



# Alexandria Police Department



## Directive 10.6

# COURT APPEARANCE

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### 10.6.01 POLICY AND PURPOSE

The purpose of this directive is to set forth guidelines and procedures for police officers and other employees concerning their responsibility for pretrial preparation and case presentation; ensure that employees are familiar with the relevant duties and responsibilities of the Commonwealth's Attorney's Office and the City Attorney's Office; and ensure that employees are aware of their responsibilities when subpoenaed to testify in a judicial proceeding.

### 10.6.02 DEFINITIONS

**Affidavit** - a sworn, written declaration, made before competent authority, that may be accepted when the witness or affiant cannot be in court in person.

**Deposition** - the written answers to questions of a witness under oath.

**Subpoena** - a judicial writ requiring a person to appear in court to give testimony; to notify or summons by writ or subpoena.

**Subpoena Deuces Tecum** – a writ or process commanding a witness to produce documents, books, papers, etc.

**Summons** - a notice to a person requiring him or her to appear in court.

**Testimony** - the verbal presentation of a witness in a judicial proceeding.

### 10.6.03 RULES AND RESPONSIBILITIES

#### A. **Commonwealth's Attorney's Office**

The Commonwealth's Attorney is the constitutional officer who has the primary responsibility for the prosecution of violations of the criminal law of Virginia including felonies and misdemeanors. The Commonwealth's Attorney also prosecutes violations of the State Motor Vehicle Code and City Code violations, and provides prosecutors for the Juvenile and Domestic Relations Court.

#### B. **City Attorney's Office**

The City Attorney is appointed by the City Council and is the legal advisor to the City Council, City Manager, and all departments, boards, commissions, and agencies of the City. The City Attorney renders opinions on request; is responsible for drafting ordinances, deeds, affidavits, bonds, leases, and other legal papers; represents the City as counsel in civil cases; and institutes and prosecutes legal proceedings on behalf of the City.

#### C. **Setting Court Dates**

1. **General District Court** - Patrol Operations Bureau employees are limited to setting their General District (criminal and traffic) Court cases to one day a month unless they receive approval from their supervisor to schedule an additional date. Such approval shall only be granted for just cause, and supervisors will notify the commander of the affected employee when a request is granted. The one court day per month limit does not apply to dates for which an employee receives a subpoena or summons, or are notified by the Commonwealth's Attorney's office (or other competent authority) that they are needed.
2. **Juvenile and Domestic Relations (JDR) Court** - Patrol Operations Bureau employees are limited to setting two JDR court dates each month for *both* criminal *and* traffic cases. The dates will be bi-weekly (in non-consecutive weeks).

#### D. **Pretrial Conferences**

1. The purpose of a pretrial conference is to review the details of a case so that the prosecutor is fully aware of the facts before trial.

2. Requirements for reporting to pretrial conferences, unless specified otherwise by the Commonwealth's Attorney, are as follows:
  - a. Circuit Court
    - It is the responsibility of the prosecutor to contact and arrange a meeting with the employee. If the employee is not contacted by a prosecutor (by phone or note), but has received a summons to appear in a case, the employee will report to the Commonwealth's Attorney's Office by 9:00 A.M. on the morning of the trial, **or as specified on the summons.**
    - For city cases scheduled in Circuit Court, the employee will report at least 30 minutes prior to the scheduled court time to confer with the prosecutor regarding misdemeanor or traffic cases (where charges have been made under the City Code) which are being appealed.
    - In cases where evidence is needed for the trial, the employee will have such evidence available at the pretrial conference, as well as the trial.
  - b. General District Court

Employees will report to the Commonwealth's Attorney's Office no later than 8:30 A.M. on the morning of the trial to consult with the prosecutor handling the case. For preliminary hearings employees will report no later than 10:30 A.M., or as specified on the subpoena.
  - c. Juvenile and Domestic Relations District Court

Employees are to be present at the Juvenile Court at least 30 minutes prior to the beginning of court.
3. See section **10.6.04, B.1.b**, page 5, regarding off-duty pretrial conferences.

#### **E. Court Appearances**

1. Employees will, upon being subpoenaed/summoned, attend court or quasi-judicial hearings. Once set, court dates may not be changed without agreement of a member of the Commonwealth's Attorney's staff.
2. Any request for a change in a pre-selected court date will be submitted through channels to the appropriate Patrol Division commander. The Patrol Division commander will then consult with the Assistant Commonwealth's Attorney prosecuting the case(s) before a decision is made. Only emergencies (for example: illness or funeral leave) will be considered.
3. Division commanders will ensure their *personnel's* vacation and training schedules are updated in the *Alexandria Justice Information System (AJIS)*. The dates will be entered as soon as possible, after they are approved, preferably at least sixty days in advance of the court dates. When approved leave is later fully or partially cancelled for any reason, *AJIS* must be updated.
4. The department's training officer will forward planned training dates to affected commanders as far in advance as practical. Any changes in the dates of training will also be forwarded as soon as practical.

5. Employees who are involved in cases before the court will be punctual in attendance. The fact that employees have not received a subpoena will not relieve them of the responsibility to determine whether their appearance is necessary on their regularly scheduled court date. Additionally, employees are to appear in court when they have previously been made aware of the court date by other means (e.g., a verbal advisement by a judge or prosecutor in person, by phone or by note). Employees will have cases properly prepared, all witnesses subpoenaed or listed with the prosecutor, and all property to be used in evidence suitably arranged for presentation in court.
6. Nothing in this directive will relieve employees from the responsibility of determining if their presence is needed in court in cases where they have knowledge or evidence that could be used in a trial. If an employee believes that their appearance in court is needed and they have not received notice that they are needed in court, that employee will, as soon as possible, make contact by telephone or in person with the Commonwealth's Attorney handling the case. The Commonwealth's Attorney will then make the decision as to whether or not the employee is needed in court.
7. When marking into service at the beginning of a shift, Patrol Operations Bureau personnel will advise the dispatcher of any known court appearance that is scheduled for that day. Employees who are unavoidably detained will, as soon as possible, notify the dispatcher to advise the Commonwealth's Attorney's office of the delay.  
Note: Only life-threatening or dire, emergency situations should delay an officer from appearing in court. Duties that can reasonably be delayed until after a court appearance should be deferred until after court. It should be noted that being detained on a call is not considered by the court to be an excuse for being late to court or not showing up in court, and could result in the case being dismissed and the officer being cited for failure to appear if the situation is not deemed by the court to be an emergency. A supervisor, preferably the employee's direct supervisor, should be consulted if an employee is uncertain as to whether to perform an activity prior to court.
8. Dispatchers will make every reasonable effort to assist employees having scheduled court to appear at the appropriate time (for example, by assigning calls to other units). If it becomes necessary for an employee to handle an emergency, urgent or essential situation, the dispatcher will attempt to relieve such employee as soon as possible so they can respond to court.
9. Substituting witnesses in Grand Jury cases is not permitted unless the Commonwealth's Attorney or Deputy or Assistant Commonwealth's Attorney has personally approved the proposed substitution and the officer who is to substitute is willing to appear and is prepared to testify before the Grand Jury.

10. Employees calling in sick for court should make every attempt to contact the prosecutor handling the case(s) or the prosecutor(s) handling the daily criminal/traffic docket for which the employee was subpoenaed. The Court Liaison will notify commanders in writing when their employees call in sick. Commanders will review the matter and determine if further actions are warranted.
11. Employees should call the taped line (703) 746-4100 the night before a case is set to determine if they are needed. The information is also available on the Commonwealth's Attorney's WEB page:  
[http://www.alexandriava.gov/cattorney/ca\\_view\\_case\\_updates.pxe](http://www.alexandriava.gov/cattorney/ca_view_case_updates.pxe)

#### **F. Testifying for the Defendant**

Employees who are subpoenaed, intend to testify, or plan to appear in court on the behalf of the defense in any trial or hearing and against the City or the Department in any hearing or trial, will immediately notify their commander. This notification will take place prior to the court appearance in all cases and immediately upon receipt of the subpoena in cases where a subpoena has been issued. The commander will immediately forward the information, through the chain of command, to the Chief of Police, *and copy it to* the City Attorney *and/or* Commonwealth's Attorney.

#### **G. Civil Action, Court Appearances - Summonses**

Employees will not volunteer to testify in civil actions involving the city or this department; and will not testify unless legally summoned or unless directed by competent authority to attend and be available to testify. Employees will accept all summonses legally served. If the summons arises out of departmental employment or if employees are informed that they are a party to a civil action arising out of departmental employment, they will immediately notify the Chief of Police *and* the City Attorney in writing of the service of notification. Officers served with a Subpoena Duces Tecum will immediately notify their supervisor. The supervisor will ensure that it is delivered to the ISS Commander for processing. Under no circumstances will officers or supervisors copy official department records and forward them to the requestor.

*Any Police Department employee receiving a Freedom of Information Act (FOIA) request will notify their supervisor. The supervisor will forward the request to the City Council Liaison. The City Council Liaison processes all FOIA requests through the City Attorney's Office. The City Attorney's Office is the sole designated authority in the City for the release of any information requested under FOIA law.*

#### **H. Civil Depositions and Affidavits**

Employees will confer with their commander and the City Attorney's Office before giving a deposition or affidavit in a civil case involving the city.

#### **I. Employee Appearance**

When employees appear in court, either the official uniform or appropriate business attire will be worn. Firearms will not be displayed unless wearing the uniform, and will not be carried into any courtroom, **including Grand Jury procedures**. Lockers are provided for the securing of firearms in the Commonwealth's Attorney's Office. Employees will present a well-groomed appearance, avoiding any behavior or statements that might imply disrespect to the court.

#### **J. Respect and Testimony**

Employees will observe the utmost attention and respect toward the court at all times. They will testify with the strictest accuracy, confining themselves to the case before the court, and neither suppress or overstate the circumstance with a view of favoring or discrediting any person.

### **10.6.04 PROCEDURES**

#### **A. Signing In and Out at Court**

1. When *arriving at court*, either on or off-duty, all employees will sign the log book in the Commonwealth's Attorney's Office, Courthouse Room 301, indicating their name, *arrival* time, and the court or courts they will be attending.
2. Upon completion of the court appearance, employees will sign out in the same manner.
3. Violations of the sign-in sign-out procedure at court will be reported to Internal Investigations, orally or in an informal memorandum.
4. Failure to sign in or out from court may result in disciplinary action and/or the denial of a request for overtime for that appearance.

#### **B. Off-Duty Court Pay**

1. When employees are required to appear in court while off-duty, they will complete an Overtime Request (APD-0100).
  - a. It is sometimes necessary for employees to transport property and/or evidence to and from court for trials. This shall be considered part of the court appearance and is compensable as overtime when done off duty. Employees transporting property or evidence from Police Headquarters for a court appearance will complete the Overtime Request (APD-0100) as follows: In the "In" box to the right of the "Specify Reason" box, write the time they picked up the item(s) at Headquarters. This is the beginning of the total time for their court appearance. The Overtime Request (APD-0100) shall be initialed by a supervisor or Property Section employee. When it is necessary to transport property or evidence back to Police Headquarters, the time the property is turned in shall be noted on the Overtime Request (APD-0100) in the "Out" box to right of the starting time, and initialed by a supervisor or

Property Section employee. This is the end of the total time for their court appearance. The total time will then be noted in the spaces for "Hours" and "Minutes," to the right of "Total Time." The time for picking up and turning in property must be reasonable.

- b. Pretrial conferences with the prosecutor are usually held just prior to the case being heard in court. If the pretrial conference is held at a time separate from other court appearances, it will be considered a court appearance for overtime purposes.
- c. If the time in court is in excess of 80 minutes, the Overtime Request (APD-0100) must be signed by the clerk of the court or any other court official, or an employee of the Commonwealth's Attorney's office.
- d. The times listed for the court appearance on the Overtime Request (APD-0100) shall be the same as those on the court log. Employees shall list the time they actually complete their court appearance on the court log and the Overtime Request (APD-0100)

*Unless otherwise requested by the Commonwealth's Attorney's Office, employees are not to record court appearance beginning time prior to 0800. Allowance for property pickup and return will be compensated as outlined above.*

**Employees are specifically prohibited from leaving their ending time blank or adding time for driving back to Police Headquarters. The Commonwealth's Attorney's Office has been advised not to sign these types of overtime slips. Employees shall not receive overtime compensation for merely driving a police vehicle back to headquarters.**

- e. If an employee is notified that they are needed in court with less than **12** hours notice, and the time the employee is needed is also previously scheduled off-duty time, the overtime will qualify as call-back pay.
- f. Overtime is not authorized for cases that were listed on the taped line or the WEB site the night before trial. Employees who fail to check and come to court when he/she is not needed as a witness will not be paid overtime. (See 10.6.03.E.11)
- g. When off-duty employees are required to attend different courts, and a time lapse of one hour or more is incurred between the time the last case in one court is concluded and the scheduled beginning time of a second court, it will be treated as two separate appearances but recorded on the same Overtime Request (APD-0100). In such cases the two-hour minimum will apply for each appearance.
- h. It is permissible to round off time to the nearest five-minute increment. For example, an appearance lasting from 0800 to 1023 hours may be rounded off to 1025 for a total time of 2 hours and 25 minutes in court.
- i. Employees will, as soon as practical and preferably no later than **48** hours after the court appearance, submit the Overtime Request (APD-0100) to their immediate supervisor.

- j. Pay or Compensatory Time is authorized for court unless otherwise directed by the employee's commander.
2. Supervisors are responsible for confirming the validity of the Overtime Request (APD-0100) and, after signing it, ensuring it is submitted for inclusion with the appropriate unit's Overtime *memorandum, for court overtime only*, to Personnel and Training. The Overtime Requests (APD-0100) will be attached to the *memorandum*, which will be signed by the designated commander or supervisor.
3. Compensation will be paid according to current city policy on employee off-duty court appearances. (See Police Directive 4.15 Overtime.)
4. No payment will be made for civil proceedings except when the city or commonwealth is a party to the action, or when the proceedings arose as a result of the employee's official duties.
5. When an employee is in court during the work shift and must stay longer than the normal workday, this is shift extension and is compensated as such.
6. See Police Directive 4.15, Overtime for further information.

<b>10.6.05 SERVICE OF SUBPOENAS AND SUMMONSES ON EMPLOYEES</b>
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- A. The Court Liaison Officer will ensure that summonses and subpoenas that are issued are forwarded to the employee's supervisor as soon as practical after the court date is set. Phone notification alone will be avoided unless there is insufficient time after the court date is set to issue and serve a written notice.
- B. Subpoenas and summonses will be served on department employees only by supervisors and above, or their designees. Specifically, supervisors who are responsible for daily briefings in their respective units will execute these documents on a daily basis. If an officer is unavailable (vacation, injury, sickness, etc.) the supervisor will note the reason on the document, along with his or her name and the date, before returning it to the issuing authority. All criminal and traffic subpoenas and summonses will be executed without delay. **[74.1.2]**
- C. Supervisors/commanders who receive a subpoena or summons for service on a subordinate must execute the paper in person. Signing off on the paper and placing the subpoena/summons in the officer's mailbox is not permitted.
- D. Supervisors/commanders who receive a subpoena or summons for service will execute the paper by placing their name, serial number, and the date of service on the "copy to return" of the document. The supervisor/commander will then require the officer being served to place his or her name, serial number, and date received



on the "copy to return" of the paper. The "copy to serve" of the executed document will be given to the officer being served. The "copy to return" will be routed back to the Court Liaison. **[74.1.2]**

- E.** Officers, having been properly served, will retain their copy of the subpoena/summons until the case is resolved by the court.

**By Authority Of:**

**Earl L. Cook  
Chief of Police**