

 Lexington Police Department	<u>Subject:</u> Testifying in Court					<u>Policy Number:</u> 73A	
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<u>By Order of:</u> Mark J. Corr, Chief of Police							

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GENERAL CONSIDERATIONS AND GUIDELINES

Testifying in court proficiently and effectively is one of the most demanding tests of the truly professional police officer. The entire investigation process should be considered as a series of preliminary steps leading eventually to a successful courtroom presentation. All of the police duties performed at the crime scene and thereafter -- the gathering and evaluating of evidence, the locating and interviewing of witnesses, the apprehending and interrogating of suspects -- culminate at the criminal trial when the police officer testifies in court. The effectiveness of an officer's testimony is largely dependent upon the competence of the officer on the witness stand. All of the police efforts that preceded the court appearance can be nullified by an inadequate, incomplete or unsatisfactory presentation of the facts by the testifying officer.

The court will consider not only the quality and quantity of the evidence itself, but also the manner in which it is presented. The officer's personal appearance, demeanor, attitude and ability to express himself or herself in a convincing manner can greatly affect the weight given to his testimony and have significant influence on the eventual decision of the judge or jury. It is only human nature for an officer to take a personal interest in a case in which he has been involved and to firmly believe that the offender is guilty and should be convicted. However, in testifying, the officer must make every effort to present the facts fairly and impartially without understating or exaggerating any of the circumstances of the case.

The purpose of this policy is to provide guidelines for officers who will testify in any court proceeding. These guidelines include the courthouse dress code, and an officer's responsibilities before, during and after testifying.

PROCEDURE

A. Definitions

1. **Civilian Attire:** Non-uniform clothing.
2. **Business Attire:** Dress clothes such as business suit, suit coat, dress pants, shirt and tie for men, or a business dress or pants suit for women.
3. **Uniform of the Day:** Uniform as directed by this policy or the Chief of Police or designee.

B. Courtroom Attire

1. To insure that an officer's testimony will be given the full weight and credit to which it is entitled, every police officer testifying in any court proceeding shall be well groomed and properly attired.
 - a. Business attire is always appropriate for court appearances and mandatory for Grand Jury, and Superior Court.
 - b. The uniform of the day (Class B) is also appropriate for District Court or Clerk Magistrate appearances. Business attire is recommended for trials.
2. Uniforms. Shall be neat and clean with all leather and brass properly polished. As weather permits, officers may wear the long sleeve shirt with tie or the short sleeve shirt.
3. Firearms. Officers may carry any firearm, which has been issued or authorized for duty use by the Chief of Police. Officers may wear a firearm in a pancake or molded polymer holster rather than the complete duty belt.
4. Buttons, Pins, Tie clasps, etc. In order to avoid prejudicing a judge or jury, officers **should not** wear any button, pin, tie clasp or other item, which may associate the officer with any organization or affiliation other than the Lexington Police Department.

C. Pre-trial Responsibilities

1. Court Schedules: Whenever an officer is expected to testify at any court proceeding, the following information shall be posted on the Court Bulletin Board: officer's name, court location, date, defendant's name, and charges pending. Officers shall be expected to regularly review the Court Board for scheduled court dates.
 - a. If an officer discovers a scheduling conflict or other error, he/she should provide written notification to the Police Prosecutor as soon as possible.
 - b. If an officer is scheduled to work a regular tour of duty on his/her court date, he/she will notify the commanding officer as soon as possible so that appropriate staffing levels can be maintained.

2. All personnel shall be punctual in reporting at the time and place set for the court proceeding or any pre-trial consultation with the Police Prosecutor or District Attorney.
3. Officers should, when possible, review in advance all aspects of the particular case. The officer should coordinate with the Police Prosecutor (or in his absence the Detective Lieutenant) to arrange for presentation of physical evidence and case reports.

D. Officer Testimony

1. When called to testify on the witness stand, an officer should:
 - a. Go directly to the witness stand and remain standing in a dignified and alert manner. It is at this point that the judge/jury gains its first impression of the officer;
 - b. During the reading of the oath, maintain an attitude that reflects the seriousness of the proceeding;
 - c. Stand/sit in a comfortable position that gives the officer full view of the judge/jury and the attorneys while maintaining good posture and an alert appearance;
 - d. Avoid any movements or sounds that could be distracting to the judge/jury and which may divert their attention from the testimony.
2. When a question is asked, a testifying officer should:
 - a. Look directly at the person asking the question and then give a deliberate courteous well considered answer. Direct answers towards the Judge or Jury;
 - b. Testify to what he/she knows or believes to be the truth. Officers should never claim to be an expert on a topic unless trained as such and documentation is available;
 - c. Speak naturally, calmly and in a clearly audible tone of voice, describing in a straightforward manner the events of the case in the order in which they took place;
 - d. Use plain, clearly understandable conversational language avoiding slang and unnecessary technical terms;
 - e. Display a courteous attitude maintaining self-control and personal composure at all times. The impression of being contentious, biased or prejudiced must be avoided, even if the defense counsel attempts to berate, belittle or embarrass the officer or his/her efforts;
 - f. Answer **only** the questions, which are asked. Information should not be volunteered and answers should not be provided to questions, which have not been asked.
 - g. If unsure of the question, ask for clarification.

3. An officer should pause briefly and consider every question before responding. The pause should be a natural part of the officer's answer but should not be too deliberate; hesitation or conspicuous wavering may be interpreted as indecision or uncertainty. Pausing briefly before answering will:
 - a. Insure that a complete question has been asked to prevent misinterpretation or misunderstanding of the question;
 - b. Give the officer an opportunity to analyze the question and to form a complete and accurate answer;
 - c. Give the prosecuting Assist District Attorneys the opportunity to make a timely objection to the question, if necessary.
4. Whenever an objection is made to a particular question or testimony, officers should not begin or continue an answer until the judge has ruled upon the objection. An officer must answer questions when instructed to do so by the court.
5. An officer's answers should be as specific as possible. However, when testifying to times or distances, an officer should give approximations unless the exact information is readily available.
6. Officers should make every effort to avoid errors or inconsistent statements, which could undermine the confidence of the judge or jury. **Do not guess.** If an officer does not remember or does not know a particular fact, he/she should so state. An officer who admits to forgetting or having no knowledge of a fact will allow the Prosecutor the opportunity to introduce a police report or other document to refresh the officer's memory. In addition, these admissions will be less damaging to the officer's testimony than an inaccurate reply or one that is confusing or misleading.
7. Unless asked to do so, an officer should not volunteer a personal opinion on any matter or make any statements such as "I think," "I believe," "In my judgment," "probably," or "perhaps," etc.

E. Cross-Examination

1. A defense counsel may resort to a variety of tactics in an effort to confuse or upset the testifying officer or to discredit the testimony. Within limits, this is permissible and the officer's ability to handle this situation will improve with experience. Since the judge and jury will be closely observing the officer, he/she should never become argumentative or display anger or animosity towards the defense counsel.
2. Some of the techniques commonly used by a defense attorney during cross-examination include:
 - a. Asking questions in a rapid-fire manner;
 - b. Intentionally mispronouncing the officer's name or addressing the officer by the wrong rank or title;

- c. Being overly friendly to give the officer a false sense of security while trying to lead the officer into inconsistent or conflicting answers;
 - d. Being condescending to the point of ridicule to give the impression that the officer lacks experience or expertise;
 - e. Asking repetitive questions or rephrasing previous questions in order to obtain inconsistent answers or answers which conflict with testimony of other witnesses;
 - f. Asking questions, which suggest a particular answer;
 - g. Continuing to stare directly at the officer after a response has been given in order to provoke the officer into elaborating on the answer or providing more information than the question called for;
 - h. Demanding a "yes" or "no" answer to questions that obviously require more explanation;
 - i. Suggesting or indicating that conflicting answers were given in earlier testimony;
 - j. Belligerent questioning to anger or disconcert the officer.
3. All officers must acquire the ability to remain calm, deliberate and objective under such provocation and understand that it is the purpose of the defense attorney to diminish or discredit the effect of their testimony on the judge or jury.
 4. If an officer has previously discussed the case or the proposed testimony with the prosecutor then the officer should reply in the affirmative to any questions on this subject. Pre-trial discussions of this nature are entirely proper and legitimate.

F. Additional Responsibilities

1. Witnesses. In most instances, witnesses will be summoned and prepared for the court proceedings by the District Attorney and/or Police Prosecutor. However, if an officer is instructed to prepare a witness for testifying the officer should:
 - a. Inform the witness of what they can expect when they take the witness stand;
 - b. Advise the witness not to offer any personal opinions, conjecture or suppositions;
 - c. Tell the witness that they will be asked if they have discussed the case with the police and to respond affirmatively that they were told to tell exactly what happened to the best of their ability.
 - d. When appropriate, advise the witness to discuss certain matters with the District Attorney or Police Prosecutor, particularly if they involve legal questions or procedures.
2. Sequestration Orders. A sequestration order requires each witness to testify separately and without having discussed the testimony with other witnesses and without having overheard the testimony of any other witness. Violations

of sequestration orders could result in the judge declaring a mistrial or even dismissing the case. If there is a sequestration order, officers shall:

- a. Remain outside the courtroom until called to testify; and
 - b. Not discuss their testimony or the testimony of any other witness until the completion of the court proceeding.
3. If a defense attorney is involved in a case, officers shall not discuss the case with the defendant in the absence of the defense attorney. In addition, officers will not make any agreement with the defendant's attorney for recommendations as to the disposition of the case without the knowledge and presence of the District Attorney or Police Prosecutor.

G. Post Testimony Responsibilities

1. A testifying officer should rely on the prosecutor to ask the questions which need to be answered and at the time and in the sequence that they should be answered. However, if during or at the conclusion of the officer's direct testimony, and before cross examination, an officer realizes that an important point has not been brought out or fully developed by the prosecutor's questions, the officer should, while still on the witness stand:
 - a. Utilize a discreet signal to gain the prosecutor's attention. The prosecutor may then ask the judge for permission to confer with the officer; OR
 - b. If signaling the prosecutor is unsuccessful or unavailable, the officer may address the judge directly and request permission for a very brief conference with the prosecutor.
 - c. The officer **should not** wait until he/she has been excused from the witness stand to inform the prosecutor of important matters. At this point, it may be difficult for the prosecutor to get the officer back on the stand or ask questions about matters not raised on direct examination.
2. It is understandable that occasionally mistakes in testimony may be made and an officer should voluntarily correct any error as soon as possible. In addition, an officer may realize after leaving the witness stand that some particular point has been overlooked. In these instances, an officer should inform the prosecutor as soon as possible in a manner that is not distracting to the court. Writing a note and passing it to the prosecutor is an acceptable method of accomplishing this purpose.
3. Officers are encouraged to review and discuss their testimony with the District Attorney or Police Prosecutor for the purpose of evaluating its effectiveness or identifying areas where improvements may be made.
4. Officers shall insure that any and all evidence, reports, and files, which they are responsible for, are returned to the Department at the conclusion of the court proceeding. To ensure the chain of evidence is maintained, all

evidence shall be returned to the Prosecutor, Detective Commander or in their absence returned to the station and secured into a temporary evidence locker.

H. Civil Matters and Testimony

1. Officers should not testify in any civil case, which relates to their police duties unless the officer 1) is a party to the lawsuit 2) has been legally summoned to appear or, 3) has permission from the Chief of Police or his designee. If the officer is summoned, the officer should notify the Captain of Administration as soon as possible.
2. An officer should not testify for the defendant in any criminal case without being legally summoned to appear. If an officer is summoned, the officer should inform the Chief of Police, Police Prosecutor and/or District Attorney of the testimony which may be given by the officer.

I. Evaluation

1. The Police Prosecutor shall, during the course of a calendar year, document the performance of officers who testify at court. The Prosecutor shall also make assessments of written material produced by officers that are subsequently used at hearings or other proceedings.
2. Annually and prior to the issuance of performance evaluations, the Police Prosecutor will submit to each Commanding Officer a summary of each officer's calendar year performance at court.
3. If the Police Prosecutor identifies performance deficiencies or misconduct of any nature, [s]he will notify the officer's commanding officer (or other appropriate command staff officer) in a timely manner to insure that the deficiencies are corrected or misconduct properly addressed.
4. The Police Prosecutor will be directly responsible to the Detective Lieutenant and shall take direct responsibility for insuring that Lexington's court related functions are accurate, timely, neat and well presented. The Prosecutor is authorized to work with any member of the Police Department to improve court procedures.

- J. Officers attending court proceedings outside their regularly assigned shift must complete and submit a court slip. All slips will be submitted to the prosecutor in a timely manner within 72 hours of the date and time of the court appearance.