

## Court Appearance and Subpoenas

### 325.1 PURPOSE AND SCOPE

This procedure has been established to provide for the acceptance of subpoenas and to ensure employees appear when subpoenaed, or are available to appear in court when requested and present a professional appearance.

#### 325.1.1 DEFINITIONS

**Subject to Call** - When an employee has appeared in court, or is at the time on-duty, and has been told by a member of the court that he/she is free to leave the court or return to duty, subject to being available by phone if called back.

**Standby** - When an employee receives a subpoena of a type which allows him or her to not appear in court, but remain available by phone so that he or she may be directed to appear in court within the same court day.

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

**Mandatory Appearance** - Subpoenas marked as mandatory appearance require an employee's physical appearance in the specified court. Failure to timely appear in the specified court, either intentionally or by negligence, may result in disciplinary action.

**Court Cancellation** - When an employee who has been subpoenaed for a case, on his/her day off, that has been canceled and that employee does not receive notification 48 hours prior to the appearance. (refer to 348.5)

### 325.2 COURT SUBPOENAS

Employees who receive subpoenas 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. Employees are expected to cooperate with the prosecution to ensure the successful conclusion of a case.

#### 325.2.1 SERVICE OF SUBPOENA

A subpoena requiring the appearance of any department employee in connection with a matter arising out of the employee's course and scope of official duties may be personally served on the employee or by delivery of two copies of the subpoena on the employee's supervisor, the Sheriff's Court Officer or picked up by a Sheriff's designee no sooner than five (5) business days prior to the court appearance to allow for personal service (Government Code § 68097.1; Penal Code § 1328(c)).

#### 325.2.2 VALID SUBPOENAS

No subpoena shall be accepted for an employee of this department unless it has been properly served and verified to have originated from a recognized legal authority.

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#### 325.2.3 ACCEPTANCE OF SUBPOENA

- (a) Only the employee named in a subpoena, a supervisor, an authorized OIC, the Sheriff's Court Officer or Sheriff's designee shall be able to accept service of a subpoena. (Penal Code § 1328(c)).
- (b) Any supervisor or other authorized individual accepting a subpoena on behalf of another employee shall immediately log the acceptance of the subpoena and check available schedules to determine the availability of the named employee for the date listed on the subpoena. If the named employee is unavailable for service, the authorized individual accepting the subpoena shall notify the server or his or her office not less than 48 hours prior to the hearing date.
- (c) Once a subpoena has been received by a supervisor or other authorized individual, a copy of the subpoena shall be promptly provided to the individually named employee.

#### 325.2.4 REFUSAL OF SUBPOENA

Except where previous arrangements with the issuing court exist, 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, he/she shall, at least one hour before the appointed date and time, inform the District Attorney's Office of his/her absence.

If the immediate supervisor or the Sheriff's Court Officer knows that he/she will be unable to deliver a copy of the subpoena to the named employee within sufficient time for the named employee to comply with the subpoena, the supervisor or other authorized individual may refuse to accept service (Penal Code § 1328(d)).

If a subpoena is presented for service to an immediate supervisor or the Sheriff's Court Officer less than five working days prior to the date listed for an appearance and the supervisor or the Sheriff's Court Officer is not reasonably certain that the service can be completed, he/she may refuse to accept service (Penal Code § 1328(e)).

If, after initially accepting service of a subpoena, a supervisor or the Sheriff's Court Officer determines that he/she will be unable to deliver a copy of the subpoena to the individually named employee within sufficient time for the named employee to comply with the subpoena, the supervisor or the Sheriff's Court Officer 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)).

#### 325.2.5 COURT STANDBY

To facilitate court standby agreements with the courts, employees are required to provide and maintain current information on their address and phone number with the Department. Employees are required to notify the Department within 72 hours of any change in residence address or home phone number, and to provide accurate and reasonably reliable means or methods for contact.

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If an employee on standby changes his/her location during the day, the employee shall notify the District Attorney's Office of how he/she can be reached by telephone. Employees are subject to call each day the 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.

### **325.2.6 OFF-DUTY RELATED SUBPOENAS**

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

### **325.2.7 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.

### **325.3 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. In such situations, the Department will also reimburse any deputy for reasonable and necessary travel expenses.

The Department will receive reimbursement for the deputy's compensation through the civil attorney of record who subpoenaed the deputy.

#### **325.3.1 PROCEDURE**

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

#### **325.3.2 CIVIL SUBPOENA ACCEPTANCE**

Subpoenas shall not be accepted in a civil action in which the deputy or Department is not a party without properly posted fees pursuant to Government Code § 68097.6.

#### **325.3.3 PARTY MUST DEPOSIT FUNDS**

The party in the civil action that seeks to subpoena a deputy must deposit the statutory fee of \$275 (Government Code § 68097.2) for each appearance before such subpoena will be accepted. Parties seeking to have the deputy make multiple appearances must make an additional deposit in advance.

### **325.4 OVERTIME APPEARANCES**

If the deputy appeared on his/her off-duty time, he/she will be compensated in accordance with the current employee Memorandum of Understanding.

The overtime on such appearance will be paid from the time the deputy left his/her residence until he/she returned or the minimum call out hours per the Memorandum of Understanding.

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### **325.5 COURT CANCELLATION**

Sworn Sheriff's Deputies shall receive a minimum of four (4) hours of straight time compensation if their Court appearance is canceled per the MOU and if the following exists:

1. The court appearance was canceled within 48 hours of the scheduled appearance.
2. The deputy makes reasonable effort to ascertain by phone, email or D.A.'s website if the court appearance has been canceled 48 hours prior to the scheduled appearance.
3. A mandatory Claim for Overtime has been filled out completely with all necessary information. (See training bulletin 2017-11)

### **325.6 COURTROOM PROTOCOL**

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

#### **325.6.1 PREPARATION FOR TESTIMONY**

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

#### **325.6.2 COURTROOM ATTIRE**

Employees shall dress in uniform or business attire. Suitable business attire for men would consist of a coat, tie, and dress pants. Suitable business attire for female employees would consist of a dress jacket, dress blouse, and skirt or slacks.

The uniform of the day may be worn for any court case except jury trial. During jury trial employees are to wear their class A uniforms or the previously described business attire.

### **325.7 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.

### **325.8 TESTIFYING AGAINST THE INTEREST OF THE PEOPLE 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 People of the State of California, any county, any city, or any of their officers and employees in which any of those entities are parties, will notify their immediate supervisor without delay. The supervisor will then notify the Division Commander, District Attorney's Office in criminal cases, County Counsel or City Attorney, as may be indicated by the case.

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

- (a) Providing testimony or information for the defense in any criminal trial or proceeding;

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- (b) Providing testimony or information for the plaintiff in a civil proceeding against any county, any city, or their officers and employees; or
- (c) Providing testimony or information on behalf of or at the request of any party other than any county, city, or any county or city official in any administrative proceeding, including but not limited to personnel and/or disciplinary matter.