

	Effective: 01-26-2024	# 09-13
	Section: Operations	Replaces or Modifies: N/A New Policy
	Title: Subpoenas and Court Attendance	
Issued by: Chief Deputy Mattie Provost		

I. Purpose:

To establish policies and procedures for subpoenas and court attendance.

II. Policy Statement:

Employees of the Fort Bend County Sheriff’s Office have a significant responsibility to meet their obligations as a complainant or witness in a criminal or civil hearing, proceeding, or trial arising out of employment with this Office.

Employees are also obligated to properly prepare to testify in a civil or criminal trial or proceeding and to provide evidence, documents, or other tangible objects when requested. The responsibility for attending court is a high priority.

Employees will appear and conduct themselves in a professional manner as to maintain the dignity of the Sheriff’s Office.

Employees who fail to appear without making proper notification or following procedures outlined in this directive are subject to disciplinary action.

III. Definitions:

Administrative License Revocation (ALR) – A hearing conducted by the Department of Public Safety (DPS) and the State Office of Administrative Hearings to determine whether a defendant charged with refusing to take or failing to pass an alcohol concentration test should have their Texas drivers license will be suspended or revoked.

Character witness – A witness who testifies about a person’s character, reputation, or moral traits.

Expert Witness Fee – Compensation received by an employee from any source other than Fort Bend County for testimony given in any legal action.

Factual Witness – A witness whose testimony concerns facts within the witness’ personal knowledge.

Legal Action – All criminal and civil court proceedings, Texas Board of Pardon and Paroles proceedings, civil service, arbitration, or administrative hearings.

Subpoena – An order to appear at a certain time and place to give testimony upon a certain matter.

Witness Fee – Statutorily mandated fees that accompany some civil and criminal subpoenas.

**Fort Bend County Sheriff’s Office General Order # 09-13
Subpoenas and Court Attendance**

IV. Details and Procedures

A. The Human Resources Division (HR/HRD) will be the authorized agent to receive subpoenas. Upon receipt of a subpoena, the HRD will enter the following information in a tracking system:

- Employee's name
- Supervisor's name
- Date and time subpoena received
- Court of appearance
- Date and time of appearance
- Court case number
- Case or docket number
- Defendant's name
- Subpoena disposition

1. The HRD will send an email to the deputy and the supervisor and attach an electronic copy of the subpoena.

- a. Should a subpoena be issued to an employee who is no longer employed by the Sheriff's Office, the HRD supervisor will notify the issuing court and document the notice.

2. The supervisor will ensure the deputy has not requested any time off and is not scheduled for in-service training or other Sheriff's Office function.

- a. Employees who are subpoenaed in a criminal case and who have an unexpected conflict will contact the prosecutor, directly. Employees who are subpoenaed in a civil case and who have an unexpected conflict will contact the Assistant County Attorney in charge of subpoenas, directly. This policy establishes procedures in the event an officer becomes ill or injured, is dispatched to a call, or experiences another urgent matter that impedes the officer from reporting to and attending the hearing or proceeding.
- b. When an officer has received approval for time off and a subpoena is issued on any of the days off, the supervisor receiving the notice of the subpoena must ensure the officer is informed.
- c. An employee who has received approval for days off and later receives a subpoena for any of those approved days, will contact the prosecutor directly and determine if the case will be reset or if other options exist for the officer's testimony.
- d. An employee on approved days off will not be expected to appear in court provided that sufficient notice has been provided to the prosecutor (at least seven calendar days).
- e. Employees who are off work due to an on-duty injury may be excused from court. It will be the responsibility of the officer's supervisor in these situations to notify the prosecutor and inform the officer of any rescheduled proceedings.

3. If a subpoena is served directly on an employee, he or she shall notify his or her unit commander via email or written memorandum so the necessary entry will be made in the HR subpoena tracking system.

4. All personnel served with a subpoena shall comply with the instructions on the subpoena and any subsequent oral instructions of the judge or magistrate who has jurisdiction of the case. Personnel who are subpoenaed to appear may, in lieu of appearance at the time

specified in the subpoena, agree with the party at whose request the subpoena was issued to appear at another time or upon such notice as may be agreed upon. Information regarding any such agreement shall include the employee's, other party's, and defendant's names, case number, and any other pertinent information, and shall be communicated immediately to the employee's unit commander and HR.

5. If an employee is subpoenaed in a civil case where records requested could impact an open criminal investigation and/or prosecution, the employee may contact the County Attorney's Office for assistance.
- B. Employees will obey all subpoenas and notifications, including those conveyed verbally by a court official, police supervisor, or municipal, county, or state liaison.
1. Employees will arrive on time for all required court appearances and will be prepared to testify and offer evidence, documents, or other tangible objects requested. The arrival time will be confirmed by the court clerk, court staff, civil service liaison, arbitrator, or hearing examiner.
 2. An employee on a regular day off is not a valid reason for the employee being absent from court.
 3. Employees who are relieved of duty or temporarily suspended are not exempt from a requirement to obey subpoenas and notifications.
 4. Personnel who are injured-on-duty or who are on light-duty will honor subpoenas and notifications unless the nature of the injury of illness makes court appearance medically inadvisable.
 5. The judge of the issuing court has the sole legal authority to excuse an employee from a court subpoena. If the judge of the court denies the request, the employee will appear as ordered.
 6. Employees who receive multiple subpoenas for multiple courts on the same day will attend each court if possible, and when subpoenas are received for the same time, employees will prioritize attendance to the highest criminal courts. Employees will follow excuse procedures outlined in this policy on other court subpoenas.
 7. Once an employee receives a subpoena, he/she shall not schedule any type of leave which will conflict with the proceeding or pre-trial conference.
- C. Unit Commander Responsibilities
1. Shift lieutenants shall ensure that court overtime is managed in a fiscally prudent manner by conducting quarterly audits to confirm that court "overtime worked reports" are
 2. Ensure consistent, prompt court appearance, and credible testimony by personnel under his or her command;
 3. Hold all personnel under his or her command accountable for adherence to Sheriff's Office unit court appearance policies;
 4. Timely resolve any court appearance problems that may develop with the local courts, District Attorney's Office, County Attorney's Office, City Attorneys, Civil Service, or Public Defender's Office;

5. Ensure subpoenas are accepted and served on the subpoenaed employee if the employee is in his or her unit. The acceptance of a late subpoena will be at the discretion of the unit commander based on his or her knowledge of the employee's availability;
6. Ensure the address on the subpoena is corrected and that the subpoena is returned to the person delivering it if the employee has been transferred;
7. Ensure the investigating officer or the court deputy is notified if unable to serve the subpoena;
8. Ensure that court case continuances are recorded after receiving notification of a continuance from the employee subpoenaed;
9. Ensure that personnel who are disregarded from court due to illness or other matter, are not working extra employment or overtime programs that may conflict with the subpoena;
10. The shift commander will ensure employees appear as subpoenaed. At least once per month, the commander will assess quality of an employee's testimony as well as the appropriateness of the employee's professional demeanor and attire; and
11. The shift commander shall prepare and submit a monthly report to the division captain indicating court overtime expenditures, a synopsis of any prosecutor inquiries and documentation of issues that arise from audits. The report shall identify persons contacted during the inquiries and audits and summarize actions taken to resolve problems and complaints.

D. Overtime

1. Employees may be subpoenaed for court at times that differ from the employee's shift or assignment. In these instances, employees will enter their work hours into the time management system to be paid at a rate of straight time. When an officer's time exceeds the 43 work week hours, the time will be paid at time and a half.
2. Employees have the option of receiving compensatory time or pay for off-duty court appearances involving appearance as a witness or when attending judicial proceedings for municipal, JP, county, state, or federal or political subdivision or government agency that is a party in interest. Employees must be physically present to qualify for court overtime.
3. Court-ordered breaks requiring employees to return to court the same day will count as time actually spent in court when calculating court attendance compensation.
4. Employees who testify as a witness or who are required to give a deposition provided the testimony is the result of a service rendered in the employee's official capacity, qualify for court overtime compensation.
5. Employees who are suspended or relieved of duty and who are subpoenaed and attend court will be compensated at their hourly rate for the time spent on the proceedings.
6. The court compensation pay will begin at the time the court subpoena commences or at the time requested by the prosecutor and will end with the time the employee completes testimony, or when the employee returns evidence to the property room. When an employee is required to retrieve documents or evidence for court, the overtime pay will begin when the officer arrives to pick up documents or evidence.
7. When there are 2 or more hours between the officer's departure from court and the beginning of the officer's shift, the employee may report to his workstation and receive compensation for no more than 2 hours. This time may be spent entering court disposition information into the reporting system.
8. Employees are approved for a minimum of two (2) hours overtime for any official proceeding attendance when the commencement time is on a regular day off.
9. In instances where court attendance or an official proceeding is held more than two hours prior

to a work shift or after a work shift, the attendance will qualify for a minimum of four (4) hours pay.

E. Stand-By Status

Employees will be compensated while on “stand-by status,” when the officer is physically present at the court and has been advised to remain accessible for testimony. In these circumstances, the officer must notify his supervisor and must remain within an hour of the court so as to respond when called.

F. On-Call Status

1. Employees will not receive overtime compensation when they are placed “on-call.”
2. Employees placed on call will receive overtime compensation as soon as they arrive at the court; however, employees who attend court during their shift will be considered on-duty at the time and will not be eligible for overtime compensation unless the court testimony is completed at a time after the employee’s shift.
3. Personnel who are placed "on-call" shall appear promptly when contacted by the District Attorney's Office, County Attorney, City Attorney, Justice of the Peace, concerned court's bailiff, the designated Assistant County Attorney or Civil Service Liaison and shall be adequately prepared to testify on the specified case, adhering to procedures outlined in the following subsections.

G. Testimony for Defense in Civil or Criminal Cases

1. Any employee who is subpoenaed or requested to testify on behalf of the defense in a criminal case, against Fort Bend County in a civil case, or against the interest of the Sheriff's Office in a civil case or against the interest of the Sheriff's Office in any civil service hearing, arbitration, or administrative hearing will immediately notify the Sheriff in writing through the chain of command.
2. Any employee subpoenaed as depicted in #1 above, will also immediately notify the prosecutor, assistant county attorney, JP, civil service liaison, or plaintiff's or respondent's attorney who is representing the interest of Fort Bend County.
3. Employees appearing as requested in #1 above, are prohibited from donning the official Fort Bend County Sheriff's Office uniform in any proceeding to which they are subpoenaed or requested to testify on behalf of the defense in a criminal case, against Fort Bend County in a civil case, or against the interest of Fort Bend County or the Sheriff's Office in any civil service hearing, arbitration, or administrative hearing.
4. Employees who are subpoenaed to testify as a character witness for the defense or on behalf of another employee in a legal action will do so on their own time and will not be eligible for overtime compensation. This attendance will also not be conducted during an officer's shift, unless the employee takes time off for this proceeding.
5. Employees who are subpoenaed by either side to testify as a factual witness in a legal proceeding involving Fort Bend County will receive compensation as described in this policy.

H. Witness Fees

1. Employees may retain any lawful witness fee attached to a subpoena. The witness fees attributed to civil, criminal, or administrative cases at the state or federal level (except state criminal cases which do not require a witness fee) are statutorily mandated and not considered compensation.
2. Witness fees are not considered professional or expert witness fees, which require an employee to obtain an off-duty employment permit.
3. Witness fees attached to a subpoena are not in conflict with normal pay for duty, court pay, or overtime compensation if the employee is being subpoenaed for some incident that arose as a result of his or her employment with Fort Bend County. This includes witness fees that accompany subpoenas for depositions or any other discovery proceeding for which an employee is subpoenaed to give testimony.

I. Expert Witness Fees

Employees will not accept professional witness fees for any matter investigated by the Fort Bend County Sheriff's Office, in testifying for the defense in any criminal case, and in any case in which Fort Bend County has an interest.

J. Failure to Appear in Court

Employees who are properly served and who receive notice they are needed for an official proceeding and who fail to appear will be subject to an internal investigation and disciplinary action.

J. Employee Testimony

1. Employees are expected to understand their responsibility to report the facts and to testify with honesty and accuracy regardless of any effect it may have on the ultimate disposition of the case.
2. Employees shall carefully review the facts of the case prior to testimony and to study any notes and memoranda ahead of time so that he may testify confidently.

K. Courtroom Attire

1. Employees attending court or hearings, including video and teleconference for judicial proceedings or civil proceedings where testimony is the result of the employee's actions in an official capacity shall appear in a regulation uniform.
2. Plainclothes and undercover employees are to appear in professional, business attire and meet Sheriff's Office grooming requirements.
3. Members shall not wear the uniform or any other authorized uniform in any proceedings to which they are subpoenaed or requested to testify on behalf of the defense in a criminal case, against the County in a civil case, or against the interest of the Sheriff's Office in any civil service hearing, arbitration, or administrative hearing.

M. Jury Duty

1. Employees receiving a jury summons shall report in proper civilian attire on the date indicated on the official jury duty notice.
2. Prior to the jury duty date, employees are to notify their supervisor of the official notice of jury duty.
3. Members serving on jury duty are carried as “Administrative Leave,” and not required to report for regular duty either before or after their service on a jury or after being released from jury duty for the day.
4. Employees who are assigned a shift prior to jury duty on the date immediately prior to the date may be relieved from their regular duty early to return home to rest prior to reporting for jury duty.
5. Employees whose jury duty service extends additional days shall notify their supervisor so that they may continue to be carried as “Administrative Duty.”
6. Any compensation received by an employee on jury duty during a normal workday is to be submitted to the Fort Bend County General Revenue fund. Any compensation received for jury duty on an employee’s regular days off is retained by the employee.

Only the Sheriff or Chief Deputy may authorize exceptions to this General Order.