



CONCORD POLICE DEPARTMENT STANDARD OPERATING PROCEDURE

COURT AND JUDICIAL HEARING ATTENDANCE

GENERAL ORDER: 03.03

CREATED: December 1, 2000

ISSUED: December 14, 2017

ACTION: Amends original general order

EFFECTIVE: December 21, 2017

03.03.0 **PURPOSE**

The purpose of this general order is to establish policies and procedures for court and judicial hearing attendance.

03.03.1 **DEFINITIONS**

A. CIVIL ACTION

A court action brought to enforce, redress, or protect rights of private litigants not in a criminal proceeding.

B. COURT ADJOURNMENT

The postponement of judicial proceedings.

C. DUCES TECUM SUBPOENAS

A court summons ordering the recipient to appear before the court and produce documents or other tangible evidence for use at a hearing or trial (e.g., evidence, any department record other than a personal memorandum).

03.03.2 **ASSIGNMENT OF COURT DATES**

A. O.M.A.P. shall be responsible for the assignment of court dates. Any request for reassignment of court dates shall be submitted through the chain of command to O.M.A.P.

B. Coworkers working permanent nights shall have their regular court dates set for a Tuesday or Thursday when they are not regularly scheduled to work. Such coworkers shall clock in at police headquarters prior to going to court.

03.03.3 **CIVIL ACTION**

A. A coworker is not to volunteer to testify in civil actions and is not to testify unless legally subpoenaed to do so. Coworkers are to accept all subpoenas served.

- B. If the subpoena arises out of police department coworker actions or if a coworker is a party to a civil action arising out of departmental employment, the chief of police shall be promptly notified in writing of the service or notification, and of the testimony, the coworker is to give.
- C. Coworkers are not to enter a financial understanding for an appearance as witnesses except by departmental general orders.
- D. Coworkers subpoenaed to testify against the City of Concord shall promptly notify their commanding officer, who shall forward the information to the Chief of Police.

03.03.4 SUBPOENA RELATED PROCEDURES

- A. The following procedure shall apply to the receipt of all official subpoenas or recall notices (e.g., subpoenas issued by the City of Concord Attorney, Cabarrus County District Attorney, Cabarrus County Clerk of Courts, etc.):
 - 1. When the Customer Service Unit receives a subpoena for a coworker, it shall be date/time stamped as soon as practicable and entered into the records management system. The subpoena shall then be submitted to the coworker's supervisor.
 - 2. A supervisor shall present the subpoena to the coworker during the coworker's next working day. If the coworker is on an extended leave, a supervisor shall contact the coworker via telephone and inform him/her of the information contained on the subpoena, or deliver the subpoena to the coworker at his or her home. If the coworker is unreachable, the supervisor shall document date(s) and time(s) of attempted service.
 - 3. The supervisor shall record the fact that the subpoena was presented to the coworker in a manner consistent in 03.03.4(A) (2), by completing the return of service and submitting the served subpoena to the Customer Service Unit.
 - 4. The Customer Service Unit shall enter the date, time, and the name of the serving supervisor in the Records Management System. The originally signed subpoena will then be returned to the originating location (e.g., clerk of court or district attorney's office).
- B. SUBPOENA ISSUED IN A CIVIL CASE
 - 1. If a process server appears at a coworker's location to serve him/her with a subpoena regarding a civil case, wherein the coworker is not a named party, but which relates to actions taken by that coworker in furtherance of his/her official duties, that coworker shall not avoid service.
 - 2. If the coworker is on duty and available, he/she shall be directed to respond to the location of the process server and accept service of the subpoena.
 - 3. If the coworker is on duty, but unavailable, or if the coworker is not on duty, the process server shall be advised of the date, time and location of when/where the coworker will return to duty. **No coworker shall accept a civil subpoena on behalf of another coworker.**

4. Upon being served with a subpoena in a civil case, the coworker shall inform their chain of command of such service as soon as practicable. The coworker shall then contact the city attorney and provide the circumstances surrounding the service of the subpoena so the underlying case may then be investigated before the coworker appears in court or at a deposition.
5. No coworker shall make a court or deposition appearance in response to a subpoena regarding a civil case related to their duties, without first notifying their chain of command. Coworkers shall receive approval to make such an appearance in compliance with the subpoena by either a representative of the department or by a representative of the city attorney. This procedure does not apply to personal civil court appearances such as child custody or support, divorce, private business proceedings.

03.03.5 COURT ADJOURNMENT PROCEDURES

- A. Attendance in court or at quasi-judicial hearings as required by subpoena or as directed by competent authority is an official duty assignment. Approval to be absent from this duty, when a subpoena has been served, must be obtained from the district attorney responsible for the prosecution of the case or from another appropriate court or judicial hearing official. Failure to appear as directed shall constitute absence without leave and may subject the coworker to disciplinary action.

B. COURT CASE ADJOURNMENT REQUEST REPORT

Coworkers may request an adjournment of a Cabarrus County Court case for which they have received a subpoena, by submitting a Court Case Adjournment Request (Form CA-1) to their captain at least **seven days** prior to the date of the subpoenaed appearance, barring any exigent circumstances.

C. REASONS FOR COURT ADJOURNMENT REQUEST

The following are considered valid reasons for requesting a court adjournment:

1. Duty injury leave (non-ambulatory);
2. Previously scheduled vacation;
3. Sick leave (non-ambulatory);
4. A special circumstance not indicated above, with the approval of the requesting coworker's captain.

Exceptions to the above-noted reasons for requesting a court adjournment may be determined by the reviewing captain.

Note: In those cases where a coworker on light duty or workers compensation has ambulatory privileges, he/she is required to honor the subpoena. Coworkers appearing in court while on light duty or workers compensation shall wear civilian business attire.

D. CAPTAIN RESPONSIBILITIES

1. The coworker's captain shall review the Court Case Adjournment Request (Form CA-1) to determine the validity of the request for adjournment. If the captain determines that the request is valid, he/she shall submit a copy of the report to the district attorney's office via email to cabarrusdistrict@gmail.com.
2. If the request for an adjournment is denied the captain shall indicate the reason for denial on the report. The captain shall also notify the coworker of the denial, and the report shall be filed in the requesting coworker's personnel file.

E. ADJOURNMENT CONFIRMATION

The acceptance of a Court Case Adjournment Request by a captain is not confirmation of an approval of the request.

1. In Cabarrus County Superior Court matters, the coworker shall be contacted by the prosecuting attorney who has approved the request, for confirmation that the adjournment request has been approved. Absent a notice excusing a coworker's attendance in court; coworkers must honor their subpoenas and their regularly scheduled court dates.
2. The Cabarrus County District Court generally honors adjournment requests. Regardless, if the adjournment request can or cannot be honored, the coworker and the captain shall be contacted by the District Attorney's Office.

F. EMERGENCIES OR SICK CALL

If an emergency situation arises or a coworker becomes sick and is medically unable to honor a subpoena or attend their regularly scheduled court date, that coworker shall immediately contact their supervisor and advise them of the emergency situation. The supervisor shall make the appropriate notification to the district attorney's office.

03.03.6 COURT APPEARANCE PROCEDURES

- A. When appearing in court or other quasi-judicial hearings, either the official uniform or clothing conforming to GO 04.06 for coworkers working in plain clothes is to be worn. A neat and clean appearance is to be presented, avoiding any mannerisms which might imply disrespect to the court, such as gum or tobacco chewing.
- B. Coworkers with a case being prosecuted in any court, or when a party or witness in a case, are to be punctual in court attendance and have with them all property which is to be used as evidence during the trial, as directed by the attorney who commanded their court appearance.
- C. Coworkers are expected to be diligent and knowledgeable of the facts of the case(s) in which they shall be testifying by reviewing all applicable details of the incident and the part that they played in the matter. Notes should be prepared and organized prior to the day of the scheduled court attendance.
- D. Coworkers are required to meet with the prosecuting district attorney if requested.

- E. Coworkers are expected to be attentive and respectful toward judges, magistrates, and any quasi-judicial board or commission they appear before.
- F. Coworkers required to testify under oath shall do so with accuracy and civility, and they shall remain impartial regardless of whether such testimony is given under direct or cross-examination.
- G. Unless otherwise directed by the Chief of Police, coworkers are prohibited from providing testimony as an "expert witness" while representing the City of Concord or Concord Police Department in court, quasi-judicial hearings, depositions, or any other proceeding, when such testimony is intended to be used against the City of Concord, the Concord Police Department, or department coworkers.

The City of Concord considers department coworkers to be acting as representatives of the City and/or police department in the following circumstances:

- 1. Whenever they are compensated by the City of Concord for working during either their regular duty hours or on overtime;
 - 2. When wearing a Concord Police Department uniform;
 - 3. When displaying a department badge, identification card, patch or any other replica of such department insignia or device;
 - 4. When verbally identifying themselves as a coworker of the department.
- H. No coworker shall appear on behalf of another in any criminal proceeding without their commanding officer's advanced knowledge and approval. If another coworker is allowed to appear in the place of another, that coworker shall be responsible for being prepared with knowledge and details of the matter.
 - I. Coworkers shall avoid scheduling training on their assigned court date. Conflicts with a court date and a training date shall be forwarded to the coworker's commanding officer for consideration.
 - J. If a coworker receives a witness fee or mileage allowance for a court appearance related to performance of law enforcement duties, that fee shall be submitted to the Office of the Chief of Police.

03.03.7 DUCES TECUM SUBPOENAS

- A. Any coworker who receives a Duces Tecum subpoena shall consult with their commanding officer. In the event that the captain has a question or concern regarding the appropriate response to a Duces Tecum subpoena, the captain shall consult with the appropriate bureau commander.
- B. Records provided in response to the subpoena must first be reviewed by the coworker's captain and shall be obtained from the bureau commander.
- C. Order's received in relation to the release of any video from body worn cameras, or dashboard cameras must be in compliance with NCGS § 132-1.4A and with general

order 07.04.9(A) Video Recording Equipment to be released for any judicial proceedings.

03.03.8 **SUBPOENAS (STATE HEARING OFFICER, ETC.)**

- A. Subpoenas for coworkers involved in chemical analysis refusal hearings are issued by the North Carolina Assistant Attorney General or the Division of Motor Vehicles. Subpoenas are delivered by mail to the Office of the Chief of Police.
- B. When a subpoena is received, it shall be served on the coworker by his/her commanding officer or designee with the original returned to the proper authority.
- C. Chemical analysis hearings are conducted in the Office of the State Hearing Officer located in the North Carolina Highway Patrol building on Highway 29 – A, or in superior court. Subpoenaed coworkers shall report to that location for said hearings.

03.03.9 **OTHER JUDICIAL HEARINGS**

- A. Prompt notification to the appropriate commanding officer shall be made when a coworker is subpoenaed to court outside the City of Concord.



GARY J. GACEK
CHIEF OF POLICE