

ALBUQUERQUE POLICE DEPARTMENT
* PROCEDURAL ORDERS*

Effective: 10/20/04; Replaces: 03/18/02
04POR19

2-01 **COURT**

POLICY:

Department policy is to ensure that personnel are properly notified of scheduled court cases and Motor Vehicle Division Hearings in order to appear at the scheduled time properly prepared and attired.

RULES:

2-01-1 **POSTING OF ALL COURT NOTICES/MVD HEARINGS/FELONY PRETRIAL HEARINGS**

[6]

Division commanders are responsible for ensuring that all Court notices/MVD Hearings and Felony Pretrial Hearings are posted one week in advance of the scheduled time of court. Personnel are responsible for checking the court notices each day.

2-01-2 **NOTIFICATION TO COURTS OF VACATION, LEAVE TIME AND/OR OUT OF STATE TRAINING**

[7]

A. Personnel who have cases pending in Metropolitan Court or District Court and wish to take vacation, other leave, and/or attend training will notify the court offices of their intent by presenting the appropriate form (P-30 or PD-4019) to the Court Services office before submitting the form to their supervisor. The P-30 shall be submitted not less than 30 calendar days prior to the start of the planned leave of absence.

1. The Metropolitan Court Services Unit will enter the request into the Metropolitan Court computer system, then sign and date the P-30 or the PD-4019, as appropriate. Entering leave into the Metropolitan Court computer system does not cover personnel for Courts other than Metropolitan, personnel will be responsible for notifying other courts.

Personnel will notify the office of the District Attorney to reschedule any cases pending in the State District Court, or the United States Attorney's office to reschedule any cases pending in the Federal District Court.

2. If the thirty (30) -day requirements are not met, personnel will not be relieved of their responsibility to appear in court when properly notified.

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- B. Personnel who have been selected to attend specialized training, which cannot be rescheduled or made up (not including M.O.E.), shall request exemption from Court and M.V.D. hearings for that time period. The request will be made through the chain of command to the employee's Commander. If approved, the employee will notify the Metropolitan Court Services Unit.
- C. Supervisors will not initial and forward completed P-30's or PD-4019's, unless the above requirement is met.
- D. When personnel transfer or change their days off, the Metropolitan Court Services Unit office will assign a new court date. Any previously scheduled court cases will remain on the officer's old court date.

2-01-3

COURT, PRETRIALS, MVD HEARING ATTENDANCE, AND MISSED COURT

[6]

- A. All personnel directed to appear in court, pretrials, or M.V.D. hearings must appear and be prepared to testify. A special court notice, posted court/M.V.D. hearing notices, or subpoenas are considered an order to appear. For civil case subpoena and conflict of interest case directions, see subsections **2-01-6 and 2-01-8**.

1. Personnel shall wait for defense attorney(s) to arrive for Metropolitan Court pre-trials fifteen (15) minutes from the time of the scheduled hearing.
2. 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 request will be made of defense attorney(s) when police personnel inform the attorney(s) that the officer will be late.
3. Personnel shall have documentation necessary for testimony in any court and/or M.V.D. hearing, i.e., police report, tact plans, intoxilizer (breath) cards, intoxilizer calibration documentation, intoxilizer certification card, photographs, training material etc.
4. Pagers and cell phones will be turned off or left in the officer's vehicle prior to court/hearing. Officers shall arrive for their court case/hearing at least five minutes prior to the scheduled time.

- B. When personnel receive special court notices, subpoenas, or are scheduled for an M.V.D. hearing requiring simultaneous appearances, the higher court notice shall take precedence between courts; courts shall take precedence over M.V.D. hearings. Personnel shall notify the lower court of the second subpoena, **at the earliest opportunity**, and shall attend the court of higher jurisdiction. For M.V.D. hearings, the rules outlined in **2-01-2 A. 1.** will be followed.

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- C. When personnel are scheduled for court or M.V.D. hearings and are unable to appear **or will be late due to** unforeseen conditions, they shall notify the court at the earliest possible time, prior to the scheduled appearance. **Failure of personnel to properly notify the court of their absence or tardiness for a court setting shall be deemed as failing to attend the setting.**
1. Metropolitan Court notification - The officer shall notify the Court Services Unit at 768-2290. Calls will be accepted on the day of court only.
 2. Court Services shall provide Division Captains with a monthly **call in** report. The report shall include the officer's name, man number, case number, judge's name, court room number, date and time of the case, excuse by the officer (if any), and the officers immediate supervisor's name.
 3. District Court notification - contact the Assistant District Attorney named on the subpoena.
 4. Grand Jury notification (including 10-day cases), officers/detective will:
 - a. notify their immediate supervisor.
 - b. notify the presenting ADA of their absence and of any witness change.
 - c. contact a fellow officer/detective involved in the case so that officer/detective can testify on their behalf.
 5. Federal Court notification - contact the U.S. Attorney's office Monday through Friday, 0800 to 1700 hours.
 6. M.V.D. hearings notification - contact the Metropolitan Court Services Unit. After office hours, officers will call 768-2290 and leave a message on the phone mail system. The message will include the officer's name, the date and time of the hearing, the violators name, the case number and the reason for missing the hearing. Officers and supervisors will not contact the hearing officer and/or M.V.D. directly to reschedule a hearing.
- D. Appropriate excuses for calling in for court are:
1. Sick: **Commanders, at their discretion, may require a note from the officer's physician should he/she call in sick for court.**
 2. Family emergencies: This only pertains to rare and unforeseen circumstances that necessitate the officer's presence. Officers shall make all arrangements for the care of their children before the court date. **Commanders, at their discretion, may require a note from the attending physician in the event an officer must miss court or pretrial/M.V.D. because of a sick child.**

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- E. Inappropriate excuses for missing court, will be evaluated on a case by case basis. Examples of inappropriate excuses are:
1. Tact Plans
 2. Training
 3. Day Off
 4. Vacation that was not pre-approved through Metropolitan Court Services Unit.
 5. Range
- F. When personnel miss any court session or M.V.D. hearing for which adequate notice was given, they will be subject to the appropriate discipline.
- G. The first offense within a 12-month period will result in a verbal reprimand and progressive discipline will be imposed for each subsequent offense.
- H. Metropolitan Court Continuances -
1. Traffic, Misdemeanor and Parking cases:
 - a. Officers requesting continuances will be responsible **for contacting** defendants or their counsel for objection as required by Metropolitan Court. Form PD-1403, "Motion for Continuance" include spaces for documentation, such as, when the defendant was contacted, defendants response, accident, shoplifting, and witness.
 - b. Personnel can receive information and paperwork on court cases/schedule from Metropolitan Court Services Unit personnel.
 - c. Metropolitan Court will not accept requests for continuances with less than five (5) working days.
 2. Criminal cases:
 - a. Officers requesting continuances will be responsible for requesting the continuance through the Metropolitan District Attorney's office.
 - b. Personnel can receive information and paperwork on court cases/schedule from Metropolitan Court Services Unit personnel.
 - c. The Metropolitan District Attorney's office will not accept requests for continuances with less than five (5) working days.

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2-01-4 COURTROOM ATTIRE AND SECURING OF WEAPONS
[6]

A. Civilian Attire

1. Federal or District Court:

- a. Male officers who appear or testify shall be attired in a dress suit or sports jacket complete with slacks, dress shirt and a tie.
- b. Female officers who appear or testify shall be attired in pantsuits, dress suits, dresses, dress pants, or skirt and blouse. Dress shoes or dress boots shall be worn by both male and female officers.

2. Metropolitan Court:

- a. Male officers who appear or testify shall be attired in slacks, a dress shirt and a tie. Dress suits or a sports jacket are optional for Metropolitan Court *only*.
- b. Female officers who appear or testify shall be attired as outlined in subsection **2-01-4** A above.

B. Uniform Attire

1. Metropolitan Court - Officers who appear or testify may wear the authorized working uniform.
2. Federal or District Court - Officers who appear or testify may wear the authorized working uniform only in an emergency. Uniforms may be worn at preliminary hearings.

C. Before appearing in Federal District Court or Federal Grand Jury, firearms or other weapons and pagers will be left at the U.S. Marshal's Office in the Federal Building, 12th floor, Room 12403. Firearms to be used as exhibits will be checked for safety by the U.S. Marshal before they are taken into a courtroom or its surroundings. If a marshal is not available, the presiding judge may designate a suitable person to take custody of the firearms and check the safety of the exhibits.

D. Personnel will not be allowed to carry firearms into the Bernalillo County Courthouse **or the Bernalillo County Metropolitan Court Building**. Upon entering the courthouse, personnel will secure their firearms in a lockbox at the security checkpoint. The only exceptions will be uniformed personnel responding to a call or emergency at the courthouse.

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2-01-5 JURY DUTY AND WITNESS FEES
[5]

- A. 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 paid to the City.
- B. Personnel called as witnesses in cases as a result of 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 paid to the City.

2-01-6 WITNESS FEES FOR TESTIMONY IN CIVIL CASES
[6]

- A. Only the officer named on the subpoena in a civil case will accept service of the subpoena.
 - 1. Failure to obey a subpoena may be deemed contempt of court. Officers will accept service of civil case subpoenas naming them whether or not fees are attached.
 - 2. Officers will however, at the time of service, demand such fees as are appropriate. Appropriate fees shall be no less than \$6.00. If fees are not tendered upon service or prior to the required appearance, this fact will be brought to the attention of the court for remedy.

- [7] B. 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 potential liability, the officer will notify the Risk Management Division within 24 hours of subpoena service.
- C. Officers appearing in civil court during their regular duty hours will endorse the check "payable to the City of Albuquerque only" and return it and the subpoena to their supervisor. The check and the subpoena will be forwarded by the supervisor to the Fiscal Management office.
- D. When an officer is not required to appear in court, any checks received will be returned to the issuing party.
- E. Officers appearing in civil court during off-duty hours may either keep the check, or submit an overtime slip in the same manner as other court overtime. If the officer elects to submit overtime, the rules outlined in subsection **2-01-6 C** will apply.
- F. Officers will not be permitted to take vacation or compensation time solely for the purpose of collecting the witness fee.

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2-01-7 **CONFERRING WITH ATTORNEYS**
[7]

A. Civil Cases

1. When contacted by private attorneys on civil cases in which the City of Albuquerque has no interest, officers will:
 - a. Refer the attorneys to the applicable police reports.
 - b. 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.
 - c. 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 will apply:
 - (1) On-duty officers should respond to short questions from private attorneys by telephone, whenever possible.
 - (2) If a telephone conference is not sufficient, officer may schedule an off-duty conference with the private attorney, however, officers will not be compensated by the attorney.
2. No overtime and/or compensatory time slips will be accepted by supervisors for off-duty conferences between officers and attorneys on civil cases.

B. Criminal Cases

1. 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.
2. A subpoena is not required for officers to meet with defense attorneys.
3. If the assigned assistant district attorney does not wish to be present and the officer still feels the presence of the assistant district attorney is necessary, the officer should contact the District Attorney Services Unit who will take the appropriate action for an appeal.

2-01-8 **CONFLICT OF INTEREST TESTIMONY**
[7]

- A. Personnel who are subpoenaed to testify in any case in which they have not been involved in as a witness, victim, investigator, or reporting officer, will determine what testimony is being sought.

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- B. If it appears that the testimony will be directed against another officer or law enforcement agency, subpoenaed personnel will contact the Risk Management Division prior to giving any testimony or deposition.

2-01-9 NON-RECORD CASES

- A. The Metro Services Unit personnel will deliver prepared files on Non-Record criminal cases to the Metro Division of the District Attorney's office for their agency to prosecute. After the prosecution of the case(s), Metro Services Unit personnel will be responsible for retrieving the files and returning them to the Metro Services Unit.
- B. Officers shall continue to pick up prepared paperwork on Traffic Misdemeanor cases in the Metro Services Unit.