

**CHAPTER 493. SERVICE, ACCEPTANCE, AND USE OF LEGAL
PROCESS AND LEGAL PROCEEDINGS**

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Authority

The provisions of this Chapter 493 issued under sections 506 and 2001 of The Administrative Code of 1929 (71 P. S. §§ 186 and 511), unless otherwise noted.

Source

The provisions of this Chapter 493 adopted September 3, 1971, effective September 4, 1971, 1 Pa.B. 1774, unless otherwise noted.

§ 493.1. Purpose and policy.

- (a) It is the purpose and policy of the Secretary of Transportation to make information available to the public to the greatest extent in keeping with the law the protection of private rights and the efficient conduct of public business.
- (b) The provisions of this chapter are intended to control and regulate:
 - (1) Acceptance by Department employees of legal process and legal pleadings involving the Department.
 - (2) Testimony by Department employees as witnesses in legal proceedings.
 - (3) Production by Department employees of official records.
- (c) The Chief Counsel, Deputy to the Chief Counsel, or an Assistant Chief Counsel may authorize a deviation from a policy or procedure as set forth in this chapter, but only when the deviation will not interfere with matters of operational necessity, and when:
 - (1) The deviation is necessary to prevent a miscarriage of justice.
 - (2) The Department has an interest in the decision that may be rendered in the legal proceeding.
 - (3) The deviation is in the best interests of transportation activities fostered by the Department or by the United States Government.

§ 493.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Legal pleadings—The formal written statements of the parties to a legal proceeding regarding their respective claims and defenses, such as preliminary objections, answer, petition for rule to show cause, and the like.

Legal process—The summons, complaint, petition for viewers or other similar pleading which initiates a legal proceeding.

Subpoena—A court order requiring the appearance of one or more named persons at a specified time and place for the purpose of testifying in a matter before the court.

Subpoena duces tecum—A court order requiring the custodian of specified documents to deliver them at a specified time and place for use as evidence in a matter before the court.

§ 493.3. Service of legal process and legal pleadings.

(a) Legal process in a matter involving the Secretary of Transportation or the Department of Transportation shall be served only upon, and accepted only by, a staff attorney at one of the following Department Legal Offices:

- (1) Office of Chief Counsel
Pennsylvania Department of Transportation
Commonwealth Keystone Building
400 North Street, 9th Floor
Harrisburg, PA 17120
Phone: (717) 787-5473
- (2) Office of Chief Counsel
Pennsylvania Department of Transportation
Western Region
301 Fifth Avenue, Suite 210
Pittsburgh, PA 15222
Phone: (412) 565-7555
- (3) Office of Chief Counsel
Pennsylvania Department of Transportation
B-2 State Office Building
100 Lackawanna
Scranton, PA 18503
Phone: (570) 963-4745
- (4) Office of Chief Counsel
Pennsylvania Department of Transportation
7000 Geerdes Blvd. 4th Floor
King of Prussia, PA 19406
Phone: (610) 205-6600

(b) Legal pleadings in a matter involving the Secretary or the Department shall be served only upon and accepted only by the attorney who has entered his formal appearance for the Department; or, if no formal appearance has been entered, in the manner set forth in subsection (a), for service of legal process.

(c) Legal process and legal pleadings delivered to any Department office other than as specified in subsections (a) and (b), will not be accepted but will be received for forwarding to the Chief Counsel at Harrisburg. The employee who receives the legal process or legal pleading shall be deemed to be acting as agent

of the process server in receiving and forwarding the document, and shall so inform him in the case of hand-delivered legal process or legal pleading.

(1) Whether hand-delivered or received in the mail, the receiving employe shall note on the document the information listed below, and forward it—without delay and without District Staff review—to the Chief Counsel, Commonwealth Keystone Building, 400 North Street, 9th Floor, Harrisburg, Pennsylvania 17120.

(i) An annotated copy of any document received in Districts 1, 10, 11, and 12 or in Clearfield (2-2), Cameron (2-4), McKean (2-5), Elk (2-8), Cambria (9-3), and Somerset (9-7) Counties, shall also be promptly forwarded to the Department's Pittsburgh Legal Office.

(ii) An annotated copy of any document received in District 4 or in Monroe (5-4), Carbon (5-2), and Schuylkill (5-6) Counties, shall also be promptly forwarded to the Department's Scranton Legal Office.

(iii) An annotated copy of any document received in District 6 shall also be promptly forwarded to the Department's King of Prussia Legal Office.

(2) The following information shall be noted on the forwarded document:

(i) Name of receiving employe.

(ii) Departmental unit at which document was received.

(iii) Date and time of receipt.

(iv) Manner of delivery, that is, whether hand-delivered, first class mail, certified mail, or the like.

(v) A copy of the document may be made and retained for District Staff review, if desired.

(d) Upon receipt of the legal process or legal pleadings by the Chief Counsel or Staff Attorney, whether service was made directly under subsection (a) or (b) or indirectly under subsection (c), service will be accepted on behalf of the Secretary of Transportation and will be acknowledged in writing.

Source

The provisions of this § 493.3 amended September 2, 2011, effective September 3, 2011, 41 Pa.B. 4772. Immediately preceding text appears at serial pages (287542) to (287593).

§ 493.4. Subpoena of witnesses and production of records.

(a) *Subpoena ad testificandum*. Subpoena *ad testificandum* shall be served as follows:

(1) A subpoena *ad testificandum* issued in any action involving the Department or the official duties of an employe thereof shall be directed only to an employe who has detailed personal knowledge of the facts about which he is to testify and shall be personally served on the employe.

(2) Personal service of a subpoena *ad testificandum* may be waived by a Department staff attorney with the consent of the employe to whom it is directed, if circumstances warrant and if the Department and the employe will not be prejudiced by such waiver.

(b) *Subpoena duces tecum*. Subpoena *duces tecum* shall be served as follows:

(1) A subpoena *duces tecum* shall be directed to the custodian of the documents subpoenaed, as follows:

- (i) The District Engineer of each Engineering District shall be the custodian of all documents housed in any District or County office under his jurisdiction.
 - (ii) The Director of each Central Office Bureau shall be the custodian of all documents housed in the Bureau office in Harrisburg.
 - (iii) The Secretary and each Deputy Secretary shall be the custodians of documents housed in their respective executive offices in Harrisburg.
- (2) The custodian shall appoint a responsible employe of the Department to deliver subpoenaed documents and provide any necessary testimony relating to their custody and content.
 - (3) Service of a subpoena *duces tecum* may be waived by a Department staff attorney, in consultation with the custodian of the documents, if circumstances warrant and if the Department will not be prejudiced by such waiver.
- (c) *Serving the subpoena.* Subpoenas shall be served at least 48 hours in advance of the time the employe will be required to testify to allow the Department and the employe to make necessary arrangements to cover the employe's duties in his absence.
- (1) The time stated for the employe's appearance shall be pinpointed as accurately as possible in order to avoid undue disruption of official business.
 - (2) The witness fee for one day in court, plus roundtrip mileage, must be tendered with the subpoena.
- (d) An employe who is served with a subpoena requiring his appearance in court or before any legislative committee, etc., in any action involving the Department or in connection with the employe's official duties, shall telephone the Chief Counsel, Deputy to the Chief Counsel, Deputy Chief Counsel, or an Assistant Chief Counsel for instructions.
- (1) If the production of records is demanded (subpoena *duces tecum*), the employe shall fully describe the type of records listed in the subpoena so it can be determined whether the records demanded should be produced.
 - (2) If compliance with a subpoena will adversely affect the performance of official duties or require the production of records that are not available for public disclosure, the Office of the Chief Counsel will move to have the subpoena withdrawn, quashed or modified.
- (e) An employe testifying under subpoena is required to testify only to facts within his personal knowledge, and is not required to give his opinion as an expert in his particular field of knowledge. In order to avoid prejudicing the Department's case, where it is a party, and to maintain the Department's neutrality in private litigation, statements of opinion are to be avoided wherever possible.
- (1) If an employe is questioned as to his opinion by anyone other than an attorney for the Department, he shall respectfully decline to answer on the

grounds that he is forbidden to do so by this chapter. If he is, nonetheless, ordered to testify by the person or body conducting the proceeding, he shall do so.

(f) In an appropriate case, the Office of the Chief Counsel will provide legal representation for a subpoenaed employe.

§ 493.5. Fees and costs.

(a) Payments for mileage and witness fees received by an employe when subpoenaed as a witness shall be paid over to the Department Comptroller, when time spent in court is during working hours and travel is at Department expense.

(b) The party issuing a subpoena *duces tecum* shall be billed for reproduction and other costs of preparing the documents subpoenaed.

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