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# PROCEDURES FOR HANDLING SUBPOENAS AND COURT APPEARANCES

## 3240.1 PURPOSE

The purpose of this procedure is to establish the guidelines for handling subpoenas, court appearances, and related compensation. This procedure establishes the guidelines for department members who must appear in court. It will allow the Department to cover any related work absences and keep the Department informed about relevant legal matters.

## 3240.2 SUBPOENA SERVICE AND NOTIFICATION

Only Court Liaison Staff or the Clerk of Council at City Hall are authorized to receive a subpoena on behalf of the Department or any of its members. This may be accomplished by personal service to the officer or by delivery of two copies of the subpoena to the officer's supervisor or other authorized departmental agents (Government Code § 68097.1; Penal Code § 1328(c).) Although this is a state mandate, we have never required two copies.

1. It will be the responsibility of the Court Liaison Staff or Clerk of Council at City Hall to accept, process and serve subpoenas. When Court Liaison Staff or Clerk of Council at City Hall personnel are not available, the Front Desk or Station Supervisor will accept subpoenas and forward them to the Clerk of Council at City Hall or Court Liaison for processing.
2. Court Liaison Staff or the Clerk of Council at City Hall staff accepting a subpoena on behalf of another employee shall immediately use the InTime Schedule Engine (ISE) to determine the availability of the named employee for the date listed on the subpoena.
3. Once a subpoena has been received by Court Liaison Staff or the Clerk of Council at City Hall staff, a copy of the subpoena shall be promptly provided to the named employee. Service of subpoenas will be handled through the Department's email system, the automated ISE system, text message, or a hard copy may be delivered to the employee personally or via his/her department mailbox.
4. Acceptance of subpoenas is governed by California Penal Code Section 1328. All subpoenas delivered to the Department within five or more working days of the court appearance date will be accepted. Acceptance of subpoenas received with less than five working days prior to the court appearance date will be evaluated as to serviceability on an individual basis by the Court Liaison or the Clerk of Council at City Hall. When the employee can reasonably be contacted and can properly prepare for the court appearance, the subpoena will be accepted. If the employee cannot be contacted or will not have the time to properly prepare for the appearance, the Court Liaison will return the subpoena under the authority of CPC 1328. As agreed through the Integrated Law and Justice Agency for Orange County (ILJOC), there are five primary types of acceptable leave when a witness employee is unavailable for court:
  - A. Approved Vacation
  - B. Military Leave

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- C. Out of County Training
  - D. Sick (employee is physically unable to attend court)
  - E. Furlough
  - F. There may be rare circumstances, such as time limitation for a speedy trial, where an employee may be required to make a mandatory appearance despite these conditions.
5. Court Liaison staff will liaison with the assigned District Attorney, to try to reach a reasonable alternative to an appearance in court (continuance, taking the officer out of service, etc.) when the employee is assigned to a local school. If no alternative is available, the officer will be served with the subpoena and required to appear.
  6. If Court Liaison Staff is notified a case is trailing from the original subpoena date, the officer can be trailed for up to 10 days without the issuance of another subpoena. Officers are not "on-call" every day during the 10-day period and can only be trailed one day at a time.
  7. Every effort will be made by Court Liaison staff to avoid conflicts by notifying the subpoenaing agency as soon as they become aware of a potential conflict between an officer's vacation and a court date. The subpoenaing agency is also expected to communicate with the Court Liaison before trailing a case in order to verify the officer's availability.
  8. The Court Liaison Staff will monitor employee work schedules in an effort to avoid accepting subpoenas for scheduled vacations and holidays; however, if an employee is served a subpoena with a court date on a scheduled vacation or holiday, the employee shall immediately return the subpoena to the Court Liaison so it can be considered for refusal.
  9. Regular days off do not qualify for subpoena refusal; however, if an employee anticipates being on vacation during normal days off and is leaving the area. It is the employee's responsibility to contact his/her supervisor and input their lack of court availability into ISE during regular monthly scheduling.
  10. Subpoenas for the Chief of Police shall be served through the Clerk of Council at City Hall. All other civil subpoenas shall be served through the Court Liaison.
  11. Discovery Motions, Pitchess Motions, and work-related civil subpoenas will be served through the Clerk of the Council at City Hall. The Department will not accept service of process for employees in non-work related civil cases.

The party that issues a civil subpoena to an officer to testify as a witness must tender the statutory fee of \$275 with the subpoena for each day that an appearance is required before service is accepted of the subpoena (Government Code § 68097.2.)

( Court Liaison Staff) or other authorized individuals may refuse to accept service for a criminal subpoena if (Penal Code § 1328(d)(e)):

1. He/she knows that he/she will be unable to deliver a copy of the subpoena to the named officer within sufficient time for the named officer to comply with the subpoena.

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2. It is less than five working days prior to the date listed for an appearance and he/she is not reasonably certain that service can be completed.

If, after initially accepting service of a criminal subpoena, (Court Liaison Staff) or other authorized individual determines that he/she is unable to deliver a copy of the subpoena to the named officer within sufficient time for the named officer to comply with the subpoena, the subpoena clerk shall notify the server or the attorney named on the subpoena of such not less than 48 hours prior to the date listed for the appearance (Penal Code § 1328(f)).

### **3240.2.1 COURT STANDBY**

To facilitate court standby agreements with the courts, employees are required to provide and maintain current information of their address and phone number with the Department. Employees are required to notify the Department within 24 hours of any change in residence address or home phone number and provide accurate and reasonably reliable means or methods for contact.

If an employee on standby changes his/her location during the day, the employee shall notify Court Liaison of how he/she can be reached by telephone. Employees are required to remain on standby each day a case is trailing. In a criminal case the Deputy District Attorney handling the case is the only person authorized to excuse an employee from standby status.

### **3240.3 ON-CALL AND COURT APPEARANCE**

1. The Court Liaison will administer the court on-call program. It is the employee's responsibility to provide the Court Liaison with a phone number where he/she can be reached while on-call for court. Multiple phone numbers are not allowed.
2. The Court Liaison is to be notified by the subpoenaing party when an on-call employee is needed for court. All employees are required to be present in court within (1) hour of notification. Once in court, the employee is required to notify the subpoenaing party of their presence.
3. In the event an employee becomes unavailable for any scheduled court appearance, it is the employee's responsibility to immediately notify the Court Liaison. This may be due to illness, approved vacation, Military leave, out of County training, or furlough. The employee will then be notified if any subpoenas received for that time period will be refused or not.
4. The Illness and Injury Prevention Policy governs an employee claiming an inability to respond to a subpoena for court due to industrial or non-industrial injury or illness.
5. Employees must ensure that a subpoena has been issued for any court appearance they make. If the subpoena was not served through the Court Liaison, the employee must provide a copy of the subpoena to the Court Liaison before a request for court pay will be processed.
6. The employee is responsible for notifying the Court Liaison of any special agreements they make with the subpoenaing party if it could impact the rate of compensation they may be entitled to or changes their on-call status.

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### **3240.4 ON-CALL AND COURT APPEARANCE COMPENSATION**

1. Officers shall be compensated as per the Memorandum of Understanding (MOU). There are two court sessions during the court day. The A.M. session is generally from 0830 to 1200 hours and the P.M. session is generally from 1330 to 1700 hours. Subpoenaing agencies or courts may vary these hours. The variations may be listed on the subpoena, relayed verbally by the subpoenaing agency or at the Court's discretion. When court times vary, officers shall contact the Court Liaison to ensure they receive proper compensation. Employees on call for the A.M. session will be notified as soon as possible if they are to remain on call for the P.M. session. If a subpoena time indicates from approximately 0830 to 1700 hours; this is an A.M/ on call only. This is due to a system generated timeframes.
2. For each required court session appearance during an employee's off-duty time, the employee shall be paid overtime for the period of time from their arrival at court until they are released from court.
3. If required to appear in court when off duty, the employee shall be compensated a minimum of two hours overtime.
4. In the event an off-duty employee is on call during any court session and is not required to appear, the employee shall be compensated for two hours straight time for each on-call session.
5. If an employee appears in court, and is later told he/she is not currently needed but is not released and must remain available for court, the employee shall be paid overtime for all hours the court is in session or until released. Court Liaison personnel will verify the court session and notify the officer when he/she is no longer needed.
6. Employees called into court the day of the court appearance shall receive travel time, up to one hour each way. If notified prior to the court appearance date, the employee is not eligible for travel time.
7. Subpoenaed employees will be compensated for being on call unless notified of a cancellation within five court business days of the appearance. Weekends and court holidays will not be considered when calculating five business days.
8. Notification of a canceled subpoena can be made by City e-mail, phone message, delivery of canceled subpoena to the employee's mailbox or in person.
9. Employees are required to answer calls from the Court Liaison and respond to court when served with a subpoena and directed to do so by Court Liaison Staff or the Clerk of Council at City Hall staff.
10. Employees are not eligible for compensation during court lunch breaks unless they are required to work during that time.
11. Court Liaison staff are not authorized to grant court preparation overtime. Court Liaison staff will refer the requesting officer to the unit supervisor or a supervisor in the officer's chain of command. The Court Liaison supervisor may authorize overtime to be limited to short meetings with the District Attorney prior to a hearing or a meeting over the lunch break. At no time will this exceed two hours.

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12. All Detectives and special units will be considered to start their shift prior to 0800 and are not eligible for “on-call” pay on their normal work day.
13. Detectives and special unit officers are required to call the Prosecution Unit each time they are subpoenaed and their beginning of shift makes them eligible for compensation.
14. Generally, subpoenas for the below listed court hearings require mandatory appearance; however, employees can attempt to get placed on call by contacting the City Hall Clerks Office as soon as possible after receiving the subpoena:
  - (a) Juvenile Court on traffic matters
  - (b) All civil cases
    - I. All Administrative hearings to include DMV, ABC, State Compensation Board, Probation and Parole hearings
  - (c) Traffic-related subpoenas

### 3240.4.1 CIVIL SUBPOENAS

The Department will compensate employees who appear in their official capacity on civil matters arising out of the employee's official duties as directed by the current Memorandum of Understanding. The Department will also reimburse any officer for reasonable and necessary travel expenses. The Department will receive reimbursement for the officer's compensation through the attorney of record who subpoenaed the officer.

### 3240.4.2 OFF-DUTY RELATED SUBPOENAS

Employees receiving valid subpoenas for actions taken off-duty not related to their employment with the Department shall comply with the requirements of the subpoena. Employees receiving these subpoenas are not compensated for their appearance and arrangements for time off shall be coordinated through their immediate supervisor.

### 3240.5 SUBPOENA DUCES TECUM

When subpoenaed employees are required to bring documents/records/evidence to court, and are notified as such, prior to the hearing, the employee shall notify the property custodian as soon as practical of what evidence he/she will need. This will allow the property custodian sufficient time to prepare the evidence for court. It shall be the responsibility of the employee to transport all necessary evidence to court. If the court retains the evidence, have the court clerk sign the evidence receipt and return it to the property custodian.

If the evidence is not received and logged in by the court, it is the employee's responsibility to return the evidence to the property custodian the same day as the court appearance. If the employee returns to the Department after the Evidence Section is closed, the employee should place the evidence into an evidence locker.

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### **3240.6 CIVIL CASES - NOTICES OF DEPOSITION**

Work-related "Notices of Deposition" will be handled in the same manner as subpoenas. Employees are expected to appear at the same time and location indicated on the subpoena and can request to meet with the legal Advisor to discuss the Deposition subpoena.

### **3240.7 RESERVE POLICE OFFICERS**

1. Each reserve police officer receives a monthly stipend to defray the costs associated with their volunteer service. This includes court appearances. While reserve police officers are governed by this procedure as it pertains to subpoenas and court appearances, they are not entitled to court pay.
2. The Court Liaison will manage subpoenas for reserve officers with service through the Volunteer Coordinator.

### **3240.8 COURT APPEARANCES BY DEPARTMENT EMPLOYEES**

Employees appearing before any court shall conduct themselves in an exemplary manner and be dressed in either full uniform or appropriate civilian attire which reflects a professional image. Casual wear, such as blue jeans, T-shirts, shorts, etc., is not acceptable apparel. Employees will also be thoroughly prepared for their court appearance and will have the necessary notes, reports, and evidence to make a professional presentation.