

State of Utah DEPARTMENT OF NATURAL RESOURCES POLICIES AND PROCEDURES	REF. NR-95-C-02	PAGE 1 of 5
	EFFECTIVE DATE: 05-30-95	
	REVISION DATE: 01-12-12	
SUBJECT: Testifying in Criminal or Civil Proceedings		
Michael R. Styler, Executive Director		

I. PURPOSE

To clarify the rights, duties and obligations of Department of Natural Resources' employees testifying in both criminal and civil proceedings.

II. POLICY

A. Criminal matters.

1. No employee of the department may hold themselves out, solicit, encourage or in any other way advertise or make known their availability as a witness for the defense in any criminal proceedings in this state or any other state.
2. It shall be the general policy of the department that employees not testify as witnesses, expert or otherwise, for the defense in criminal cases, unless the same is specifically approved by the Executive Director of the Department of Natural Resources. Upon the receipt of a subpoena to so testify the division director shall be immediately notified and the matter brought to the attention of the executive director of the department.
3. If an employee of the department has been compelled by subpoena to testify for the defense, and the department and/or the state of Utah or other prosecuting agency is unable to quash the subpoena or discourage the use of department personnel as defense witness, no fee, other than the statutory witness fee, may be accepted by department personnel.

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1. Department personnel subpoenaed as state's witnesses shall comply with said subpoena and cooperate in every way appropriated with the prosecution.

B. Civil Cases.

Frequently, employees of the department will be sought out and/or subpoenaed as witnesses in civil cases. Employees may be called as fact or occurrence witnesses or experts where they have actually observed or evaluated an event as a result of their official duty or they may be called as general expert witnesses simply to evaluate events totally unrelated to conduct of their official duties or responsibilities.

It will be the purpose of this subparagraph to define the bounds and propriety of testimony in either circumstance and to prescribe those instances where compensation may be demanded and received.

III. DEFINITIONS

A. Fact or occurrence witness: A witness who conducts an investigation of an event in the course of their duties utilizing commonly employed investigative techniques in evaluating the event.

B. Fact or occurrences expert: A witness who conducts an investigation of an event in the course of their official duties where the employee utilized specialized training or knowledge in evaluating the event.

C. General expert: A witness unacquainted with the particular facts of an event but who's' testimony is sought to evaluated the event employing their special training knowledge.

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IV. PROCEDURE

A. Testifying on fact or occurrence.

1. Employees of the department shall respond to a subpoena to testify as a fact or occurrence witness regarding the substance, evidence, observations, investigations, conclusions, opinions or other matters relating to an event in which the employee was involved as a consequence of their official duty as an employee of the department.
2. Employees thus subpoenaed, may demand on behalf of the department a fee equal to his or her hourly rate of compensation plus benefits including mileage both ways if required to travel, when subpoenaed to give testimony or participate in consultation during duty hours. Fees thus received shall be immediately tendered to the state treasury via the employee's division director.
3. An employee subpoenaed to give testimony off duty or participate in consultation may demand a fee not in excess of double their hourly rate of compensation plus benefits including mileage both ways if utilizing his own transportation. The employee may retain all of the fees plus mileage unless they utilize a state vehicle in which case the mileage reimbursement shall be tenured to the state treasury as indicated above.

B. Testifying as general experts: An employee of the department may appear as a general expert witness in civil matters only under the following conditions and circumstances:

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1. Testimony will not tend to impair their independence of judgment during the performance of duties as an employee of the state of Utah.
 2. The employee shall have no personal or financial interest in the matter before the court and shall testify on their own time.
 3. Where the testimony would be contrary to an opposing witness who is an employee of the department or the state of Utah or where an opposing witness is an employee of any other political subdivision of this state, permission must be sought and obtained from the Executive Director of the Department of Natural Resources before honoring a subpoena or otherwise agreeing to testify.
 4. General experts are free to negotiate fees with the party who employs them as experts.
 5. Notwithstanding the above, no employee of the department may solicit or advertise their availability as a general expert witness.
- C. Under no circumstances shall an employee subpoenaed pursuant to Section B, affirm or imply a lack of cooperation when a dispute arises regarding payment of fees. The occurrence of such disputes should be immediately reported to the employee's division director.
- D. Public Employees Ethics Act: Each employee of the department will be thoroughly familiar with the Public Employees Ethics Act contained in Title 67, Chapter 16 of the UCA. In particular, the prohibited acts contained in Section 67-16-4 of this act are important for every employee to thoroughly understand. Essentially those prohibitions are as follows.

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1. Disclosing confidential information gained by reason of their official position.
2. Disclosing confidential information or using such information for their or another's private gain or benefit.
3. Using their official position to secure a special privilege or exemption for themselves or another.
4. Accepting employment which they might reasonably expect might impair their independence of judgment in their performance of public duties.

E. Penalties for violation of this policy.

1. Violation of the state of Utah Public Employees Ethics Act is a misdemeanor and if the employee knowingly and intentionally violated the act, they shall be dismissed from employment or removed from office, in accordance with appropriate Human Resources rules.
2. In addition to any criminal penalties which may attach to a violation of this policy, departmental discipline or dismissal from service with the department may be initiated.

F. Personal gain or profit.

Other than specified in this policy regarding fees to be charged, no employee of the department shall sell, barter, trade, or otherwise profit by the release of information or knowledge gained primarily as a consequence of their experience as an employee of the department. All written materials submitted to professional journals or trade publications must be submitted to and approved by the Executive Director of the Department of Natural Resources prior to release.