



BRAINTREE POLICE DEPARTMENT

Policy and Procedure

Court Procedures and Testimony

2019-70

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General Considerations An Officer's personal appearance, demeanor, and ability to express himself/herself in a credible manner can affect the weight give to his/her testimony and potentially affect the outcome of the case. The following are guidelines that should be followed by Officers attending and testifying in court.

Policy It is the policy of this department that:

- 1) Officers shall cooperate with prosecutors and other court personnel to ensure the thorough and impartial prosecution of all offenders; and
- 2) Officers shall testify truthfully and impartially in all judicial proceedings.

Procedures

- 1) Prior to Trial Officers should:
 - a) Review the case, including reports, notes, witness statements, and review or obtain all physical evidence needed.
 - b) Refrain from discussing the case with the defendant in the absence of his/her attorney, if [s]he has one, or from making any agreement with the defendant's attorney for recommendations as to the disposition of the case without the knowledge of and the presence of the prosecutor and/or the department prosecuting officer.
 - c) In pretrial conferences with the prosecutor, provide all available information. No detail concerning the particular case should be considered too trivial to discuss. This will decrease the likelihood of any surprise developments during the trial.
- 2) At the Courthouse
 - a) Officers shall be punctual in reporting at the time and place set for the hearing, trial or other proceeding. Officers are to check

in/sign in with the DA. The court attendance list is emailed to all sworn personnel weeks in advance. Officers' dress and decorum should be appropriate and professional.

- b) If there is a sequestration order applicable to the police and other witnesses, officers shall remain outside the courtroom until called to testify.
 - i) Officers shall not discuss their testimony or the testimony of any other witness with anyone other than the prosecutor until the completion of the trial or other proceeding.
 - ii) A sequestration order generally requires that each witness testify separately and without having discussed his/her testimony with other witnesses and without having overheard the testimony of any other witness.
 - iii) Violation of a sequestration order could result in the judge's declaring a mistrial or even dismissing the case.
- c) While waiting to be called to the stand, or after having provided testimony, officers shall refrain from any unnecessary discussion with other officers involved in the case.

3) Courtroom Attire

- a) While attending court proceedings officers may wear the uniform of the day or appropriate civilian attire. If a member of sworn personnel wears a uniform to court he/she shall wear the complete uniform of the day. Sworn personnel attending court while on duty will wear the uniform of the day unless prohibited by the particular court (Superior Court). Sworn personnel shall not wear the external vest carrier while testifying. Appropriate civilian clothing for male officers is either a business suit with tie or sports coat with tie and dress pants.. Female officers are permitted to wear a dress or skirt/dress pants and blouse.

4) Conduct as a Witness

- a) As soon as [s]he is called, the testifying officer should go directly to the witness stand in a dignified and alert manner, as it is at this point that the jury gains its first impression of the officer.
 - i) [S]he should avoid any movements or sounds that could be distracting to the judge or jury and which may divert their attention from his/her testimony.
- b) While on the stand, the officer shall:
 - i) Testify to what [s]he knows or believes to be the truth.
 - ii) Use plain language, avoiding slang and unnecessary technical terms.
 - iii) Be courteous maintain self-control and personal composure, avoid any impression of bias or prejudice.
 - iv) Listen carefully to each question and respond accordingly.

- (1) If asked to state facts, state the facts known or believed to be true.
 - (2) If asked to state an opinion or conclusion, do so if the officer has formed an opinion or conclusion which [s]he can articulate and support. Do not give a personal opinion unless asked to do so.
 - (3) If an answer is unknown, state that it is unknown.
- v) Answer only the questions which are asked.
 - vi) Make every effort to avoid errors in his/her testimony or inconsistent statements which could undermine the confidence of the judge or jury in his/her credibility.
- c) When a question is asked, the testifying officer should:
 - i) Look at the person asking the question and then give his/her answer. If [s]he does not hear or clearly understand the question, [s]he should request that the question be clarified or repeated before answering.
 - ii) Pause briefly and consider every question before responding in order to:
 - (1) Ensure that [s]he understands the question;
 - (2) Give the officer an opportunity to analyze the question and to form a complete and accurate answer; and
 - (3) Give the other attorney the opportunity to make an appropriate objection to the question, if necessary.
 - iii) Avoid being too deliberate in responding to questions, as any conspicuous wavering or hesitancy on his/her part may be interpreted as indecision or uncertainty.
 - iv) Be as specific as possible in his/her responses, but in testifying as to times or distances [s]he should state that they are approximations unless [s]he has the exact information readily available.
 - d) When an objection has been made, an officer should stop testifying, look at the judge, and await his/her decision.
 - e) Refer to Notes: At the request of the prosecutor or defense attorney, and with the permission of the judge, an officer may refer to his/her notes or a police report to refresh his/her memory on a given point. Officers should be mindful that continual reliance on notes can detract from their testimony and raise doubts as to their knowledge of the facts.
- 5) Inaccurate or Omitted Testimony
- a) If an omission is realized after the officer has left the witness stand, [s]he shall inform the prosecutor as soon as possible in a manner that is not distracting to the court.

- b) If a mistake in testimony has been made, the officer should voluntarily correct any error as soon as possible.
 - c) **Note:** Officers that intentionally lie as witnesses in court or investigation are subject to termination.
- 6) Defense Attorney Tactics
- a) A defense attorney may resort to a variety of tactics in an effort to confuse or upset the testifying police officer or to discredit his/her testimony.
 - i) This must be expected, and it is permissible within ethical limits.
 - ii) An officer's ability to cope with these tactics improves with experience.
 - iii) As the judge and jury will be closely observing the officer, [s]he should never become argumentative or display anger or animosity towards the defense counsel. [S]he should remain calm and courteous at all times, despite any badgering tactics by the defense, and take sufficient time to permit the prosecutor to make appropriate objections.
 - b) The following are some of the most common tactics used by a defense attorney in cross-examination:
 - i) Asking questions in a rapid-fire manner to confuse the witness;
 - ii) Intentionally mispronouncing the officer's name or calling him/her by the wrong rank or title in order to affect his/her concentration;
 - iii) Being overly friendly to give the witness a false sense of security before attempting to lead him/her into inconsistent or conflicting answers;
 - iv) Being condescending to the point of ridicule to give the impression that the officer lacks experience or expertise;
 - v) Asking repetitious questions or rephrasing previous questions in order to obtain inconsistent answers or answers which conflict with previous testimony by the witness;
 - vi) Asking leading questions;
 - vii) Continuing to stare directly at the witness after [s]he has responded in order to provoke the witness into elaborating on his/her answer and providing more information than the question called for;
 - viii) Demanding a "yes" or "no" answer to questions that obviously require more explanation;
 - ix) Suggesting or indicating that conflicting answers were given in earlier testimony; and

- x) Belligerent questioning to anger and disconcert the witness.
- c) All officers should acquire the ability to remain calm, deliberate and objective, despite such provocation, and understand that it is the purpose of the defense attorney to diminish or discredit the effect of the officer's testimony on the judge and jury.