

Subpoenas and Court Appearances

323.1 PURPOSE AND SCOPE

Best Practice **MODIFIED**

This policy establishes the guidelines for department members who must appear in court. It will allow the California Department of State Hospitals (DSH) to cover any related work absences and keep DSH informed about relevant legal matters.

323.2 POLICY

State **MODIFIED**

DSH members will respond appropriately to all subpoenas and any other court-ordered appearances.

323.3 SUBPOENAS

State **MODIFIED**

Only DSH employees authorized to receive a subpoena on behalf of DSH 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 DSH agent (Gov. Code § 68097.1; Pen. 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 (Gov. Code § 68097.2).

An immediate supervisor or authorized individual may refuse to accept service for a criminal subpoena if (Pen. 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 (Pen. Code § 1328(f)).

323.3.1 SPECIAL NOTIFICATION REQUIREMENTS

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

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- (a) Any civil case where the State or one of its employees, 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 an employee of any such unit of government, as a result of his/her official capacity, is a party.
- (c) Any criminal proceeding where the employee is called to testify or provide information on behalf of the defense.
- (d) Any civil action stemming from the employee's on-duty activity or because of his/her association with DSH.
- (e) Any personnel or disciplinary matter when called to testify or to provide information by a government entity other than the California Department of State Hospitals.

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

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

323.3.2 CIVIL SUBPOENA

Best Practice **MODIFIED**

DSH will compensate employees 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.

DSH should seek reimbursement for the employee's compensation through the civil attorney of record who subpoenaed the employee.

323.3.3 OFF-DUTY RELATED SUBPOENAS

Best Practice **MODIFIED**

Employees 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

Best Practice **MODIFIED**

Any employee 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

Best Practice **MODIFIED**

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

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

323.6 COURTROOM PROTOCOL

Best Practice **MODIFIED**

When appearing in court, employees shall:

- (a) Be punctual and prepared to proceed immediately with the case for which they are scheduled to appear.
- (b) Dress in the appropriate DSH 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.

323.6.1 TESTIMONY

Best Practice **MODIFIED**

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

323.7 OVERTIME APPEARANCES

Best Practice **MODIFIED**

When an employee 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.