

SUBPOENAS-AND RECORDS REQUESTS

- AUTHORITY:** Penal Code Sections 832.7 & 832.8, 1203.05, 1203.45, 1326-1330, and 1328(a)(d)(e)(f)
 Civil Code of Procedure Sections: 1985.3(d), 1985(a)-1989, and 2020(d)(f)
 Welfare and Institutions Code Sections 781, 827, and 828
 Evidence Code Sections 1040, 1043-1046, and 1650-1564
 Government Code Sections 68093, 68096.1, and 68097.1-68097.6
 California Rules of Court, Rules 5.552 and 5.553
- RESCINDS:** Procedure Manual Item 1-1-111, dated 06/19/15 (Major Revision)
- FORMS:** Expense Worksheet
 Subpoena Advisement
- PURPOSE:** To provide guidance regarding departmental subpoena policy, centralization of responsibilities for subpoenas, Subpoena Duces Tecum (SDT), electronic subpoenas, and Standing Orders within the Professional Standards Division (PSD).

I. GENERAL INFORMATION

- A. A subpoena is a written legal order summoning a witness or requiring evidence to be submitted to a court or similar deliberative body such as a deposition. The majority of these are for the personal appearance of staff. Most often requests for appearance are in connection with a pending Probation Violation Hearing.

All appearance subpoenas are served upon the Custodian of Records (COR), Subpoena Clerk, or their designee at the North County Field Service Office (NCFSO). The Probation Department may not accept subpoenas for staff on personal, non-work-related matters unless acceptance would be in the interest of justice, such as when staff is the witness to a crime or when the Department is a party to a civil matter involving an employee. Although appearance subpoenas are reviewed for validity before being sent to the employee, it is ultimately the employee's responsibility to respond to the subpoena.

Local subpoenas received by the Department may be for cases pending in the Orange County Superior Courts. If the subpoena lists the Lamoreaux Justice Center (LJC) as the court location, then the matter involves a case in Family Law, Juvenile Dependency, or Juvenile Delinquency. Subpoenas from Federal Courts and adjacent jurisdictions are less common. Those subpoenas will be received and processed as established in this Procedure Manual Item (PMI).

No persons shall bring documents or records to court without prior authorization by the COR or their designee.

II. Types of Subpoenas

- A. Subpoenas for Appearance – Require the appearance of the subpoenaed individual.
 - 1. Subpoenas for appearance of employees, auxiliary staff, or volunteers.
 - 2. Subpoenas for appearance of youth in Probation custody.
- B. Subpoena Duces Tecum (SDT) – These are requests for probation records from adult case files including records maintained in the Integrated Case Management System (ICMS). This category may include Federal Court, Dependency Court, State Bar, Medical Board, and the Workers' Compensation Appeals Board (WCAB) SDTs.
 - 1. SDTs from the Medical Board and WCAB must be forwarded to Risk County Executive Office (CEO) for processing.
- C. Civil or Deposition Subpoenas – Civil matters where the Department is a third party. These may request appearance of staff and/or the production of records regarding probationers or staff. A deposit is required in the amount of \$150.00 for the appearance of non-sworn employees, \$275.00 for the appearance of sworn employees, and \$15.00 for production of documents.
- D. Pitchess Motion – A request for peace officer personnel records on sworn probation staff.
 - 1. Per Senate Bill (SB) 1421, certain peace officer personnel records are subject to release pursuant to a California Public Records Request (CPRA). The Assistant Division Director (ADD) of Professional Standards Division (PSD) will review these CPRAs.
- E. Request for Disclosure of Juvenile Case File Information (JV-570), also known as an 827 motion. Section 827 Welfare and Institutions Code (WIC) addresses the confidentiality requirements for juvenile case information/records. Juvenile case information/records cannot be discussed/presented in adult court matters without prior permission from the Presiding Judge of the Juvenile Court. A Proof of Service Form (JV-569) must be completed and filed with the JV-570 form.
 - 1. The motion is filed with the Juvenile Court and a copy of the motion is served to the Subpoena Clerk.
 - 2. A Judge's signature on form JV-573 approving the motion is required to produce records.

III. Subpoena for Appearance

- A. Receiving Subpoena Service
 - 1. A subpoena is legally valid only if issued by a person allowed to do so under the law. In criminal cases, the Court Clerk, attorney of record, District

Attorney or Public Defender Investigator may issue the subpoena. With civil deposition subpoenas, the attorney of record for any party may also sign and issue a Subpoena per Civil Code of Procedure (CCP) 1010(b).

2. Subpoenas reach the Probation Department through a variety of methods. Subpoenas are received via electronic portal, email, pony mail, fax, and courier (walk-in). The COR and Subpoena Clerk or their designee are the only staff authorized to accept service of any form of subpoena on the Probation Department. Attempted service at area offices or institution sites will be redirected to the Subpoena Clerk at the NCF SO 2nd floor.
3. The Subpoena Clerk processes all Probation Department subpoenas centrally at NCF SO.
4. The COR/Subpoena Clerk are responsible for the processing of subpoenas served to the Probation Department. Final review of production of documents and questionable subpoenas for appearance are reviewed by the COR to determine if the subpoena meets the terms of timeliness, content, applicable fees, etc.

B. Electronic Subpoena Compliance

1. The Department receives electronic service of subpoenas for appearance via the Integrated Law and Justice (ILJ) System from the Orange County District Attorney's (OCDA) office in lieu of paper subpoena service. Once the subpoena is uploaded onto ILJ, the affected employee will receive the subpoena via email from [REDACTED]. Service is considered "complete" once the subpoena arrives in the Department email system. All departmental policies and procedures regarding subpoenas remain the same.
2. Probation Department personnel will receive an email from [REDACTED] containing the subpoena.
 - a. The employee will open the email icon to view the subpoena.
 - b. The employee will acknowledge the subpoena by clicking on a link provided within the email. The link will be highlighted in blue and reads, "Clicking here confirms my appearance unless specifically excused by the DA's Office or the Court".
 - c. The employee must click on the link at the bottom of the subpoena to confirm receipt of the subpoena. This does not replace the function of being placed on-call.
 - d. If the subpoena requires the employee to be on-call, the employee must abide by the on-call instructions.
 - e. If the employee wishes to be placed on call, they must contact Victim Witness.

C. Paper Subpoena Compliance

1. Upon receipt, the employee will confirm receipt of the subpoena by contacting the Subpoena Clerk via email or phone.
2. The employee must place themselves on-call as instructed on the subpoena.

D. Staff Responsibility When Subpoenaed

1. Employees are to notify their immediate supervisor when they have received a subpoena providing the appearance date, time, and any relevant case information.
2. Per PC 1330, an employee subpoenaed in a criminal matter must comply if the place of appearance is within 150 miles of the employee's residence. Beyond that point, endorsement by a judge on the subpoena itself is required.
3. Any out-of-state requests for appearances in Criminal Court shall be staffed immediately with the COR. Expense arrangements are generally funded and arranged by the requesting agency. Ultimately, the subpoenaed employee's Division Director has the authority to approve or deny any out of state requests for court appearances.
4. Review Policy E-2 (Subpoena, Summons, and Subpoena Duces Tecum).
5. Review PMI 1-3-003 (Jury Duty and Witness Leave).
6. If the subpoena is issued by the OCDA's Office, contact Victim Witness to be placed on-call and make arrangements to appear. Victim Witness will need the following information:
 - a. The case name and number.
 - b. The subpoenaed employee's name and a contact phone number. Give them both your business number and a cell phone number.
 - c. Estimated drive time to the court (account for traffic).

If the subpoena does not list the Deputy District Attorney (DDA) assigned to the case, Victim Witness can provide the subpoenaed employee the information. If the subpoena indicates a "not on-call" status, then contact the issuing attorney directly or appear in court on the set date and time.

Victim/Witness Contact Numbers:

- a. Central Justice Center 714-834-4350
- b. Harbor Justice Center 949-476-4855

- c. Lamoreaux Justice Center 714-935-7074
- d. North Justice Center 714-773-4575
- e. West Justice Center 714-896-7188

- 7. If the court date is scheduled on the subpoenaed employee's non-work day, the subpoenaed employee must contact the subpoenaing party and give a telephone number where he/she may be reached, give a time estimate to get to court, and ask to be placed "on-call."
- 8. If the employee is on a Department-approved Leave of Absence (LOA) or if the subpoena is received while the subpoenaed employee is on vacation and their return date is after the hearing date, the Subpoena Clerk will contact the petitioning party directly.

E. Supervisor Responsibility

- 1. The employee's supervisor is responsible to monitor subpoena acceptance.
- 2. Confirm that the employee has reflected on-call status correctly on the time sheet, showing the number of hours required to be available for court and the actual hours worked – include travel and court attendance time. This applies only to work-related subpoenas.
- 3. If the employee is not scheduled to work, the supervisor will ensure that the employee contacts the subpoenaing party and gives the telephone number where he/she may be reached, gives a time-estimate to get to court, and asks to be placed "on-call".

F. SDT

- 1. An SDT is a legal procedure to obtain certified copies of business records, probation documents, and records from adult or juvenile case files.
- 2. No documents or other items will be taken to court by subpoenaed staff without specific authorization by the COR, PSD ADD, or their designee.
- 3. Delivery of the requested records to court may be required within five (5) business days of service. It is imperative that the assigned officer expedite the case file to the Subpoena Clerk/COR at NCF SO for processing.
- 4. Upon receipt of an SDT, the Subpoena Clerk will send a notification via email-to the assigned deputy.
- 5. The Court has established a Standing Order (2008-_5/08) to authorize counsel access to an adult probation file and a procedure for them to obtain copies of relevant documents related to technical probation violation hearings.
 - a. All appointments for file reviews must be made with the COR or

their designee. The COR or their designee must be present during the file review.

- b. All records are reviewed for applicable redactions.

G. Subpoenas for Youth Housed in Probation Institutions

1. The Subpoena Clerk/COR receive and process subpoenas for youth in custody at one of the institutions. The Subpoena Clerk/COR will confirm the youth's custody status with probation before accepting a subpoena and will notify the institution.
2. Institutional office personnel will:
 - a. Hand-deliver the original to the appropriate supervisor to serve the minor.
 - b. Make an appropriate entry in the unit log book and the youth's ICMS record.
 - c. Place a copy of the subpoena in the youth's Probation Institutional file.
3. The supervisor receiving the subpoena from the office personnel will:
 - a. Note on the desk calendar the youth's name, court date/time, and location.
 - b. Personally serve the subpoena to the youth and document the service in the unit log including date, time, and person who completed service.
 - c. Coordinate transportation of the youth to court:
 - (1) This may be done by the youth's parents/guardians via a temporary release if it is approved in advance by the institution's Division Director.
 - (2) Institution staff will transport the youth for matters scheduled at LJC.
 - (3) For appearances in Orange County, other than LJC, a Transportation Order via the Orange County Sheriff's Department is required in addition to the subpoena.
4. For court appearances outside of Orange County, transportation will usually be the responsibility of the requesting agency. The supervisor will coordinate this through the youth's assigned Deputy Probation Officer (DPO). The DPO will need to prepare and submit a Modification Petition prior to the court date.

H. Subpoenas for Civil Matters and Deposition Subpoenas

1. An employee subpoenaed for civil action is required to appear (subject to applicable fees – consult COR), as long as the action is pending in a court within the state.
2. Deposition Subpoenas may compel a non-party to appear at a deposition and bring documents with him/her. This subpoena may be used to compel the appearance of a person most knowledgeable about the matter. A fee of \$150.00 for the appearance of non-sworn employees and \$275.00 for the appearance of sworn employees should be collected after the testimony is complete. Consult with the COR for preparation.

I. Vacation or Flex Day Conflict – Suggested Steps

1. If an employee has a pre-approved/documented vacation scheduled and they are subpoenaed to appear in court during their scheduled vacation time, the COR/Subpoena Clerk will notify the requesting party that the employee is not available for service and a return date will be provided to them.
2. The Department cannot legally refuse a subpoena for an employee to appear in court on a date for which the employee is regularly scheduled to be off-duty. However, there are several steps the employee can pursue to avoid or minimize interruption of off-duty plans.
3. The subpoenaed employee may call the attorney who issued the subpoena, explain the situation, and ask for a continuance or relief of appearance. If the case is trailed, you may still be required to be available up to ten (10) calendar days after the date the subpoena was first issued.
4. If the attorney refuses to continue the matter or to relieve you of appearing, ask for an "on-call" status. This assumes you will be vacationing in the local area.
5. If an agreement cannot be made between the attorney and the subpoenaed employee, the subpoenaed employee may consult with their supervisor and/or the COR.
6. If an employee fails to appear in court, he/she may be held in contempt by the court and subject to disciplinary action by the Department.
7. If after acceptance of a subpoena the subpoenaed employee cannot appear, they must contact the subpoenaing attorney directly or ask their supervisor do so if they are not available. Also, notify the COR.

J. Subpoena Inquiries

1. For purposes of uniformity and familiarity with current policies and procedures, this responsibility has been centralized with the COR and Subpoena Clerk.

2. Refer all subpoena inquiries to the Subpoena Clerk (714-937-4736).

REFERENCES:

Procedures:	1-1-101	Access to and Release of Criminal Offender Record on Information (CORI)
	1-1-116	Release of Juvenile Record Information Police Reports
	1-3-003	Jury Duty and Witness Leave
Policies:	B-1	Case Confidentiality - Client's Right to Privacy
	B-2	Inter and Intra-Agency Confidentiality
	E-2	Subpoena, Summons and Subpoena Duces Tecum

Standing Order No. 2008 - 5/08 (Copy may be obtained from the COR)

M. Negrón

APPROVED: