

## SUBPOENAS AND COURT APPEARANCES

### 5.01 PURPOSE

To establish Department policy regarding subpoenas and the appearance of Department personnel as witnesses at court proceedings.

### 5.02 APPLICABILITY

All personnel who handle subpoenas or are subpoenaed to appear in any matter as a result of the performance of their official duties, except for personnel involved in arbitration matters between the Commonwealth and the Pennsylvania State Troopers Association (PSTA), are subject to this regulation. Subpoenas Duces Tecum (for records) are handled by the Right-to-Know Law/Subpoena Section, Bureau of Records and Identification, pursuant to AR 6-3, Subpoenas for Records.

### 5.03 DEFINITIONS

- A. Court Proceeding: An official proceeding at the federal government level, or at any level of Commonwealth or municipal government where judicial or quasi-judicial business is conducted.
- B. Duty Related: The individual's testimony or reason for appearance relates to matters arising from the performance of official duties.
- C. Non-Duty Related: The individual's testimony or reason for appearance does not relate to matters arising from performance of official duties. For purposes of this regulation, the term "non-duty related" includes, but is not limited to, appearances by personnel who are plaintiffs in lawsuits or appearances by personnel as character witnesses.
- D. Regular Mail: Regular mail is considered to be any form of mail not requiring the addressee to complete a return receipt card or other acknowledgment of receipt.

- E. Special Mail: Special mail is considered to be any form of registered, certified, express, or other mail which requires the addressee to complete a return receipt card or other acknowledgment of receipt.
- F. Subpoena: A command by a court or administrative body to appear at a certain time and place and give testimony upon a certain matter. A Subpoena Duces Tecum requires production of books, papers, and/or other items relative to a specific incident. A subpoena will have the word "SUBPOENA" written on it and will bear a seal or other identifying mark of the court or administrative body.

#### 5.04 SUBPOENA COORDINATOR

All Department installations shall designate at least one individual as the Subpoena Coordinator for the installation. The Subpoena Coordinator shall be responsible for the processing of subpoenas in accordance with this regulation and assisting the Right-to-Know Law/Subpoena Section.

#### 5.05 ORIGIN OF SUBPOENA

A subpoena may originate from a federal, state, or municipal court or an administrative body.

- A. Federal Subpoena: A subpoena is a federal subpoena if it originates from the "United States District Court." A federal subpoena from a federal court in another state is a federal subpoena, not a state subpoena.
- B. State Subpoena: A subpoena is a state subpoena if it originates from the Commonwealth of Pennsylvania's "Court of Common Pleas," magisterial district judge, or a state court from another state.
- C. Municipal/Administrative Subpoena: A subpoena is a municipal/administrative subpoena if it originates from a municipal body (e.g., township, school board) or administrative body (e.g., Judicial Conduct Board). This term does not include subpoenas issued in arbitration matters between the Commonwealth and the PSTA, which are not covered under this regulation.

5.06 NOTIFICATION

Personnel named in subpoenas shall promptly notify their Troop Commander, Bureau/Office Director, or Lab Manager, through channels, upon receipt of a subpoena to appear at duty-related court proceedings; or non-duty-related matters where civil leave is applicable in accordance with this regulation.

5.07 TIMING

A subpoena is a command from a federal, state, or municipal court or administrative body that cannot be ignored. Subpoenas are time-sensitive and should be processed prior to the date of compliance on the subpoena. If the subpoena is received on or after the date of compliance on the subpoena, the subpoena must be processed as soon as practicable. These time limits may be extended with the permission of the person issuing the subpoena.

5.08 PROCESSING OF SUBPOENAS

Communications-Desk Unit personnel, or other personnel having contact with process servers who appear in person at Department installations to serve subpoenas, must make a decision in accordance with this regulation whether the subpoena should be accepted or immediately returned to the process server. All subpoenas accepted from process servers, as well as all subpoenas received by mail or fax, shall thereafter be processed by the Subpoena Coordinator. If the Subpoena Coordinator determines that compliance with the subpoena is necessary, the Subpoena Coordinator shall forward the subpoena to the person named therein, with instructions. If the Subpoena Coordinator determines that compliance with the subpoena is not necessary, the Subpoena Coordinator shall return the subpoena to the sender using the procedures set forth in this regulation.

5.09 ACCEPTANCE OF SUBPOENAS

In order for a subpoena to be valid and enforceable, it must first be properly "served" upon the individual named in the subpoena. There are generally three ways that a subpoena may be "served": (1) personal service; (2) special mail; or (3) regular mail. Federal subpoenas may only be personally served. Pennsylvania state subpoenas and municipal/administrative subpoenas may be served by personal service, special mail, or regular mail. All subpoenas must be

immediately date/time stamped, except those immediately returned to the process server by desk or other personnel. The following shall not apply to subpoenas issued on behalf of prosecuting attorneys, which may be served by any method, including by fax.

- A. **Personal Service:** Personal service occurs when a person physically appears at a Department installation to serve the subpoena. Personnel shall evaluate the following before accepting personal service of a subpoena.
  - 1. Determine who the subpoena is for. Subpoenas shall only be accepted for personnel currently assigned to that location. If the person named in the subpoena is not currently assigned to the location where the subpoena is served, the server should be directed to the current process server location of the person named in the subpoena. Subpoenas for the Commissioner or Custodian of Records may be accepted at any location and shall be immediately forwarded to Department Headquarters, Right-to-Know Law/Subpoena Section, Bureau of Records and Identification, 1800 Elmerton Avenue, Harrisburg, Pennsylvania 17110. Subpoenas for separated personnel may be accepted at the former installation of such personnel.
  - 2. Determine whether witness fees are necessary. A civil subpoena requiring testimony, court appearance, or travel must be accompanied by payment of the appropriate witness fee and round-trip mileage of \$40.00 per day and \$.32 per mile for federal subpoenas, or \$5.00 per day and \$.07 per mile for Pennsylvania subpoenas. Witness fees and round-trip mileage are not required for criminal subpoenas or Subpoenas Duces Tecum, which demand the production of records only with no testimony, court appearance, or travel required.
- B. **Special Mail:** Special mail shall only be accepted for personnel currently assigned to the location where the special mail is addressed. Special mail for the Commissioner or Custodian of Records may be accepted at any location and shall be immediately forwarded to the Right-to-Know Law/Subpoena Section. Special mail for separated personnel may be accepted at the former installation of such personnel.
- C. **Regular Mail:** Subpoenas received by regular mail shall be processed in accordance with this regulation. Personnel should

not sign an Acknowledgement of Receipt of Subpoena, or similar statement, acknowledging receipt of the subpoena by regular mail.

- D. Fax: Subpoenas received by fax shall be rejected and returned to the sender in accordance with this regulation. However, subpoenas issued on behalf of prosecuting attorneys may be served by fax.

## 5.10 CRIMINAL SUBPOENAS

A criminal subpoena is generally identifiable by the word "criminal" appearing somewhere on the subpoena. The parties on a criminal subpoena are identified as "United States" and "Defendant" in federal court and "Commonwealth" and "Defendant" in a Pennsylvania court. A criminal subpoena includes a subpoena issued by a magisterial district judge or other member of the minor judiciary for a preliminary hearing or summary trial.

- A. If the criminal subpoena was issued on behalf of a prosecuting attorney, personnel named in the subpoena shall comply with the subpoena, unless otherwise directed by the prosecuting attorney.
- B. If the criminal Grand Jury subpoena was issued on behalf of a prosecuting attorney, personnel named in the subpoena shall comply with the subpoena, unless otherwise directed by the prosecuting attorney.
- C. If the criminal subpoena was issued on behalf of a criminal defendant, personnel named in the subpoena shall:
  - 1. Contact the prosecuting attorney handling the case and the Office of Chief Counsel for guidance. Discuss with the prosecuting attorney whether compliance with the subpoena is legally required and whether the subpoena has been properly served.
  - 2. If the subpoena calls, in whole or in part, for the production of documents or tangible evidence, notify the prosecuting attorney and defense counsel that the Commissioner is the sole custodian of all Department records. A subpoena for records or tangible evidence must be issued to the Commissioner or Custodian of Records and should be served on the Right-to-Know Law/Subpoena Section.

- D. In all other situations not described above, personnel served with a criminal subpoena shall contact the Office of Chief Counsel.

## 5.11 CIVIL SUBPOENAS

A civil subpoena is generally identifiable by the word "civil" appearing somewhere on the subpoena. The parties are identified as "Plaintiff" and "Defendant."

- A. If the civil subpoena was issued on behalf of the Attorney General appointed to defend the Commonwealth, the Department, and/or Department personnel, personnel shall comply with the subpoena and cooperate with the assigned Deputy Attorney General in defending the lawsuit.
- B. If the civil subpoena was issued on behalf of a plaintiff or other party to a lawsuit who has named the Commonwealth, the Department, and/or Department personnel as a defendant in a lawsuit, personnel shall immediately notify the Deputy Attorney General assigned to defend the Commonwealth, Department, and/or Department personnel. If the subpoena requires the production of documents or tangible evidence, the assigned Deputy Attorney General and the Office of Chief Counsel shall be contacted. If the assigned Deputy Attorney General is unknown, personnel shall contact the Office of Chief Counsel.
- C. If the civil subpoena was issued on behalf of a plaintiff or other party to a lawsuit that does not name the Commonwealth, the Department, and/or Department personnel as a defendant in the lawsuit, such as a personal injury arising from an automobile crash between private parties, the Subpoena Coordinator shall review the subpoena against the checklist set forth below to determine legal sufficiency. If the civil subpoena is not legally sufficient, it shall be returned to the sender using the form letter in Appendage A. All applicable boxes on the form should be checked. All subpoenas returned using Appendage A shall be kept in the subpoena file along with a copy of all related correspondence.
  - 1. Witness fees/mileage: A civil subpoena requiring testimony, court appearance, or travel must be accompanied by payment of the appropriate witness fee and round-trip mileage of \$40.00 per day and \$.32 per mile for federal subpoenas, or \$5.00 per day and \$.07 per

mile for Pennsylvania subpoenas. If not, the subpoena must be returned. Witness fees are not required for Subpoenas Duces Tecum which demand the production of records only with no testimony, court appearance, or travel required. Fees shall be paid by certified check or money order made payable to the "Commonwealth of Pennsylvania" and sent to the appropriate Troop Commander or Bureau/Office Director, who shall then forward it to the Bureau of Staff Services, Fiscal Division.

2. Expert testimony: A civil subpoena requiring expert testimony must also include an expert witness fee of \$300 per day. If not, the subpoena must be returned. An "expert witness" is an individual who possesses scientific, technical, or other specialized knowledge by virtue of their skill, experience, training, and education. It is the policy of the Department that personnel may only provide expert testimony to civil litigants in cases in which they are already involved in the course of employment. If expert testimony is sought from an individual in which they are not already involved in the course of their employment, individuals must forward this request to the Office of Chief Counsel for review and permission. Personnel working as specialists in the following areas are considered to be experts for purposes of this section: Ballistics, Chemistry, Drug Identification, Beverage Alcohol Analysis, Blood Alcohol Analysis, Serological Analysis, Trace Evidence, DNA, Documents, AFIS, Latent Prints, Shoe and Tire Impressions, Digital Evidence, Photography, Collision Analysis and Reconstruction, Drug Recognition Expert, and Fire Marshal. Guidance on additional areas of expert testimony may be sought from Chief Counsel. "Expert testimony" is opinion evidence offered by an expert witness in the expert's field of expertise. Fees shall be paid by certified check or money order made payable to the "Commonwealth of Pennsylvania" and sent to the appropriate Troop Commander or Bureau/Office Director, who shall then forward it to the Bureau of Staff Services, Fiscal Division.
3. Service: In order for a subpoena to be valid and enforceable, it must first be properly "served" upon the individual named in the subpoena. If a subpoena which has been accepted under this regulation is subsequently determined to be improperly served, it must be returned.

See this regulation to determine whether the subpoena was properly served.

4. Records: If the civil subpoena is for records, the subpoena must specifically name the Commissioner or Custodian of Records in order to be forwarded to the Right-to-Know Law/Subpoena Section. If it does not, the subpoena must be returned.
5. Tangible evidence: If the civil subpoena calls for the production of tangible evidence, the subpoena must specifically name the Commissioner or Custodian of Records. If it does not, the subpoena must be returned.
6. Testimony and records and/or tangible evidence: If the civil subpoena is not only for testimony, but also requires the witness to bring documents or tangible evidence, the subpoena must be returned. Two subpoenas must be reissued in their place. The first subpoena must be issued to the person for testimony. A second subpoena for records or tangible evidence must be issued. The second subpoena must specifically name the Commissioner or Custodian of Records.
7. Time for compliance: If a civil subpoena does not allow **at least 20 days** for compliance, the subpoena should be returned to the sender, upon the approval of the Troop Commander or Bureau/Office Director.
8. Out-of-state subpoenas: A civil subpoena from another state is not effective in Pennsylvania unless accompanied by a Pennsylvania court order domesticating the subpoena under the Pennsylvania Uniform Interstate and International Procedure Act. The subpoena must be returned, and a copy maintained.
9. Excessive travel: Personnel who are served with a civil subpoena to attend a deposition requiring travel in excess of 100 miles should attempt, where feasible, to work out an agreement for a closer location. Personnel may request the assistance of the Office of Chief Counsel in this effort.

5.12 MUNICIPAL/ADMINISTRATIVE SUBPOENAS

Personnel receiving a municipal or administrative subpoena shall contact the Office of Chief Counsel for guidance. The Office of Chief Counsel will determine whether the subpoena is authentic and legally sufficient.

5.13 NON-DUTY-RELATED COURT PROCEEDINGS

- A. Personnel who are called for jury duty, or who are not parties in a non-duty-related civil or criminal court proceeding but are subpoenaed as witnesses to attend such court proceedings, shall be granted civil leave while attending proceedings in the minor judiciary, Court of Common Pleas, Commonwealth Court, United States District Court, and administrative hearings before state or federal agencies performing quasi-judicial functions.
- B. Personnel who are plaintiffs, defendants, or otherwise parties in non-duty-related civil or criminal court proceedings shall participate in those proceedings during non-duty hours or on approved leave. For purposes of this regulation, personnel who are members of a particular class specified in class action litigation do not become a party to that litigation until such time as they have been granted intervention status by the court or have opted into the class.
- C. When personnel are subpoenaed or required to appear at court proceedings, either civil or criminal, as a result of duty-related matters, they are deemed to be in a regular employment status. The Commonwealth shall provide travel and bear related expenses in accordance with existing regulations.

5.14 ADDITIONAL REGULATIONS FOR SEPARATED PERSONNEL

Subpoenas for separated personnel accepted at a Department installation and determined by the Subpoena Coordinator to be sufficient shall be forwarded to such separated personnel in accordance with AR 2-8, Financial Reimbursement of Separated Personnel.

## 5.15 RESPONSIBILITIES

- A. Troop Commander or Bureau/Office Director:
  - 1. Designate at least one individual as a Subpoena Coordinator for every Department installation under their command.
  - 2. Determine whether personnel under their command are entitled to civil leave to attend non-duty-related proceedings.
  - 3. Ensure that all personnel under their command are familiar with the contents of this regulation.
  
- B. Communications-Desk Unit Personnel: Communications-Desk Unit personnel or other personnel having contact with process servers who appear in person to serve subpoenas shall determine whether the subpoena should be accepted or immediately returned to the process server in accordance with this regulation. All subpoenas accepted by process servers, as well as all subpoenas received by mail or fax, shall be date/time stamped and forwarded to the Subpoena Coordinator.
  
- C. Subpoena Coordinator:
  - 1. Receive all subpoenas for personnel at the installation served by personal service (if accepted), mail, or fax, and ensure that the subpoena is date/time stamped.
  - 2. Forward criminal subpoenas to personnel named in the subpoena, except as otherwise provided by AR 2-8.
  - 3. Determine whether civil subpoenas are legally sufficient in accordance with this regulation.
  - 4. Return original civil subpoenas that are legally insufficient to the sender and retain copies on file in accordance with this regulation and Appendage A.
  - 5. Forward civil subpoenas that are legally sufficient to personnel named in the subpoena with instructions (if any), except as otherwise provided by AR 2-8.

6. Forward civil subpoenas addressed to the Commissioner or Custodian of Records to the Right-to-Know Law/Subpoena Section.
  7. Serve as the principal point of contact for the Right-to-Know Law/Subpoena Section.
  8. Forward municipal/administrative subpoenas to the Office of Chief Counsel.
- D. Department Personnel:
1. Ensure the subpoena has been reviewed by the Subpoena Coordinator.
  2. Notify the Troop Commander, Bureau/Office Director, or Lab Manager, through channels, upon receipt of a subpoena to appear at duty-related proceedings, or non-duty-related proceedings where civil leave is applicable, in accordance with this regulation.
  3. Follow the procedures set forth in this regulation for criminal subpoenas.
- E. Right-to-Know Law/Subpoena Section: Serve as the initial point of contact for questions from Subpoena Coordinators.
- F. Chief Counsel:
1. Develop legal checklists to assist the Communications-Desk Unit personnel and Subpoena Coordinators.
  2. Provide legal assistance to the Subpoena Coordinators and other Department personnel.