



DEPARTMENTAL  
GENERAL  
ORDER

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Index as:  
Civil Action Proceedings  
Subpoenas, Civil

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**CIVIL ACTION PROCEEDINGS**

The purpose of this order is to set forth procedures regarding civil action interviews, depositions, appearances, and subpoenas that arise out of Departmental business or affect the Department or the City. Procedures regarding criminal matters are set forth in Departmental General Order E-1, DEPARTMENTAL SUBPOENA SERVICE.

**I. INTRODUCTION**

- A. The provisions of Parts II through VIII of this order apply to routine interviews, affidavits, depositions, and appearances made by members and employees before State and federal courts, hearings, boards, tribunals, grand juries and other proceedings regarding civil actions that arise out of Departmental business. These parts of the order do not apply to cases in which neither the Department nor the member or employee is a party.
- B. Part IX of this order sets forth additional regulations regarding civil cases arising out of Departmental business when the Department or a member or employee is the defendant.
- C. Part X of this order sets forth procedures to be followed when private litigation in which a member or employee is involved affects his/her availability for duty or otherwise has an impact on the Department.

**II. GENERAL PROVISIONS REGARDING ROUTINE CIVIL ACTIONS**

- A. In this order, the word "State" is distinguished from the word "federal" and refers to the State of California. "State" proceedings include those that take place before superior and municipal court judges and commissioners of California.

- B. Members and employees shall be in an on-duty status, either regular time or overtime. Overtime includes vacation or day-off hours that are interrupted or canceled by the necessity to attend civil actions.
- C. Members and employees shall complete the Civil Action Attendance Record (TF-196) following attendance at every civil proceeding whether or not overtime is involved.
- D. Members and employees shall not volunteer to testify in civil actions but shall accept and comply with all subpoenas that are legally served.
- E. Under most circumstances, members and employees are not required to appear at any State proceeding outside the county of their residence if the distance is greater than 150 miles from their homes (Code of Civil Procedure Section 1989). Consequently, written approval from a deputy chief for such travel is required.
- F. Members and employees shall use City-owned vehicles or common carriers to travel to civil action proceedings whenever transportation is required. City vehicles shall not be driven beyond a 100-mile radius from City Hall without written approval from the Chief of Police.
- G. Members and employees shall demand statutory witness and mileage fees, which shall be submitted to the City. Members and employees shall not solicit nor accept remuneration except for that provided by law.
- H. No member or employee shall accept service of a civil summons/complaint (State or Federal) on behalf of another member or employee without his/her written approval. Receipt of the document may be made, but not acceptance of service.
- I. Those members or employees who receive, but do not accept service or any attempt at service, or who accept service on behalf of another member or employee with their written approval shall ensure that the information is recorded on a copy of the civil summons/complaint,

which the member or employee shall retain until the termination of the civil proceeding to which it pertains:

- Date and time received
- Type of legal process, civil or criminal
- Nature of document
- Source of document
- Name of plaintiff, complainant, court, magistrate, defendant or respondent
- Officer assigned for service
- Date of assignment
- Court docket number
- Date service due
- Date and time service was executed/attempted
- Name of officer(s) executing or attempting service
- Name of person on whom legal process was served or executed
- The method of service or reason for nonservice
- The address of service or attempt of service

### **III. CIVIL ACTION INTERVIEW: MEMBER OR EMPLOYEE**

- A. For the purpose of this order, an interview is a conference between a member or employee, his/her superior officer, and a representative of the litigant in a State or federal action. Interviews are voluntary, but the Department shall normally comply with requests for interviews in the absence of unusual considerations.
- B. Interviews regarding civil actions shall not be conducted until related criminal prosecutions have been completed. The City Attorney may be consulted prior to giving an interview, to determine whether a claim for damages or lawsuit is pending.
- C. All interviews between Departmental personnel and litigants' representatives (attorneys, private investigators, adjusters, etc.) shall be conducted in the presence of a superior officer.
- D. The member or employee shall review case reports or other data either before or during the interview and shall furnish witnesses' names and all other proper information upon request.

- E. There are no statutory fees or reimbursements for civil action interviews, and personnel shall not accept or request any gifts for their participation.
- F. At the request of the person conducting the interview, personnel may, but are not required to, sign statements regarding the information they have presented.
- G. Immediately after the interview, the member or employee shall complete Part I of two copies of the Civil Action Attendance Record (TF-196) and submit it to the superior officer who attended the interview in accordance with procedures in Part VIII, C, of this order.

**IV. SPECIAL PROCEDURES REGARDING SUBPOENAS FOR MEMBERS**

- A. Litigants in State civil actions must deposit \$150 each day with the court or appropriate official to defray expenses incurred by the Department when a member is subpoenaed (Government Code Section 68097.2). NOTE: The deposit is not required if the City or the member is a party in the case. No member or employee shall accept service of any subpoena from a court or other forum carrying out investigatory proceedings, e.g., federal or State grand jury, without the written permission of the subpoenaed member or employee; however, receipt of the document may be made, but not acceptance of service.
- (B) Neither service nor delivery of State civil subpoenas for members shall be accepted unless the endorsement section of the subpoena has been completed with a receipt number and date and the signature of the clerk of the court.
- C. Members who are requested to testify for more than one day shall ask to be served with a subpoena for each day.
- D. Properly stamped or endorsed subpoenas may be served on the subject member or delivered to the member's supervisor or commander for service.

- E. In all cases, information regarding each item of legal process, civil and or criminal shall be recorded and retained as follows:
- Date and time received
  - Type of legal process, civil or criminal
  - Nature of document
  - Source of document
  - Name of plaintiff, complainant, or name of defendant, respondent
  - Identification of process server
  - Date assigned
  - Court docket number
  - Date service due
  - Date and time service was executed or attempted
  - Name of person executing or attempting service
  - Name of person on whom legal process was served or executed
  - Method of service or reason for non-service
  - Address or location of service or attempt of service
- F. In the event that a subpoena is delivered to the member's supervisor or commander:
1. The person accepting delivery shall be either of the rank of lieutenant or higher or shall be the supervisor in charge of an independent section.
  2. The supervisor or commander shall not accept delivery unless all of the following conditions are met:
    - a. The subpoena is properly stamped or endorsed.
    - b. The subpoenaed member is assigned to the unit.
    - c. The member is not and will not be on leave when service is attempted or when his/her appearance in court is required. Leave includes vacation, OTA, sick leave, etc.
    - d. The date of the appearance is at least 48 hours from the date of delivery.

- e. The supervisor or commander is certain that he/she can personally serve the subpoena on the member the same day as the delivery or the next calendar day.
  - 3. When supervisors or commanders cannot accept delivery of subpoenas for one of the above reasons, they shall advise the server of the reason. The residence address and residence telephone number of the subpoenaed member shall not be disclosed.
  - 4. If a supervisor or commander receives a subpoena and subsequently discovers that he/she will not be able to deliver the subpoena to the member, the supervisor or commander shall notify the server or the server's office immediately and document the time, date, and name of the person notified on the subpoena.
- G. Following their testimony, members shall submit subpoenas and Civil Action Attendance Records to the Department in accordance with procedures set forth in Part VIII, C, of this order. Members shall not solicit nor accept reimbursements from courts or litigants.

**V. FEDERAL COURT SUBPOENAS: MEMBERS OR EMPLOYEES  
STATE COURT SUBPOENAS: EMPLOYEES ONLY**

- A. Properly stamped or endorsed subpoenas for federal court civil appearances by either members or employees and properly stamped or endorsed subpoenas for State court civil appearances by employees may be served on the subject individual during duty hours or delivered to his/her supervisor or commander for service in accordance with Part IV, E, 1-4.
- B. There is a statutory fee for appearances in federal court and for appearances in State courts by employees. The litigant is not required to make expense deposits. Fee checks shall be submitted to the Accounting Section as soon as they are received.

- C. Individuals who are required to testify for more than one day shall ask to be served with a subpoena for each day.
- D. Following their testimony, members and employees shall complete Part III of the Civil Action Attendance Record in accordance with Part VIII, C, of this order.

**VI. RETURN OF SUBPOENAED DOCUMENTS (SUBPOENAS DUCES TECUM)**

- A. Service of a subpoena duces tecum is invalid unless a copy of the affidavit on which the subpoena is based is served at the same time as the subpoena (Code of Civil Procedure 1987.5). NOTE: Special procedures regarding subpoenas for internal affairs and personnel records are set forth in Part IX, C.
- B. If the personal attendance of a member is required to deliver the subpoenaed documents, the subpoena shall not be accepted unless it is stamped or endorsed to indicate that the \$150 peace officer deposit has been paid. If the City or a member is a party in the case, the \$150 deposit is not required.
- C. Evidence Code Section 1563 states that all reasonable costs incurred in a civil proceeding by any witness which is not a party with respect to the production of all or any part of business records the production of which is requested pursuant to a subpoena duces tecum may be charged against the party serving the subpoena duces tecum.
- D. Evidence Code Sections 1560-1565 control the return of subpoenaed documents. Usually personnel are required to bring the documents to court in person. Under some circumstances, however, the custodian of records or other summoned witness is not required to make a personal appearance to surrender documents specified in a subpoena duces tecum. (Commanders and managers of divisions and supervisors of independent sections are the custodians of records maintained by their own units and shall retain pertinent information in accordance with Parts II, I, and IV, D, of this order.)

- E. If compliance by mail is unacceptable, the subpoena will contain language similar to the following statement, which is set forth in Evidence Code Section 1564:

The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedures authorized pursuant to Sections 1560(b), 1561 and 1562 of the Evidence Code will not be deemed sufficient compliance with this subpoena.

- F. If the subpoenaed documents may be returned by mail, the member or employee shall comply with the following procedures, which are set forth in Evidence Code Section 1560, within five days in any criminal action or within 15 days in any civil action, of receiving the subpoena:

1. Obtain a true, legible, durable copy of all records described in the subpoena.
2. Obtain an affidavit from the appropriate custodian of records, stating that:
  - a. The affiant is authorized to certify records.
  - b. The copies are true copies.
  - c. Departmental personnel originated the records.
  - d. If none or only part of the subpoenaed records is in Departmental custody, a statement to that effect shall be included in the affidavit.
3. Seal the records and the affidavit in an envelope or wrapper inscribed with the title and number of the civil action, the member or employee's name and the subpoena date.
4. Place the sealed records and the affidavit in another envelope and mail them to the court clerk or an appropriate official.



- G. If compliance by mail is unacceptable, the records and affidavit must still be sealed before they are delivered in person to the appropriate court clerk or official.
- H. Whenever personal attendance is required, the member or employee shall complete the Civil Action Attendance Record in accordance with Part VIII, C, of this order.

## VII. EXPENSES

- A. Members and employees shall demand statutory witness and mileage fees from courts, tribunals, etc.
  - 1. The federal witness fee for members and employees is \$40 a day; the mileage fee is 31 cents a mile, both ways (28 United States Code 1825).
  - 2. The State witness fee for employees is \$35 a day; the mileage fee is 20 cents a mile, both ways (Government Code Sections 68093—68096; Code of Civil Procedure Section 1986.5). Fees shall not be accepted if the City or the employee is a party in the case.
  - 3. There is no State witness or mileage fee for members. The Department will reimburse members for travel expenses (parking, bridge tolls, etc.) when expense receipts are attached to the Civil Action Attendance Record. The Accounting Section will bill the court for Departmental expenses (officer's salary, mileage in a City Vehicle, etc.). Expenses shall not be claimed if the City or the member is a party in the case.
- B. Members and employees shall report to the Accounting Section as soon as they receive witness and mileage fee vouchers from the courts and shall sign the vouchers over to the City of Oakland.
- C. Members and employees shall be compensated for overtime in accordance with Departmental General Order D-1, OVERTIME ACCOUNTING AND COMPENSATION.

- D. Whenever possible, members and employees shall use scrip for bridge tolls, as directed by Departmental General Order F-1, BRIDGE SCRIP TICKETS.
- E. In the event that a civil action appearance involves the special circumstances set forth below, members and employees shall follow procedures in Departmental General Order F-2, BUSINESS TRAVEL.
1. Written approval from the Chief of Police is required to travel more than 100 miles from City Hall in a City vehicle.
  2. Unusual travel expenses, such as overnight lodging, vehicle rental, plane fare, etc., shall be approved and documented in accordance with General Order F-2 provisions on legal travel.
  3. Bureau commander written approval is required to attend a State civil proceeding at a location that is outside a member's or employee's county of residence and more than 150 miles from his/her home.

## VIII. FORMS

A. Trial Attendance Record (TF-438)

Clarification: Members are **not** required to sign the Trial Attendance Record at the patrol desk for overtime appearances in **civil court.**

B. Subpoenas

1. After concluding a day's testimony at State or federal proceedings, members and employees shall have the court clerk or other appropriate official endorse the subpoena. The official shall be asked to record the length of time the member or employee's presence was required.
2. If members or employees are required to return on another day, they shall ask the court clerk or official to record the

copies shall be forwarded through the division commander to the Bureau of Field Operations court auditor whether or not overtime is involved. An overtime requisition is not required, even if overtime is involved; space is provided in Part II of TF-196 for reporting overtime.

- c. **Part III:** Members shall complete three copies of Part III of TF-196 following appearances in federal court. Employees shall complete three copies following appearances in either State or Federal courts. If the member's or employee's organizational unit wants to retain a copy, four TF-196's shall be completed. After endorsement by the commander, the original and two copies shall be forwarded to the Bureau of Field Operations court auditor. If overtime is involved, it shall be reported in Part III of TF-196.
2. The Bureau of Field Operations auditor shall review TF-196 forms to ensure that they have been properly completed and that subpoenas are attached and shall return forms to the reporting individuals if corrections are needed. When Part II of the form is completed, the auditor shall check to make sure receipts are attached if travel expenses are claimed and shall submit the forms to the Bureau of Field Operations Commander for approval. The auditor shall detail TF-196 forms as follows:
    - a. **Part I:** If Part I is completed, forward the original TF-196 form to the Records or the Traffic Division, as appropriate. (The reporting person's division will have retained one copy of the TF-196.) If a Court Overtime Worked Requisition is attached, it shall be forwarded to the Accounting Section.
    - b. **Part II:** If Part II is completed, forward the original to the Records or the Traffic Division, as appropriate, and forward two copies to the Accounting Section.

- c. **Part III:** If Part III is completed, forward the original to the Records or the Traffic Division, as appropriate, and forward two copies to the Accounting Section.
3. The Records and Traffic Divisions shall file TF-196 forms with the reports on the original incidents.
4. The Accounting Section shall bill the court for Departmental expenses when Part II of TF-196 is completed (provided that neither the City nor the member is a party in the case) and reimburse members for their documented travel expenses. When Part III is completed, the Accounting Section shall pay overtime if so indicated and place the second copy in a suspense file until the member or employee submits the witness fee, unless the member, employee, or the City is a party in the suit in which case the fees shall be returned to the issuing agency.

**IX. CIVIL ACTIONS ARISING OUT OF DEPARTMENTAL BUSINESS:  
MEMBER, EMPLOYEE, OR CITY NAMED AS PARTY TO THE  
CASE**

**A. Member or Employee**

1. In the event that a member or employee is served with a subpoena or complaint that names him/her as a party in a civil action arising out of Departmental business, or that names the City as a party to the action, he/she shall immediately:
  - a. Notify his/her unit commander.
  - b. Notify the City Attorney by telephone.
  - c. Personally deliver the documents served to the City Attorney.
  - d. Inform the City Attorney what records, if any, have been subpoenaed.

2. Whenever a member or employee is subpoenaed to testify on behalf of another member or employee before a Workers' Compensation Appeal Board, the subpoenaed person shall immediately notify the Personnel Section commander and the City Attorney.

**B. Unit Commanders, Managers and Independent Section Supervisors**

Unit commanders, managers and independent section supervisors shall notify the Chief of Police immediately whenever a subordinate is subpoenaed or requested to give evidence or information in a civil action of importance to the City.

**C. Professional Standards Division and Personnel Section**

1. Subpoena servers who have subpoenas for Professional Standards or personnel records shall be directed to the Professional Standards Division or Personnel Section Commander, as appropriate.
2. The Professional Standards Division or Personnel Section Commander shall immediately notify the City Attorney, the Chief of Police, the Oakland Police Officers Association or other employee/Ranger bargaining unit as appropriate, and the individual whose records are subpoenaed. Notification to the individual shall be made by means of the Notification of Pitchess Motion form, TF-800.
3. If a member or employee's residence address and telephone number are listed in the subpoenaed documents, the Professional Standards Division or Personnel Section Commander shall make a special request to the court to preserve the confidentiality of the residence information and to delete such information from all copies of the documents released by the court.

**D. Witness and Expense Fees**

Normal witness and expense fees earned or claimed for appearances at civil action proceedings arising out of Departmental or City business shall not be accepted when the Department, the City, a member, or an employee is a party to the action.

1. The \$150 peace officer deposit normally required of litigants under Government Code Section 68097.2 shall not be accepted.
2. Federal witness and mileage fees for members and employees and State witness and mileage fees for employees shall not be accepted under the above circumstances.

**X. PERSONAL OR NONDEPARTMENTAL LITIGATION**

- A. Members and employees shall be in an off-duty status while handling personal civil actions not arising out of Departmental business or while testifying in any civil action that does not arise out of Departmental or City business. If, however, the City joins the action, e.g., by filing a lien claim, then the member or employee shall be in an on-duty status.
- B. If personal and non-Departmental actions conflict with duty schedules, members and employees must arrange to take OTA or vacation hours for the time involved; however, if the member or employee is not a party to a civil action and he/she is not paid expert witness fees, he/she shall be provided a paid leave of absence (OPA).
  1. If the member or employee has sufficient overtime hours accrued; he/she shall take OTA, not vacation.
  2. If the member or employee is ineligible to receive paid time off, he/she shall submit the Leave of Absence Record (TF-982) in accordance with established procedures, requesting an unpaid leave of absence.
- C. Members and employees shall retain statutory and expert witness fees connected with personal or nondepartmental civil actions unless they receive a paid leave of absence in accordance with Part X, B.

- D. Subpoenas regarding private and nondepartmental litigation may be delivered to the commander or independent section supervisor of the member or employee or may be served on the member or employee personally during his/her tour of duty. The supervisor or commander shall not acknowledge receipt of a subpoena unless the conditions in Part IV, E, 2, b-e, are met. The residence address and telephone number of the subpoenaed individual shall not be disclosed.
- E. When a member or employee has received a City-provided benefit (e.g., sick leave, workers' compensation, medical treatment, uniform damage claim, etc.) relative to an event and where such member or employee initiates an action relative to such event, he/she shall notify the Chief of Police through channels by memorandum whenever he/she initiates personal civil action to recover damages. The notification shall include the name, address and telephone number of the member or employee's attorney.

By order of

Richard L. Word  
Chief of Police

GO39/E-3