

# General Order

## Houston Police Department



ISSUE DATE:

July 11, 2016

NO.

300-25

**REFERENCE:** Supersedes all prior conflicting Circulars and Directives, and General Order 300-25, dated July 6, 2012

### SUBJECT: COURT ATTENDANCE AND COMPENSATION

#### POLICY

Employees shall appear in court when subpoenaed unless an incapacitating illness or an emergency prevents them from reporting as scheduled. Employees shall use the Court System Management and Resource Technology (CSMART) program to receive subpoenas and to document court attendance.

Overtime compensation shall be made in accordance with federal and state statutes, the City of Houston Code of Ordinances, and the department's Meet and Confer Agreements.

This General Order applies to all employees.

#### DEFINITIONS

**Administrative License Revocation (ALR) Hearing.** A hearing conducted by the Department of Public Safety (DPS) and the State Office of Administrative Hearings (SOAH) to determine whether defendants charged with refusing to take or failing to pass an alcohol concentration test shall have their Texas driver license suspended or revoked.

**Character Witness.** A witness who testifies on behalf of a person as to that person's character, reputation, or moral traits.

**Computerized Subpoena.** A subpoena transmitted by computer.

**Court System Management and Resource Technology (CSMART).** The courts' program used to enter subpoenas and to document court attendance for HPD employees.

**Disregard.** Employee's disregard request has been approved by the supervisor or the supervisor has created the *disregard* directly.

**Disregard Request.** Employee has reviewed the subpoena and requests to disregard it (pending supervisor approval).

**Expert Witness Fee.** Compensation received by an employee from any source other than the City of Houston for testimony given in any legal action.

**Factual Witness.** A witness whose testimony concerns facts within the witness's personal knowledge.

**Legal Action.** Any criminal or civil court proceeding, Texas Board of Pardons and Paroles proceeding, or civil service, arbitration, or administrative hearing.

**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.

#### 1 GENERAL

Once a citation or case is completed and turned over to the courts, the final disposition of the citation or case is the exclusive purview of the court and the employee's role is to serve as a witness.

On a regular basis employees shall log on to CSMART to receive any subpoenas they may have. Employees shall obey all subpoenas and notifications to attend court, including those conveyed by computer, as

well as any verbal summons received directly from a court official, police supervisor, or municipal or county court liaison personnel. Employees shall arrive on time for all required court appearances and be prepared to testify.

Employees relieved of duty or temporarily suspended shall obey all subpoenas and notifications. Employees on injured-on-duty leave or transitional duty shall honor all subpoenas and notifications unless the nature of the injury or illness makes court appearance medically unadvisable.

Unless an employee is disregarded from a court subpoena by the judge or designee of the issuing court or by an on-duty supervisor with a valid excuse (Municipal Court only), the employee shall appear as ordered (see section 3, *Court Disregard Request Procedures*, of this General Order).

Employees may be released from a court for meal breaks by only the judge or designee of that court, but can be preempted to report back at any time.

Unauthorized absences from court, ALR hearings, or parole hearings are subject to disciplinary action. An employee being on a regular day off is not a valid reason for the employee to be absent from court. Employees required to attend court during their regular duty hours on a day that personal leave had been scheduled shall have their personal leave adjusted to reflect the number of hours actually taken.

Employees are prohibited from wearing a department uniform, police badge or patch, or official police identification while observing any criminal proceeding in which the defendant is or has been an employee of the Houston Police Department or while observing any civil proceeding against the interests of the City of Houston, the state of Texas, or the federal government. This prohibition does not apply to employees attending a proceeding as required by the

employee's on-duty assignment. This prohibition does not preclude employees from attending such proceedings in an off-duty non-uniformed capacity.

#### Non-computerized Subpoenas

An employee receiving a non-computerized subpoena shall contact the Municipal or County Court Liaison Office to have an electronic subpoena generated.

#### Floating Holiday

Employees may use one of the below methods to handle their floating holiday time in the unlikely event an employee is mandated to attend court during regular duty hours on a day previously approved as a floating holiday.

- a. When summoned to court at the beginning of their shift, employees shall report for duty after being released from court to finish the remainder of their shift. Timekeepers shall ensure the floating holiday remains unused.
- b. Employees shall take other personal leave to finish out any time discrepancies from their court time and their entire shift. Timekeepers shall ensure the floating holiday remains unused.
- c. Any scenario other than the two previous shall be handled on a case-by-case basis.

Employees are responsible for notifying their supervisor and the timekeeper of any changes from the original request. Employees shall keep documentation in case questions arise concerning their court attendance.

## **2 SUPERVISORS' RESPONSIBILITIES**

Division commanders shall ensure that all supervisors under their command receive

all appropriate training necessary to execute subpoena procedures.

Supervisors shall immediately inform their shift commander if they need CSMART training. If supervisors experience a problem with the subpoena system, they shall document the incident and ensure the Municipal Court Liaison Office is notified.

Division commanders are responsible for ensuring employees under their command follow all subpoena procedures. Supervisors shall follow these procedures, which include, but are not limited to, the following. Supervisors shall:

- a. Immediately notify employees, regardless of shift or days off, of subpoenas or disregard notices.
- b. Process disregard requests by completing the disregard procedure for computerized subpoenas.
- c. Require documentation from employees verifying reasons given for absences if the validity of an excuse for missing court is questionable.
- d. Monitor employee court attendance and check for patterns of abuse.
- e. Conduct audits of court attendance for their employees and investigate all absences.
- f. Ensure the accuracy of *Court Overtime Request* forms they sign. Overtime requests may be returned to employees for explanation or correction. All court overtime denials shall comply with General Order 300-07, **Overtime Compensation**.

### **3 COURT DISREGARD REQUEST PROCEDURES**

Employees who are disregarded from court due to illness shall not work any extra em-

ployment or scheduled overtime during the 24 hours following the beginning of the scheduled court appearance.

Employees with multiple subpoenas for the same date shall attend each court if possible. Should court circumstances prohibit honoring all subpoenas, employees shall attend the highest court and handle absences from the lower courts according to normal disregard procedures.

Employees may not request to be disregarded from non-Municipal Courts proceedings.

#### **Municipal Courts**

Municipal Courts disregard requests shall occur prior to the date and time of the court setting specified on the subpoena. The court liaison offices shall not accept disregard requests after that time.

Employees shall review computerized subpoenas or disregard notices immediately upon notification by a supervisor to attend or disregard court. When an employee is notified of a subpoena for a date on which the employee has previously scheduled an absence or is otherwise unable to honor the subpoena, the employee shall personally contact the prosecutor handling the case to advise of the need to be absent. This does not absolve the employee of the responsibility to honor the subpoena unless the judge in that court disregards the employee. The name of the prosecutor contacted shall be documented by the employee.

Employees shall notify an on-duty supervisor when they need to be disregarded from court. Employees are required to be disregarded from court when they have a valid excuse for not attending court. Examples of valid excuses for missing court include, but are not limited to, the employee being sick, on preplanned time off, or on duty and preempted by a call for service.

#### 4 COURT ATTENDANCE CERTIFICATION

Off-duty employees without a subpoena or notification to attend court, return to court, or attend meetings with prosecutors for any day not specifically stated in the subpoena (e.g., a continuance) shall have the prosecutor or judge complete and sign the *Substitute for Court Subpoena* field printed on the back of the *Court Overtime Request* form. On-duty and off-duty employees shall report to the liaison office (or call the liaison office if at an off-site location) prior to and following the appearance (trial, hearing, meeting with prosecutor, etc.).

Employees shall not certify *Court Overtime Request* forms for other employees. Employees shall not complete sign-in logs for other employees.

##### Municipal Courts

- a. *Arrival Certification.* On-duty and off-duty employees shall report to the Municipal Court Liaison Office and complete the Municipal Court Attendance log. The information entered on the log shall be legible and include employee numbers and telephone contact numbers. Employees shall enter their arrival time in the log, not the time on the subpoena. If there is no liaison office at the court, then employees shall report directly to the subpoenaing court. Employees shall be able to report to court within 30 minutes or as ordered by a court official or by a liaison office employee to avoid having their cases dismissed. If no contact number is provided, then the employee shall remain in the liaison office or the courthouse.

Off-duty employees shall certify their arrival time by inserting a *Court Overtime Request* form into the time-stamp machine located inside the Municipal Court Liaison Office or, if not available, in the courtroom.

After signing in with the municipal court, employees shall check the status of their cases every hour.

- b. *Dismissal Certification.* Off-duty employees shall have the *Courtroom Dismissal* field of the *Court Overtime Request* form completed and certified by a court prosecutor or other competent court authority. Employees shall then personally deliver the completed *Court Overtime Request* form to the Municipal Court Liaison Office for final dismissal time certification.

Off-duty employees who find the Municipal Court Liaison Office closed shall note "liaison closed" and the time the office was found closed in the *Employee's Final Dismissal Time* field.

On-duty employees shall document their departure time on the log and then return directly to their duty assignments.

Exempt classified employees shall certify court attendance in the same manner as other employees, but shall use an *Exempt Employee Compensation Request* form (available on the department's Intranet Portal).

##### Harris County Courthouse Complex

- a. *Arrival Certification.* Before reporting to court, on-duty and off-duty employees shall report to the County Court Liaison Office and complete the County Court Attendance log. The information entered on the log shall be legible and include employee numbers and contact information.

Off-duty employees shall submit their *Court Overtime Request* form to the liaison office for arrival time certification.

After reporting to the county or district court, employees shall check the status of their cases every two hours.

If, in response to official notification, an employee is required to appear prior to the scheduled court time to meet with prosecutors to review a case, the employee shall first go to the County Court Liaison Office for arrival time certification.

Upon arrival in court, off-duty employees shall have the *Courtroom Arrival Time* field of the *Court Overtime Request* form completed and certified by the court clerk, prosecutor, or judge.

- b. ***Dismissal Certification.*** Off-duty employees shall have the *Courtroom Dismissal Time* field of the *Court Overtime Request* form completed by the court clerk, prosecutor, or judge. Employees shall then deliver the form to the County Court Liaison Office for final dismissal time certification.

Off-duty employees who find the County Court Liaison Office closed shall note "liaison closed" and the time the office was found closed in the *Employee's Final Dismissal Time* field.

On-duty employees, upon being released from court, shall check out with county court liaison personnel before returning to their duty assignments.

#### Off-Site Certification

When employees arrive at an off-site location for a legal proceeding (e.g., federal court, contiguous county court, deposition, hearing), employees shall telephone either the Municipal or County Court Liaison office to register their attendance. Liaison personnel shall log the arrival and related subpoena information and enter the information into the CSMART. Employees shall also call a liaison office to check out.

When attending court or judicial proceedings out of town or away from the municipal or Harris County court complexes while off

duty, employees shall have their arrival and dismissal times certified by the court clerk, prosecutor, or judge of the court or office attended. Employees shall note "off-site/no liaison" in the *Employee's Final Dismissal Time* field.

#### **5 COURT ATTENDANCE COMPENSATION**

Employees have the option of receiving compensatory time or pay for off-duty court appearances.

All court overtime requests shall be submitted on the appropriate Houston Police Department *Court Overtime Request* form or *Exempt Employee Compensation Request* form. All non-computerized subpoenas shall be attached to the back of the form and the case disposition shall be documented in the area provided. All *Court Overtime Request* forms for courts attended on the same day shall be submitted simultaneously and to the same supervisor.

Court overtime compensation is authorized when off-duty employees serve as witnesses or attend judicial proceedings for federal, state, county, or city government, or for any other political subdivision or governmental agency that is a party in interest. Notwithstanding other provisions of this General Order, employees shall be physically present to qualify for court overtime compensation.

Court ordered breaks requiring employees to return on the same day shall count as time actually spent in court when calculating court attendance compensation. An employee on a court ordered break shall not use this time to conduct personal business.

Court overtime compensation shall also be authorized for off-duty employees who serve as witnesses or are required to give depositions for private litigants provided the

testimony is the result of a service rendered in the employee's official capacity. Employees must be officially subpoenaed to attend as a witness or to give a deposition before court overtime compensation is authorized.

Employees on temporary suspension are eligible for court pay at their straight time rate. The temporary suspension status shall be noted in the *Additional Details* field of the *Court Overtime Request* form.

Exempt classified employees shall be compensated for attending court while off duty. Compensation shall be in accordance with General Order 300-36, **Exempt Time Compensation** and the current Meet and Confer Agreement. Exempt time compensation shall be considered assignment pay.

Employees on relieved-of-duty status are assigned to a regular 0900 hours to 1700 hours workday and shall appear in court, as required, during those hours without additional compensation. If these employees are required to exceed their regular duty hours while honoring a court subpoena, they shall be compensated at the regular, court overtime rate. This also applies to employees whose duty hours have been adjusted for training.

Compensation for off-duty employees shall begin at the time the employee is scheduled to appear in court or when the employee arrives in court, whichever is later, and shall end at the time documented by the court liaison office, unless the employee is entitled to the minimum compensation as described in section 6, *Minimum Compensation*, of this General Order. Employees shall clock out with the court liaison office as soon as possible following the courtroom dismissal time. Exceptions to the above provisions include the following:

- a. When attending court at the downtown Harris County Courthouse complex, court overtime compensation may begin

up to, but no more than, 15 minutes prior to the scheduled appearance time. This is provided the employee was stamped in by court liaison personnel at least eight minutes prior to the scheduled appearance time.

- b. An off-duty employee required to obtain evidence from or return evidence to the Property Division shall be compensated for the amount of time necessary to complete the tasks. The appropriate *Authorization for Temporary Checkout of Property (or Evidence)* form (available on the department's Intranet Portal) shall be attached to the *Court Overtime Request* form. The employee shall document in a supplement report the handling of evidence in accordance with General Order 700-01, **Property/Evidence Control Regulations**.

Employees shall not assign themselves or anyone else to a case or citation for the sole purpose of obtaining or accruing court overtime compensation.

## 6 MINIMUM COMPENSATION

Employees shall not receive regular duty pay, court pay, overtime pay, or exempt time compensation while being compensated by another employer.

Employees who have multiple court appearances on the same day shall:

- a. Earn a minimum of two hours for each appearance if there is more than two hours between the actual courtroom dismissal time of the first appearance and the scheduled starting time of the second appearance.
- b. Treat any gap time between court appearances as a continuation of the first court appearance if the actual dismissal time of the first appearance and the scheduled starting time of the second

appearances are two hours or less apart.

Appearances commencing two hours or less before the scheduled beginning of an employee's regular shift shall result in compensation for the entire period between the time the employee is scheduled to appear in court or the arrival time in court, whichever is later, and the beginning of the employee's regular shift.

Court appearances commencing at the end of or during an employee's regular duty hours and continuing beyond the employee's end of shift shall be treated as a continuation of the employee's shift. Compensation shall be calculated from the end of the employee's shift to the end of the court appearance or the time documented by the liaison office.

In all other situations, employees are entitled to a minimum compensation of two hours for any court appearance occurring outside of their regular duty hours. This shall be documented by showing the two-hour period using military time in the "from" and the "to" blanks on the appropriate overtime form.

## **7 LAG OVERTIME**

With prior approval of a division supervisor and subject to the department's policy regarding *maximum work hours*, patrol officers may continue to work up to three hours after the end of their shift or report to work up to three hours prior to the start of their shift to fill the lag time before or after court attendance.

Officers working lag overtime shall be assigned to a patrol unit and respond to calls for service. Patrol officers working lag overtime are not eligible for the two hours minimum court compensation for off-duty court attendance. Lag overtime applies to uniformed patrol officers only.

## **8 ADMINISTRATIVE LICENSE REVOCATION (ALR) HEARINGS**

Employees who are witnesses in driving while intoxicated (DWI) cases may be required to provide testimony in ALR hearings. The DPS and the State Office of Administrative Hearings shall determine if the testimony is to be given in person or via teleconference. Employees shall respond to the *Notice to Appear* issued by the DPS as they would any other type of official notice to appear in court.

Off-duty employees who testify in person are eligible for the minimum two hours overtime compensation provided the appearance meets the criteria listed in section 6, *Minimum Compensation*, of this General Order. Employees testifying in person shall have their arrival and departure times certified by the hearing examiner. All other court overtime requirements and restrictions apply to off-duty employees testifying in person.

Off-duty employees testifying via teleconference shall be at a predetermined telephone number at the subpoenaed time to receive the teleconference call. Employees may accept these calls at any location, including a private residence. Employees testifying via teleconference are eligible for a minimum of one hour court overtime compensation. Employees testifying via teleconference shall attach documentation of their testimony to their *Court Overtime Request* form.

Employees testifying on duty shall report to the State Office of Administrative Hearings or to a predetermined telephone location to receive the teleconference call. Employees shall return immediately to their duty assignment upon release from the hearing.

## **9 OUT OF TOWN COURT ATTENDANCE**

When employees are required to attend court out of town, their duty hours shall be

temporarily designated as 0900 hours to 1700 hours.

## **10 STAND-BY STATUS**

To be placed on stand-by status by a court, employees:

- a. Shall physically arrive at the court in question.
- b. Shall be sworn in by the court's judge.

Unless ordered otherwise by a judge, employees shall be able to report within one hour to the designated court.

Employees shall notify an on-duty supervisor in their division whenever they are placed on stand-by status. Compensation shall begin at the time the employee notifies the supervisor that the employee has been placed on stand-by status.

The employees' dismissal time on the *Court Overtime Request* form is when their stand-by status ends or they are dismissed from court, whichever is later. If the employees' stand-by status is terminated by telephone, employees shall note the name of the court personnel or prosecutor who terminated the stand-by status on the *Court Overtime Request* form. Stand-by status is automatically terminated when the court recesses for the day or is adjourned.

Employees are placed on stand-by status only one day at a time. They shall repeat all of the procedures above (except being sworn in) each day to remain in stand-by status for the same court.

## **11 ON-CALL STATUS**

Off-duty employees placed on call by a judge or prosecutor shall not receive court overtime compensation while their activities are not unreasonably affected.

On-call status may include employees being required to call the court periodically, or leave a number where they can be reached. For the on-call process to work as intended, employees must be able to be contacted in the event their presence is needed in court. Once placed on call, employees are required to be available to call the prosecutor (e.g., assistant district attorney) back regarding the court case. Employees may be subject to discipline for failing to call the prosecutor back after the prosecutor attempts to contact them. If employees are called to report to court after being placed on call, the employees' court overtime compensation shall commence upon their arrival at the appropriate liaison office.

Employees who are placed on call via telephone shall immediately notify an on-duty supervisor in their division. The employee shall document the date, time, and prosecutor's name.

This procedure shall not apply when employees attend court and are then placed on call.

## **12 COMMUNICATIONS WITH CRIMINAL DEFENSE COUNSEL**

Unless subject to court order or subpoena, employees are under no obligation to speak to or otherwise communicate with criminal defense attorneys about a pending case. Employees who choose to communicate with a criminal defense attorney about a pending criminal case shall notify their supervisor in advance, if practicable; and if unable to do so are required to notify their supervisor of the communication as soon as possible thereafter.

Information volunteered by a criminal defense attorney to an employee is not privileged and may be shared with the prosecutor. Employees have a duty to notify the prosecutor of any developments, new

information, or exculpatory evidence that may come to their attention.

**13 TESTIFYING FOR THE DEFENSE IN CIVIL OR CRIMINAL CASES OR AGAINST THE INTEREST OF THE CITY OR STATE**

Employees subpoenaed or requested to testify on behalf of the defense in a criminal case; against the City of Houston in a civil case; or against the interest of the department in any civil service hearing, arbitration, or administrative hearing shall immediately notify the Chief of Police in writing through their chain of command. Employees shall also immediately notify, by telephone, the prosecutor or city attorney representing the City of Houston. Employees who are unable to contact the prosecutor or city attorney in their case shall notify Legal Services of the situation.

Employees are prohibited from wearing a department uniform at any proceeding to which they are subpoenaed or requested to testify on behalf of the defense in a criminal case; against the City of Houston in a civil case; or against the interest of the department in any civil service hearing, arbitration, or administrative hearing.

Employees subpoenaed to testify as a character witness in a legal action on behalf of another department employee shall do so on their own time unless they are subpoenaed by the City of Houston. Employees subpoenaed by either side to testify as a factual witness in a legal action involving the City of Houston shall receive compensation as described in this General Order. Supervisors unsure of an employee's status as a factual or character witness shall contact Legal Services for clarification.

Interviews between an employee and a complainant's attorney about a case arising from the employee's employment shall be done in the presence of or with the

knowledge and consent of the employee's supervisor.

Employees shall not serve civil process papers or render assistance in civil cases except as required by law. Employees shall not volunteer to testify in civil actions.

**14 WITNESS FEES**

Employees may keep any lawful witness fee attached to a subpoena. Witness fees in any civil, criminal, or administrative case at the state or federal level (except state criminal cases, which do not require a witness fee) are statutorily mandated and not considered compensation. Witness fees are not considered professional or expert witness fees, which require an employee to obtain an extra employment permit. 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. This includes witness fees that accompany subpoenas for depositions or any other discovery proceeding for which an employee is subpoenaed to give testimony.

This section does not apply to subpoenas for documents received by employees while acting in their role of custodian of records.

**15 EXPERT WITNESS FEES**

Employees shall not accept professional witness fees:

- a. In any matter in which HPD, City of Houston, other government agency, school district, or state-funded college or university is a party to or has an interest in the lawsuit, investigation, or other action for which they are appearing.
- b. For testifying for the defense in any criminal case.

- c. Unless specifically authorized by this policy and General Order 300-14, **Extra Employment**.

attendance occurs at the end of the *maximum work hour* period. Employees shall comply with General Order 200-26, **Workday and Workweek**.

#### **16 PHASE DOWN PROGRAM (PDP) OFFICERS**

Officers in the Phase Down Program are responsible for honoring subpoenas and shall be compensated for court attendance as indicated in General Order 300-35, **Phase Down Program**.

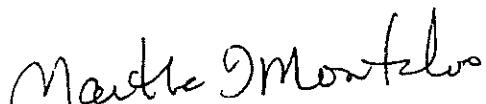
Employees are prohibited from working lag overtime or any other form of overtime or extra employment after the court appearance when the *maximum work hours* have been exceeded.

#### **17 MAXIMUM WORK HOURS**

When an employee is required to attend court and attending court will cause the employee to exceed the *maximum work hours* for any period as established by the department, the employee shall attend court as required. Court attendance is an exception that allows an employee to exceed the *maximum work hours* only when the court

#### **18 RELATED GENERAL ORDERS AND REFERENCE MATERIAL**

200-08, **Conduct and Authority**  
200-26, **Workday and Workweek**  
300-07, **Overtime Compensation**  
300-14, **Extra Employment**  
300-15, **Appearance and Grooming Standards – Classified**  
300-35, **Phase Down Program**  
300-36, **Exempt Time Compensation**  
**Meet and Confer Agreement (Civilian)**  
**Meet and Confer Agreement (Classified)**



Martha I. Montalvo  
Acting Chief of Police