

**2009 INTRODUCTION TO DRUG PROSECUTION COURSE**

**“DEALING WITH DRUG ANALYSIS EXPERTS”**

**ADA RAY MAYER and NELLY MILES,  
Asst Mgr, Chemistry, GBI-DOFS**

**~ HANDOUT ~**

## 2009 INTRODUCTION TO DRUG PROSECUTION COURSE

### HANDOUT: “DEALING WITH DRUG ANALYSIS EXPERTS” ADA RAY MAYER and NELLY MILES, Asst Mgr, Chemistry, GBI-DOFS

#### TRIAL PLANNING, PREPARATION and PROFESSIONAL COURTESY:

##### Plan ahead:

- Regardless of which lab your expert may work out of, it is very unlikely that yours will be the only case the expert may have going that week, so, in addition to sending out a subpoena, it is *imperative* that you or someone in your office *talk to the expert* sufficiently ahead of time.
- In Coweta, we maintain a **telephone list** (copy provided) (which we plan to augment with e-mail addresses).
- Also have **directions** (sample provided) readily available in case your expert needs them.
- **Accommodate** your expert as best you can, including having them sitting around waiting to testify the least amount of time practicable.
- **No assumptions.**
- **No surprises**, for you or the expert.

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## TRIAL PLANNING, PREPARATION and PROFESSIONAL COURTESY cont'd

- You also need to find out where your **evidence** is (i.e., at the Crime Lab or sent back to the evidence room) and how it's getting to court.
- You may want to **consider** seeing if the defense will **stipulate** to the expert's testimony at **trial** (e.g., where the issue clearly is not whether the drugs are drugs), thus avoiding the necessity of the expert's appearance; and you should try to get the defense to stipulate to the Crime Lab results at any **probation revocation** or **asset forfeiture** hearing.
- Something we are so very bad at: You or someone in your office should **call** the expert **after** the trial to **thank** him or her, to tell him or her of the **outcome** and to let him or her know of anything particularly good or bad in the testimony or otherwise in the case pertinent to him or her. That would be deserved and greatly appreciated.

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**2009 INTRODUCTION TO DRUG PROSECUTION COURSE.  
HANDOUT: “DEALING WITH DRUG ANALYSIS EXPERTS” cont’d**

**TRANSCRIPT EXTRACTS:**

We have provided transcripts of the **testimony** of **Nelly Miles** in three of Ray Mayer’s drug prosecutions as **examples** of the **direct examination and testimony of a drug analysis expert**. While there are other, and perhaps better, ways to accomplish the objective, these have sufficed many times before and before many different judges.

You will see that the examination generally follows this **outline**:

- **Introduction** (including explaining to the jury what a “forensic chemist” (or equivalent) is and does);
- **Qualifications** (the required **foundation**, but note how easily it can be done); (note also that it is *not* necessary to formally **tender** the witness as an expert (*Pickett v. State*, 271 Ga. App. 250 (2c) (2005); see *Fielding v. State*, 278 Ga. 309(3) (2004)) and the State may, but *need not*, accept a defense **stipulation** to the expert’s qualifications (see *Ross v. State*, 279 Ga. 365(2) (2005));
- **Description of the tests** employed (unnecessary, but jurors generally seem interested in it);
- **Explanation of the procedures** (including **chain of custody** and including requirement that drugs be submitted in a sealed bag or container (proof that the bag was **sealed** at both ends of the pipeline obviating the

need for the testimony of evidence custodians and transport officers, see *Franklin v. State*, 281 Ga. App. 409(2) (2006); *Hayes v. State*, 276 Ga. App. 268(4) (2005));

- **Identification, receipt and handling of the subject evidence** (including **tendering** the exhibit now that chain of custody has been established);
- **Testing of the subject evidence** (including weight and percentage as necessary); and
- **Results** (note that you often may avoid expressly asking for the expert's "opinion;" asking instead for what he or she determined from the tests, what the tests revealed, etc.).