

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PD-57 (rev. 7), “Employee Appearances in Judicial or
Legislative Proceedings or for Jury Service”
APRIL 1, 2015
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TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

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SUPERSEDES: PD-57 (rev. 6)
July 1, 2011

EXECUTIVE DIRECTIVE

SUBJECT: EMPLOYEE APPEARANCES IN JUDICIAL OR LEGISLATIVE PROCEEDINGS OR FOR JURY SERVICE

AUTHORITY: Tex. Gov't Code §§ 493.001, 493.006(b), 659.005; *General Appropriations Act*

APPLICABILITY: Texas Department of Criminal Justice (TDCJ)

EMPLOYMENT AT WILL CLAUSE:

These guidelines **do not** constitute an employment contract or a guarantee of continued employment. The TDCJ reserves the right to change the provisions of these guidelines at any time.

Nothing in these guidelines and procedures limits the executive director's authority to establish or revise human resources policy. These guidelines and procedures are adopted to guide the internal operations of the TDCJ and **do not** create any legally enforceable interest or limit the executive director's, deputy executive director's, or division directors' authority to terminate an employee at will.

POLICY:

The TDCJ encourages its employees to fulfill their duties as witnesses in judicial or legislative proceedings or as jurors. Time reporting, leave administration, state per diem, and receipt of witness fees for the appearances shall be in accordance with the guidelines within this directive.

DEFINITIONS:

"Expert Witness" is an employee who by reason of education or specialized experience possesses advanced knowledge regarding a subject about which persons having no particular training are incapable of forming an accurate opinion or deducting correct conclusions.

“Fact Witness” is an employee, other than a plaintiff, who has been requested or subpoenaed to testify in a judicial proceeding as to what the employee has seen, heard, or otherwise observed. A character witness is considered a fact witness.

“Judicial Proceeding” is any proceeding conducted within a judicial, or court, system requiring an employee’s attendance or that an employee elects to attend.

“Plaintiff” is a party or member of a party who initiates a suit against the TDCJ in a court of law.

“State Per Diem” is a reimbursement for applicable travel expenses, not to exceed the state rate as defined in the *General Appropriations Act*.

“Witness Fee” is money paid to an employee for various expenses incurred by the employee as a result of appearing in a judicial, legislative, or administrative proceeding.

PROCEDURES:

I. Judicial Proceedings

A. General Provisions

1. Time Reporting

- a. Employees shall advise their warden or department head prior to a scheduled court appearance for time reporting purposes and to allow for adequate staffing.
- b. The time that may be reported as time worked in accordance with this directive shall be limited to the following:
 - (1) The time an employee is required to be available to present testimony; and
 - (2) The time required for an employee to travel to and from the location of the proceeding in order to be available to present testimony, in accordance with state travel regulations and TDCJ policies.
- c. Time for an employee to observe another witness’ testimony when the employee is not required to be available shall not be reported as time worked.

2. State Travel and Per Diem

- a. Any state per diem for expenses shall be from TDCJ appropriations in accordance with the standard rules governing state per diem and mileage. An employee shall receive state per diem for expenses incurred only during the time that may be reported as time worked in accordance with this directive.
- b. A state officer or employee may receive state per diem for expenses connected to an appearance as a witness in a judicial proceeding only from the state or the judicial body, but not from both the state and the judicial body.

3. Witness Fees

- a. In accordance with state law, a state officer or an employee who appears as a witness in an official capacity in a judicial proceeding may not accept a witness fee for the appearance. Therefore, if an employee's appearance in a judicial proceeding is considered official business in accordance with this directive and the appearance is reported as time worked, the employee may not accept a witness fee for the appearance.

If a state officer or employee who appears as a witness in an official capacity in a judicial proceeding receives a check as payment for this service, the state officer or employee shall forward the check to the TDCJ Cashier and Travel Office, P.O. Box 4015, Huntsville, Texas 77342.

- b. In accordance with state law, a state officer or an employee who appears as a witness in a judicial proceeding, in a capacity other than as a state officer or employee to testify from personal knowledge concerning matters related to the proceeding or hearing, is entitled to receive any customary witness fees for the appearance. Therefore, if an employee's appearance in a judicial proceeding is not considered official business in accordance with this directive and the appearance is not reported as time worked, the employee may accept a witness fee for the appearance. The use of accrued leave is not considered time worked.

B. Plaintiffs

The following are guidelines for judicial proceedings in which an employee is a plaintiff.

1. If the plaintiff is requested or subpoenaed by the Office of the Attorney General to testify, this service shall be considered official business and reported as time worked in accordance with Section I.A. The plaintiff's supervisor shall release the plaintiff during working hours in order to present the testimony. The plaintiff shall receive state per diem for expenses incurred during the time reported as time worked.
2. If the plaintiff is requested or subpoenaed by the plaintiff's attorney to testify or if the plaintiff elects to observe the proceedings, the service shall not be considered official business. The plaintiff is not entitled to report the service as time worked or receive state per diem. The plaintiff's supervisor shall allow the plaintiff to take leave in accordance with PD-49, "Leaves Other than Medical and Parental" to present the testimony or to observe the proceedings.

C. Fact Witnesses

1. TDCJ Related Matters

If an employee is requested or subpoenaed by the Office of the Attorney General, the plaintiff's attorney, or by the attorney for the defense to testify as a fact witness in proceedings concerning TDCJ related matters, the service shall be considered official business and reported as time worked in accordance with the provisions in Section I.A. The employee's supervisor shall release the employee during working hours to present the testimony. The employee shall receive state per diem for expenses incurred during the time reported as time worked. The employee may not accept witness fees for the appearance.

2. Matters Not Related to the TDCJ

If an employee is requested or subpoenaed to testify as a fact witness in proceedings not related to TDCJ matters, the employee shall not be entitled to report the service as time worked or receive state per diem. The employee's supervisor shall allow the employee to take leave in accordance with PD-49, "Leaves Other than Medical or Parental" to present the testimony. The employee may accept witness fees for the appearance.

D. Expert Witnesses

1. TDCJ Related Matters

If an employee appears as an expert witness on behalf of the TDCJ or state, the service shall be considered official business and shall be reported

as time worked in accordance with Section I.A. The employee shall receive state per diem for expenses incurred during the time allowed to be reported as time worked. Such an employee may not accept witness fees or any other compensation for the appearance.

2. Matters Not Related to the TDCJ

If an employee is requested or subpoenaed to testify as an expert witness in proceedings not related to TDCJ matters, the employee shall not be entitled to report the service as time worked or receive state per diem. The employee's supervisor shall allow the employee to take leave in accordance with PD-49, "Leaves Other than Medical or Parental" to present the testimony. The employee may accept witness fees for the appearance.

II. Legislative Proceedings or Other Hearings

For the purpose of this directive, appearances in legislative proceedings do not include appearances as a lobbyist. TDCJ employees, including full-time, part-time, and contract employees, are prohibited from serving as paid lobbyists for any individual, firm, association, or corporation. For additional information regarding these prohibitions, refer to PD-23, "Employee Political Activity and Participation in Employee Organizations."

A. Appearance is on Behalf of or Requested by the Legislature or TDCJ

If an employee is required by official process, including, but not limited to, subpoenas, to appear before a legislative committee or in an administrative action on behalf of or as requested by the legislature or the TDCJ, the following guidelines shall apply.

1. Time Reporting

The service shall be considered official business and the time expended shall be reported as time worked. The employee shall advise the employee's warden or department head prior to the scheduled appearance and provide the employee's supervisor with sufficient advance notice to provide adequate staffing.

2. Reimbursement of Per Diem

State per diem and mileage shall be allowed for this service. The employee shall not accept reimbursement for travel from both the TDCJ and the legislature.

3. Witness Fees

An employee may not accept a witness fee for this appearance.

B. Appearance is Not on Behalf of or Requested by Legislature or the TDCJ

The following procedures shall apply to an employee whose appearance at a legislative committee hearing or other administrative hearing is not on behalf of or requested by Legislature or the TDCJ, but is on the employee's own behalf or on behalf of some person or entity other than the TDCJ.

1. Time Reporting

The appearance shall not be reported as time worked. The employee may request leave in accordance with PD-49, "Leaves Other than Medical or Parental."

2. Reimbursement of Per Diem

An employee shall not receive reimbursement of any kind from the TDCJ.

3. Witness Fees

An employee shall be entitled to any customary witness fees if the appearance is to allow the employee to testify from personal knowledge concerning matters related to the hearing.

III. Jury Service

A deduction may not be made from the salary or wages of a state employee because the employee is called for jury service, and the employee is allowed to accept compensation for such service. Administrative leave for jury service shall be granted in accordance with PD-49, "Leaves Other than Medical or Parental."

Brad Livingston
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