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## Subpoenas and Court Appearances

### 323.1 PURPOSE AND SCOPE

This policy establishes the guidelines for department members who must appear in court. It will allow the East Palo Alto Police Department to cover any related work absences and keep the Department informed about relevant legal matters.

### 323.2 POLICY

East Palo Alto Police Department members will respond appropriately to all subpoenas and any other court-ordered appearances.

### 323.3 SUBPOENAS

Only department members authorized to receive a subpoena on behalf of this department or any of its members may do so. This may be accomplished by personal service to the officer or by delivery of two copies of the subpoena to the officer's supervisor or other authorized departmental agent or by E-Subpoena (Government Code § 68097.1; Penal Code § 1328(c)).

The party that issues a civil subpoena to an officer to testify as a witness must tender the statutory fee of \$275 with the subpoena for each day that an appearance is required before service is accepted of the subpoena (Government Code § 68097.2).

An immediate supervisor or authorized individual may refuse to accept service for a criminal subpoena if (Penal Code § 1328(d)(e)):

- (a) He/she knows that he/she will be unable to deliver a copy of the subpoena to the named officer within sufficient time for the named officer to comply with the subpoena.
- (b) It is less than five working days prior to the date listed for an appearance and he/she is not reasonably certain that service can be completed.

If, after initially accepting service of a criminal subpoena, a supervisor or other authorized individual determines that he/she is unable to deliver a copy of the subpoena to the named officer within sufficient time for the named officer to comply with the subpoena, the supervisor or the subpoena clerk 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)).

#### 323.3.1 SPECIAL NOTIFICATION REQUIREMENTS

Any member who is subpoenaed to testify, agrees to testify or provides information on behalf of or at the request of any party other than the City Attorney or the prosecutor shall notify his/her immediate supervisor without delay regarding:

- (a) Any civil case where the City or one of its members, as a result of his/her official capacity, is a party.
- (b) Any civil case where any other city, county, state or federal unit of government or a member of any such unit of government, as a result of his/her official capacity, is a party.

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- (c) Any criminal proceeding where the member is called to testify or provide information on behalf of the defense.
- (d) Any civil action stemming from the member's on-duty activity or because of his/her association with the East Palo Alto Police Department.
- (e) Any personnel or disciplinary matter when called to testify or to provide information by a government entity other than the East Palo Alto Police Department.

The supervisor will then notify the Chief of Police and the appropriate prosecuting attorney as may be indicated by the case. The Chief of Police should determine if additional legal support is necessary.

No member shall be retaliated against for testifying in any matter.

### **323.3.2 CIVIL SUBPOENA**

The Department will compensate members who appear in their official capacities on civil matters arising out of their official duties, as directed by the current memorandum of understanding or collective bargaining agreement.

The Department should seek reimbursement for the member's compensation through the civil attorney of record who subpoenaed the member.

### **323.3.3 OFF-DUTY RELATED SUBPOENAS**

Members receiving valid subpoenas for off-duty actions not related to their employment or appointment will not be compensated for their appearance. Arrangements for time off shall be coordinated through their immediate supervisors.

### **323.4 FAILURE TO APPEAR**

Any member who fails to comply with the terms of any properly served subpoena or court-ordered appearance may be subject to discipline. This includes properly served orders to appear that were issued by a state administrative agency.

### **323.5 STANDBY**

To facilitate standby agreements, members are required to provide and maintain current information on their addresses and contact telephone numbers with the Department.

If a member on standby changes his/her location during the day, the member shall notify the designated department member of how he/she can be reached. Members are required to remain on standby until released by the court or the party that issued the subpoena.

### **323.6 COURTROOM PROTOCOL**

When appearing in court, members shall:

- (a) Be punctual and prepared to proceed immediately with the case for which they are scheduled to appear.
- (b) Dress in the department uniform or business attire.

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- (c) Observe all rules of the court in which they are appearing and remain alert to changes in the assigned courtroom where their matter is to be heard.

### 323.6.1 TESTIMONY

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

### **323.7 OVERTIME APPEARANCES**

When a member appears in court on his/her off-duty time, he/she will be compensated in accordance with the current memorandum of understanding or collective bargaining agreement.

### **323.8 E-SUBPOENA**

Pursuant to agreement between the District Attorney of San Mateo County and East Palo Alto Police Department, the District Attorney will now prepare and serve subpoenas upon East Palo Alto Police Department employees electronically.

Notification to employees will consist of an e-mail to the employee's designated City of East Palo Alto e-mail account. Employees are directed to access their e-mail at least once a day while on duty.

Upon notification of a subpoena, employees will access the link (<https://ca.hostedbykarpel.com/CASanMateoeSubpoena/Login.aspx>) to the portal and view the subpoena. Proof of service occurs electronically the moment the employee opens the link to the subpoena. Employees should view all subpoenas without delay.

In lieu of prior practice of calling the day before, employees should access the link before appearing in court to avoid unnecessary court attendance. If an employee is unable to attend court due to preplanned vacation, training, or other approved absences he/she must prepare an "Officer Declaration For Court Continuance" within 48 hours of service, via the link.

Supervisor responsibilities include monitoring subpoenas to ensure they are served timely. In cases where there is an extended absence or situation preventing the employee from being served, supervisors must immediately notify the District Attorney's Office using the "Officer Declaration For Court Continuance" form.

Members absent from work, either on days off or other leave, may be contacted by the East Palo Alto Police subpoena clerk for service. Members who are off work are not expected to check their email for subpoenas.