

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 24, 2005

GENERAL ORDER: C-62

SUBJECT: SUBPOENAS AND COURT APPEARANCES

PURPOSE

- 1 - The purpose of this General Order is to outline policies and procedures for processing all subpoenas for Police Department personnel pertaining to criminal, civil and traffic related cases. All subpoenas for Police Department personnel relating to criminal and civil prosecution shall be processed by the designated employee(s) assigned to the **Records** Bureau of the Support Services Division.

POLICY

- 2 - It is the policy of the Berkeley Police Department that subpoenas for police personnel be administered and honored in a prompt and efficient manner.

RESPONSIBILITIES

- 3 - Designated employee(s) assigned to the **Records** Bureau of the Support Services Division will function as the Court Liaison Program Coordinator (CLP) and the **Records** Bureau Subpoena Clerk. He/she shall be responsible for maintaining effective administrative liaison among the Courts, the District Attorney's office, and the Department on matters concerning police personnel who have been subpoenaed for appearances in criminal, civil or traffic court.

MASTER COURT APPEARANCE CALENDAR - CRIMINAL CASES

- 4 - A Master Court Appearance Calendar will be maintained by the CLP Coordinator and will provide current information on the status of subpoenas and court dates. The calendar will contain information concerning the status of current court cases requiring officers' appearance (e.g., going, canceled or rescheduled).
 - (a) A telephone Court Appearance recording is available 7 days a week, 24 hours per day. The Telephone Court Appearance recording may be accessed by dialing 981-5990 X 7991.

CRIMINAL SUBPOENA RECEPTION AND SERVICE PROCEDURES

- 5 - The Coordinator will receive and acknowledge receipt of all subpoenas for police personnel, either on the part of the people or of the defendant. Individual subpoenas will then be processed as follows:
 - (a) Subpoenas will be forwarded to the immediate supervisor of the subpoenaed employee.
 - (b) Supervisors will personally "serve" the employee and acknowledge service by signing the original of the subpoena.

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- (c) **The subpoenaed employee will sign in the Subpoena Acknowledgement Receipt box, indicating receipt of the subpoena.**
 - (d) Supervisors will return the original subpoena to the Coordinator, giving the copy of the subpoena to the employee.
 - (e) If service of the subpoena is not possible, the reason for "no service" will be noted on the subpoena. The supervisor shall also fill out a "Subpoena Continuation Request" form on behalf of the subpoenaed employee, attaching it to the subpoena. Both subpoena and form shall be returned to the Coordinator.
 - (f) The Coordinator will return all subpoenas, served or unserved, to the issuing Court.
- 6 - The Police Department and the Housing Department have arranged a "subpoena" process that will insure the needed officer(s) is notified in a timely fashion of the date, time and location of an administrative hearing. The notice will be handled by the Subpoena Clerk in a manner very similar to a normal criminal subpoena.

EMPLOYEE RESPONSIBILITY AFTER RECEIPT OF CRIMINAL SUBPOENA

- 7 - Upon receipt of a subpoena the subpoenaed employee shall carefully review the case report to determine the need for his/her testimony. If the employee feels that he/she has been improperly subpoenaed, or that his/her testimony would be of little or no value, this opinion shall be forwarded in writing, via his/her designated supervisor, to the CLP Coordinator.
- 8 - The Coordinator will discuss the need for the employee's testimony with the District Attorney and report back to the employee. The District Attorney's office shall make the final determination concerning the need for the employee to appear and testify.
- 9 - If the subpoenaed employee will be unavailable to appear in court due to pre-approved leave of absence (i.e., vacation, training courses, parental leave), the "Subpoena Continuation Request" form shall be completed, attached to the subpoena and returned upon receipt. The form must be approved by the supervisor of the subpoenaed employee and then forwarded to the Coordinator.

CONFIRMATION OF CRIMINAL COURT APPEARANCE

- 10 - The Coordinator shall confer with the assigned Deputy District Attorney during the afternoon hours of the business day prior to a scheduled court hearing to determine if:
 - (a) The case will proceed as scheduled;

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- (b) The subpoenaed employee's testimony will actually be needed for that court session;
 - (c) If additional witnesses, information, or evidence are needed.
- 11 - Subpoenaed police employees scheduled to appear for court can confirm their need to appear by checking the Court Calendar posted in the squad room and Service Bureau, (by listening to the recorded court list on the telephone); or they may contact the Coordinator between 1600 and 1630 hours the afternoon before they are scheduled to appear
- 12 - In the event of a late cancellation or other change in an employee's scheduled court appearance, the Coordinator will arrange for the notification of the employee.
- 13 - **Subpoenas are usually received by the Subpoena Clerk. Whenever an employee receives a subpoena directly from the District Attorney's Office or from any other source, including a personal notification to appear the employee shall inform the Subpoena Clerk as soon as possible.**
- (a) **Employees should comply with any subpoena that directs them to contact the District Attorney's Office. However, if any change is made regarding date/time of appearance, cancellation or telephone stand-by status, the employee shall inform the Subpoena Clerk as soon as possible.**
 - (b) **Notification of the Subpoena Clerk in these situations is required so that the Clerk can administer the subpoena process as outlined through this order.**
- 14 - All completed court overtime slips shall be routed immediately to the employee's supervisor, then forwarded onto the Lieutenant and Captain prior to forwarding to the Coordinator. The Coordinator will initial the overtime slip and forward it to Accounting for processing.

TRAFFIC SUBPOENAS RECEPTION AND SERVICE PROCEDURES

- 15 - The Coordinator will record and acknowledge receipt of all traffic (section removed) subpoenas. Traffic subpoenas include those requesting an actual appearance in court, Informal Discovery Request, and those requesting "trial by declaration" (TBD).
- (a) Traffic subpoenas will be forwarded and served upon the subpoenaed employee as prescribed in section 5 of this Order.
 - (b) The employee's supervisor shall take steps to insure all traffic subpoenas, requests for "trial by declaration", "Informal Discovery Request" and

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requested documents are returned, to the Coordinator, by the date specified. There is no specified date on an Informal Discovery Request. Informal Discovery Requests shall be returned promptly.

- (1) If the supervisor determines that special circumstances justify a longer response time or is unable to serve the subpoena by the date specified, he/she shall fill out a subpoena continuation request, on behalf of the subpoenaed employee, and route it to the Coordinator.
 - (2) If the subpoenaed employee will be unavailable to appear in court due to a pre-approved leave of absence (i.e., vacation, training courses, parental leave), the "Subpoena Continuation Request" form shall be completed and attached to the subpoena and returned upon receipt. The form must be approved by the supervisor of the subpoenaed employee and then forwarded to the Coordinator.
- 16 - If an officer becomes aware they cannot make a scheduled court appearance on the day of appearance, regardless of the reason, he/she must notify a supervisor who will then notify the Department's Subpoena Clerk. The Subpoena Clerk will notify the courts.
- 17 - Employees who are not able to recall sufficient information regarding the incident in order to testify in traffic court shall advise their supervisor of this prior to the court date. **The Courts need to know if an Officer is unable to appear at least 10 business days prior to the appearance date. Employees who are not able to testify shall notify their supervisor as early as possible.**
- (a) The employee's supervisor shall take appropriate action, depending upon the circumstances, regarding why the employee was not able to testify. Such actions may range from an employee/supervisor counseling session, training or initiation of disciplinary sanctions.
 - (b) The employee's supervisor shall relay this information, in writing, as set forth in paragraph 6 of this Order.
 - (c) No monetary (overtime) compensation shall be provided for employees who appear in court and are unable to testify due to being unprepared and/or unable to recall.

SUBPOENAING OF CITIZENS IN CRIMINAL CASES

- 18 - In the majority of criminal cases, the District Attorney's office will send notice of court appearance to **civilian witnesses**.

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- 19 - In those cases **subpoenas presented to the Police Department for service on civilian witnesses will be sent to the Records Bureau of the Support Services Division by the District Attorney's office for processing.**
- (a) The Service Bureau Subpoena Clerk shall immediately stamp it, enter the report number, or arrange for preparation of a numbered report, and then forward the subpoena to the on-duty sergeants **for service.**
- (b) Upon completing service, the subpoena shall be returned to the Records Bureau Subpoena Clerk, who will then insure that the form is returned to the Court.

CRIMINAL SUBPOENAS FROM OTHER JURISDICTIONS

- 20 - **Criminal subpoenas for Berkeley residents from Law Enforcement agencies** shall be received by the **Records** Bureau of the Support Services Division. The **Records** Bureau Subpoena Clerk shall immediately time stamp them, arrange for the preparation of a numbered report, and route them to the on-duty team sergeants for service.
- 21 - Upon completing service, the subpoena shall be returned to the Records Bureau Subpoena Clerk for return to issuing agency.

SUBPOENA DUCES TECUM

- 22 - A subpoena duces tecum requires the **production of** documents, witness, or other objects to be examined.
- (a) A copy of the supporting affidavit must be attached to the subpoena **when the production of documents is requested.**
- 23 - An employee served with a subpoena duces tecum shall notify the **Subpoena Clerk and give the subpoena to the Subpoena Clerk without delay.** The latter shall insure that the necessary documents or objects are made available for the Court by the due date.

FOR CIVIL ACTIONS - OFFICER PRESENCE REQUIRED

- 24 - California law requires that a City be compensated at the rate of 150.00 dollars per day or actual expenses, whichever is less, for each day of service lost the City by reason of an officer responding to a subpoena for appearance in court or for the taking of a deposition in connection with any civil action or proceeding regarding an event or transaction which was perceived or investigated in the course of his/her duties. "In the course of his/her duties" shall be construed to mean during his/her regular tour of duty or an extension thereof preceding or following; while enroute to or from work; or during an off-duty period when, because of his/her peace officer status, he/she takes any police action. If the

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officer merely witnesses an event while off-duty, but takes no action normally required or expected of a peace officer, the content of this Order does not apply.

- 25 - **The process for receiving Civil Subpoena is the same as the process for criminal subpoena as outlined in Section 5 of this Order.**
- 26 - Any officer served with a subpoena requiring appearance as a witness in any court or for the taking of a deposition in any civil action in connection with on-duty employment shall promptly deliver that subpoena to the **Records Bureau Subpoena Clerk** who will **process it as outlined in Section 5 of this Order** and complete Part A of BPD Form J (Reimbursement for Appearance on Civil Subpoena) in triplicate. The original will be given to the officer, the duplicate attached to the master file, and the triplicate forwarded to the Public Safety Business Office. On those occasions when the civil subpoena is delivered directly to the Service Bureau Subpoena Clerk he/she will prepare a BPD Form J without delay and route as prescribed above.
- 27 - Following the officer's appearance in response to the subpoena, he/she shall complete Part B of his/her copy of the form, attach the subpoena, and forward them to the **Records Bureau Subpoena Clerk**.
- 28 - The **Records Bureau Subpoena Clerk** shall be responsible for maintaining adequate records of all required appearances of on-duty officers before a court or for the taking of a deposition in connection with any civil action or proceeding.
- 29 - Upon notification by the Service Bureau Subpoena Clerk, the Public Safety Business Office shall complete Part C of the original of Form J and forward it to the Tax and License Bureau, Finance Department.

COMPENSATION FOR CIVIL ACTIONS - RECORDS PRODUCTION ONLY

- 30 - When a civil subpoena duces tecum only requires production of the documents, the costs shall be computed at **\$6.00** per quarter hour and/or any portion thereof per person labor not to exceed **\$24.00** per person per hour. **A fee of 10 cent per page for copying records** and 20 cents per page for copying of documents from microfilm **shall be charged**.

CIVIL CASES INVOLVING THE CITY

- 31 - Any employee subpoenaed to testify in a civil case involving the City of Berkeley shall confer with the City Attorney in advance of testifying.

CIVIL CASES NOT INVOLVING THE CITY

- 32 - Government Code Section 68097.1 provides for the service of civil subpoenas and summons not associated with the City but involving Department personnel. The following procedures will be followed regarding the acceptance and delivery

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of those subpoenas involving Department personnel:

- (a) Service Bureau or other personnel who are contacted by individuals attempting to serve such subpoena shall first contact the employee's immediate supervisor. The immediate supervisor shall insure the subpoena/summons is personally served upon the named employee.
 - (1) If unable to contact the immediate supervisor, personnel shall then contact another supervisor or command officer affiliated with the employee's Division.
 - (2) In the event the above individuals are not available, such requests are to be directed to the Administrative Division Captain during regular business hours or, in his/her absence, the on duty Watch Commander or senior ranking officer.
 - (3) The individual accepting the subpoena shall forward the summons via the Divisional chain of command for the named employee.

COURT HEARINGS AND APPEARANCES

- 33 - Employees shall appear in any court or at any hearing authorized by any public law when:
 - (a) Subpoenaed;
 - (b) Requested by a member of a District Attorney's Office;
 - (c) Requested by a judge or officer of a court;
 - (d) Requested by a referee or hearing officer.
- 34 - Employees subpoenaed to Municipal or Superior Court for matters being heard before a jury shall wear conservative civilian clothing. **Male personnel shall wear a suit or sport coat, slacks, shirt, tie and dress shoes. Female personnel shall appear in correspondingly appropriate attire. This attire shall consist of suits, including pants suits and conservative dresses. No jeans shall be worn by either male or female personnel attending court. Any employee subpoenaed for matters being heard without a jury may appear in either uniform or appropriate civilian attire as described above.** Deviations from this regulation may be authorized by a commanding officer or a Deputy District Attorney.
- 35 - Employees shall avoid any indication of bias, prejudice or anger, and shall testify in a clear, concise and distinct manner. Questions shall be answered promptly, truthfully, and without trace of evasion. Personal behavior shall be exemplary while waiting to testify and while testifying.

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36 - Employees required to be in court by Departmental Order or subpoena shall be prompt in attendance and shall remain until excused by competent authority.

References: California Penal Code, Section 1328
Government Code Section 68097.1 and 68097.2
Civil Code Procedures 415.20(b)
Police Regulations 222, 223, and 225
Berkeley City Attorney Memorandum of April 27, 1988
Captain's Instruction 99-27
Captain's Instruction 9-27-96
Training & Information Bulletin #270