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	SUBJECT		EFFECTIVE DATE
	<b>Virginia Beach Police Department General Order</b> <b>Chapter 17 – Court Procedures</b>		<b>08/04/2015</b>
			ORIGINATOR/REVIEW
DISTRIBUTION		CALEA:	Uniform Division
ALL			
BY THE AUTHORITY OF THE CHIEF OF POLICE:			<i>James A. Coonan</i>

## Purpose

To establish guidelines for police personnel for the preparation and prosecution of cases and while attending court.

## Policy

It is the responsibility of the arresting officer to prepare every case thoroughly, cooperate with the prosecuting attorney, and to present the evidence in a competent manner.

## Procedure

In most misdemeanor and traffic offenses, the arresting officer normally has the sole responsibility for case preparation and presentation.

Misdemeanor criminal charges, juvenile charges and traffic offenses shall be scheduled only on the officer's assigned court date(s). Officers are not to schedule cases on non-assigned dates unless extraordinary circumstances are present and this scheduling has received prior approval by a supervisor. Multiple offenses charged to one defendant and originating out of the same encounter should be set for one court and tried simultaneously. The determination of which court hears the charges will be based upon the circumstances of the original stop.

Under no circumstances shall officers schedule cases simultaneously in the different courts (criminal, juvenile, traffic) on the same date. If an officer has been subpoenaed to appear in court, under no circumstances shall the officer schedule any other case(s) for any other court on that date.

Officers shall notify their first line supervisor within 24 hours of (a) setting any court date other than their assigned court date or (b) receiving subpoenas for court dates other than their assigned dates. Supervisors are expected to investigate the reason for this scheduling; and if need be direct officers setting dates on other than their court dates be rescheduled unless extraordinary circumstances are present. A request may be made to the court to re-schedule subpoenas issued to officers for other than their regularly scheduled court dates, but the issuing court will have final authority over such matters. In all cases, supervisors are to document the court date and the reason(s) for the officer's appearance on a non-assigned date.

Officers shall monitor the number of cases they schedule for any one court session. In order to limit the number of traffic and criminal cases each officer schedules for a particular court session, the following will be the guidelines utilized: no more than 100 cases in traffic court and 20 in criminal court. For those officers who tend to generate more than the stated amount of traffic or criminal cases, they shall utilize an alternate court date within the same month (secondary dates or if available, dates within the 5<sup>th</sup> week of the month). With respect to criminal court, officers are not generally given an alternate date; however, officers who do generate more than the stated amount of cases per month should request to have one assigned to

them via Operations Division Administrative Office. Officers who know in advance that they will not be able to attend their scheduled court date (traffic or criminal) shall set dates for an alternate date within the same month (secondary court date or if available, a date within the 5<sup>th</sup> week of the month). The intended purpose of this procedure is to avoid the stacking of cases from one month to another, causing undue stress to the Court's docket.

**Officers/Detectives finding it necessary to call in sick on their assigned court dates, or dates for which they have received a subpoena, shall notify an on-duty supervisor from their command prior to contacting the Court Liaison. The notified supervisor shall (a) approve or disapprove this request, (b) document the date, reason and requested continuance date(s), and (c) provide a copy of this information to the officer's first line supervisor. In addition, this information shall also be documented in a log kept by each command. Only after receiving command approval shall the officer/detective contact the Court Liaison. The Court Liaison shall complete a BlueTeam Missed Court entry noting the approving supervisor from the command in the narrative section and forward the BlueTeam to Internal Affairs. Internal Affairs shall review the BlueTeam entry and if it appears excused by the command, shall forward the entry in BlueTeam to the command for verification and iPoad update. Failure to Appear and/or unexcused absences will result in an Internal Investigation being generated by IA and forwarded to the command for investigation and adjudication.**

### **Prior Conviction Documentation**

Documentation of prior convictions may be needed for the successful prosecution, or imposition of enhanced penalties, in certain cases. Due to the Court of Appeals ruling in *Nicely v. Commonwealth*, a DMV abstract is generally all that is now needed.

### **Appeals**

Once a misdemeanor or traffic offense has been appealed, or in all felony cases, it is the duty and responsibility of the City/Commonwealth's Attorney to prepare and prosecute the case in Circuit Court. A written questionnaire provided to the officer from the City/Commonwealth's Attorney must be completed and returned in a timely manner. Any request for a continuance of cases pending in Circuit Court must be made through the office of the City/Commonwealth's Attorney.

### **Court Appearances**

#### **Expert Witness Testimony**

The complete uniform must be worn to court if you are a uniformed officer. Officers/detectives in non-uniform assignments should dress in appropriate business attire and display their badges.

Unless on official duties, no police employee shall appear in court in uniform or will they be in possession of any weapon.

Officers on administrative leave or in administrative assignments where their police authority has not been restricted shall go to court as required. Officers on administrative leave or in administrative assignments where their police authority has been restricted shall notify the court and/or prosecuting attorney(s) and attempt to continue their cases until such time as the officer's police authority has been restored. Officers should recognize that continuances are not automatic and the final decision rests with either the Court or the prosecuting attorney(s).

No department member shall testify in any criminal or civil trial as an expert witness in any case where the member has no official involvement with the case while the member is on-duty or in uniform, unless said

member is subpoenaed by the City Attorney's Office, the Commonwealth Attorney's Office or the State Attorney General's Office. Any subpoena's received by members from a non-government entity shall be forwarded to Professional Standards immediately. Should any member elect to provide expert witness testimony in a case where he or she has no official involvement, such testimony shall only occur (1) as a civilian in an off-duty status, (2) when he or she is not in a department uniform and (3) after Professional Standards, together with the City Attorney's Office, determines such testimony would not present a conflict of interest for the member, the Department or the City of Virginia Beach.

### **Plea Bargaining**

In cases being prosecuted by the officer, they may discuss the case with defense attorneys; however, officers are not to agree to any plea agreement. In cases being prosecuted by the City / Commonwealth's Attorney, officers shall not discuss any information/facts relating to the case without the express permission of the prosecuting attorney(s).

### **Dismissal / Nolle Prosequi**

Officers may request a dismissal, nolle prosequi, reduction or merger of charges only; (a) after the officer obtains supervisory authorization (with the exception of traffic infractions listed below) and, (b) the defendant appears in court at the prescribed date and time.

**(Minor Traffic Infractions)** Police officers may request, without prior supervisory approval, a dismissal, nolle prosequi, reduction or merger of the below listed traffic infractions only if (a) an accident was not involved, and (b) the defendant appears in court at the prescribed date and time and provides documentation that the violation had been corrected.

#### **LICENSE AND REGISTRATION**

- a. 46.2-104 Possession of registration cards; exhibition of registration card and operator's license, etc.; failure to carry license or registration card.
- b. 46.2-613 Expired State tags

#### **IMPROPER EQUIPMENT**

- a. 46.2-1000 When registration to be suspended; officer to take possession of registration card, license plates, and decals upon observing defect in motor vehicle; when to be returned.
- b. 46.2-1011 Head lamps on motor vehicles
- c. 46.2-1012 Head lamps on motorcycle
- d. 46.2-1013 Rear lamps, stop lamps
- e. 46.2-1082 Mirrors
- f. 46.2-1055 Windshield wipers
- g. 46.2-1056 Windshields
- h. 46.2-1041 Tires
- i. 46.2- 1038 Turn Signals
- j. 46.2-1049 Exhaust system in good working order
- k. 46.2-1047 Muffler cutout, etc., illegal
- l. 46.2-1158 Expired State Inspection

In cases involving felony charges, or misdemeanor/traffic charges being prosecuted by the City / Commonwealth's Attorney, the officer may recommend a dismissal, nolle prosequi, reduction or merger to the prosecuting attorney only after the officer seeks and obtains approval from a police supervisor.

Nothing in this policy restricts the decision of the Commonwealth's Attorney's Office to initiate any motion before the Courts pertaining to the final disposition of a case under their control.

Officers may not dismiss, nolle prosequi, reduce or merge any charges without the defendant's presence in court at the time of the motion except in the following cases: (a) where the summons or arrest was due to an error by a law enforcement officer or other city official or, (b) a genuine injustice would result from requiring the citizen to appear in court. In these cases the Commanding Officer of the command responsible for the summons or arrest may approve the defendant's absence from court.

For the convenience of the citizen who appears in court and who has complied or corrected the situation that prompted the issuance of the summons (equipment or licensing violation) the officer may move to nolle prosequi or dismiss the case in the motion line prior to the hearing of cases.

For all instances, other than the above listed minor traffic infractions, where an officer's request for either a dismissal or nolle prosequi of a case was approved by the judge, the officer will be required to complete a memorandum outlining the justification for the decision and the name(s) of the supervisor and other authorizing personnel. The memorandum will be sent to the Commanding Officer of the officer who had the charge(s) dismissed or nolle prosequi. The Command will be responsible for retaining the memorandum in accordance with the Virginia Records Retention and Disposition Schedule.

Nothing in this General Order authorizes any officer, police supervisor or civilian employee to dismiss, nolle prosequi, reduce or merge any charge placed by any other employee of this department.

### **Subpoena of Witnesses**

When an officer subpoenas a witness at a crash scene, pursuant to Virginia State Code, or requests a magistrate issue a subpoena for witnesses, officers will make every attempt to notify any witness, or victim, if the case is continued or adjudicated prior to the scheduled court appearance.

### **Requesting Assistance from the City/Commonwealth's Attorney**

The assistance of the City/Commonwealth's Attorney may be requested in certain cases depending on the complexity of the case.

Should assistance be requested, the following procedures shall apply:

- a. Officers shall submit a Request for Prosecution Assistance form (PD-70).
- b. Within three (3) days of the arrest, the arresting officer shall submit the required paperwork to their immediate supervisor.
- c. The supervisor shall review the paperwork and ensure that it is forwarded to the appropriate City/Commonwealth's Attorney.
- d. Delivery of the completed case file to the City/Commonwealth's Attorney must occur within ten (10) days of the arrest.

### **Case Screening**

To ensure that complete and thorough cases are presented for prosecution, it is imperative that complex cases be screened by the City / Commonwealth's Attorney. Most felony cases must be screened by the Commonwealth's Attorney's office either prior to, or immediately after, and arrest is made. However, in all cases, case screening shall take place within five (5) days of an arrest in accordance with General Order

8.02, Criminal Investigations. Outright indictments to be presented to the Grand Jury must be screened before the case will be placed on an upcoming Grand Jury docket.

### **Request for Continuances and Change in Court Date**

The Virginia Beach General District Court (GDC) has instituted standards that officers must comply with in order to request a continuance or change from an established court date. Except where otherwise noted, officers seeking a continuance must appear in GDC to seek permission from a judge before sending any letters to citizens advising them the case has been continued. If this procedure is not followed, the GDC will not honor the continuance and will require the officer to appear on the scheduled court date. Barring any special circumstances, certain offenses can be continued one time without the direct involvement of a judge. Those offenses are:

- Any bicycle offense
- No license or registration card in possession (46.2-104)
- Speeding (except reckless by speed)
- Defective Equipment (46.2-1003), Improper Brakes (46.2-1066), Improper Exhaust (46.2-1047, 1048, 1049), Tint Violation (46.2-1052)
- Fail to Obey Highway Markings / Improper Lane Change (46.2-804)
- Disobey a Highway Sign (46.2-830), Stop Sign (46.2-821), or Traffic Signal (46.2-833)
- HOV Violation (33.1-46.2)
- Seatbelt Violation (46.2-1094)
- No Child Restraint or No Seatbelt for Child (46.2-1095)
- Expired Inspection Sticker / No Inspection Sticker (46.2-1158)
- Expired Driver's License (46.2-330)
- Expired Registration (46.2-646)
- Failure to Yield Right-of-Way (46.2-820 to 46.2-826)
- Drinking in Public (City Code 23-22.1)
- Drunk in Public (City Code 23-22)

If any of the above offenses involves a vehicular or pedestrian accident involving property damage or personal injury, or the defendant is facing charges not included on the above list, then the request for continuance must be made in person and in accordance with the following guidelines.

1. Prior to beginning the continuance process, the requesting officer will discuss the need with their supervisor to explore potential alternatives. Continuances should not be sought for frivolous or avoidable reasons. The officer must include a justifiable explanation for making the request on the Request for Court Continuance form, or the continuance request may not be honored by the Courts. If the supervisor approves the request, the officer will complete the top portion of page one of the "Request for Court Continuance" form (PD-249) and the supervisor will sign in the designated place.
2. All continuance requests (except those meeting the criteria previously established) must be made in person before the Court. If the arresting/issuing officer is unable to personally bring the matter before the Court, they may designate a representative to act on their behalf. If the employee is unable to personally bring the matter before the court for a continuance, such as the employee is incapacitated and/or on a "No Duty" status, their immediate supervisor shall be responsible for ensuring necessary

continuances are sought in accordance with this policy.

3. If the requesting officer is aware a defense attorney has been retained, the officer should make the attorney aware of the intent to request a continuance. Officers should provide the attorney the opportunity to appear in Court and object to the continuance motion.
4. To ensure adequate time exists for all parties to be notified, requests for continuance should be made at least three weeks in advance of the scheduled court date, or as soon as reasonably possible in emergency situations.
5. The preference is for the requesting officer to appear in the courtroom the case in question is scheduled to be heard. If that Court is not in session or unavailable for other reasons, the officer may appear before any other GDC judge, including the Duty Judge, to request the continuance.
6. Once in Court, the requesting officer should notify the court clerk that they will be requesting a continuance. The clerk will request copies of the officer's documentation in order to pull the cases and prepare them for the judge's review. If the Duty Judge is not on the bench at the time the officer arrives at Court, a meeting with the Duty Judge may be requested by the officer by contacting the GDC Clerk's Office. In order to assist the officers who are in Court for the sole purpose of requesting a continuance, all of the judges and court clerks have been instructed to prioritize the officer's requests in order to minimize the time they would need to remain in Court.
7. For each defendant, the officer will present the Judge with two copies of the "Request for Court Continuance" form (PD-249, page 1) for approval or disapproval, one copy of the completed Citizen Letter (PD-249, page 2), and one copy of all uniform summons(es) or arrest warrant(s) for that defendant. The judge will complete the bottom half of the Request for Court Continuance form (PD-249, page 1), indicate whether the continuance request is approved or denied, sign the form, and return one signed copy of that form to the officer. The second copy of that form, as well as the copy of the Citizen Letter, and copies of the applicable summons(es) or arrest warrant(s) will be retained by the Court for inclusion in the defendant's case file. The officer should retain all original documentation in order to properly prosecute the matter.
8. If the Judge approves the continuance, as soon as practical the officer will send by U.S. Mail the "Notice of Court Continuance" form (PD-249, page 2) to the defendant and any other involved parties notifying them that the Court has granted the continuance. Other involved parties may include a co-defendant, a defense attorney, and any witnesses.

It is important to remember that whenever possible the need to request Court continuances should be avoided. All officers must keep an accurate calendar reflecting the officer's conflicts and the Court's expected closures and holiday schedule in order to avoid setting Court dates on an improper day.

### **Legal Defense for Officers**

When an officer has been accused of, and formally charged, with committing a criminal act while in the performance of their official duties, the officer(s) may wish to retain legal counsel for representation in court. Neither the City of Virginia Beach nor the Department of Police shall be responsible for retaining

counsel on behalf of an officer who is accused of committing a criminal act while in the performance of their official duties. The responsibility of retaining counsel rests solely with the accused officer(s).

If, upon hearing the case against the officer(s), the court renders any decision other than that of “guilty”, the City of Virginia Beach may be responsible for paying all reasonable and customary legal expenses incurred as a result of such representation. However, if the court renders a verdict of “guilty” against the officer(s), remuneration of all legal fees and expenses is solely the responsibility of the convicted officer(s).

### **Amendment to Virginia Uniform Summons**

The officer who issues a summons to a citizen is responsible for completing the summons accurately and completely. In the event that an error or omission is noted after the summons has been issued, the officer must make an amendment to the summons in person, before the judge, prior to the commencement of the trial. As soon as the need for amendment is noted, the officer shall make written notification to the defendant, the Department, and the Clerk of the Court of the need to amend the summons via the Amendment to Issued Summons Letter (PD-2) The use of this form permits the entry of accurate information into the records management systems of the Police Department and the Clerk of the Court, while maintaining the fairness and integrity of the judicial process.

The Amendment to Issued Summons Letter (PD-2) will be mailed to the defendant as soon as the need for amendment is noted. A copy of the Amendment to Issued Summons Letter (PD-2) shall be attached to the original summons permitting accurate entry into the records management systems. The summons may then be amended in person, before the judge, prior to the commencement of the trial.