
Subpoenas and Court Appearances

355.1 PURPOSE AND SCOPE

This policy establishes the guidelines for department members who must appear in court. It will allow the Irvine Police Department to cover any related work absences and keep the Department informed about relevant legal matters.

355.1.1 DEFINITIONS

Mandatory Appearance - Subpoenas marked as mandatory appearance require an employee's physical appearance in the specified court. Failure to appear as directed in the specified court or hearing location may result in disciplinary action.

On Call - When an employee receives a subpoena of a type which does not require him/her to appear in court but rather allows him/her to remain available by phone or wireless device so that he or she may be directed to appear in court within a reasonable amount of time.

Trailing Status - When an employee remains on standby status for additional court sessions until notified otherwise.

Subject to Recall - When an employee has appeared in court, or is at the time on-duty, and has been told by a member of the court that he/she is free to leave the court or return to duty, subject to being available by phone or wireless device if called back.

Court Liaison Officer (CLO) – The Court Liaison Officer (CLO) is the Irvine Police Department employee assigned to facilitate communication and transfer official documents and files between various components of the justice system and Irvine Police personnel.

355.2 POLICY

Irvine Police Department members will respond appropriately to all subpoenas and any other court-ordered appearances.

355.3 SUBPOENAS

Only department members authorized to receive a subpoena on behalf of this department or any of its members may do so. This may be accomplished by personal service to the officer or by delivery of two copies of the subpoena to the officer's supervisor or other authorized department agent (Government Code § 68097.1; Penal Code § 1328(c)).

The party that issues a civil subpoena to an officer to testify as a witness must tender the statutory fee of \$275 with the subpoena for each day that an appearance is required before service is accepted of the subpoena (Government Code § 68097.2).

An immediate supervisor or authorized individual may refuse to accept service for a criminal subpoena if (Penal Code § 1328(d)(e)):

- (a) He/she knows that he/she will be unable to deliver a copy of the subpoena to the named officer within sufficient time for the named officer to comply with the subpoena.

Irvine Police Department

Policies

Subpoenas and Court Appearances

- (b) It is less than five working days prior to the date listed for an appearance and he/she is not reasonably certain that service can be completed.

If, after initially accepting service of a criminal subpoena, a supervisor or other authorized individual determines that he/she is unable to deliver a copy of the subpoena to the named officer within sufficient time for the named officer to comply with the subpoena, the supervisor or the subpoena clerk shall notify the server or the attorney named on the subpoena of such not less than 48 hours prior to the date listed for the appearance (Penal Code § 1328(f)).

355.3.1 SUBPOENA ACCEPTANCE

Authorized department agents described above include front desk personnel and the CLO. Any department employee accepting a subpoena shall immediately provide a copy of the subpoena to the CLO as a copy to the individually named employee.

Subpoena service is also acceptable by courier or CLO from the court to this department. Subpoenas can be served electronically and will be considered served at the time they were sent. The scheduling program, commonly known as ISE, is utilized to deliver subpoena information to employees and track the ongoing status of those delivered subpoenas. Department personnel are responsible for checking ISE and their work email account on each work day for subpoenas issued through the system.

355.3.2 SPECIAL NOTIFICATION REQUIREMENTS

Any member who is subpoenaed to testify, agrees to testify or provides information on behalf of 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 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 member is called to testify or provide information on behalf of the defense.
- (d) Any civil action stemming from the member's on-duty activity or because of his/her association with the Irvine Police Department.
- (e) Any personnel or disciplinary matter when called to testify or to provide information by a government entity other than the Irvine Police Department.

The supervisor will then notify the Chief of Police, via the chain of command. The appropriate prosecuting attorney will also be notified in a manner determined by the Chief of Police. The Chief of Police should also determine if additional legal support is necessary.

No member shall be retaliated against for testifying in any matter.

Irvine Police Department

Policies

Subpoenas and Court Appearances

355.3.3 CIVIL SUBPOENA

The Department will compensate members who appear in their official capacities on civil matters arising out of their official duties, as directed by the current memorandum of understanding or collective bargaining agreement.

The Department should seek reimbursement for the member's compensation through the civil attorney of record who subpoenaed the member.

355.3.4 OFF-DUTY RELATED SUBPOENAS

Members 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.

355.4 FAILURE TO APPEAR

Any member who fails to comply with the terms of any properly served subpoena or court-ordered appearance may be subject to discipline. This includes properly served orders to appear that were issued by a state administrative agency.

355.5 STANDBY / ON CALL

To facilitate standby agreements, members are required to provide and maintain current information on their addresses and contact telephone numbers with the Department.

If a member on standby changes his/her location during the day, the member shall notify the designated department member of how he/she can be reached. Members are required to remain on standby until released by the court or the party that issued the subpoena.

355.6 COURTROOM PROTOCOL / ATTIRE

When appearing in court, members 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 as listed below:
 1. Sworn Personnel: Officers shall appear either in uniform or wear conservative attire appropriate to a courtroom setting, such as a suit or a coat, dress shirt and tie.
 2. Civilian Personnel: Whenever their appearance is required in court, personnel shall wear conservative attire appropriate to a courtroom setting, such as a suit or a coat, dress shirt and tie.
 3. Forbidden Attire: At no time should casual attire such as shorts, sandals, denim or corduroy slacks, etc. be worn in the courtroom.
 4. Firearms: Firearms carried by personnel who are in plain clothes shall have the Department badge displayed immediately adjacent to any holstered firearm.

Irvine Police Department

Policies

Subpoenas and Court Appearances

- (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.

355.6.1 TESTIMONY

Before the date of testifying, the subpoenaed member shall request a copy of relevant reports and become familiar with the content in order to be prepared for court.

355.7 OVERTIME APPEARANCES

When a member appears in court on his/her off-duty time, he/she will be compensated in accordance with the current memorandum of understanding or collective bargaining agreement.

355.8 EMPLOYEE RESPONSIBILITIES IF UNABLE TO ATTEND COURT

An employee may refuse to accept a subpoena for legitimate reasons, such as illness, previously-approved training, and vacations, which have been scheduled and approved. Regular scheduled days off are not valid reasons for refusing the subpoena or missing court. Once a subpoena is accepted, an employee unable to attend the proceeding as directed shall follow the notification protocol below:

- (a) **Illness:** The employee shall notify the CLO as soon as possible.
- (b) **Any other reason:** The employee shall, in the following order:
 1. Prepare a memo to the CLO explaining the conflict.
 2. Obtain a supervisor's approval and signature on the memo.
 3. Forward the memo to the CLO and request the CLO to contact the appropriate DA.