

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 Fontana Police Department to cover any related work absences and keep the Department informed about relevant legal matters.

348.2 POLICY

Fontana 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 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 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)).

348.3.1 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.

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348.3.2 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.

348.3.3 SUBPOENAS DUCES TECUM

- (a) Subpoena Duces Tecum may be accepted by any employee of the police department as long as the appearance date is at least 15 days from the date of service. If the date is less than 15 days, the subpoena must be accepted by the Support Services Supervisor.
- (b) In order for the subpoena to be valid, it must be accompanied with a copy of the affidavit upon which the subpoena was issued.
- (c) When the subpoena is accepted, it must be initialed, and the time and date put in the upper right hand corner. Forward the subpoena, as soon as possible, to the Support Services Supervisor.

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.

348.4.1 TRANSPORTATION TO AND FROM COURT

It is each individual employee's responsibility to provide transportation to and from court. If employees ride together for a court appearance, they shall not be compensated for time spent waiting for the other to complete their testimony.

Department vehicles may be used by employees appearing on job-related subpoenas, providing they have prior watch commander approval. Approval by the watch commander shall be contingent on availability of department vehicles. Department operational needs shall always take precedence over employees requesting vehicles for transportation to court.

348.4.2 SUBPOENA CALL-OFFS

- (a) Field Services Secretary or Investigations Secretary is notified by the District Attorney's office that a case is being called off.
 - 1. The Field Services Division Secretary writes on the subpoena (which should be in the subpoena book) the date of the call off, the reason and whether the employee will be re-subpoenaed.
 - 2. If the appearance date on the subpoena is close, or the employee is not scheduled for work prior to the appearance date, the secretary will call the employee at home and make the notification.

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- (a) If a case is trailing and an employee is called off for the date indicated on the subpoena, but put on call or told to appear in the immediate future, the secretary will write that information on the subpoena and notify the employee by telephone.
- (b) If an employee is placed on call for a day he/she has been subpoenaed for, the secretary will write that information onto the subpoena and notify the officer if the date is close.
 - (a) The secretary will also note on the subpoena the time the employee was called off for one day and put on call for the other day. This is done to assist the employee when he/she turns in his/her time for on call pay.
 - (b) Employees placed on-call shall check each morning with the secretary to see if they are on call for that day.
- (c) When an employee appears in court on a case for which he/she is subpoenaed:
 - (a) Upon returning from court he/she should remove the subpoena from the subpoena book, fill it out, and submit it to the Field Services Division Commander or his designate.
 - (b) If an employee wants a subpoena to remind him/her of the date, a copy should be made. This allows for the original to remain in the book so the secretary can make the aforementioned notations. If the subpoena is removed from the book prior to the appearance date and the secretary receives notification to call off the employee(s), the secretary does not know who was subpoenaed for that particular case.
- (d) After the date on the subpoena has passed:
 - (a) It shall be the responsibility of each employee to remove subpoenas from the subpoena book under his/her name with expired appearance dates.

348.4.3 EMPLOYEE RESPONSIBILITY

Once an employee is officially notified of a subpoena, it is his/her responsibility to contact the District Attorney's office or other issuing agency in case of illness, other subpoenas falling on the same date, or for any other reason the employee will not be able to honor the subpoena. It is also the employee's responsibility to notify the on-duty watch commander when illness or injury will prevent them from appearing on a subpoena. Being on vacation, or having other plans for time off, are not valid reasons for failure to appear once the subpoena has been served. In addition, the employee is responsible for complying with the instructions (if any) on the subpoena, including calling the court the night before appearing for additional instructions.

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.

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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.