

	<b>DELMAR POLICE DEPARTMENT</b>	
	<b>Policy 2.7 Court Appearances</b>	
	<b>Effective Date: 01/01/15</b>	<b>Replaces: 1-2.18, U</b>
	<b>Approved: <u>Ivan Barkley</u> Chief of Police</b>	
	<b>Reference: N/A</b>	

## I. POLICY

The success of a criminal prosecution is determined not only by the quality and quantity of evidence but by the manner in which it is presented by law enforcement officers in a court of law. An officer's appearance, demeanor, attitude, and ability to testify in a fair and professional manner are essential. Therefore, it is the policy of this agency that officers provide competent and professional testimony by adherence to court scheduling, preparation, appearance, and testimony guidelines provided herein.

## II. PURPOSE

It is the purpose of this policy to provide officers with guidelines for scheduling, preparing for, and testifying in criminal court cases.

## III. SUBPOENA PROCEDURES

A. When an employee is the recipient of any form of subpoena, he/she is specifically directed to obey the notification in the same manner he/she would a formal subpoena. An employee's regular day off and/or the employee residing outside of Wicomico or Sussex County are not valid reasons for being unavailable for any subpoena and will not be accepted as such. Employees should contact the Wicomico County State's Attorney's office or the Sussex County District Attorney General's office in the event that a court date/time conflicts with in-service training; however, if no resolution is possible, training does not excuse an employee from honoring a subpoena.

### B. Subpoenas

1. All officers shall accept subpoenas and shall appear in the designated place at the time required unless authorized by the court authority to remain on stand-by status. Avoidance of service is strictly prohibited, and offending officers are subject to disciplinary action.

- a. Employees receiving subpoenas are responsible for ensuring that notification is made as soon as possible to the designated court authority when an appearance cannot be made on the designated court date.
  2. Officers served subpoenas or given other official notice to appear before a criminal court by means other than the foregoing are responsible for complying with this directive and for providing agency notification as soon as possible of the need for appearance.
  3. Officers who are served with a subpoena shall forward a copy of the subpoena to their respective Division Commander.
- C. District, Circuit, Justice of the Peace, Court of Common Pleas, and Superior Court Subpoenas
1. When subpoenaed for grand jury indictments, motions, or trials before the court, the employee will:
    - a. appear in court on the designated date and time; or
    - b. be available at a telephone number (stand-by status only)
  2. On occasion, a subpoena will be issued on short notice. If notified by a court liaison, the employee will be required to appear in court regardless of whether or not the employee actually received a subpoena.
- D. Alderman Court Appearances
1. All Alderman Court notifications are considered “MUST APPEAR”. Employees must appear at least fifteen (15) minutes prior to the Alderman Court session and check in with the Alderman Court clerk or Alderman.
  2. Employees unable to attend a scheduled Alderman Court appearance must make written notification to their respective division commander requesting to be excused from the scheduled appearance. Only a command level officer may excuse an employee from an Alderman Court appearance.
  3. A division commander excusing an employee from Alderman Court shall be responsible for notifying the Alderman Court clerk or the Alderman that the employee will not be attending the scheduled Alderman Court appearance.
  4. If an employee is unable to attend due to an unforeseen emergency or will be late, the employee shall notify their respective division commander or another command level officer who in turn will notify the Alderman Court clerk or the Alderman as soon as possible.

E. Administrative License Suspension Hearings

Subpoenas for administrative license suspension hearings are civil subpoenas. However, they will not be handled in accordance with section F. (immediately following). Employees are required to respond to these subpoenas as if they were a criminal subpoena.

F. Civil Subpoenas

1. Employees will not accept a civil subpoena for another employee.
2. When an employee receives a subpoena to testify in a civil case or receives a subpoena duces tecum, the employee will:
  - a. Forward a copy of the civil subpoena or subpoena duces tecum to the employee's respective division commander.
  - b. The division commander will review the case file and documents upon which the employee's testimony will be based.
  - c. The division commander will discuss the case with the Chief of Police who will determine if the Town Attorney should be consulted.
  - d. The employee will appear after receiving approval from the division commander and, if necessary, the Town Attorney.
3. The Division Commander will determine if criminal charges relating to the civil case are pending and, if so, the division commander will notify the appropriate prosecutor.

**IV. INTERVIEWS WITH ATTORNEYS**

- A. Contact with defense attorneys should be limited to those necessary to protect the legal rights of the accused and to speed the prosecution of criminal cases. Defense attorneys wishing to interview employees beyond that scope shall be referred to the appropriate prosecuting attorney.
- B. When an attorney representing the Town or an employee in any work-related civil suit needs to interview an employee about a criminal case, the employee's immediate supervisor will be notified. The supervisor will arrange for the employee to be present for the interview.
- C. When attorneys representing residents or Town employees in litigation against one another, or in litigation against the Town of Delmar, wish to interview employees concerning an incident, the attorney will be referred to the Human Resources Manager. If after consultation the Town's legal representatives approve an interview, an interview will be granted.

## **V. DISMISSAL OF COMPLAINTS**

- A. An employee of this Department will not request or recommend dismissal of any valid legally sufficient complaint filed in any court absent authorization from command level officer.
- B. When an employee learns of facts or circumstances that suggest that in the interest of justice a case initiated by him/her should be dismissed, the employee will discuss the case with his/her supervisor.
- C. If the supervisor and the employee both feel the case should be dismissed, they will prepare a memo detailing the facts or exceptions that may be cause for dismissal and forward it to their respective division commander.
- D. If the division commander agrees with the requested dismissal the prepared memorandum will be forwarded to the Chief of Police for final approval. If the Chief of Police approves the recommendation, the prepared memorandum will be forwarded to the prosecuting attorney for review. Only the prosecuting attorney can approve a recommendation for dismissal. Final dismissal can only be made by the presiding judge.
- E. A supplement will be prepared by the employee setting out the reasons for the dismissal and signed by the employee's supervisor. The supplement along with a copy of the memorandum requesting dismissal will remain in the respective case file.

## **VI. WITNESS FEES**

- A. Employees may not accept or solicit fees for testifying before any Alderman, county or state court, except the witness fee attached to civil subpoenas or the fee for attending an administrative license suspension hearing.
- B. Employees are authorized to accept the witness fee required on subpoenas for the defense in federal court or military installations.
- C. Employees excused from duty for a jury duty summons may keep jury duty fees paid.
- D. Other fees collected by an employee for a court appearance will be turned in to the Chief of Police for review. The Chief of Police may authorize an employee to keep the fee or direct the employee to return it to the issuing authority/person.

## **VII. OUT OF TOWN APPEARANCES**

- A. When an employee receives a criminal subpoena to testify in a court outside the county jurisdiction, the employee shall notify their respective division commander. The division commander will assist the employee with travel arrangements. When practical, travel

within the State will be by Town vehicle. If not practical to travel by City vehicle, mileage reimbursement may be authorized or air travel may be arranged.

- B. Travel and living expenses will be based on the Town's per diem rate and issued in advanced of any travel.

## **VIII. COURT OVERTIME**

- A. Employees who appear in court off-duty will be compensated for court appearances at the rate designated by this department and in accordance with established means of calculation.
- B. When a prosecutor requests a telephone consultation with an off-duty employee, the employee shall record the actual hours worked on the time card as the actual length of the telephone consultation with the prosecutor to the nearest quarter hour.
- C. Off-duty employees will only be compensated under the provisions of section A and B for actual appearances, and telephone consultations. Off-duty employees will not be compensated for "stand-by status" in lieu of appearance.

## **IX. DRESS CODE FOR COURT APPEARANCE**

- A. Employees shall wear one of the following:
  - 1. Class A uniform (unless testifying in Federal Court),
  - 2. Business suit and tie; or
  - 3. Sport coat, slacks and dress shirt with tie.
  - 4. Appropriate footwear.
- B. Female employees may also wear one of the following:
  - 1. Dress,
  - 2. Skirt with blouse or sweater,
  - 3. Skirted suit; or
  - 4. Pants suit or slacks with matching shirt/blouse.

- C. When on-duty or off-duty personnel are urgently needed in court and not having time for suitable dress, the employee may appear in working attire. Casual wear (denim jeans, t-shirts, shorts, work-out attire, etc.) are strictly prohibited for any court appearance.