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ORLANDO POLICE DEPARTMENT POLICY AND PROCEDURE

2105.11, Witness Management

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1. PURPOSE

This directive establishes guidelines for employees to respond to court, depositions, arbitrations, or other court or administrative hearings when subpoenaed.

2. POLICY

Personnel will be held accountable for responding to court, depositions, arbitrations, or other court or administrative hearings when subpoenaed or otherwise notified by an employee with the State Attorney’s Office, Clerk of Court, SAO Witness Management, OPD Witness Management, Police Legal Advisor’s Office, City Attorney’s Office, City

Prosecutor's Office, or the Orlando Police Department. This policy also clarifies the circumstances under which an employee is entitled to receive witness and mileage fees for appearance as a witness in trials or depositions and the amount of those fees. It further specifies the employee's duty to return excess fees tendered.

3. DEFINITIONS

N/A

4. PROCEDURES

4.1 RESPONSE TO COURT

Once employees are notified they are needed in court, they shall respond at the specified time, and shall be responsible to the judge of that court for "Failing to Appear." By local rule, presiding circuit and county judges in Orange and Osceola Counties will allow a maximum of 45 minutes for employees to arrive in court. When an employee with the State Attorney's Office, Clerk of the Court, SAO Witness Management, OPD Witness Management, Police Legal Advisor's Office, City Attorney's Office, City Prosecutor, or the Orlando Police Department contacts an employee for court and the employee is not under subpoena for that day, the employee shall respond to the court.

4.2 EMPLOYEE RESPONSIBILITY

4.2.1 EMPLOYEE RESPONSIBILITY FOR TRIAL AND HEARING SUBPOENAS

Employees must call the State Attorney's Office (SAO) Witness Management staff at 407.836.1216 (felony cases), 407.836.1348 (misdemeanor cases), or 407.836.7597 (juvenile cases) the business day immediately preceding the date the subpoena period begins to ascertain the status of the case and to provide contact information for the trial period. Employees shall not assume that SAO Witness Management knows how or where to contact the employee. SAO Witness Management is normally available to answer the telephone from 0800 to 1700 hours on weekdays.

The State Attorney's Office will place employees on standby for trial subpoenas in felony cases via e-mail. Every effort will be made to notify employees one week before the trial date, but no later than Wednesday before the date needed for the trial.

Note: OPD employees shall review documents in PowerDMS (on scheduled work days) to ensure pending subpoenas are received and signed off as assigned by Witness Management. Any login issues with PowerDMS shall be immediately reported to the Training Coordinator (ext. 2865) and OPD Witness Management (ext. 2353).

Employees shall immediately, upon receipt, confirm their availability via e-mail with the State Attorney's Office. In the event of a schedule conflict, the employee shall immediately call the phone number listed on the e-mail. Employees who will be out of the office for training, vacation, or extended periods shall set up the out-of-office reply on the City e-mail account and notify Witness Management via e-mail at opdwitnessmanagement@orlando.gov, placing in the subject line, "Out of Office," along with the specified dates.

Please note some subpoenas are issued by the defense or by parties in civil and administrative proceedings. The SAO Witness Management program does not coordinate these subpoenas. Employees will coordinate with the office of the attorney who issued the subpoena and whose telephone number is normally listed on the bottom of the subpoena.

Employees under subpoena will be available to appear in court during the trial period and will provide information as needed to the subpoenaing attorney or SAO Witness Management Program as is necessary to ensure that the employee is available for trial. Employees will provide information to the SAO Witness Management personnel on how they can be reached, including when they are on duty, and can be reached through the Communications Center or the OPD Witness Management Unit personnel. Subpoenas are effective for the entire trial period and employees are bound by those subpoenas for the duration of the trial period.

Off-duty bargaining unit employees under subpoena for cases processed under the SAO Witness Management program will be available by phone to respond to court Monday through Friday as specified by the court or Witness Management and will be compensated as prescribed in the collective bargaining agreement. If the subpoenaed employee leaves home, it shall be the employee's responsibility to notify the SAO Witness Management Unit and provide a telephone number where he or she can be reached.

Employees must appear according to hearing and trial notices and subpoenas at the designated time and location. It is further recommended employees contact the attorney issuing the subpoena a day before the hearing to verify the hearing is still scheduled. All hearing subpoenas are mandatory whether they are stamped as such.

4.2.2 EMPLOYEE RESPONSIBILITY FOR DEPOSITIONS AND HEARINGS

- a. **Rules of Procedure:** The Florida Rules of Criminal Procedure allow a party to serve by mail a Notice of Taking Deposition, Testimony, or Evidence Production instead of a subpoena. The effect of a mailed or delivered notice is identical to a subpoena and the employee must respond to it in the same manner.

This rule requires attorneys to coordinate deposition times. Generally, this is done by coordinating dates and times with the prosecuting attorney. Some defense attorneys may try to coordinate with individual law enforcement employee witnesses by calling the officer at the phone number listed on the OPD roster. If an employee receives a phone message in this regard, the employee must return that call. If an employee's voicemail goes to a supervisor's voice mailbox, it shall be the supervisor's responsibility to relay those messages to subordinates. The supervisor shall call the attorney if the employee is unavailable due to vacation, sickness, or otherwise.

The defense bar and prosecutors generally agree to send notices or subpoenas to the OPD Witness Management Unit in the same manner as deposition subpoenas. These notices will be processed and routed through PowerDMS to the individual employee. If a notice is delivered while an employee is on leave and that employee will not return before the deposition, hearing, or production of evidence date, the supervisor must contact the attorney who issued the notice to resolve the matter as described in Section 4.

- b. **Rescheduling deposition:** If an employee needs to have a deposition, hearing, or evidence production rescheduled, they must contact the issuing attorney at the earliest possible date. It is recommended employees fax or email a request for rescheduling to the issuing attorney. This request should be kept with the other documentation of the employee's efforts to reschedule. Efforts to contact the attorney should be noted on the face or reverse side of the notice, and the notice should be kept until the case is over. The defense bar has agreed to make every reasonable effort to reschedule depositions, hearings, or evidence production that conflict with an employee's day off, school, or other activity. If the trial is imminent, the deposition, hearing, or evidence production may not be able to be rescheduled. If an officer is having difficulty getting a response, they should contact the Police Legal Advisor several days before their anticipated unavailability to ensure there is sufficient time for the Police Legal Advisor to attempt resolution. A memo should be sent to the Police Legal Advisor with a copy of the subpoena, setting forth

all steps taken to resolve the conflict and the employee's contact number. The employee shall also provide a copy of the memo to the supervisor.

Defense attorneys who have email addresses may list them on their notices to assist those employees who work shifts or assignments that make daytime telephone contact difficult. Those who have access to electronic mail are encouraged to use it to communicate regarding deposition scheduling. The employee should maintain hard copies of the emails.

An employee who requests a deposition or hearing be rescheduled must agree to and appear for the rescheduled deposition or hearing without being re-noticed. The initial notice will continue to serve as proper notice of the new deposition or hearing date. If the issuing authority cannot, or will not, reschedule, the employee shall not be considered released from the subpoena or notice.

- c. **General Rule of Conduct:** Employees are expected to remain civil at all times in dealing with the attorneys and their office staff. If there is a problem with an Assistant Public Defender, such as no callback within 48 hours, please contact the Chief Assistant Public Defender at 407.836.4854. Leave a voice mail if it is after hours. For other problems, continue to contact the Police Legal Advisor's Office for assistance.

Some attorneys may continue to serve subpoenas. That is still an effective method to compel appearance. Some attorneys may seem unwilling to reset a deposition regardless of the reasonableness of a request. Those instances should be brought to the attention of the Police Legal Advisor.

- d. **Location of deposition:** Depositions set in criminal cases must be held at the courthouse and are not to be held in the private office of the defense attorney unless otherwise designated by the trial judge or chief judge. Civil case depositions may be held at any location.

Upon receipt of a notice of criminal case deposition at the office of a private defense attorney, the employee should call the attorney and advise them the policy of the Orlando Police Department prohibits their attendance unless provided evidence of a court order authorizing it.

Criminal defendants are generally prohibited from being present during a deposition unless stipulated to or ordered by the court. If the defendant is present, the employee shall advise the attorney they will not remain for the deposition unless there is a court order authorizing the defendant's presence or unless the defendant leaves.

Employees should not be deposed more than once in a case nor should depositions occur in misdemeanor or traffic cases without order of the court. Any such situations that cannot be resolved by the employee should be brought to the attention of the Police Legal Advisor.

Employees who do not attend depositions or hearings set by the notice are subject to contempt of court and internal discipline in the same manner as when served by subpoena. In some circumstances, an employee may desire outside counsel to represent them at a Contempt of Court or Rule to Show Cause proceeding.

An employee who, for any reason, receives a notice or subpoena for a deposition or hearing after the date for such hearing must contact the issuing attorney or party to advise them of the late receipt, and the employee shall make themselves available for rescheduling of the hearing or deposition, if possible.

- e. **Traffic Infraction Hearing reset procedure:** Employees requesting the reset of a traffic infraction hearing must make the reset request, via email, on the designated form ([Attachment A](#)). A copy of the form can also be found in the OPD Forms folder (N:) OPD/FORMS/Forms in Policy or on PowerDMS.

Resets apply to Traffic Hearing Officer cases only. Where there is one defendant with multiple cases, it is appropriate to use one form. However, when an employee has multiple subpoenas for different defendants on any given day for which the employee needs to reset, a separate form must be used for each defendant. The instructions for emailing the completed form and the correct email addresses are printed on the form. Employees must copy their supervisors and/or any other personnel who need to be aware of the request. The new hearing date will be sent via email from the Civil Traffic Infraction Hearing Office to the email address of the requesting employee, as well as each email address listed on the original email containing the request for the reset date. Reset requests must be made at least 10 days before the hearing date. Reset requests will be made via email, and the new court date information will be provided via email, not with a new subpoena. The resetting of a traffic infraction due to RDO is not a valid reason: only pre-approved vacations, formal training, etc., are considered valid reasons for requesting a reset. Employees are discouraged from requesting resets in traffic cases because the reset date may be beyond the speedy trial date and will result in a dismissal. Employees should retain their notes and emails as backups in case any future issues arise.

4.2.3 SUBPOENAS ISSUED TO THE WRONG EMPLOYEE

If an employee receives a subpoena and determines it belongs to another employee with the same or similar last name, the employee should determine who the correct employee is and furnish this information to Witness Management, who will return the subpoena for reissue or re-route it to the correct employee.

Note: OPD Staff Assistants shall maintain an updated Patrol Roster at the beginning of every week.

4.3 COMPENSATION

Bargaining unit employees will receive compensation for each trial subpoena received as prescribed in the applicable collective bargaining agreement. This compensation is for adult and juvenile trial subpoenas only. Subpoenas or notices for depositions and subpoenas for hearings that are for time and date certain (e.g., suppression hearings, non-criminal traffic court, etc.) will be compensated as provided for in the applicable collective bargaining agreement.

Bargaining unit employees who receive subpoenas due to law enforcement action taken outside OPD's jurisdiction (but which is immediately reported to OPD) shall receive compensation for each trial subpoena as well as witness and mileage fees as prescribed in the appropriate collective bargaining agreement and this policy.

Bargaining unit employees who receive a trial subpoena will record the appropriate compensation time according to shift assignment. Compensation time will be recorded on the employee's Kronos on the date the subpoena is received.

Civilian employees shall be compensated per City Policy & Procedure [808.40](#) and [808.35](#), or any applicable collective bargaining agreement.

4.3.1 ON-DUTY ATTENDANCE

A law enforcement agency employee who is subpoenaed as a witness to attend any official proceeding related to their employment (e.g., trial, deposition, hearing, etc.) or who is provided notice of deposition that is scheduled during the employee's regular on-duty hours is entitled to receive mileage reimbursement at a rate established by [§112.061\(7\), Fla. Stat.](#), for actual miles traveled to and from the place of the hearing only if the employee travels in a private vehicle. If the employee travels by City vehicle, the employee is not entitled to mileage reimbursement.

Law enforcement agency employees appearing as witnesses during time compensated as part of their normal duties may not receive witness fees or any other payment for their appearance or testimony.

4.3.2 OFF-DUTY ATTENDANCE

A law enforcement agency employee who is subpoenaed as a witness to attend any official proceeding related to his or her employment (e.g., trial, deposition, hearing, etc.) or who is provided notice of deposition scheduled during off-duty hours is entitled to receive a five-dollar witness fee from the party compelling the appearance or the amount designated by the court holding jurisdiction. Collective bargaining employees are entitled to the witness fee in addition to any compensation provided in the applicable collective bargaining agreement. Civilian employees are entitled to compensation per City Policy and Procedure [808.40](#), or applicable collective bargaining agreement

A law enforcement agency employee subpoenaed for trial or subpoenaed or given notice of deposition during off-duty hours may receive the mileage fee outlined in [§112.061\(7\)](#), Fla. Stat., for each mile traveled round trip from the point of origin (presumably the employee's home) to that place of trial, hearing, or deposition provided such travel is by private vehicle. Employees shall not claim mileage compensation for travel by City vehicle.

Personnel who attend depositions or hearings per notice or subpoena from the Public Defender's Office or State Attorney's Office, and who are otherwise entitled to receive witness and/or mileage fees, are to take their original subpoenas to State Attorney's Office first-floor receptionist for the appropriate forms and submission for witness and mileage fees. Subpoenas generated at the request of a court-appointed attorney will be marked in the upper right-hand corner as "INSOLVENT" immediately below the returnable date.

4.3.3 EXCESS, INAPPROPRIATE, OR INADEQUATE FEES

Should an employee receive, in advance of a scheduled hearing or deposition, or otherwise, witness or mileage fees over the amount to which they are entitled, that excess amount must be returned to the remitting party.

Should an employee receive, in advance of a scheduled hearing or deposition, witness or mileage fees for a hearing or deposition which, for whatever reason, they do not attend, the entire fee must be returned to the remitting party.

Should an attorney refuse to fully reimburse an employee for their appearance and mileage fees as required by statute, the employee should inform the Police Legal Advisor by memo, with copies of all related documentation attached and detail of efforts made by the employee. The PLA will take appropriate action as approved by the Chief of Police.

4.4 SUPERVISOR RESPONSIBILITY

It shall be the responsibility of the subpoenaed employee's supervisor or the designated corporal to review submissions for court time compensation. The supervisor is to ensure the necessary subpoenas, notices, and court time compensation are entered into the employee's Kronos on the date of occurrence.

Note: Supervisors shall review subordinates' documents in PowerDMS (weekly) to ensure pending subpoenas are received and signed off by members in their units. Any login issues with PowerDMS shall be immediately reported to the Training Coordinator (ext. 2865) and OPD Witness Management (ext. 2353).

When the supervisor discovers an employee has not signed off on a subpoena and/or notice of deposition in PowerDMS because of vacation, illness, school attendance, etc., and the hearing/court is within seven days of such subpoenas or notice, the supervisor shall contact the subpoenaing attorney to advise of the employee's unavailability. The 7-day rule will not apply to those subpoenas that must be accepted by Witness Management according to Florida Statutes.

If the supervisor determines the employee has transferred to another unit within OPD, the supervisor shall immediately notify the OPD Witness Management Unit.

If a supervisor receives a message for a subordinate advising the subordinate of a proposed time, date, and location for deposition, the supervisor shall inform the subordinate as soon as possible. If the supervisor knows the subordinate will not be available to either attend at the requested time or respond to the attorney's request timely (more than 48 hours after the request is made), the supervisor shall be responsible for notifying the attorney's office the employee will not be available.

- a. Email the OPD Witness Management Unit the officer's reason for unavailability.

NOTE: This does not apply where the employee can review and sign off the subpoena or confirm the deposition date in PowerDMS and will subsequently be unavailable for the appearance date. Employees are required to call the issuing authority in those cases to request and secure a release from the subpoena or notice. The Police Legal Advisor will continue to assist employees who have diligently attempted to secure a release but have been unsuccessful. Supervisors will document efforts to notify the issuing authority of the unavailability of employees.

Employees shall print out a copy of every subpoena or notice of court appearance they receive in PowerDMS and/or SAO email, which should be retained for their records. Users will sign off on all witness subpoenas by entering their username and password. NO SUBPOENAS/NOTICES OF DEPOSITION SHALL EVER BE PLACED IN AN EMPLOYEE'S MAILBOX.

4.4.1 OFFICERS ON RELIEF OF DUTY

Internal Affairs shall notify the OPD Witness Management Unit whenever an employee is relieved of duty; those employees will be listed as being in the Internal Affairs Unit.

4.5 EMPLOYEE RESPONSIBILITY/OTHER TYPES OF SUBPOENAS

4.5.1 STATUS

Employees will answer subpoenas and notices of deposition, notices of trial, or notices of hearing and ascertain the status of the following types of cases without assistance from the OPD Witness Management Unit:

- a. Civil Court;
- b. Traffic Court (infractions);
- c. Pre-trial Conferences;
- d. Probation and Parole violations hearings;
- e. Depositions;
- f. Federal Court;
- g. Time and date of certain subpoenas;
- h. Arbitrations;
- i. City-related hearings (e.g., Civil Service Board, Code Enforcement Board, City Prosecutor cases in County Court).

4.5.2 NON-DUTY RELATED SUBPOENAS AND DUTY-RELATED CIVIL SUMMONS

When a process server appears at OPH to serve an employee with any subpoena, notice, or summons that would not otherwise be processed through OPD's Witness Management Unit, the OPD Witness Management Unit personnel or Information Desk personnel shall ascertain if the employee is on duty. If the employee is on duty, their supervisor shall be notified of the presence of the process server and the name of the employee to be served. The supervisor shall then arrange for the employee to be served the subpoena or summons in a private location (i.e., office).

If the employee is not on duty, the process server shall be advised as to when the employee is scheduled to work and the name of the employee's supervisor. The process server will be told to return at that time to the Information Desk and request to see the employee's supervisor, who will arrange for the employee to be served the subpoena. If the employee to be served works a schedule during which the Information Desk is not staffed, the process server will be provided with the employee's supervisor's contact information and the supervisor shall coordinate service time and location with the process server until they makes contact with the supervisor.

If an employee is served with a civil summons and complaint (civil lawsuit) naming the employee as a defendant in their capacity as an OPD employee, the employee must provide a copy to the Police Legal Advisor within 24 business hours of being served. Prompt notification is essential to assist in the defense of the employee. If no one is available in the Police Legal Advisor's Office, the copy must be delivered to the City Attorney's Office on the third floor of City Hall.

Subpoenas for criminal traffic cases, misdemeanors, third-degree felonies, and second-degree felonies may be served by certified mail to the witness's last known address, provided the subpoena was mailed at least seven days before the required appearance.

4.6 OPD WITNESS MANAGEMENT UNIT RESPONSIBILITIES AND NOTIFICATION

The OPD Witness Management Unit will generally assist employees with subpoenas and notices of deposition for criminal traffic, misdemeanor, and felony cases.

The OPD Witness Management Unit will assist in locating, contacting, and taking messages from the State Attorney's Office for employees having received a subpoena, notice of deposition, or requested to appear in criminal matters.

Electronic subpoenas are emailed regularly by the State Attorney's Office and have to be updated daily and/or by the date(s) issued by Witness Management. The system update indicates if the subpoena was served (forwarded via email to the affected member) and/or not served, with the reason for not being served noted in the update.

Upon receiving paper subpoenas to be served throughout the Agency, the OPD Witness Management Unit will enter the information into PowerDMS.

The OPD Witness Management Unit will review these reports in PowerDMS weekly to ensure they have been reviewed and signed. If subpoenas have not been signed off within 3 days in PowerDMS, the Witness Management Unit will notify supervisors. In addition, the Executive Director of Constitutional Policing and/or designee will be notified via email group address ocpp@orlando.gov on any subpoena(s) that require officers to testify in hearing on motions to suppress evidence.

4.7 DISTRIBUTION OF ELECTRONIC SUBPOENAS

Paper subpoenas will be scanned by the Witness Management coordinator within 24 hours of receipt in PowerDMS. Once a subpoena has been entered into PowerDMS, the subpoena will automatically show up in the assigned officer's PowerDMS Inbox for review and signature. It is the responsibility of each officer to check their PowerDMS Inbox daily. It is also the responsibility of the supervisor to make sure their employees have signed off on all witness subpoenas.

4.8 CONFLICTING HEARINGS OR WORK DUTIES

Employees who receive two or more subpoenas and/or notices for matters conflicting with one another shall:

- a. Contact the OPD Witness Management Unit and advise them of the location of the court where the employee can be reached.
- b. If the conflict is between a court hearing and a deposition, respond to the court. If the conflict is between two court hearings, generally, the superior court takes precedence. If in doubt, contact the Police Legal Advisor.

In all conflicts, notify all issuing attorneys or entities of the conflict. Many times, the issuing parties may be able to assist in resolving the appearance conflict.

- c. For court hearings contact the judge's judicial assistant and the office that issued the subpoena (i.e., the State Attorney, defense attorney, or public defender) and advise them of the conflict, your location, and the anticipated length of delay.
- d. For depositions, contact the office that issued the subpoena (i.e., the State Attorney, defense attorney, or public defender) and advise them of the conflict, your location, and the anticipated delay. Employees must make every reasonable effort to reschedule the deposition or otherwise resolve the conflict.
- e. Always document your efforts, and maintain that documentation at least until the case is disposed of by the court.

4.9 POLICE LEGAL ADVISOR NOTIFICATION

If an employee responds to a subpoena, notice of deposition, or hearing, and the issuing attorney is not present more than 15 minutes after the scheduled appearance time, the employee will submit a memo to the Police Legal Advisor, specifying the time, date, location of the subpoena, the case number and the name of the attorney who initiated the subpoena. This same information will be provided if multiple employees are subpoenaed for deposition at the same time.

If the court reporter is present but the attorney is not, the employee should attempt to contact the subpoenaing attorney's office to inquire as to why the attorney is not present. If the attorney has been delayed in court and is on their way to the deposition, the employee should wait.

Employees who are unavoidably delayed for an operational reason should be careful to make arrangements to have the office of the attorney who subpoenaed them notified as soon as possible and should try to reschedule the matter at a mutually agreeable time without being subpoenaed again.

See Section 4.5.2 above for required notification in the event an employee is served with a civil summons and complaint in which the complaint alleges wrongdoing as an OPD employee.

4.10 RELEASE FROM SUBPOENA

The only people who may release an employee from a subpoena, notice of deposition, or hearing are the judge in whose court the case is scheduled, the attorney, or their associate who caused the issuance of the subpoena or notice.

The initiating attorney's secretary, when acting in a staff capacity for the attorney, may release the employee from appearing for the subpoena or notice. The subpoenaed or noticed employee shall obtain the name of the secretary or attorney and the date and time of the call when receiving such a release. It shall be the employee's responsibility to determine whether the secretary can release them from the subpoena or notice. A qualified person must release employees. Simply providing the attorney or their office with notice the employee is unavailable is not sufficient and may subject the officer to administrative discipline or contempt of court.

The employee shall keep a copy of the subpoena or notice with the recorded information until the court case has reached a final disposition.

Should an employee need to be released from a subpoena or notice and be unsuccessful in securing the issuing attorney's approval, the Police Legal Advisor should be notified at the earliest possible opportunity for assistance.

4.11 RULES TO SHOW CAUSE

The OPD Witness Management personnel shall not deliver Rules to Show Cause: those must be personally served upon the employee. Upon receiving a Rule to Show Cause for allegedly missing a trial, hearing or deposition, or other matter, the receiving employee shall immediately notify their supervisor and the Police Legal Advisor's Office. A copy shall be forwarded to the Police Legal Advisor's Office.

The employee may also wish to contact their personal lawyer or appropriate bargaining unit representative for legal assistance.

5. FORMS AND APPENDICES

[ATTACHMENT A-Uniform Law Enforcement Hearing Date Reset Request](#)