

PHOENIX FIRE DEPARTMENT
Volume 1 – Management Procedures

**INTERVIEW REQUESTS, SUBPOENAS AND
SERVICE OF LEGAL PROCESS**

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| This policy is for internal use only and does not expand an employee’s legal duty or civil liability in any way. This policy should not be construed as creating a duty to act or a higher duty of care with respect to third-party civil claims against employees, the Phoenix Fire Department (PFD) or the City of Phoenix. A violation of this policy, if proven, can only form the basis for non-judicial administrative action by the employer in accordance with the laws and rules governing employee discipline. | |
| Related Policies: A.R. 4.43, Service of Summons and Notices of Claim, A.R.S. § 12-821.0 Notice of Claim Statute | |

PURPOSE AND SCOPE

This procedure will establish guidelines for interview requests and witness or deposition subpoenas issued to employees of the Phoenix Fire Department (PFD) in both civil and criminal cases. It also provides guidelines for handling subpoenas for the production of records, service of notice of claims and service of lawsuits.

POLICY

It is PFD’s policy that interview requests in civil cases that do not involve the City of Phoenix as a party to the lawsuit will not be granted, except under extraordinary circumstances. Where extraordinary circumstances exist, a civil interview request may be granted only upon approval of the City Attorney. This policy applies equally to written and verbal interview requests.

It is the policy of the Phoenix Fire Department that employees will grant witness interview requests in all criminal cases.

It is the policy of PFD that employees will comply with legal process served in accordance with Arizona law for cases involving on-duty conduct.

ADMINISTRATIVE RESPONSIBILITIES FOR INTERVIEW REQUESTS

The Public Records Supervisor will receive and log all interview requests. The Public Records Supervisor will notify those requesting interviews in civil cases where the City is not a party, that the Phoenix Fire Department does not grant civil interview requests as a matter of policy. If an exception to this policy is warranted, the Public Records Supervisor will consult with the Assistant City Attorney for PFD, who will seek necessary approvals from the City Attorney.

For criminal interview requests by either the prosecutor’s office or defense counsel, the Public Records Supervisor will contact the prosecutor’s office to obtain the charging document and determine if the prosecutor will be present for the interview. The Public Records supervisor will notify the employee by email that the employee has received an interview request in a criminal case and will provide the Incident History Report and Electronic Patient Care Record to the employee via encrypted email. The Electronic Patient Care Record is only for the member’s use and may not be released outside of PFD. The Public Records Supervisor will also contact the Emergency Response Staffing Office (ERSO) and staff at South Deputy Command to ensure that the member’s job duties are covered during the time of the interview or

court appearance. If they are scheduled when the member is off-duty then the member should contact Human Resources to arrange to be paid for their time.

EMPLOYEE RESPONSIBILITIES FOR CIVIL INTERVIEW REQUESTS

Upon receiving an interview request in a civil case related to an employee's official duties, the employee should notify the Public Records Section of the Human Resources Division of such request. The employee does not need to take any action. The Public Records Section will notify the requestor that the Fire Department does not grant interview requests in civil cases as a matter of policy, unless the City of Phoenix is a party to the case. If an employee feels that extraordinary circumstances provide a reason to grant an interview, the employee should notify the Public Records Section of the circumstances.

EMPLOYEE RESPONSIBILITIES FOR CRIMINAL INTERVIEW REQUESTS

Upon receiving an interview request in a criminal case from either the prosecutor or the defense counsel, the Public Records Supervisor will coordinate scheduling of the interview with the member and the employee's supervisor to determine an interview time. The interview should be scheduled during the employee's work hours from 0800 to 1800 hours, Monday through Friday. The Public Records Supervisor will provide the subpoena, Incident History Report, and Electronic Patient Care Record to the employee, via encrypted email. The Electronic Patient Care Record is only for the member's use and may not be released outside of PFD. The Public Records Supervisor notifies the employee's Battalion Chief, District Chief and ERSO secretary of the date and time of the interview. The Public Records Supervisor will also contact the Emergency Response Staffing Office (ERSO) and staff at South Deputy Command to ensure that the member's job duties are covered during the time of the interview or court appearance. If they are scheduled when the member is off-duty then the member should contact Human Resources to arrange to be paid for their time.

For criminal cases under the jurisdiction of the Phoenix Municipal Court, where an interview is requested by the prosecutor, the employee should arrange the interview time and location with the Prosecutor. Where an interview has been requested by the defense counsel, the employee will contact the City Prosecutor's Office at (602) 262-6461 to determine if the prosecutor wishes to be involved in the interview.

For criminal cases under the jurisdiction of Maricopa County Superior Court, the employee will contact the prosecutor assigned to the case for assistance. If the employee does not have the prosecutor's contact information, the employee may obtain the information by calling the Maricopa County Attorney's Office at (602) 506-3411.

(1) Maricopa County Criminal Case Interview Requests

The prosecutor will assist the employee with setting the date, time, and location of the interview, giving consideration to the employee's work hours and days off. The prosecutor will normally attend the interview. If the prosecutor does not plan to attend the interview with the employee, the employee should notify the Public Records Supervisor. The Public Records Section supervisor will notify the Assistant City Attorney for the Fire Department, who may arrange for an Assistant City Attorney to be present if necessary.

(2) Phoenix Municipal Court Case Interview Requests

If the prosecutor wishes to be involved in the interview, the prosecutor should assist the employee with scheduling the interview, giving consideration to the employee's work hours and days off. If the prosecutor does not wish to participate in the interview, the employee will contact the Public Records Supervisor to alert them of the interview request and that the prosecutor does not intend to be present. The Public Records Section supervisor will notify the Assistant City Attorney for the Fire Department, who may arrange for an Assistant City Attorney to be present. Interviews for Municipal Court cases may be conducted by telephone upon

agreement of the attorneys and the employee.

SUBPOENA POLICY FOR OFFICIAL DUTY RELATED SUBPOENAS FOR WITNESS TESTIMONY AT TRIAL OR HEARING

Criminal Subpoenas (official duty related): It is PFD policy to accept, record, log, and distribute all official duty related criminal subpoenas for trial or hearing testimony to Fire Department employees in an efficient and expeditious manner, so that employees may comply with the subpoena.

Civil Subpoenas to serve as witnesses in involuntary mental health commitment hearings (official duty related) are County Attorney subpoenas and handled in the same manner as criminal subpoenas.

Civil Subpoenas (official duty related): It is PFD policy to advise employees when a civil subpoena for trial, hearing or deposition testimony concerning their official duties is received, where the City is not a party to the lawsuit, to determine if the employee wishes the Public Records Supervisor to waive personal service on their behalf and accept service of the subpoena. If the employee does not wish to waive service, the employee should inform the Public Records Supervisor that personal service is required, and PFD shall refuse to accept service on their behalf.

It is PFD policy that all employees shall comply with all properly issued and served official duty related civil and criminal subpoenas.

ADMINISTRATIVE RESPONSIBILITIES FOR CRIMINAL CASE SUBPOENAS FOR TRIAL OR HEARING TESTIMONY

Criminal case subpoenas for hearing or trial testimony are emailed to the Public Records Section. The subpoena and the Incident History Report, and Electronic Patient Care Record will be sent to the employee via encrypted email. The Electronic Patient Care Record is only for the member's use and may not be released outside of PFD. The Public Records Section will contact the employee to provide all pertinent information, including the defendant's name, the case number, and the date, time, and location of appearance.

If a subpoena is received that conflicts with the employee's schedule, the Public Records Supervisor will contact the attorney on the case and attempt to reschedule the appearance. The employee will be notified if the appearance can be rescheduled.

EMPLOYEE RESPONSIBILITIES FOR CRIMINAL CASE SUBPOENAS FOR TESTIMONY

Employees must comply with all properly served criminal case subpoenas or be subject to contempt of court proceedings. When an employee is notified of a criminal case subpoena, the employee shall obtain a copy of the subpoena along with the Incident History Report, and Electronic Patient Care Record via encrypted email. The Electronic Patient Care Record is only for the member's use and may not be released outside of PFD. The employee must follow the instructions on the subpoena, including calling the contact number on the subpoena on the afternoon before the required court appearance to verify the need to appear. To inquire about a trial or hearing, use the defendant's name and the case number. **DO NOT** use the EMS/FIRE incident report number.

When appearing for a hearing or deposition, employees should wear the Fire Department dress uniform, be on time and conduct themselves professionally as a representative of PFD.

In the event that an employee has pre-scheduled leave on the day of the appearance, the employee shall contact the Public Records Supervisor. The Public Records Supervisor will attempt to reschedule the

appearance. If the appearance cannot be rescheduled, the employee will be responsible to comply with the subpoena or be subject to contempt of court proceedings. The Public Records Supervisor will contact the employee if the appearance is rescheduled.

There may be occasions when subpoenas relating to an employee's official duties are served personally to an individual employee. Should this occur, the employee shall call the Public Records Supervisor to receive further instructions.

The employee must attach a copy of the subpoena to all leave forms and overtime slips submitted for witness duty.

If an employee has any questions regarding a subpoena, the employee should contact Public Records Supervisor, who will contact the Assistant City Attorney for the Fire Department as necessary.

COURT WITNESS TIME AND COURT STANDBY TIME ON A REGULARLY SCHEDULED DAY OFF

All "Court Witness Time" will be paid at the "Call Out" rate specified in the MOU or AR 2.21 Overtime, Call Out, and Standby Pay and Shift Differential, provided that a photocopy of the subpoena is attached to an overtime slip and the words "Court Subpoena" are written in the reason box of the overtime slip. Compensatory Time credit may be accrued for court witness time worked.

COURT WITNESS TIME AND COURT STANDBY TIME ON A SCHEDULED SHIFT DAY

Employees who are subpoenaed to attend court for matters related to their official duties on a scheduled shift day must coordinate the time away from their assignment through their assigned District office. In most cases the subpoena will require the witness to phone the Court on the afternoon before the trial or hearing to verify the need to appear. Immediately following this verification with the Court, the employee must contact the District office to schedule City Business for the time at Court.

When an employee is placed on Court Standby Status while on duty the employee will report to work, but must provide the Court the station telephone number where the employee can be reached (includes Rovers). The employee is also responsible for informing his/her immediate supervisor and the District/ Section office of the employee's Court standby status.

WITNESS FEES

If a department member receives a fee as the result of being subpoenaed for witness services relating to his/her official duties, the member must endorse the check and forward it to the Public Records Supervisor.

DEPOSITION TESTIMONY

Employees who are subpoenaed to testify in a deposition regarding matters related to their official duties on a scheduled shift day must coordinate the time away from their assignment through their assigned District office. In most cases the subpoena will require the witness to appear at a specified time and place to be questioned under oath by an attorney. The employee will typically be represented by an attorney from the Law Department or outside counsel retained by the City. Employees who are scheduled for a deposition on their regular day off will be paid at the "Call Out" rate specified in the MOU, provided that a photocopy of the subpoena is attached to an overtime slip and the words "Deposition Subpoena" are written in the reason box of the overtime slip. Compensatory Time credit may be accrued for time spent giving a deposition. The employee is responsible for informing his/her immediate supervisor and the District/ Section office of their attendance at a deposition.

SUBPOENAS FOR NON-WORK-RELATED MATTERS

PFD will not waive or accept service on behalf of its members for matters not related to official duties.

SERVICE OF LAWSUITS, DEPOSITION SUBPOENAS AND NOTICE OF CLAIMS

Refer all process servers attempting to serve notice of claims, deposition subpoenas, lawsuits or requesting waiver of formal service on the City of Phoenix, PFD or the Fire Chief to the City Clerk's office.

Refer all process servers attempting to serve notice of claims, subpoenas for depositions, lawsuits or requesting waiver of formal service on individual employees or former employees to the individual employee.

All individual employees who are served with a notice of claim, deposition subpoena or lawsuit related to their official duties should immediately contact the Public Records Supervisor for further instructions.

SERVICE OF SUBPOENAS DIRECTED TO PFD OR THE CITY OF PHOENIX IN CIVIL MATTERS

Subpoenas for depositions, including 30(b)(6) depositions, should be refused and the process server directed to the City Clerk's Office.

As a matter of policy, PFD will accept service of subpoenas for production of documentary evidence that are directed to the City of Phoenix only for records in the custody of PFD. Subpoenas for the production of documents or records that are not in the custody of PFD should be refused and directed to the City Clerk's Office. If both City of Phoenix records and PFD records are sought, service of the subpoena should be refused and directed to the City Clerk's Office.