



ALBUQUERQUE POLICE DEPARTMENT  
PROCEDURAL ORDERS

SOP 2-76

Effective: 09/29/16 Review Due: 09/29/17 Replaces: 03/10/16

## 2-76 COURT

### 2-76-1 Purpose

The purpose of this policy is to detail the procedures and expectations for department personnel appearing and testifying in court.

### 2-76-2 Policy

Department policy is to ensure that personnel are properly notified concerning court cases and Motor Vehicle Division (MVD) hearings so that they will appear at the scheduled times, properly prepared and attired.

### 2-76-3 Procedures

#### 6 A. Posting All Court Notices/MVD Hearings/Felony Pretrial Hearings

1. Division/Area commanders are responsible for ensuring that all court notices, MVD hearings, and felony pretrial hearings are posted one week in advance of the scheduled court time.
2. Personnel are responsible for checking the court notices each day.

#### 7 B. Notifications to Courts of Vacation, Leave Time, and/or Out-of-State Training

1. Personnel must submit a leave request to Court Services not fewer than twenty (20) calendar days before taking leave or attending training.
  - a. Officers will not be allowed to make a regular practice of submitting leave requests for their regular days off.
  - b. Personnel will notify the United States Attorney's office to reschedule any cases pending in the Federal District Court.
  - c. If the twenty (20) calendar-day requirements are not met, personnel will not be relieved of their responsibility to appear in court when they have been properly notified.
2. When personnel transfer or change their days off, the Court Services Unit will assign new court dates for them.
  - a. Personnel will notify the Court Services Unit of permanent schedule changes.
  - b. The Court Services Unit shall be notified of extended TDY (over two weeks).



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**6** C. Court, Pretrials, MVD Hearing Attendance, and Missed Court

1. All personnel directed to appear in court, pretrials, or MVD hearings must appear and be prepared to testify. A special court notice, posted court and MVD hearing notices, or subpoenas are considered an order to appear. For civil case subpoena and conflict of interest case directions, see subsections G and H.
  - a. Personnel shall wait for defense attorney(s) to arrive for Metropolitan Court pre-trials fifteen (15) minutes from the time of the scheduled hearing.
  - b. If an attorney calls to inform the officer that he/she will be late, the officer shall wait an additional fifteen (15) minutes if he/she is not expected in another court case. The same expectation will be requested of defense attorney(s) when police personnel inform the attorney(s) that the officer will be late.
  - c. Personnel shall have in their possession the documentation necessary for testimony in any court and/or MVD hearing. This may include police reports, tactical plans, and similar documents.
  - d. Cell phones and all electronic devices will be turned off or placed in silent mode.
  - e. Officers shall arrive for their court case or hearing at least five minutes before the scheduled time.
2. When personnel receive special court notices, subpoenas, or are scheduled for MVD hearings requiring concurrent appearances, the higher court notice shall take precedence over other courts. In addition, courts shall take precedence over MVD hearings. At the earliest opportunity, personnel shall notify the lower court of the second subpoena and shall attend the court of higher jurisdiction. Priority of attendance is as follows:
  - a. Federal Court
  - b. District Court
  - c. Felony DA pretrials
  - d. Metro Court
  - e. Misdemeanor pretrials
  - f. MVD hearings
  - g. Seizure hearings
  - h. All other notices or hearings
3. When personnel are scheduled for court or MVD hearings and are unable to appear or will be late due to unforeseen conditions, they shall notify the court at the earliest possible time and before the scheduled appearance. Failure of personnel to properly notify the court of their absence from or tardiness for a court setting shall be deemed as failing to attend the setting.
  - a. For Metropolitan and District Court notification, the officer shall notify the Court Services Unit. Calls will be accepted on the scheduled court day only. Court Services Unit shall, in turn, notify the appropriate Court.



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- b. Court Services shall provide Division/Area Commanders with a monthly call-in report through Operations Review. The report shall include the officer's name, employee number, case number, court room number, date and time of the case, officer's excuse (if any), and the officer's area command or assignment.
  - c. For Grand Jury notification (including ten-day cases), officers will follow these procedures:
    - i. Notify the presenting ADA of their absence and any witness change.
    - ii. Contact a fellow officer involved in the case so that officer can testify on their behalf.
  - d. For Federal Court notification, contact the U.S. Attorney's office Monday through Friday, 0800 to 1700 hours.
  - e. For MVD hearings notification, contact the Court Services Unit. If calling after office hours, officers will leave a message on the voicemail system. The message will include the officer's name, the date and time of the hearing, the violator's name, the case number, and the reason for missing the hearing. Officers and supervisors will not contact the hearing officer and/or MVD directly to reschedule a hearing.
4. Appropriate excuses for calling in for court may include the following:
- a. The officer is ill or has a family emergency  

Supervisors, at their discretion, may require a note from the officer's physician, should he or she call in sick for court.
  - b. If the officer is on a call, and unable to respond to court.
5. Inappropriate excuses for missing court will be evaluated on a case-by-case basis. The following are examples of inappropriate excuses.
- a. Tactical plans
  - b. Training
  - c. Day off
  - d. Vacation that was not preapproved
  - e. Range
  - f. Sick pets
  - g. Child care or taking children to school
6. Court continuances
- a. Traffic, misdemeanor, and parking cases
    - i. Officers requesting continuances will be responsible for contacting defendants or their counsel for objection as required by Metropolitan Court, without the 20 calendar day requirement.



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- ii. Form PD-1403, "Motion for Continuance," includes spaces for documentation, such as when the defendant was contacted, defendant's response, accident, shoplifting, and witness.
- iii. Personnel can receive information and paperwork on court cases and schedules from Court Services Unit personnel.
- iv. Court Services will not accept requests for continuances submitted fewer than five (5) working days before the request.

b. Criminal cases (Felonies, DWIs, and Domestic Violence)

Any officer requesting a continuance that is within the 20 calendar day requirement will contact the prosecutor that the case is assigned to.

D. Evidence Disposition

1. Primary officers or case agents attending a court appearance shall complete an Evidence Disposition Form and forward it to the Evidence Unit.
2. A separate form should be filled out for each case adjudicated on the docket during the court appearance. Indicate whether any evidence connected to the case may be disposed of or should be retained for further adjudication.
3. Officer-prosecuted cases do not need an ADA signature.

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E. Courtroom Attire and Securing Weapons

1. Civilian Attire

a. Federal or District Court

Officers will appear in formal business attire. This may include dress suits or pants suits.

b. Metropolitan Court

Officers will appear in semi-formal business attire. This may include business suits or pants suits. Suit jackets are optional.

2. Uniform Attire

a. Metropolitan Court

Officers may wear the authorized working uniform, unless they are appearing for personal reasons not related to their official duties.



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b. Federal or District Court

Officers may wear the authorized working uniform only in an emergency and at preliminary hearings.

3. Upon entering any courthouse, personnel will secure their firearms in a lock box at the security checkpoint, if so required by the court. The only exceptions will be uniformed personnel responding to a call or emergency at the courthouse.

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F. Jury Duty and Witness Fees

1. Personnel called for jury duty will be paid their regular salary while serving on a jury. Any monies received by personnel for serving on a jury must be turned over to the City.
2. Personnel called as witnesses in cases resulting from their employment will be paid their salary, per diem, and travel expenses by the City, as prescribed by law. Any monies paid to personnel while serving as a witness shall be turned over to the City.

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G. Witness Fees for Testimony in Civil Cases

1. Only the officer named on the subpoena in a civil case will accept service of the subpoena.
  - a. Failure to obey a subpoena may be deemed contempt of court.
  - b. Officers will accept service of civil case subpoenas naming them, whether or not fees are attached.

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2. If the civil case is one which involves a pending claim or suit against the officer, department, or City, or if the officer believes there may be a potential liability, the officer will notify the Risk Management Division within 24 hours of subpoena service.
3. Officers appearing in civil court during their regular duty hours will endorse the offered check as "payable to the City of Albuquerque only"; they will then give it and the subpoena to the Fiscal Management Office in City Hall.
4. When an officer is not required to appear in court, any checks received will be returned to the issuing party.
5. Officers appearing in civil court during off-duty hours may either keep the check or submit an overtime slip in the same manner as for other court overtime. If the officer elects to submit overtime, the rules outlined in subsection F will apply.



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H. Conferring with Attorneys

1. Civil cases

- a. When contacted by private attorneys on civil cases in which the City of Albuquerque has no interest, officers will take the following actions.
  - i. Refer the attorneys to the applicable police reports.
  - ii. If the attorney insists on discussing the case without benefit of a court-directed deposition, the officer will refer the attorney to the Risk Management Division for discussion with the City Legal Department.
  - iii. If the Legal Department approves an informal conference between the officer and the private attorney, the Risk Management Division will so notify the officer and the following guidelines will apply.
    - On-duty officers should respond to short questions from private attorneys by telephone, whenever possible.
    - If a telephone conference is not sufficient, the officer may schedule an off-duty conference with the private attorney. However, officers will not be compensated by the attorney.

- b. No overtime and/or compensatory time slips will be accepted by supervisors for off-duty conferences between officers and attorneys on civil cases.

2. Criminal cases

- a. Officers will meet with defense attorneys when requested to do so. The District Attorney's office will be briefed on the intended meeting and given the option of attending.
- b. A subpoena is not required for officers to meet with defense attorneys.

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I. Conflict of Interest Testimony

1. Personnel who are subpoenaed to testify in a case in which they have not been involved in as a witness, victim, investigator, or reporting officer, will determine what testimony is being sought.
2. If it appears that the testimony will be directed against another officer or law enforcement agency, subpoenaed personnel will contact the Risk Management Division before giving any testimony or deposition.
- 3.

J. Service of Subpoenas

Defense attorney subpoenas may be served to the officer, his direct supervisor, or staff at the officer's substation.

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