

Subpoenas and Court Appearances

309.1 VERSION

Agency Content

Review Date	Effective Date	Approving Authority
02/11/19	07/09/18	Eric D. English, Chief of Police

309.2 POLICY AND PURPOSE

Best Practice **MODIFIED**

This policy establishes the guidelines for department employees who must appear in court. It will allow the Harrisonburg Police Department to cover any related work absences and keep the Department informed about relevant legal matters. Harrisonburg Police Department employees will respond appropriately to all subpoenas and any other court-ordered appearances.

309.3 ACCOUNTABILITY STATEMENT

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All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisors to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

309.4 SUBPOENAS

Best Practice **MODIFIED**

The Harrisonburg Police Department works with the Commonwealth's Attorney Office and Rockingham County Civil Service Unit to deliver court subpoenas to officers in a timely manner, allowing the officer to prepare and respond to court on the date summonsed.

309.4.1 DISSEMINATION OF SUBPOENAS TO OFFICERS

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To help audit the delivery of subpoenas, the Commonwealth's Attorney Office, usually the origin of court subpoenas, will send the papers to the RCSO Civil Process Servers no less than seven (7) calendar days prior to the court date. Only in extraordinarily compelling circumstances with high priority cases will the officer be requested to testify with less than seven (7) days notice. These will be initiated by Deputy Commonwealth's Attorney so that the process servers are aware that there is an acceptable extraordinarily compelling reason to serve on short notice.

- (a) RCSO Civil Process Servers will serve the Records Specialist on duty.
 - 1. The Records Specialist will stamp each subpoena as the "signature" of receipt.

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2. The Records Specialist will collate by Division/Squad and place in the appropriate hanging boxes inside the Records office window.
- (b) Before and during each shift, the supervisor on duty, the CID supervisor, and the Special Operations supervisor, will check the appropriate box and disseminate the subpoenas.
1. If an officer is absent, the supervisor will call that officer sometime during his/her shift rotation to advise of the subpoena.
 2. If the subpoena falls during a pre-approved leave period, with the officer's (See attachment: 139-Notification of Absence from Court.pdf) on file, the supervisor shall notify the issuing attorney.
- (c) It is still the officer's responsibility to verify that their testimony is needed for each court date subpoenaed. The officer must contact the Commonwealth's Attorney Office to be properly released from a properly delivered subpoena.

309.4.2 NON-CWA/PROSECUTOR SUBPOENAS

Best Practice **MODIFIED**

Any employee who is subpoenaed to testify, agrees to testify or provides information on behalf 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 officials or 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 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 the Harrisonburg Police Department.
- (e) Any personnel or disciplinary matter when called to testify or to provide information by a government entity other than the Harrisonburg Police Department.

The supervisor will then notify the Chief of Police, City Attorney 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 employee shall be retaliated against for testifying in any matter.

Whenever possible, officers shall notify the appropriate court and the Office of the Commonwealth's Attorney in writing at least thirty (30) days in advance of any planned absences, such as vacation, training, etc. that may interfere with the officer's availability to appear in court.

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Any law enforcement official or case, officers may not attend the case in uniform, unless they are required to testify. Officers attending on their own time may not attend in uniform and will not be compensated.

309.4.3 COMPENSATION REGARDING SUBPOENAS

Best Practice MODIFIED

Civil Subpoena - The Department will compensate employees who appear in their official capacities on civil matters arising out of their official duties, as directed by the current City rule or policy.

Off-Duty Related Subpoenas - 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.

309.4.4 GENERAL PROCEDURE

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When setting trial dates, officers will allow at least 10 working days between the day of arrest and the trial date.

Whenever witnesses are to appear, the officer shall request that a subpoena be issued. In order to ensure that the subpoenas are promptly issued and served, officers will complete the Rockingham County General District Court, "Request for Subpoena" form. This form shall be submitted to the Office of the Clerk of the appropriate court (J&D or District) no later than 10 days prior to trial date. Officers may use the Harrisonburg Police Department Witness Subpoena Forms at the scene of an incident as follows:

- Motor vehicle crashes in accordance with VA Code section 46.2- 939.
- Misdemeanor Criminal Cases in accordance with VA Code section 19.2-267.1.

Preliminary hearing court dates are normally set by the magistrate or the Office of the Commonwealth's Attorney for the officer's regularly scheduled court date. Court arraignments for felony cases are handled by the Office of the Commonwealth's Attorney. They will also subpoena all prosecution witnesses through all phases of the judicial process for felony charges and misdemeanor appeals, upon proper notification by the arresting officer.

309.5 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 department uniform or business attire. Officers appearing in court shall wear the long sleeve uniform shirt with the tie, short sleeve uniform shirt, or other appropriate attire such as a suit or sport coat and tie.

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- (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.
- (d) Be aware that the authority of an officer to carry a firearm into any court within the courthouse may, from time to time, be restricted by court order.
- (e) Not agree upon plea bargain offers made by defense attorneys without prior approval of the Office of the Commonwealth's Attorney or his/her assistant.

309.5.1 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.

309.5.2 CONTINUANCES

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In cases of illness or emergency, officers may have their scheduled cases continued. In the event an officer cannot attend court because of the above reasons, the officer shall be responsible for notifying the Clerk of the Court and the Commonwealth's Attorney.

In cases where the officer makes the continuance request to the Clerk of the Court, the officer shall be responsible for making telephonic contact with the defendant and any witnesses involved.

309.6 OVERTIME APPEARANCES

Best Practice **MODIFIED**

When a employee appears in court on his/her off-duty time, he/she will be compensated in accordance with the current City rule or policy.

309.7 NON-DUTY RELATED COURT ATTIRE

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Officers shall not attend any court in any jurisdiction for the purpose of testifying or appearing as a defendant attired in a Harrisonburg Police uniform, unless it relates to the acts which occurred during the performance of official duties.