



San Diego Community College District Police Department Policy and Procedures

1.18 COURT PROCEDURES & SUBPOENAS

EFF. 10/01/19

I. PURPOSE

This Department procedure establishes guidelines for members to follow when receiving subpoenas, being excused from subpoenas, and when testifying in court.

II. SCOPE

This procedure applies to all members of the Department.

III. SERVICE PROCEDURES

A. All work related criminal and civil subpoenas will be accepted for service at the Community College Police Headquarters, 1536 Frazee Rd. San Diego CA. 92111. Officers may be individually served up to the date of appearance and are not to refuse service with less than 5 days notice. The College Police District Site Office Staff are to cooperate by accepting subpoenas for employees they reasonably know are available for service. This includes subpoenas from the Sheriff's Office, process servers, and other agencies (D.M.V., Parole, etc.).

1. All subpoenas received at DSC will be date stamped, then logged by date of appearance with the names of the defendant, subpoenaed employee, and the appearance time. Original Subpoenas shall be sent to the Southern and Northern office staff for service. A scanned copy will be sent to the clerical staff prior to sending the originals.
 2. The clerical staff will distribute the copies to the appropriate supervisors who will immediately notify the officer of a pending court appearance.
 3. Supervisors serving subpoenas will legibly sign them and include their rank, I.D. number, and date of service. Employees will sign and date the subpoena, acknowledging receipt. A copy of the acknowledgement will be sent to the clerical staff at DSC. The subpoenaed officer's supervisor are responsible for ensuring timely service, logging, and notifying DSC staff of subpoenas served to employees assigned to their shift.
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4. The subpoenaed officer's supervisor will be responsible for the receipt and distribution of the subpoenas to their officers.
- B. Employees/Officers are responsible for recording appearance dates and preventing loss of subpoenas. Should a subpoena become lost, officers should check with their supervisor or DSC staff for subpoena information.
- C. Employees/Officers are responsible for contacting the on-duty supervisor for transportation and/or availability of a vehicle for their use.
- D. Employees and Officers assigned to appear on their days off will be granted a minimum of 4 hours of paid overtime in accordance with their current contract.
- E. Officers are required to comply with any special instructions listed on subpoenas such as calls to attorneys, calling the recording for call-off information and bringing of evidence. Calls to attorneys are to be made the first business day following receipt of the subpoena to determine whether to appear at the time specified on the subpoena or at a future date that is agreed upon. Officers unable to reach attorneys are to appear as instructed by the subpoena. Unless mitigating circumstances exist, officers who appear in court, off duty, on cases listed on the call-off recording are not eligible for overtime.
- F. Subpoenas issued by criminal defense attorneys shall be handled in the same manner as subpoenas issued by the prosecution. Such subpoenas deserve the same high standard of response, including preparation, unbiased testimony, and courtesy in all respects. Officers subpoenaed by the defense in criminal cases are to immediately contact and advise the prosecutor of the subpoena. The fact that an officer is subpoenaed by the defense does not mean that the officer must discuss the case with the defense attorney prior to trial. Officers subpoenaed by the defense may only be released or called off by the defense attorney.
- G. A faxed or scanned copy of a subpoena for a witness/officer/employee in a criminal proceeding is as effectual as the original subpoena.

IV. EXCUSE FOR NON-APPEARANCE

- A. As a result of a June 2005 court decision, *Baustert v. Superior Court*, 129 Cal. App. 4th 1269 (2005), a Declaration is needed from any sworn officer or civilian employee requesting an excusal from a subpoena in criminal cases only.
 1. The Officer Declaration for Continuance will be used if an employee is requesting to be excused from a court appearance due to vacation, military leave, scheduled training class, conflicting court appearance, family emergency, or any other

reason where the employee needs to be excused from court.

- B. Subpoenas arriving prior to an employee's scheduled vacation, compensatory leave, or Department authorized training will be served. None of the above types of leave shall be sought or granted, once a subpoena has been served, that would conflict with the member's court appearance. In order for a member to be excused from a court appearance, the member must first obtain their supervisor's approval, and then follow the procedures listed below:
1. Misdemeanor and traffic cases – Prepare an Officer Declaration for Continuance Form, have it approved by a supervisor and mail it to the Kearny Mesa Court as appropriate. If the appearance date is less than ten working days from date of service, immediately fax a copy of the served subpoena and the Officer Declaration for Continuance Form to the Court Liaison. Mail the original Officer Declaration for Continuance Form and the signed subpoena to the Court Liaison. If the officer is not available, the immediate supervisor shall submit the Officer Declaration for Continuance Form.
 2. In all cases with an assigned prosecutor (e.g., District Attorney, City Attorney), defense attorney, or hearing officer the member will personally contact (a phone message does not constitute personal contact) the assigned prosecutor, defense attorney, or hearing officer a minimum of ten days prior to the appearance date. If an agreement is reached, the member will complete an Officer Declaration for Continuance Form, have it approved by a supervisor and mail it to the Court Liaison. If the member is not available (vacation, training, sick leave, etc.) a supervisor shall make the necessary contacts and submit a Declaration for Continuance Form.
 3. Subpoenas for members on extended industrial, maternity, or sick leave, who have been placed on light-duty, shall be forwarded to their immediate supervisor. If the member is not able to attend court, the member's supervisor will submit the Officer Declaration for Continuance Form. Upon request, it is the member's responsibility to provide the court with a physician's excuse from attending court.
 4. Only the subpoenaing party or agency can excuse a member from an appearance. The prosecution cannot excuse an appearance on a defense subpoena.
 5. The court will consider prior commitments of member witnesses in the same manner as it would consider prior commitments of lay witnesses when deciding whether or not a good cause for continuance exists. If problems or questions arise concerning the above procedures, contact the Court Liaison Unit between 0600 and 1600 hours at (619) 533-5561.

6. Members who are ill, or for any other reason cannot appear in court on the day of the trial, are responsible for contacting the Court Liaison Unit at (619) 533-5561, if it is a City Attorney/Misdemeanor Case, or the Kearny Mesa Traffic Court Liaison Officer at (858) 634-1822, if it is a Traffic Case, or the assigned District Attorney.
7. Members delayed en route to court shall immediately notify the Court Liaison Unit at (619) 533-5561, Downtown Court Waiting Room at (619) 450-5244, or for Kearny Mesa Court at (858) 634-1822. Court Liaison personnel will notify the court and the case may be trailed until the member arrives.

V. COURT STAND-BY

- A. Members subpoenaed for City Attorney cases at 330 West Broadway and 1100 Union Street are to report to the officers' waiting room at the time indicated on the subpoena. Members subpoenaed to attend Kearny Mesa Court are to report to the officers' waiting room at the Traffic Court, 8950 Clairemont Mesa Boulevard. Members shall report to the location indicated on all other subpoenas.
- B. There are situations where, by mutual agreement between the prosecutor and the member, the member can assume stand-by status while on or off-duty. These arrangements must be coordinated with the prosecutor
- C. Members are not eligible for overtime pay while off-duty and on voluntary stand-by status away from the court. Stand-by status away from the court while off-duty cannot be required of a member without compensation.

VI. TESTIFYING IN COURT, DEPOSITIONS, AND HEARINGS

- A. Members shall not negotiate, directly or indirectly, any compromise or arrangement for the purpose of permitting any person to escape the penalty of the law; nor shall any member interfere with the courts of justice.
 1. It is inappropriate for Department members to have contact with members of a jury. Department members should not attempt to contact jurors.
 2. In the event that a juror attempts to converse with a Department member, the member should explain the conflict and politely excuse himself or herself from the conversation. Department members may respond to simple greetings and queries such as requests for directions within the Courthouse.
- B. Members must review all reports relating to the case prior to appearance in court. In some cases, it is advisable to revisit the scene of the incident. Any errors noted

on the reports or citations must be brought to the attention of the prosecutor prior to the trial.

- C. Vehicles with “exempt” license plates may park at metered spaces without having to pay the meter. Exempt license plates DO NOT allow vehicles to be parked in red zones, or areas designated for passenger drop off or loading.
- D. Members shall attend court in full uniform (including leather gear) or in civilian clothes. No person other than a Peace Officer on OFFICIAL business, within courthouse facilities, shall possess a firearm, knife, taser, teargas, stun gun, or similar device listed in Penal Code sections 171b, 244.5, 17240 and 17250. On-duty police officers who are appearing in court as a requirement of their duties are an exception to this order. Members who are appearing in court as litigants in personal matters are not exempt and must not bring firearms or any of the above listed items into any courthouse facility. Jury duty is considered personal business for the application of this procedure. Violators may be prosecuted for a violation of Section 171b of the Penal Code.
- E. It is every member’s responsibility to be punctual and available at all times during court proceedings. Absences must be coordinated with the prosecuting attorney assigned to the case.
- F. Members are expected to closely monitor court proceedings and know the status of their case (whether it has been continued, dismissed, transferred to another courtroom, etc.).
- G. Parking for members attending Kearny Mesa Traffic Court will be on the east or west side parking lots. The north side is reserved for court staff.

VII. CIVIL SUBPOENAS

- A. Service may be made statewide. The only limitation is one requiring that the witness be a resident within the state at the time of service.
- B. Members subpoenaed for a civil trial or deposition appearance shall receive their normal salary (and expenses, if any) from the District for time at court, including travel time. In accordance with California Government Code section 68097.7, it is a misdemeanor for any person to pay or offer any additional consideration for a member's services, with regard to any matter which he or she witnessed or investigated in the course of his or her duties, or for any member to ask or receive any other payment other than reimbursement through the District for salary and out of pocket expenses.

- C. These provisions shall also apply to subpoenas issued for arbitration board hearings and/or depositions.
- D. A Police Department supervisor subpoenaed to testify about Department policy and procedures must send a copy of the subpoena to the District Legal Advisor for review.

VIII. FEDERAL SUBPOENAS

- A. Members shall obtain a signed certificate of attendance form from the United States Attorney.
- B. Members shall submit the completed form to the United States Marshal, who will issue a check in the member's name. (In San Diego, the U.S. Marshal's Office is on the lower level of the Federal Courthouse.)

IX. SERVICE OF CIVIL SUMMONS (JOB-RELATED)

- A. A summons is a legal document notifying the person summoned that an action has been initiated against that person in the court where the summons was issued. A person who has been served with a summons in a civil action is a defendant in that case and an answer must be filed in court on that person's behalf within 20 days from the date of the service of the summons if it is a civil rights action in Federal Court, or 30 days if it is an action brought in State Court. If an answer is not filed within the 20-30 day period, the court may render a default judgment against the defendant.
- B. Members of the Department are required to accept personal service of summons on themselves in civil cases related to the performance of their duties. The Code of Civil Procedure section 415.30 authorizes service by mail. With the sole exception of Internal Affairs, members of the Department shall not receive personal service of a summons in a civil suit for any other member unless specifically authorized to do so by the member in writing.
- C. The Department shall receive service of summonses directed to any member of the Department in civil actions related to the performance of their duties, unless a member has directed Internal Affairs in writing not to receive summons.
- D. Members personally served with a summons in a civil suit shall immediately read the summons and complaint carefully.
 - 1. Members shall note their name, date, and time when served in the upper right hand corner and forward the paper immediately to their supervisor.

2. It is imperative that this procedure be followed if the member intends to be defended by the District so that the District's legal counsel can prepare and file the proper pleading on behalf of the member.
3. The member will be contacted by the District's legal counsel and any questions the member may have can be discussed with legal counsel.

X. SERVICE OF CIVIL SUMMONS (NON-JOB RELATED)

- A. These actions stem from personal matters unrelated to employment, such as debt/contractual disputes, divorce, small claims court, and other civil actions.
- B. Process servers will be directed to the member's command or work unit. The process server shall be informed that their access to Police Department property is limited to the areas normally open to the public.
- C. Personnel at this level are ordinarily under no obligation to accept or assist with the service, but shall provide accurate information as to when and where the member reports and leaves from work. If the process server cannot "with reasonable diligence" serve the summons directly upon the member, the summons may be left in the presence of a person apparently in charge of the member's office or place of business. See California Code of Civil Procedure § 415.20(b). The process server must inform the person in charge of the contents of the summons at that time.
- D. If a summons is left by a process server, then personnel shall note in the upper right hand corner of the summons their name, date, and time when the summons was left and forward the papers immediately to the member.
- E. The process server must, thereafter, mail a copy of the summons and complaint to the member at the address at which the summons was left. Service of a summons in this manner is complete on the tenth day after the mailing.
- F. Upon receipt of a mailed summons, personnel shall note in the upper right hand corner of the summons their name, date, and time when the summons was received and forward the papers immediately to the member.