

**CHAPTER 10**  
**SUBPOENAS/SUBPOENAS DUCES TECUM COMPLIANCE**  
**CRIMINAL/CIVIL APPEARANCES**

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## CHAPTER 10

### SUBPOENAS/SUBPOENAS DUCES TECUM COMPLIANCE CRIMINAL/CIVIL APPEARANCES

#### 1. POLICY.

a. Proper Service. For matters regarding events/transactions, which the uniformed employee perceived/investigated in the course of duty, proper service of a subpoena **can only be made** by delivery of a copy of the subpoena to the witness personally, or to their immediate superior, or designated agent (California Penal Code section 1328), except as noted below.

##### (1) Exceptions.

- (a) Department of Motor Vehicles (DMV) subpoenas (see paragraph 4.c.).
- (b) State Personnel Board (SPB) subpoenas (see paragraph 4.d.[1]).
- (c) Subpoenas issued by the district attorney. It is up to the discretion of the commander to accept service by mail, e-mail, or fax.

##### (2) Time Frames.

(a) Subpoena for appearance only.

1 For criminal and civil cases, a subpoena must be served within a reasonable time for preparation and travel to the place of attendance.

(b) Subpoena for records, or records and appearance.

1 For criminal cases, the subpoena must be served at least five calendar days prior to the hearing date.

2 For civil cases, the response is due either 15 days after the service, or 20 days after issuance of the deposition subpoena, whichever date is later.

(3) Unavailability of Officer. If the subpoena is for an officer who is not available at the time of service due to vacation, sick leave, military leave, regular days off, or other sufficient reason, and the date of the officer's return is unknown/uncertain, the immediate superior or designated agent shall refuse to accept service of the subpoena. If known, the date of expected return to duty should be given. An employee on **administrative time off** is not considered unavailable for service.

(4) Officer on Suspension. While on suspension, an officer is considered a CHP employee. However, should a process server attempt to serve a subpoena for an officer on suspension, the immediate superior or designated agent should refuse to accept service. A commander, at their discretion, may make arrangements to have another officer testify, seek a postponement, etc., as in other situations where the officer is unavailable.

(5) Former Employee. Subpoenas **are not** accepted for former employees. As a courtesy, if service is attempted by a prosecutorial agency, and the former employee's address and/or telephone number is known, the former employee should be contacted by the Area office and made known of the attempt and who to contact. **Addresses and/or telephone numbers are not to be disclosed.**

(6) Change of Appearance Date. Appearances shall be made on the date specified on the subpoena. If noticed by the attorney who issued the subpoena, other than the district attorney, of a change of the appearance date, the attorney shall be advised that a new subpoena, reflecting the new date, must be personally served at the appropriate Area office prior to the new date. At the discretion of the commander, employees may be placed on an "on-call" or "standby" basis, but it is not required.

b. Witness fees.

(1) Criminal Cases. Witness fees or expenses tendered by either the prosecution or defense shall not be accepted.

(2) Civil Cases. Fees in the amount of \$275, together with the subpoena, shall be tendered for each day the uniformed or nonuniformed employee is required to remain in attendance. The service shall be made to allow the witness a reasonable amount of time for preparation and travel to the place of attendance. **The \$275 fee should not be accepted when the Department is a party (plaintiff or defendant) to the case.**

NOTE: See paragraph 4.d.(2)(a) for SPB witness fees.

c. Definitions and Requirements.

(1) Official. Within the course and scope of employment with the Department.



(2) Nonofficial. Outside the course and scope of employment with the Department.

(3) Immediate Superior. An “immediate superior” is an individual of higher rank who may be available to the process server and may be expected to be in touch with the witness to be served within adequate time for the appearance of the witness.

(4) Designated Agent. A “designated agent” is an employee appointed by the commander who may be available to the process server and who may be expected to be in touch with the witness to be served within adequate time for the appearance of the witness.

d. Dress and Department. Employees appearing as criminal/civil witnesses shall wear the prescribed uniform or appropriate civilian attire. Appropriate civilian attire for men is a business suit, or sport coat with a shirt and tie. Appropriate civilian attire for women is a tailored suit, dress, or coordinated pant and blouse set. Uniformed employees required to wear the uniform while on duty shall wear the prescribed uniform when appearing as witnesses.

e. Weapons. Officers are to have immediately available approved weapon while traveling to and from court in a state vehicle.

## 2. CRIMINAL PROCEEDINGS–WITNESS APPEARANCE.

a. Attendance. This Department extends complete cooperation to all governmental agencies charged with the prosecution of criminal proceedings within the State of California. This policy does not preclude exploration with the prosecuting authorities the propriety of dismissal of minor violations arising out of accidents or routine enforcement activities, where prosecution would require members to travel distances which would result in excessive travel and overtime expense to the Department. Upon receipt of a subpoena on behalf of a criminal defendant, contact the appropriate prosecutorial agency.

b. Official.

(1) Conditions and Requirements.

(a) Employees shall attend criminal proceedings being prosecuted by the state or any political subdivision thereof, provided service is proper and the attendance is the result of events directly attributable to circumstances

involving the discharge of official duties; for example, testimony is sought from an officer who conducted an investigation.

(b) An appearance by a newly appointed employee, subpoenaed as a result of an official act while previously employed by another state agency, shall be considered an official appearance.

(c) Attendance shall be on state time and at state expense.

(d) Departmental motor vehicle equipment may be used.

(e) When travel extends beyond the employee's assigned command, the commander shall determine the appropriate mode of transportation.

(f) Travel expenses shall be allowed in accordance with Chapter 2, Travel Advances and Expense Claims, of this manual.

(g) When served with a subpoena on behalf of a defendant, contact the appropriate prosecutorial agency.

NOTE: Upon receipt of a federal subpoena on behalf of a defendant, notify the appropriate U.S. Attorney's Office.

c. Nonofficial.

(1) Attendance. When an employee is subpoenaed to appear as a witness in a criminal proceeding for testimony not related to a matter performed on behalf of the Department (e.g., a character witness), they may be granted a leave of absence with pay if the employee has leave credits. If the employee does not have leave credits, the employee shall make arrangements with their commander regarding the appearance. If a commander has questions regarding pay status, please contact the Office of Legal Affairs (OLA). Testifying as an expert is considered nonofficial and only permitted if in accordance with Highway Patrol Manual (HPM) 10.3, Personnel Transactions Manual; Chapter 14, Inconsistent and Incompatible Activities.

NOTE: Uniformed employees cannot accept criminal subpoenas that are not personally served, as service by any other method requires disclosure of confidential peace officer information.

3. FEDERAL GRAND JURY SUBPOENAS. All federal grand jury subpoenas should be referred to OLA.

4. CIVIL PROCEEDINGS–WITNESS APPEARANCE.

a. Attendance. Employees shall attend civil proceedings anywhere in the state, provided service of the subpoena was proper and the proceeding is in connection with a matter, event, or transaction, which was perceived or investigated in the course and scope of duties while an employee of the Department. Attendance shall be on state time and at state expense.

b. Depositions. The deposition of an employee shall be taken either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise.

c. Department of Motor Vehicles Administrative Per Se Hearings. A DMV subpoena may be served by either personal service or first-class mail. Employees required to attend on behalf of the state as material witnesses, shall attend on state time and at state expense. A subpoena for appearance served by a party other than DMV, must be accompanied by a \$275 witness fee deposit.

d. State Personnel Board and Workers' Compensation Appeals Board Hearings.

(1) Written Notice in Lieu of Subpoena. An officer, director, or managing agent of an agency, for whose benefit the hearing is being conducted, may be served with a written notice in lieu of a subpoena to require attendance at either an SPB or Workers' Compensation Appeals Board (WCAB) hearing. For example, the Attorney General's Office, an OLA attorney, State Compensation Insurance Fund, etc., would issue a letter with the date, time, and location of the hearing seeking testimony from someone in their official capacity with the Department. Any letter from someone other than those representing the Department may not be accepted; a subpoena is required.

NOTE: For purposes of this section, the terms "officer, director, or managing agent," shall mean a person in a supervisory or managerial position within the Department. If a notice is sent to an Area office, please notify OLA immediately (within one business day).

(2) State Personnel Board Hearings. An employee contesting an adverse action may file an appeal with the SPB. The employee may be represented by an attorney or non-attorney representative. This employee is referred to as the "appellant."



(a) Service and Fees. When an employee is subpoenaed to testify by the appellant's attorney or representative, a separate subpoena for each day of testimony must be served on the employee, or their immediate superior or designated agent. Each subpoena must include an accompanying \$35 witness fee deposit. OLA should be immediately (within one business day) advised of any subpoena(s) served pursuant to this section.

(b) Official. When an employee is subpoenaed to testify by the appellant's attorney or representative, as a result of an incident they witnessed or investigated within the scope of their employment, a subpoena must be served on the employee, or their immediate superior or designated agent. A \$35 witness fee deposit must accompany the subpoena.

(c) Nonofficial. When an employee is subpoenaed to testify by the appellant's attorney or representative about something other than their official duties (e.g., employee was a good partner, employee was a hard worker), the subpoena must be served on the employee, personally. A \$275 witness fee deposit must accompany the subpoena. Absent authorization by the employee, a superior or designated agent cannot accept the subpoena.

(d) The commander is responsible for determining whether the appearance is official or nonofficial. The OLA should be immediately (within one business day) advised of any subpoena served pursuant to this section.

(3) Workers' Compensation Appeals Board Hearings. An employee contesting benefits may file an appeal with the WCAB. This employee is referred to as the "applicant."

(a) Official. When an employee is subpoenaed to testify by the applicant or the applicant's attorney as a result of an incident they perceived or investigated within the scope of their employment, a subpoena must be served on the employee, or their superior or designated agent. A \$275 witness fee deposit must accompany the subpoena.

(b) Nonofficial. When an employee is subpoenaed to testify by the applicant's attorney or the applicant's representative about something other than their official duties, the subpoena must be served on the employee personally. Absent authorization by the employee, a superior or designated agent cannot accept the subpoena. Refer to HPM 10.7, Injury and Illness Case Management Manual; Chapter 11, Workers'



(c) Compensation Appeals Board; for policy and procedures related to appearances at WCAB hearings.

(d) The commander or their designated agent is responsible for determining whether the appearance is official or nonofficial. The Injury and Illness Case Management Unit should be advised of any subpoena served pursuant to this section.

5. SUBPOENA DUCES TECUM. A Subpoena Duces Tecum (SDT) may compel the production of documents and/or may require the personal appearance of a witness to bring the requested documents.

a. Compliance. An SDT is a type of subpoena that requires the production of documents. Absent a basis to object, records should be produced in response to a valid and properly served SDT. For questions about objections, please check with the chain of command. In the event the chain of command needs additional assistance, please e-mail questions to [OfficeOfLegalAffairs@chp.ca.gov](mailto:OfficeOfLegalAffairs@chp.ca.gov), with a carbon copy to a lieutenant or higher rank.

NOTE: Upon receipt of a subpoena on behalf of a criminal defendant, contact the appropriate prosecutorial agency to coordinate release of the records.

b. Certification. Records shall be certified by the authorized custodian of records described in the subpoena prepared by personnel in the ordinary course of business. When none of the records described or only part thereof are available, the certification shall so state. Following is an example of a certification:

“I declare under penalty of perjury that the documents consisting of \_\_\_\_ pages to which this is affixed are true and correct copies of the original documents on file with the Department of the California Highway Patrol.”

By: \_\_\_\_\_ Title: \_\_\_\_\_

6. DISCOVERY OF EMPLOYEE PERSONNEL RECORDS.

a. Policy. It is the policy of the Department to preserve confidentiality of personnel records.

b. Legal Provisions. Some peace officer personnel records are confidential pursuant to California Penal Code section 832.7. Therefore, a discovery motion must usually be served pursuant to California Evidence Code section 1043. Refer

- c. to HPM 120.1, Discovery of Peace Officer Personnel Records, for policy and procedures on responding to such motions.
- d. Procedures. Subpoenas for personnel records must be personally served on the Human Resources Section (HRS), as HRS is the custodian of records.
- e. Payroll Records. Subpoenas/motions for payroll records only, are not to be accepted. The process server shall be advised that the official custodian of payroll records is the State Controller.