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## Court Appearance and Subpoenas

### 348.1 PURPOSE AND SCOPE

This procedure has been established to provide for the acceptance of subpoenas and court notices and to ensure that employees appear in court when requested and present a professional appearance.

#### 348.1.1 DEFINITIONS

Definitions related to this policy include:

**On Call** - When an employee has appeared in court or is on-duty and has been told by a member of the court that the employee is free to leave the court or return to duty, subject to being available by telephone or pager.

**Standby** - When an employee receives a subpoena or court notice of a type that allows him/her to not appear in court but to remain available by telephone or pager so that the employee may be directed to appear in court within a reasonable amount of time.

**Trailing Status** - When an employee remains on standby status for additional court sessions until notified otherwise.

**Mandatory Appearance** - Subpoenas and court notices require an employee's physical appearance in the specified court at the specified time unless advised by the notice or issuing attorney otherwise. Failure to appear either intentionally or by negligence may result in disciplinary action.

### 348.2 COURT SUBPOENAS

Employees who receive subpoenas or court notices related to their employment with this department are subject to the provisions of this policy. Employees should be aware that their compliance is mandatory on all cases for which they have been properly subpoenaed or properly notified. This policy applies to civil and criminal subpoenas and notices. Employees are expected to cooperate with the prosecution to ensure the successful conclusion of a case.

Sworn employees of this department shall serve any subpoena delivered to him/her for service in this county, either on behalf of the State of Arizona or a defendant (ARS § 13-4072(F)).

#### 348.2.1 SERVICE OF SUBPOENA OR DELIVERY OF COURT NOTICES

Service of a subpoena or court notice requiring the appearance of any employee in connection with a matter arising out of the employee's course and scope of official duties may be accomplished by one of the following:

- Delivering a copy of the subpoena to the employee.
- Delivering a copy to the usual place of residency.
- Delivering a copy of the subpoena to the Department subpoena clerk or a designee.
- Reading the subpoena in the hearing or case where the officer is present.
- Electronically transmitting a copy of the subpoena to the officer.

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- Mail delivery requiring an acknowledgement of receipt.
- Oral delivery, including telephonic communications, with proper proof of service and acknowledgment of receipt.
- Delivering a copy of the court notice or subpoena from a prosecutor or other government attorney to the employee's work station mail box or through the Department Subpoena Liaison who will ensure employee notification. Employees shall check for delivery of such documents during each shift worked.

#### **348.2.2 VALID SUBPOENAS**

No subpoena or court notice shall be accepted for an employee of this department unless it has been properly served.

#### **348.2.3 ACCEPTANCE OF SUBPOENA**

The police service officers assigned to the front lobby counter under the supervision of the station sergeant are designated as the department subpoena liaisons for the purpose of receiving and distributing all subpoenas.

Peoria City Court Subpoenas:

The City Attorney/Prosecutor's Office will send subpoenas and interview requests to officers via e-mail (Microsoft Outlook) appointments.

Officers shall accept all subpoenas delivered in this fashion and check to ensure that there are no conflicts between appointments. If there is a conflict with the appearance date and/or time, the employee shall immediately work through their chain of command, and with approval, contact the Prosecutor's Office and request a continuance, re-schedule, or excusal.

Other courts: Subpoenas sent or delivered to the department shall be received by the department subpoena liaison, and forwarded to the officer.

The Maricopa County Attorney's Office an electronic-based County Attorney Notification System (CANS) for all subpoenas and Grand Jury notifications. Employees will no longer be sent an appointment or receive a hard copy for subpoenas and Grand Jury notifications for courts at the county level. The CANS system will send an electronic copy of the subpoena to the department's assigned liaison who will forward the subpoena to the employee by email, with a copy to the employee's supervisor.

Supervisors shall be responsible for ensuring that their employees have acknowledged receipt of all distributed subpoenas.

#### **348.2.4 REFUSAL OF SUBPOENA**

Training, vacations and regularly scheduled days off are not valid reasons for refusing a subpoena or missing court. If, due to illness or injury, the named employee is unable to appear in court as directed by a previously served subpoena, the employee shall, as soon as reasonably possible, inform the subpoena clerk or their supervisor of the expected absence. It shall then be the responsibility of the subpoena clerk to notify the issuing authority of the employee's unavailability to appear.

In cases in which a government entity is not a party, if a subpoena is presented for service to an immediate supervisor or other authorized individual less than five working days prior to the date listed for an appearance, the supervisor or other authorized individual should

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tell the process server to serve directly to the named witness. If the named witness is not on-duty, the supervisor must inform the process server of the next available duty dates for the witness.

#### **348.2.5 COURT STANDBY**

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

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

#### **348.2.6 OFF-DUTY RELATED SUBPOENAS**

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

#### **348.2.7 FAILURE TO APPEAR**

Any employee who fails to comply with the terms of any valid and properly served subpoena may be subject to discipline as well as court-imposed civil and/or criminal sanctions for contempt of court.

#### **348.3 CIVIL SUBPOENAS NOT INVOLVING A GOVERNMENT PARTY**

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 collective bargaining agreement. In such situations, the Department will also reimburse any employee for reasonable and necessary travel expenses.

Except when acting as a witness for a government party, the Department will receive reimbursement for the employee's compensation through the civil attorney of record who called the employee as a witness. Any reimbursement received directly by the employee shall be promptly turned over to the Department.

##### **348.3.1 PROCEDURE**

To ensure that the employee is able to appear when required, that the employee is compensated for such appearance, and to protect the Department's right to reimbursement, employees shall follow the established procedures for the receipt of a civil subpoena.

##### **348.3.2 CIVIL SUBPOENA ACCEPTANCE**

Subpoenas shall not be accepted in a civil action in which the employee or the Department is not a party without properly posted fees pursuant to applicable law.

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#### **348.3.3 PARTY MUST DEPOSIT FUNDS**

A private party in a civil action who seeks to subpoena an employee must deposit the statutory fee, if any, for each day's appearance before such subpoena will be accepted. Parties seeking to have the employee make multiple appearances must make an additional deposit in advance to include mileage reimbursement and per diem allowed by law.

#### **348.4 OVERTIME APPEARANCES**

If the employee appeared on his/her off-duty time, he/she will be compensated in accordance with the current collective bargaining agreement.

The overtime on such appearance will be paid from the time the employee left his/her residence until he/she returned.

#### **348.5 COURTROOM PROTOCOL**

Employees must be punctual when appearing in court and shall be prepared to proceed immediately with the case for which they are scheduled to appear.

##### **348.5.1 PREPARATION FOR TESTIMONY**

Before the date of testifying, the subpoenaed employee shall request a copy of relevant reports and become familiar with their content in order to be prepared for court.

##### **348.5.2 COURTROOM ATTIRE**

Proper Attire Required. Employees shall wear proper attire during all pre-planned court proceedings.

Proper attire is described as either clean and pressed (Class "B" minimum) uniform or clean business attire.

Officers working in an on-duty status may wear their duty uniform for City Court non-jury appearances.

Employees should consult with the prosecuting agency as to which attire would be most appropriate for the proceeding.

#### **348.6 COURTHOUSE DECORUM**

Employees shall observe all rules of the court in which they are appearing, refrain from smoking or chewing gum in the courtroom and shall remain alert to changes in the assigned courtroom where their matter is to be heard.

#### **348.7 TESTIFYING AGAINST THE INTEREST OF THE STATE**

Any member or employee who is subpoenaed to testify, who has agreed to testify or who anticipates testifying or providing information on behalf of or at the request of any party other than the State of Arizona, any county, city, other unit of government or any of its officers and employees in which any of those entities are parties, will notify his/her immediate supervisor without delay. The supervisor will then notify the Chief of Police and County Attorney's Office as may be indicated by the case.

This includes, but is not limited to, the following situations:

- Providing testimony or information for the defense in any criminal trial or proceeding.

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- Providing testimony or information for the plaintiff in a civil proceeding against any county, city, other unit of government or any government official or its officers and employees, including, but not limited to, personnel and/or disciplinary matters.
- Providing testimony or information on behalf of or at the request of any party other than any county, city, other unit of government or any government official or its officers and employees, including, but not limited to, personnel and/or disciplinary matters.