

Chapter

Employment Policies

Article

Subpoenas and Civil Processes

PURPOSE

The purpose of this policy is to outline the different processes by which an employee may be called upon to appear in court and set the expectations for complying with those appearances. And, to ensure swift action is taken upon receipt of civil process, subpoenas and discovery so that the City Attorney's Office can respond to protect the City and the Department's interests in a legal and timely manner.

POLICY

It is the policy of the Department to facilitate the proper/legal delivery and handling of subpoenas and civil processes to Department employees.

DEFINITIONS

Civil Discovery is the process by which information regarding a civil lawsuit is gathered. Examples include: interrogatories, depositions, requests for stipulated facts, requests for documents, etc.

Civil Process is paperwork that initiates a civil lawsuit, usually consisting of a complaint and summons to appear and respond.

Private Lawsuits are lawsuits against an employee in their private citizen capacity. A typical example is child custody or divorce matters.

Prosecuting agency (attorney) is an attorney who represents the City, county, and any other governmental agency that prosecutes crime, juvenile delinquency, or dependency and neglect.

Subpoena is an order to appear and testify and can also be an order to appear and bring documents. Subpoenas may be issued by the Court or by any attorney of record in a criminal or civil case.

GENERAL GUIDELINES**Subpoenas**

All subpoenas (to testify and/or to produce documents) must be personally served in order to be valid. That is, handed directly to the person named on the subpoena, unless the person signs a waiver of service and promise to appear. Failure of a person properly served to comply with a subpoena is punishable as contempt of court. (Colorado Rules of Civil Procedure 45 and Colorado Rules of Criminal Procedure 17)

Any employee subpoenaed to testify against the Loveland Police Department or the City of Loveland, in any hearing or trial shall notify their supervisor upon receipt of the subpoena.



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- Subpoenas from prosecuting agencies' attorney(s): subpoenas with attached waivers of service from a prosecuting agency or an attorney representing the City may be accepted by Records personnel who shall place the subpoena in the named person's inbox. The employee will sign and return the waiver of service if available for the date of the trial or hearing. If the subpoena is for a date which the employee has previously scheduled leave, the employee should not sign the waiver of service and shall instead contact the person or agency that issued the subpoena as soon as possible regarding the schedule conflict to determine whether their appearance for that date is necessary.
 - Subpoenas from the Larimer County District Attorney's Office through the eSubpoena system are completed with a notification to the employee's email account. Employees receiving a notification will log into the eSubpoena system and click the "Waiver Card" option or provide a reason for not attending.
- Subpoenas from the Fort Collins Office of the Public Defender or defense counsel in a Larimer County District or County Court matter where the employee was acting in their official capacity: Records personnel will place the subpoena and attached waiver of service in an employee's inbox. An employee should complete the waiver of service only after notification and consultation with the Larimer County District Attorney's Office. If the subpoena is for a date which the employee has previously scheduled leave, the employee should not sign the waiver of service and shall instead contact the person or agency that issued the subpoena as soon as possible in an attempt to resolve the schedule conflict. Employees may consult with the City Attorney's Office if questions arise.

Once an employee is properly served or has submitted a waiver, the employee shall appear at the date and time commanded in the subpoena.

- All other subpoenas (civil or criminal): no employee shall accept service of a subpoena for someone else. If a subpoena is presented to an employee other than the named employee, the following steps will be taken:
 - If the person named on the subpoena is not available, Records personnel or the on-duty supervisor will inform the subpoena server when the person named on the subpoena will next be on-duty or available to accept the subpoena.
 - Records may accept a "waiver and promise to appear" and the subpoena if offered by the subpoena server and deliver the waiver and the subpoena to the employee's inbox. The subpoena is not effective unless the waiver is properly returned.

Upon receipt of any other subpoena or waiver described immediately above, the subpoenaed employee shall contact the City Attorney's office to determine the appropriate course of action.

- Subpoena to produce documents: if the subpoena requests the production of documents, the subpoenaed person shall provide Records with a copy of the subpoena. Records shall retain a copy of the subpoena and contact the City Attorney's Office to determine the appropriate course of action regarding the subpoena and the production of any documents.



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- Witness fees and mileage fees: civil subpoenas are to be accompanied with a fee for one day's attendance and mileage fees. Police Officers are not entitled to witness fees and mileage fees in criminal cases if subpoenaed in their official capacity. (CRS 13-33-103) Payment for witness and mileage fees received by an employee must be turned over to the City (Department's Budget Analyst) for deposit into the general fund.

Civil Process (Colorado Rules of Civil Procedure 4) <CALEA 52.1.4>

Lawsuits against the City or employee in his or her capacity as City employee

The City Attorney's Office is responsible for representing the City in all litigation matters. Department employees will promptly notify the City Attorney's Office when served with civil process, any subpoena not issued by a Prosecutor, and any requests for civil discovery.

A Department employee, upon receipt of civil lawsuit, civil subpoena, or civil discovery request related to his or her capacity as a City of Loveland employee shall notify his or her supervisor and deliver a copy of the process to the PSU Sergeant, who shall notify the Chief of Police and the City Attorney's Office. Each notification will be done without unnecessary delay. At the discretion of the Chief, an internal investigation may be initiated to be conducted separately from any investigation conducted by the City's legal department pursuant to the Department's Internal Affairs policy.

Type of Document	Job relatedness	Responsibility for Service
Subpoena from Prosecutor, Public Defender, Private Attorney or Pro Se Defendant	Related to Departmental duties	Requesting Party (DA/LMC) must personally serve but may include waiver of personal service
Civil Process	Related to Departmental	Legal service may be accomplished by delivery to workplace
	Not Job related (<i>Private lawsuit</i>)	Legal service may be accomplished by delivery to workplace

Private Lawsuits against an employee in their private citizen capacity: (Colorado Rules of Civil Procedure 4)

Colorado law states that a civil process for a private lawsuit against an employee in his or her civilian capacity (such as divorce, child custody, landlord tenant, or any other civil suit) may be served by:

- Handing a copy of the process directly to the person, *or*
- By leaving a copy with the person's supervisor, secretary, admin assistant, or other person appointed to receive the process.

Therefore, Records personnel and supervisors shall accept these civil processes for any other employee.

Because the person named in the civil process has only twenty days to file an answer to the civil process, the receiving supervisor or Records personnel shall deliver the process without delay to the person named in the process, by:

- Placing a copy in the person's inbox, *and*
- Notifying the person via email, telephone, or other means available for prompt notification that the person has been served with process.

