

## Subpoenas and Court Appearances

### 348.1 PURPOSE AND SCOPE

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

#### 348.1.1 DEFINITIONS

**On-Call** - When an employee receives a subpoena of a type which allows him/her to not appear in court, but remain available by phone or pager so that he/she may be directed to appear in court within one hour of notification.

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

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

**Mandatory Appearance** - Subpoenas marked as mandatory appearance (Be in Court) 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 legal action by the court or disciplinary action by the department, or both.

### 348.2 POLICY

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

### 348.3 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 electronic service via the electronic subpoena system, 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 (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, Records Specialist, or other 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.

# Azusa Police Department

Azusa PD Policy Manual

## *Subpoenas and Court Appearances*

---

- (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, Records Specialist, 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)).

### 348.3.1 SERVICE OF ELECTRONIC SUBPOENA (E-SUBPOENA) AND HARDCOPY SUBPOENAS

Service of all subpoenas requiring the appearance of any department employee issued by the District Attorney's Office or other prosecuting agency will likely be electronically delivered to the Azusa Police Department's electronic subpoena system (e-subpoena). When an employee opens his /her police department's electronic mail (e-mail) containing an electronic subpoena notification, they will be directed to login to the e-subpoena system and are required to acknowledge any subpoenas and/or subpoena cancelations. Acknowledgment of subpoenas in the e-subpoena system constitutes service and receipt of the subpoena. Electronic subpoenas convey the same responsibilities as a personally served paper or hardcopy subpoena. The e-subpoena system will document the service of the subpoenas. The Records Department will have access to the e-subpoena system to monitor the issuance and service of the electronic subpoenas. Employees are required to access their email at least once during each workday, including overtime shifts, and open/acknowledge all electronic subpoenas and cancelations.

If a hardcopy subpoena is delivered to the supervisor (i.e. facsimile, etc), that supervisor shall serve the employee at the earliest opportunity, preferably the same day and no later than the employee's next workday. Service shall include the supervisor's and employee's signatures along with the date of service on one of the copies of the subpoena.

If the hardcopy of the subpoena is delivered to the supervisor or Records Division (e.g. facsimile, short notice, Records in-tray, etc.) the Records Specialist shall check the availability of the employee by confirming the employee's next workday. For subpoenas sent with short notice, the Watch Commander must be consulted to determine the employee's availability. If the employee is available, the Records Specialist will enter the hardcopy subpoena into the e-subpoena system and send notification to the employee electronically.

### 348.3.2 SUBPOENA CANCELLATIONS

If it is determined an employee is not needed for a court proceeding, the Records Specialist shall change the status of the electronic subpoena to "called off" or "trailed" and cause a notification to be sent to the employee via the e-subpoena system. This procedure will be used for both On-Call and Be In Court subpoenas. Subpoena cancelations will be delivered to the employee's email. Employees are required to open and acknowledge all electronic subpoena correspondence. An employee opening and acknowledging the electronic subpoena cancelation constitutes service of

# Azusa Police Department

Azusa PD Policy Manual

## *Subpoenas and Court Appearances*

---

the cancelation to that employee and supersedes any prior e-subpoena communication for that case.

### 348.3.3 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.
- (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 Azusa Police Department.
- (e) Any personnel or disciplinary matter when called to testify or to provide information by a government entity other than the Azusa 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.

### 348.3.4 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.

### 348.3.5 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.

### 348.3.6 COMPLIANCE WITH SUBPOENAS

- (a) The Custodian of Records shall determine that the subpoena is valid and lawful, then shall follow Evidence Code §§ 1541 and 1560 in complying with the subpoena.
- (b) A declaration that certifies the records shall be prepared and signed by the Custodian of Records.

# Azusa Police Department

Azusa PD Policy Manual

## *Subpoenas and Court Appearances*

---

1. Certify the records are true and accurate copies as described in the Evidence Code, or that no copies are available on the subject as described in the subpoena affidavit.
  - (a) Copies shall be individually stamped with a photocopy, red ink stamp.
  - (b) If requested, each copy may be certified by records staff. Records staff will initial each red stamp (page).
2. Include the certification with the records.

### 348.3.7 EMPLOYEE RESPONSIBILITIES

Employees that are properly served with a subpoena shall:

- (a) Be required to have departmental e-mail access.
- (b) Immediately notify the Records Division of any known or future dates of unavailability by e-mailing the subpoena group.
- (c) Log into the e-mail and e-subpoena system at least once during each workday, including overtime shifts, and open and acknowledge all electronic subpoenas and cancelations. This should preferably be done at the beginning of the shift to ensure subpoena service that workday.
  1. If, for any reason, an employee is unable to access his/her email or e-subpoena system during a workday, the employee shall contact their supervisor or Records Specialist to ensure that he/she is served with the subpoena(s) that have been sent to the e-subpoena system.
- (d) Notify the Records Division if the District Attorney's Office makes a direct notification of a change in the status of the court proceeding (e.g. placed on call, excused, trailed, etc.) and provide the Records Division with the case number and the deputy District Attorney's name and contact information.
- (e) Comply with the procedures outlined in the Azusa Police Department policy regarding military and maternity leave, injured on duty, sick for court, preapproved leave, training, and vacations.
  1. If the employee cannot attend the court proceedings outlined in the subpoena, the employee must select from the list of approved "Unavailable for Court" reasons listed in the e-subpoena system, including, but not limited to: IOD/ Medical Leave, Preapproved Leave, Training, Vacation, etc.
- (f) Immediately notify the Records Division upon receiving a subpoena that was sent in error

### 348.3.8 SUPERVISOR RESPONSIBILITIES

Supervisors shall ensure :

- (a) Employees check their e-mail at least once per workday (including overtime shifts) and acknowledge any subpoenas, cancelations, and/or continuances.
- (b) New employees or employees who do not have e-mail access obtain access as soon as practicable.

# Azusa Police Department

Azusa PD Policy Manual

## *Subpoenas and Court Appearances*

---

### 348.3.9 RECORDS DIVISION SUBPOENA RESPONSIBILITIES

Records Personnel must:

- (a) Monitor the status of the subpoenas in the e-subpoena system throughout the week to ensure that employees are opening and acknowledging them in a timely manner.
- (b) Maintain employee subpoena records and serve all other types of subpoenas to employees via the e-subpoena system. Civilian subpoenas, traffic court subpoenas, and Trial by Written Declaration subpoenas will also be entered into the e-subpoena system.
- (c) Ensure that civilian witness subpoenas with addresses outside the City of Azusa jurisdiction are entered into the e-subpoena system and forwarded to the handling detective for service. The handling detective will return the served subpoena to the Records Division for notification to the court.
- (d) Ensure civilian witness subpoenas with addresses within the City of Azusa jurisdiction are printed and forwarded to Dispatch for service by patrol personnel. Patrol personnel will return the served or unserved (with due diligence notes) subpoena to the Records Division for further notification to the court.
- (e) Check the e-subpoena system daily for On-Call status cases. The Records Specialist will contact the court to obtain a status update for notification to the employee.
- (f) Ensure employees are notified of any changes in the status of a court proceeding (e.g. "Be in Court" changed to "On-Call" status). Note: Notification of employees may be in person, telephonically, or via e-mail, as is appropriate for prompt service.
- (g) Ensure the status of canceled employees is changed in the e-subpoena system from "served" to "called off" and the employee is subsequently notified.
- (h) Ensure a subpoena sent to an employee in error is immediately resent to the correct employee.
- (i) Notify the District Attorney's Office or prosecuting agencies who do not utilize the e-subpoena system of the service of subpoenas received/served (e.g. subpoenas from courthouses outside of Los Angeles County, civilian witness subpoenas, traffic subpoenas where the Officer is not available, and trial by written declaration subpoenas).
- (j) Notify the District Attorney's Office or other prosecuting agency as required by the court when an employee cannot be served (e.g. IOD/Medical Leave, Preapproved Leave, Training, Vacation, etc).
- (k) Monitor and print out subpoenas to notify the court of an employee's unavailability while the employee is on vacation or leave. The unavailability will be confirmed through the deployment calendar and subpoena unavailable calendar.

### **348.4 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.

# Azusa Police Department

Azusa PD Policy Manual

## *Subpoenas and Court Appearances*

---

### **348.5 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.

### **348.6 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.
- (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.

#### **348.6.1 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.

### **348.7 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.