



<b>Series</b> 200 Operations	<b>Effective Date</b> TBD	<b>Review Date</b> Three Years	<b>Directive Number</b>  <b>202.5</b>
<b>Chapter</b> 202 – Limits on Authority			
<b>Reviewing Office</b> Detective Bureau			<input type="checkbox"/> <b>New Directive</b> <input checked="" type="checkbox"/> <b>Revised</b> <i>Revisions in italics</i>
<b>References</b>			

## COURT APPEARANCES

### 202.5 - 1 PURPOSE

The purpose of this directive is to set forth rules and procedures governing the issuance of subpoenas, court appearance notices, and members' attendance in court.

### 202.5 - 2 POLICY

All subpoenas and orders to appear in court shall be received, recorded, and served upon members to ensure their appearance in court. Members shall appear in court, be prepared, and testify when required to do so. In order to preserve the credibility of this Department, members shall maintain a professional appearance while attending court and shall ensure that all facts testified to be unbiased, complete, and accurate.

### 202.5 - 3 Priority of Court Work

A member's court work shall be given the highest priority.

### 202.5 - 4 Orders to Appear in Court or Legal Proceedings

A subpoena is an order directing a member (or a citizen) to appear at the time and place stated in the subpoena. A subpoena may direct a member to testify, produce documents or other materials for inspection, or to take other action. Properly issued subpoenas impose legal obligations on the individuals to whom they are directed. Failure to adhere to the orders contained in a subpoena may result in the individual to whom the subpoena is directed being held in contempt of court.

Once a member is served with a subpoena, they are obligated to appear as directed. Failure to appear in court may result in dismissal of proceedings, the member being held in contempt of court, as well as department discipline.

### 202.5 - 5 Receiving, Recording, and Serving Subpoenas

#### 202.5 – 5.1 Service by E-mail Transmission

All members are responsible for checking their e-mail on a daily basis to receive subpoenas

or orders to appear in court. Service of the subpoena is presumed once an e-mail containing the subpoena has been transmitted to the member to whom the subpoena has been issued.

In the event actual notice of the subpoena is contested, the member will be required to demonstrate that the duty to check departmental e-mail was excused or not feasible under the circumstances (e.g., furlough, sick, disabled).

### **202.5 – 5.2 Service via Court Appearance Notice**

An Appearance Notice (DPD 422) is an official order from the Department to appear at the time and place stated in the notice. An Appearance Notice may be issued by the officer in charge of a case or by a supervisor. If an Appearance Notice is issued by the officer in charge of a case, the Appearance Notice shall be approved by a supervisor prior to service upon the member.

If advance written notice cannot be given, the officer in charge of the case shall contact a supervisor at the member's command. The supervisor shall promptly attempt to contact the member whose appearance is required and direct the member to appear in court. The supervisor shall ensure that an Appearance Notice is prepared either at the member's command or place of appearance, which is more convenient. The Appearance Notice shall then be given to the member, who shall use it to record the time in and out of court.

### **202.5- 6 Court Appearance Book**

1. A Court Appearance Book is a logbook of subpoenas received by the command maintaining the book.
2. Any command that receives subpoenas that are not otherwise logged or received through department-approved electronic systems (e.g., hearings before the Michigan Liquor Control Commission, implied consent hearings, parole board hearings) shall maintain a Court Appearance Book.<sup>1</sup>
3. At a minimum, the Court Appearance Book shall track the date on which the subpoena is received, the case number, defendant's name, the name of the officer being ordered to appear, the date and time on which the hearing is to take place, and the court in which the officer is required to appear.
4. The officer in charge of each shift shall conduct a daily audit of the command's Court Appearance Book to ensure that members whose attendance in court is required have acknowledged receipt of the subpoena.
5. Supervisors should attempt to contact members on sick leave or furlough of upcoming court appearances.

### **202.5 - 7 Canceled or Adjourned Court Dates**

The officer in charge of a court case that has been canceled or adjourned is responsible for notifying all witnesses, including members of the Department, of this fact.

If the witness is a Department member, the officer in charge of the case shall notify the supervisor *on the desk* of the concerned member's command. The supervisor receiving the call regarding the adjournment of a case shall make a notation in the *desk blotter and notify the member*. *The*

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<sup>1</sup> Department-approved electronic systems includes e-mail notification via DPDSUBPOENAS@detroitmi.gov, Court Tracker Smartsheet, and any other system approved by the commanding officer of Investigative Operations.

*supervisor shall also be responsible for updating the Precinct's Court Tracker Smartsheet and, if applicable, the Court Appearance Book.*

## **202.5- 8 Special Proceedings**

### **202.5 – 8.1 Liquor License Subpoenas**

The Michigan Liquor Control Commission (MLCC) e-mails all Notification of Liquor Hearings to the personnel within the Licensing Unit or VICE. All subpoenas received from the MLCC shall be promptly e-mailed to the member being subpoenaed. The member's supervisor and commanding officers shall be included on the e-mail.

If it is not possible to serve a subpoena, the Licensing Unit shall be notified within seven days of the scheduled MLCC hearing.

### **202.5 - 8.2 Proceedings before the Probate Court**

The probate court or litigants to an action before the probate court may issue a subpoena to compel a member's attendance at a proceeding. Members receiving a subpoena to appear at a hearing before the probate court shall notify a supervisor of receipt of a subpoena and follow the procedures set forth above.

### **202.5 - 8.3 Secretary of State Hearings**

The Secretary of State or its divisions may issue a notice of hearing directing members to attend. Examples include implied consent hearings or license re-examination hearings. Hearing notices are mailed to the City of Detroit, where they are subsequently routed to the member.

Any member receiving a hearing notice from the Secretary of State or any of its divisions shall notify their supervisor and follow the procedures set forth above.

### **202.5 - 8.4 MDOC Hearings**

Agents with the Michigan Department of Corrections (MDOC) may issue a formal request for a member to attend a hearing regarding an individual's parole status or allegations that person violated parole conditions. The agent in charge of the investigation is responsible for locating the officer and issuing the request.

Members receiving notification from MDOC or any of its agents to testify at a hearing shall notify a supervisor and following the procedures set forth above.

### **202.5 - 8.5 Citizen Subpoenas**

The prosecutor assigned to a criminal case is generally responsible for ensuring that witnesses are subpoenaed to appear in court. If requested, the officer in charge of a case will be responsible for assisting the prosecutor in serving subpoenas.

## **202.5 - 9 Appearing in Court**

### **202.5 - 9.1 Appearances Scheduled in Different Courts**

Members scheduled to appear in different courts shall contact a supervisor for guidance on which court shall be given priority. While many factors may be relevant in making the appropriate determination, the following should be considered in deciding which court should be attended first:

- Criminal matters should be given priority over civil matters.
- Federal court should be given priority over state court.
- Felonies should be given priority over misdemeanors.
- Misdemeanors should be given priority over lesser offenses (e.g., civil infractions).

Members appearing in one court after having been subpoenaed to appear in another shall notify the officer in charge of the case as well as the prosecuting attorney assigned to the case of the member's inability to attend the proceeding. This notification should be made as soon as the conflict is discovered.

### **202.5 - 9.2 Unable to Appear**

Members unable to appear in court must notify the officer in charge of the desk as soon as possible but no later than one hour prior to the hearing time. As soon as practical following receipt of this call, the supervisor shall notify the court liaison or other appropriate individual of the member's inability to appear. This notification shall be by phone. Replying to the DPDSUBPOENAS@detroitmi.gov does not constitute notification.

### **202.5 – 9.3 Appearing in Uniform**

When appearing in court to testify, sign warrants, or for other official duties, members shall wear the prescribed police uniform or *professional business attire*. Members **shall not** wear the police uniform when appearing on a personal matter in any court of criminal or civil jurisdiction as a defendant, plaintiff, or witness.

### **202.5 – 9.4 Appearing in Civilian Clothes**

A member that is exempted by proper authority from wearing a uniform, or is otherwise prohibited from wearing a uniform (e.g. restricted duty), shall wear appropriate business attire and present a neat and well-groomed appearance when appearing in court.

### **202.5 – 9.5 Supervisor Verifying Court Appearance Notice**

A *Court Liaison* supervisor is assigned to the sign-in room at 36<sup>th</sup> District Court and the Wayne County Criminal Justice Center. The supervisor's primary duty is to administer and control the court appearance record for 36<sup>th</sup> District Court and 3<sup>rd</sup> Circuit Court. This includes checking members in and out of court by using an electric time clock.

### **202.5 – 9.6 Reporting to the Sign-In Room**

Members appearing at 36<sup>th</sup> District Court or 3<sup>rd</sup> Circuit Court shall first report to the sign-in room and present their Appearance Notice. The *Court Liaison* supervisor will time stamp and sign the Appearance Notice. After getting their Appearance Notice stamped, the member shall sign in on the Court Sign-In Sheet, if one is available. The member shall promptly report to the specified courtroom and report to the officer in charge of the case or the assistant prosecuting attorney.

Upon completion of the appearance, members shall return to the sign-in room immediately and have their Appearance Notice stamped and signed out by the appropriate supervisor, and shall sign out on the Court Sign-In Sheet. If the appearance is completed after regular court hours (4:00 p.m.), members shall go to the 36<sup>th</sup> District Court's security supervisor to have their Appearance Notice signed out.



**202.5 - 9.7 Preparation**

Before taking the stand, a member should be thoroughly familiar with all reports that they have prepared, and all statements or depositions the member made.

**202.5 - 9.8 Discussing the Case**

Members should avoid discussing the case in or about the court building, as persons within hearing distance may be connected in some way with the case.

**202.5 - 9.9 Sequestration**

It is common procedure for the trial court to exclude all witnesses from the courtroom while others are testifying. This process is commonly referred to as sequestration and is intended to ensure that the testimony of one witness does not influence the testimony of another. Once proceedings have started and a sequestration order has been put into effect, members shall not discuss the case with anyone other than the prosecutor.

**202.5 - 9.10 Identifying the Defendant**

Prior to the court coming to order, members should attempt to locate the defendant in the courtroom for subsequent identification to the court.

**202.5 - 9.11 Courtroom Demeanor**

Members shall adhere to the following guidelines when testifying:

- a. Always tell the truth.
- b. Members shall maintain an objective attitude toward the defendant while testifying. Members shall speak in a clear, conversational tone of voice. If, for any reason, the question is not understood, the member should ask the examining attorney to repeat the question.
- c. Members shall try to avoid the use of police jargon (e.g. CCW, RA, etc.) while testifying.
- d. Only factual information may be stated. Members shall not state opinions nor guess at answers when testifying. If the answer is not known, members shall so state to the examining attorney.
- e. Members shall not interrupt or argue with the defense attorney. Members shall rely upon the assistant prosecuting attorney and judge to object and rule upon court procedure. If one of the attorneys makes an objection while a member is testifying, the member shall cease speaking immediately.
- f. If the assistant prosecuting attorney has not brought out testimonial information, which the member considers important to the case, the member shall wait until excused from the stand and then pass a written message to the assistant prosecuting attorney.

**202.5 - 9.12 Completion of Testifying**

When a member finishes their testimony and is excused from the witness stand, they should leave the courtroom as soon as possible after having their Appearance Notice signed, unless instructed otherwise by the officer in charge of the case.

**202.5 – 9.13 Failure to Appear in 3<sup>rd</sup> Circuit or 36<sup>th</sup> District Court (Criminal)**

An alert is sent to Investigative Operations when a member fails to appear in 3<sup>rd</sup> Circuit or 36<sup>th</sup> District Court on criminal matters. Once alerted, the commanding officer of Investigative Operations is responsible for making a preliminary inquiry into the circumstances of the missed court appearance. If appropriate, the commanding officer of Investigative Operations will refer the matter to the appropriate command for an investigation into the missed court appearance.

**202.5 – 9.14 Failure to Appear in 36<sup>th</sup> District Court (Traffic)**

Court Liaison is responsible for alerting the member's command and the appropriate deputy chief when a member fails to appear for court. Once the notification is received, the member's command has 72 hours to submit a report to the deputy chief of the corrective action that will be taken, if applicable. Any investigations shall be submitted to the deputy chief under whom the member the member is assigned.

**202.5 – 9.15 Location Not Equipped with a Time Clock**

When a member is directed to appear at a location which does not have a time clock, the member shall have the Appearance Notice signed and the time entered by a ranking member, if one is present. If no ranking member is present, the officer shall request a representative of the court or office in which the hearing is taking place sign the officer in and out of the proceedings. If refused, then the member is authorized to make the time entry.

**202.5 – 9.16 Disabled Sworn Members**

Members carried disabled must attend court when subpoenaed to appear. Members who believe their condition will prevent them from appearing in court shall notify their supervisor of the impending court date. The supervisor is responsible for ensuring that the prosecuting attorney and officer in charge of the case is notified as soon as possible. If there is doubt as to whether a member is able to attend court, Police Medical shall be contacted for a determination.

Members attending court while being carried disabled shall not receive overtime compensation for their appearance in court.

**202.5 – 9.17 Suspended Member Court Procedures**

A member suspended with pay shall appear in court pursuant to the policies and procedures in this directive, including honoring an Appearance Notice. Failure to do so may subject the member to further disciplinary action.

A member suspended without pay is required to appear in court, as is any other citizen, when properly subpoenaed. When a supervisor receives notice that a member is being suspended without pay, the supervisor shall check the Appearance Book to determine if the member has a pending court date during the period of the no-pay suspension. If this situation exists, the supervisor shall notify the officer in charge of the case that the member is under suspension.

When a supervisor receives an Appearance Notice or a 3<sup>rd</sup> Circuit Court Criminal Division Subpoena that requires a member suspended without pay to appear in Court during a period of suspension, the supervisor shall inform the officer in charge of the case that the member is under suspension.

If a suspended member's appearance is necessary, the officer in charge of the case shall ensure that the proper subpoena is secured and served to the member within a reasonable amount time of the date on which the member's appearance is required. A member suspended without pay, who is subpoenaed to appear in court, shall not be reinstated onto the payroll nor shall the member be given credit for an off-duty court appearance. In complying with the court's subpoena, a member suspended without pay is entitled to the statutory witness fee.

**202.5 - 10 Return of the Court Appearance Notices**

The member shall deliver a copy of their completed Appearance Notice to *the officer in charge of the desk on their next regular tour of duty*. If a member is on furlough or other extended leave, they shall promptly deliver the Appearance Notice to their command in person *and shall have the officer in charge of the desk sign it*. *Members are encouraged to keep a copy of their Appearance Notice for their records.*

**202.5 - 11 Witness Fees**

Members who retain witness fees despite being on duty or otherwise compensated by the Department for their appearance in court may subject the member to departmental discipline and criminal prosecution. Any member receiving a witness fee shall notify the officer in charge of desk, who shall instruct the member to turn the fee over to the Office of Departmental Financial Services as soon as possible.

**202.5 - 12 Civil and Legal Processes****202.5 - 12.1 Accepting Summonses, Complaints, and Subpoenas**

Each member named in a lawsuit may be notified by personal service or certified or registered mail of summonses, complaints, and other civil processes. No members shall accept service of any summons, complaints, or other civil process on behalf of another member. When a process server, bailiff, or other officer of the court having jurisdiction in civil matters presents a subpoena for service, they shall be directed to the member's command.

**202.5 - 12.2 Notifying the Police Law Unit**

A member who receives a subpoena in connection with a civil suit against the City or a City employee shall immediately contact the Police Law Unit.

**202.5 - 12.3 Appearance at the Police Law Unit**

Members who are sued for actions taken while in the good-faith performance of their duties shall immediately appear in person at the Police Law Unit as soon as possible following receipt of the lawsuit. Members seeking representation by City attorneys must complete and sign the Recommendation for Legal Representation Form (DPD645) and turn over all summonses, complaints, and other documents served upon the member.

**202.5 - 12.4 Investigation of Incident**

The Police Law Unit will transmit a request for a Recommendation for Legal Representation to the member's command. The transmission will include a memo from City Law with information regarding the members named in the lawsuit, the date of the incident, the plaintiff's name, and a copy of the complaint. The investigating command will be required to prepare a Recommendation for Legal Representation Form and forward the recommendation to the Chief of Police through channels.

**202.5 - 12.5 Recommendations**

The Chief of Police's recommendation shall be forwarded to City Law for review by corporation counsel or his or her designee. City Law shall forward its report and recommendation together with that of the Chief of Police to the *Detroit City Council for their review and decision*.

**202.5 - 12.6 Cooperation with Legal Counsel**

Members will be provided outside legal counsel subject to the provisions of collective bargaining

agreements. If outside legal counsel is retained by the City to represent the City or its employees in a civil action, all Department members shall cooperate fully with them.

Members are advised to take advantage of this opportunity for legal counsel. Members who fail to follow this procedure may have to seek their own counsel and personally pay for any resulting damages.

**202.5 – 12.7 Jury Duty**

Members summoned for jury duty shall promptly return the summons with a notation indicating employment with the Department. Upon receipt of an actual date the member must appear for jury duty, the member shall promptly notify their commanding officer. If the date for jury duty service falls on a day when the member is scheduled to work other than platoon two, the Department will, upon request of the member, assign the member to platoon two on that date. If the date for jury service falls on a member's scheduled leave day, the member may, according to procedural and contractual provisions for changing a leave day by mutual consent, request a change of leave day. Nothing prohibits members from fulfilling their jury duty responsibilities on a scheduled leave day, furlough day, on their off-duty time, etc.

**Related Forms:**

- Appearance Notice (DPD422)
- Court Sign-In Sheet
- Inter-Office Memorandum (DPD568)
- Recommendation for Legal Representation (DPD645)