

CIVIL LEGAL PROCESS

The purpose of this order is to instruct members in the procedures for accepting and processing civil legal papers regarding actions connected with the course and scope of their employment.

I. DEFINITIONS

- A. **Complaint:** A statement by the plaintiff setting forth a cause of action and a request for relief from the Court.
- B. **Summons:** Notice to respond to a complaint within a specified period.
- C. **Subpoena:** An order which directs the appearance of a witness.
- D. **Subpoena Duces Tecum:** An order which directs the production of documents or records. Personal appearance may or may not be required.
- E. **Temporary Restraining Order:** An order from the court directing or prohibiting some action.
- F. **Order to Show Cause (OSC):** An order requiring the appearance of named parties in court to tell the court why some actions should or should not take place.

II. GUIDELINES

A. THE LAW REGARDING SUMMONS AND COMPLAINTS

1. SUBSTITUTE SERVICE

- a. Individuals are entitled to be personally served with a Summons and Complaint; however, if a process server has made a reasonable and diligent effort to personally serve the individual, but is unsuccessful, substitute service is authorized.

DGO 3.14
07/20/94

- b. Substitute service is accomplished when a Summons and Complaint is delivered to an individual's place of work and is left with the person who is apparently in charge. A copy is then mailed to the place of work addressed to the individual to be served. Service is deemed completed 10 days after the mailing.
 - c. The person in charge must receive the Summons and Complaint and forward it to the named individual.
2. SERVICE BY MAIL. Service by mail is accomplished when a server sends a copy of the Summons and Complaint by mail, together with two copies of a "Notice and Return of Acknowledgement," with a return envelope. The individual to whom the Summons and Complaint is directed must complete and return the acknowledgement in 20 days or must pay for other permissible methods of service.

III. PROCEDURES

- A. ACCEPTING AND RESPONDING TO LEGAL PROCESS. These procedures affect all members, including those on vacation, disability, sick, military, or personal leave or suspension. If a member is absent or unable to comply with the provisions of this order, the officer-in-charge of the unit must prepare a memorandum describing the method of service and the circumstances of the member's absence. Failure to comply with these procedures, or failure to respond in a timely fashion may result in a default judgement, and the member may be subject to disciplinary action.
1. SUBPOENAS. All subpoenas (civil or criminal) for individual members shall be processed and routed through the Court Liaison Unit in the same manner as other subpoenas. Department policy does not prohibit personal service of a subpoena or substitute service through the officer-in-charge of the member; however, the officer-in-charge may decline receiving a subpoena if he/she is unable to serve the member in a timely manner (see Penal Code Section 1328).

2. **SUMMONS AND COMPLAINT/DUTIES OF MEMBERS**
 - a. When receiving a Summons and Complaint (they usually accompany one another) relating to your employment with the Department, immediately forward them to the Legal Division along with any documents or memoranda.
 - b. Prepare a memorandum indicating the date, time and method of service. If you request representation by the City Attorney, include it in the memorandum.
 - c. When receiving a Summons and Complaint by mail with a "Notice and Acknowledgement of Receipt," sign the receipt, enter the date, and forward it along with any other documents or memoranda to the Legal Division.
 3. **SUBPOENA DUCES TECUM.** When a subpoena Duces Tecum is received by any unit, the subpoena shall be sent to the Legal Division for review prior to complying with the order.
 4. **QUESTIONS.** Should you have any questions regarding service of Civil Legal Process, contact the Legal Division. When in doubt, accept the documents presented and forward them to the Legal Division with a memorandum as outlined in these procedures.
- B. LEGAL DIVISION RESPONSIBILITIES.** The Legal Division is designated to accept Summons and Complaints and Subpoenas on behalf of the Department. It receives and reviews Temporary Restraining Orders for completeness before forwarding them to the Identification Section. The Legal Division also accepts Orders to Show Cause, and reviews them for correctness before advising the respective unit to appear.
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