigators (CCA!) Course is provided only in the southern region which can be challenging for many students.

The Strategic Aid course is a courtroom based program that is recognized to encompass the entirety of the material. The intention of this course is to serve as a summative examination of the student’s ability to meet the NFPA 1033 Skill (4-7.3 Testify).

If approved by STEAC and State Board of Services, State Fire Training will follow policy and procedures to make this course available as a Fire Investigations Job Performance Requirement.

**Attachments**
Strategic Aid Partners Expert Witness Testimony
Job Performance Requirement #29 Course Plan
Course Details

Description:

This hybrid (online-court room) 25-hour course evaluates fire/arson investigators as to their ability to deliver sound, detailed and legally supported expert witness testimony.

Students will learn the critical skills of courtroom testimony preparation and presentation, enabling the trained student to provide expert testimony and withstand rigorous cross-examination. Students will become familiar with the courtroom procedures associated with preliminary hearings and jury trials.

The course reviews the essential California Penal Code arson laws and applicable California Evidence Code sections necessary to confidently testify in criminal prosecutions as an expert witness as to the origin and cause of a fire.

Students will initially work online to prepare for a Mock Court experience by studying relevant California Penal and Evidence Code sections through online reading material. Online work will include preparation of documentation and evidentiary materials for Court, review of hypothetical arson case file, and review of video preliminary hearing and jury trial testimony.

Students will learn to apply their experience as Fire Investigators who conduct investigations pursuant to the scientific method to give expert courtroom testimony regarding origin and cause.
Prior to participating in the mock Courtroom experience, students must pass written quizzes to confirm understanding of the California Penal Code, the California Evidence Code, report writing, courtroom procedure and expert testimony qualifications.

Upon successful completion of the preparation work, students will be given a hypothetical arson case file based on an actual case. Students will be required to work with practicing attorneys in preparation for a mock Courtroom experience based on the hypothetical.

Students will be given the opportunity to view multiple examples of, videotaped, licensed Fire Investigators testifying at a mock preliminary hearing based on the hypothetical. The mock preliminary hearing is presided over by a retired Superior Court judge. Each testifying Fire Investigator will be qualified as an expert witness as to origin and cause by a practicing District Attorney. Students will view direct examination of Fire Investigator experts testifying about the hypothetical incident. They will have multiple opportunities to view Fire Investigators rigorously cross examined by licensed criminal lawyers.

In the final 16 hours of the course, students will work in a Courtroom. Each student will testify in-person regarding the arson hypothetical. They will participate in a voir dire examination, direct and cross examination.

**Designed For:**

Fire and Police Arson Investigators with full time fire/arson investigation responsibility. These personnel include fire/arson investigators, state fire marshals, criminal investigators, district attorney’s staff and members of arson task forces.

**Qualification and Certification Standard:**

Intended to be an alternate method of satisfying State Fire Training Fire Investigator Job Performance Requirement (JPR) #29 (Testify during a legal proceeding).

**Standard and Certificate:**

Student must successfully complete the pre-court module (minimum score of 80%). Student must participate in both court room exercises and will be evaluated by the instructors for successfully demonstrating the ability to participate in courtroom activities (voir dire, direct examination and cross examination). Students who have met the course requirements will receive a certificate of completion and satisfy State Fire Training Job Performance Requirement (JPR) #29 for Fire Investigator 2017 (Alternate Method)
Instructor Cadre:

The course coordinator shall be an attorney licensed in the state of California with arson jury trial experience. The minimum instructor (3) cadre shall be two attorneys licensed in the state of California with arson jury trial experience and one certified fire investigator with jury trial experience. Coordination of the course shall be in cooperation and partnership with local county district attorneys.

Student Learning Objectives:

After successfully completing this course, students will be able to accomplish:

- Analyze fire reports to ensure complete and accurate information
- Understand Arson Law including California Penal and Evidence Code Sections
- Provide sound verbal analysis in Court in support of expert opinion
- Testify as to hearsay pursuant to Proposition 115
- Recognize legal constraints regarding interviews, interrogations, and courtroom testimony
- Present a prosecution report compliant with NFPA standards to legal counsel for a criminal case filing
- Communicate effectively in legal proceedings
- Withstand rigorous cross examination
- Qualify as expert witnesses in the area of fire investigation
- Render an expert opinion as to origin and cause

Hours:

- 8 hours Online (lectures, power point, reading assignments, CV preparation, video review and quiz)
- 17 hours Court room (mock preliminary hearing, mock jury trial and exam)
- 25 hours Total

Maximum Class Size:

20 students

Instructor/Student Ratio:

1:3
Required Resources

Instructor Resources:

California Penal Code
California Evidence Code
California Criminal Jury Instructions
NFPA 1033 Standard for Professional Qualifications for Fire Investigator (2014)
Access to Learning Management System for online participation
Strategic Aid Partners Training Videos of Preliminary Hearings and Jury Trial

Student Resources:

Access to online Learning Management System
Textbook and readings as selected by instructor

Unit 1: Course Outline

Terminal Learning Objective

At the end of this module, the student will be able to identify the course requirements for completion. They will know that the course is a hybrid online and courtroom participation and what tasks are necessary for successful completion.

Enabling Learning Objectives

Identify time limitations to complete units
Review course syllabus
Identify online Learning Management System and log-on procedures
Review internet equipment and access requirements
Identify assignments
Identify required activities
Review class participation requirements

Unit 2: Applicable California Law

Terminal Learning Objective

At the end of this module, the student will be able to describe applicable state laws and be able to utilize and reference those laws throughout fire/arson investigations and relevant court proceedings
Enabling Learning Objectives

- Review California Penal Code sections regarding Arson
- Review California Penal Code sections regarding Destructive devices
- Review California Evidence Code
- Identify key components of Proposition 115 regarding hearsay
- Review 4th Amendment regarding relevant Arson case law
- Review relevant arson cases

Unit 3: Presenting Investigative Findings

Terminal Learning Objective

At the end of this module the student will be able to explain and document the critical elements of determining the origin and cause of a fire. They will explain how to support the conclusion regarding the cause of the fire.

Enabling Learning Objectives

- Review NFPA 921 Guide for Fire and Explosion Investigations
- Review relevant arson cases
- Describe the case file assessment and/or evaluation process
- Use information assessment skills
- Use correlation skills
- Use organizational skills

Unit 4: Preliminary Hearings and Legal Considerations

Terminal Learning Objective

At the end of this module the student will be able to explain California law that allows for qualified experts to provide opinions and conclusions.

Enabling Learning Objectives

- Review NFPA 1033 Standard for Professional Qualifications for Fire Investigator
- Review NFPA 921 Guide for Fire and Explosion Investigations
- Demonstrate the ability to create a curriculum vitae
- Understand Penal Code section 832
- Review Rules of Evidence including hearsay and Proposition 115.
- Identify the significance of Daubert v. Merrell Dow Pharmaceuticals (1993)
- Identify the significance of Kumho Tire v. Carmichael (1999)
- Identify the importance of the Scientific Method regarding expert testimony
Demonstrate an understanding of *Brady v. Maryland*

**Unit 5: Courtroom Preparation**

**Terminal Learning Objective**

At the end of this module, the student will be able to demonstrate an understanding of courtroom procedures (voir dire, direct examination and cross examination) for a preliminary hearing and jury trial and will also demonstrate an ability to render an expert opinion supported by conclusions contained in the fire investigation report.

**Enabling Learning Objectives**

- Review best practices for working with attorneys
- Review glossary of courtroom terms
- Review tactics used by opposing counsel
- Identify the roles of the participants in a preliminary hearing
- Review video of fire investigators testifying at mock preliminary hearing
- Review of applied codes and strategies used in mock trial video
- Identify the need to prepare regarding review of reports and witness statements

**Unit 6: Mock Preliminary Hearing**

**Terminal Learning Objective**

At the end of this module, the student will demonstrate their ability to participate in voir dire, direct examination and cross examination at preliminary hearing. Students will demonstrate their ability to render an expert opinion regarding the cause of a fire and undergo a rigorous cross examination. Each student will participate in a voir dire examination. They will also be questioned under a direct examination and cross examination.

**Enabling Learning Objectives**

- Describe how to review reports in preparation for testifying
- Identify the components of the pre-trial conference with attorneys
- Identify appropriate courtroom attire, decorum and demeanor
- Review procedures for introduction of visual aids with testimony
- Review California Criminal Jury Instructions
- Review situations where the investigator might be vulnerable
- Identify how to request permission to review report while testifying
- Demonstrate how to respond to questions regarding voir dire
- Demonstrate how to answer questions upon direct examination
Demonstrate how to answer questions upon cross examination
Demonstrate how to render an expert conclusion regarding origin and cause

Unit 7: Mock Jury Trial

Terminal Learning Objective

At the end of this module, the student will demonstrate their ability to render an expert opinion regarding the cause of a fire at jury trial. Each student will participate in a voir dire examination. They will also be questioned under a direct examination and cross examination.

Enabling Learning Objectives

Understand rules against Hearsay including proposition 115.
Review the significance of the Preliminary Hearing transcript.
Review court procedures for trial
Demonstrate how to answer questions upon direct examination at trial
Demonstrate how to answer questions upon cross examination at trial
Demonstrate how to render an expert conclusion regarding origin and cause at trial

Time Table

<table>
<thead>
<tr>
<th>Unit</th>
<th>Online &amp; Video Conference</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit 1 Course Outline</td>
<td>00:30</td>
<td></td>
</tr>
<tr>
<td>Unit 2 Applicable California Law</td>
<td>03:00</td>
<td></td>
</tr>
<tr>
<td>Unit 3 Presenting Investigative Findings</td>
<td>00:30</td>
<td></td>
</tr>
<tr>
<td>Unit 4 Preliminary Hearing &amp; Legal Considerations</td>
<td>01:30</td>
<td></td>
</tr>
<tr>
<td>Unit 5 Courtroom Preparation</td>
<td>02:00</td>
<td>00:30 Quiz</td>
</tr>
<tr>
<td>Unit 6 Mock Preliminary Hearing</td>
<td></td>
<td>08:00 Court</td>
</tr>
<tr>
<td>Unit 7 Mock Jury Trail</td>
<td></td>
<td>08:00 Court</td>
</tr>
<tr>
<td>Summative Examination &amp; Evaluation</td>
<td>01:00</td>
<td></td>
</tr>
<tr>
<td>Totals</td>
<td>07:30</td>
<td>17:30</td>
</tr>
</tbody>
</table>