

## **Guidelines for Appearing as a Witness in Legal Proceedings**

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### I. Introduction

Boston EMS personnel testify at trials, depositions, and other legal proceedings several hundred times each year. Sometimes they testify as witnesses in civil lawsuits as employees of the Boston Public Health Commission when the Commission is sued as a result of either a motor vehicle crash involving EMS personnel or care and treatment rendered by EMS personnel in emergency situations. In these cases, the Boston Public Health Commission's General Counsel's Office is defending lawsuits that directly relate to EMS employees alleged involvement as drivers of EMS vehicles or as caregivers in emergency situations.

In addition to the Boston Public Health Commission litigation cases in which EMS personnel are directly involved, EMS personnel may testify in civil lawsuits involving personal injury or other civil matters that do not involve the Commission.

More frequently, EMS personnel appear on behalf of the state government in criminal prosecutions. Because EMTs and paramedics respond to crime scenes regularly, and because they arrive almost immediately after the crime has occurred, they often possess information not available from any other source. As a result, the testimony of EMS personnel may play a crucial role in the outcome of a criminal trial.

EMTs and paramedics who understand the workings of the legal system make better witnesses. The purpose of these guidelines, therefore, is to prepare Boston EMS personnel for appearances at trials and other legal proceedings.

### II. Overview of the Criminal Trial Process

The Massachusetts criminal court system consists of one Superior Court and several district courts in each county. Superior Courts have jurisdiction over felonies—crimes that carry a sentence of at least two and a half years in state prison. Lesser crimes, known as misdemeanors, are tried in the district courts. Many of Boston's neighborhoods have their own district courts, including South Boston, Dorchester, and Roxbury. The district court for downtown Boston is called Boston Municipal Court (BMC).

The Suffolk County District Attorney's Office or the Massachusetts Attorney General's Offices are responsible for prosecuting state crimes committed in Boston. For this reason, the district attorney's office and its personnel are known collectively as "the

prosecution.” At least one assistant district attorney (ADA) or assistant attorney general represents the prosecution at each criminal trial. The person accused of the crime is called the defendant. A defendant may be represented by a privately-hired attorney, or, if indigent, by an attorney appointed and paid for by the state.

Criminal proceedings in the district courts begin with the filing of a written complaint by a crime victim, a police officer, or by the district attorney’s office. The complaint identifies the defendant and the crime with which he is charged. In Superior Court, the process is somewhat more complex. There, an ADA presents evidence to a 23-member grand jury in a closed proceeding. If, after viewing the ADA’s presentation, at least 12 of the 23 grand jurors agree that the defendant probably committed a crime, then the court issues a document known as an indictment, and the case proceeds to trial. Otherwise, the charges are dismissed.

Criminal jury trials, federal and state, consist of the following events:

- *Jury selection.* The prosecution and defense must agree on six jurors for district court trials, and 12 jurors for Superior Court trials. In addition, the judge usually requires the selection of one or more alternates, to serve in the event that a regular juror becomes unavailable or incapacitated. This process may take as little as one hour, or, in particularly complex or high-profile cases, as long as several weeks.
- *Opening statements.* Each side describes the merits of its case to the jury, and outlines the evidence it intends to present. The prosecution goes first; the defense makes its statement afterward.
- *Presentation of evidence.* The prosecution shows charts, photographs, weapons, articles of clothing, and other items to the jury in an effort to prove beyond a reasonable doubt that the defendant committed the crime with which he has been charged. The most persuasive evidence may be the testimony of witnesses who have personal knowledge of the events surrounding the crime. Boston EMS personnel generally testify during this point in the trial. After the prosecution has completed its presentation, the defense presents its own evidence.
- *Closing arguments.* Each side summarizes the evidence. The defense urges the jury to find the defendant not guilty; the prosecution urges the jury to convict.
- *Jury Instructions.* The judge instructs the jury regarding the law.
- *Jury deliberation.* The jury retires to decide in private whether the prosecution has proven, beyond a reasonable doubt, that the defendant committed the crime as charged. The verdict—guilty or not guilty—must be unanimous among all jurors. If the members cannot agree, the judge may declare a mistrial, and another trial may be held, from the beginning.

- *Announcement of verdict.* One member of the jury, designated by the judge as foreman, announces the vote of the jury.

Criminal trials usually include the following participants:

- *Judge.* The judge acts as a referee, making decisions about what type of evidence the jury may hear, resolving disputes between the prosecution and defense, and overseeing the trial in general. The judge sits at the head of the courtroom, in an elevated chair known as a “bench.”
- *Prosecutor.* The goal of the prosecutor is to convince the jury to find the defendant guilty. Generally, the prosecutor sits at a desk facing the judge, to the judge’s left. In a state court, the prosecutor is an Assistant District Attorney or an Assistant Attorney General. In federal court, the prosecutor is an Assistant United States Attorney.
- *Defense attorney.* The defense attorney represents the defendant. Usually the defense attorney sits at a desk facing the judge, to the judge’s right.
- *Defendant.* The person accused of committing a crime.
- *Witnesses.* These individuals provide information, called testimony, that helps to determine whether the defendant is guilty or innocent.
- *Jury.* The members of the jury observe the presentations of the prosecution and defense and listen to the testimony of the witnesses. At the end of the trial, they decide whether the defendant is guilty or not guilty. The defendant has a right to waive a trial by jury, and have the judge rule on his guilt instead.
- *Clerk.* This individual assists the judge by keeping track of paperwork, scheduling hearings, and performing other administrative tasks. The clerk issues the summons the compels each witness to appear in court.
- *Court officers.* Also known as “bailiffs,” they maintain order in the courtroom under directions from the judge. In Massachusetts courts, they carry handcuffs, but are not armed.
- *Stenographer.* This individual keeps a written record of everything said during the trial. Sometimes the stenographer types the transcript; other times it is dictated for later transcription.

### III. Notice to Appear

Under Massachusetts law, each witness must receive written notice of the time and place at which to appear. In the past, notice given to the defendant was called a “summons,” while notice given to a witness was called a “subpoena.” Today, every notice to appear at a criminal trial is referred to as a summons. A witness may be called

into court by the prosecution or by the defense. In either event, the request is presented to the clerk of the court, who issues the written summons. The summons must be hand-delivered to the witness, or, when the witness cannot be located, it may be left at the last known place of residence. A special agreement between Boston EMS and the Suffolk County District Attorney's Office makes it possible for a witness summons to be delivered to Boston EMS headquarters and forwarded to the witness during regular work hours.

Trials sometimes last several weeks, and ADAs understand that coming to the courthouse on every day of the trial may pose a hardship for Boston EMS personnel. To resolve this problem, ADAs generally are willing to work out an arrangement that will allow the EMT or paramedic to come to court only when that individual's testimony actually will begin. Such arrangements may involve notification by pager or telephone. Because ADAs make these arrangements out of courtesy, it is essential that the EMT or paramedic appear as promised.

#### IV. Failure to Appear

A witness who fails to appear after being properly notified may be arrested and brought before the court. While this does not happen often, the judge may find the witness in contempt of court, and may impose a fine or even a jail sentence. The Boston EMS Professional Standards Division works closely with the Suffolk County District Attorney's Office (SCDA) and has established a system whereby the SCDA will endeavor to give BEMS at least three days notice of court cases whenever possible. Boston EMS has also instituted a procedure to expedite the notification and delivery of court requests to our members as quickly as possible. When a subpoena arrives, Professional Standards identifies the primary EMT of record. That EMT is notified by e-mail that a subpoena has been issued and the date, place, and time that the case is scheduled for. The subpoena is then photocopied, attached to a "sign-for" return-receipt envelope, and forwarded to the appropriate Shift Commander's mailbox for distribution to the department member. The Shift Commander is responsible for ensuring that this time sensitive mail is delivered, and that the return-receipts are forwarded back to Headquarters. However, based on court system volume, secret grand juries, or other sealed indictments, etc, we sometimes receive these requests with relatively little notice. The "three days notice" is a privilege, not a requirement.

Frequently, there are instructions in the subpoena for calling the Assistant District Attorney (ADA) to verify that you have useful testimony. If you are excused from testimony after such a telephone conference, you must notify Professional Standards of that fact. Conversely, if you are required to be present in court for more than the days listed on the subpoena, you must notify the Professional Standards Division of that fact as well. It is important for members to know that there is no right, or privilege, to ignore affidavits, interrogatories, or a court or deposition appointment.

Once you have been notified by the Department to attend a legal proceeding, your attendance is mandatory. A failure to appear as ordered frequently extends court

proceedings, tarnishes the reputation of Boston EMS, and may be cause for discipline. Depending on the circumstances, failure to appear could even result in civil or criminal actions being brought against individual EMTs. If you are unable to report to court or a deposition as scheduled, because of a very emergent and extenuating circumstance, you must immediately notify the Assistant District Attorney assigned to the case (or the clerk of the court in the jurisdiction you are due to testify in), or the private attorney's office responsible for a deposition, *and* the Professional Standards Division. Department members who are notified directly that they either are no longer required to attend OR are notified that they need to attend a court proceeding on additional days, need to notify both Dispatch Operations and Professional Standards so the schedule can be updated. Department members who fail to show up for any such appointments, without notice, may be subject to discipline. Department members assigned to attend a legal proceeding will complete a Boston EMS Witness Appearance Form and forward the completed form to the Professional Standards Division. An employee shall only be paid for those appearances that are authorized by, and scheduled through the Professional Standards Division. Any subpoena fee received by an employee in connection with an appearance involving Department business shall be forwarded to Professional Standards by the employee.

Lastly, if you are contacted at your private residence or at your station, relative to any legal proceeding, please notify Professional Standards, as soon as possible.

Boston EMS personnel are recognized as valuable witnesses in a variety of legal situations. Members of the legal system realize that Department EMTs and Paramedics are frequently among the first to arrive on scene and have first-hand knowledge about the circumstances at accident scenes, crimes, and civil liability incidents. Responding to depositions, affidavits, interrogatories, and/or presenting testimony in court on department related matters are an essential obligation of Department EMTs. The Department expects that EMTs will honor orders to appear, will dress appropriately and present a professional appearance, complete and return interrogatories, arrive at their appointments on time, and present truthful testimony without prejudice.

#### V. Giving Testimony In Criminal Matters

In virtually all criminal cases, the judge orders witnesses "sequestered," or kept separate from other witnesses as they testify. In effect, this means that witnesses are allowed in the courtroom only when they are actually testifying. Boston EMS personnel should presume this to be true, unless they are expressly told otherwise by the ADA prosecuting the case.

A court officer will announce the name of the witness when it is time to testify. Once inside the courtroom, the witness must promise to tell "the truth, the whole truth, and nothing but the truth, so help me God." A witness who objects to this statement on religious grounds may, upon request to the judge, make an alternative promise called an "affirmation" that eliminates the reference to God.

The court officer will instruct the witness to sit in a chair immediately to the judge's side. Often the judge will instruct the witness to speak into a microphone, which amplifies the testimony for the benefit of the judge and the jury. When the witness appears at the request of the prosecution, the prosecution asks the first round of questions. This questioning is called "direct examination." Since Boston EMS personnel almost always appear as witnesses for the prosecution, the ADA generally will pose the first round of questions to the EMT or paramedic. Once the ADA has completed his questioning, the defense attorney has the option of asking additional questions. This round of questioning is known as "cross-examination." In general, cross-examination is not as extensive as direct examination, when it occurs at all.

The judge dismisses the witness once the testimony is complete. At this time, the witness must leave the courtroom.

When testifying, it is important to observe the following principles:

- Listen carefully to the question. If you do not understand the question, ask for it to be repeated.
- Answer the question precisely as it is posed. Do not provide additional information that goes beyond the scope of the question. If the prosecutor asks, "Do you recall responding to a call on Blue Hill Avenue?" the proper response is simply, "Yes." Do not say, "Yes, we responded to a stabbing call there."
- Think carefully before answering. Make sure your answers are correct, and remember the answers you have given. Your credibility may be destroyed if you answer a question one way, and then answer the same question differently later on.
- If you do not recall the answer to a particular question, say so. If you can answer a question only with an estimate, make this clear.
- Answering questions under cross-examination can be a stressful experience. When confronted with a hostile line of questioning, remain calm, show no anger, and continue to answer truthfully. Be aware that the attorney may attempt to trip you up by paraphrasing your previous statements incorrectly. Do not be afraid to point out these inconsistencies. If the attorney asks, "So, are you saying that your patient was not hurt?" you may respond by saying, "No, I didn't say that. I said that we found no obvious injuries when we first examined him."
- The testimony of EMS personnel is unusual in that it combines "eyewitness testimony" with "expert testimony." At times you will be asked to explain technical terms and medical procedures. Be prepared to describe your training and experience, and to describe in detail the responsibilities of an EMT or paramedic.
- Sometimes an attorney will rise and announce, "Objection!" while you are testifying. Do not let this bother you. Attorneys must adhere to complex rules of trial procedure

when questioning witnesses, and most objections are technical in nature. The fact that an attorney raises an objection does not necessarily reflect poorly on the answer you have given.

## VI. Standard Questions and Answers

Certain questions will be asked of virtually all EMTs and paramedics who testify in a criminal trial. Below are some questions that EMS personnel are likely to be asked. The accompanying answers may prove useful in responding.

QUESTION: Who are you employed by?

ANSWER: The Boston Public Health Commission, Emergency Medical Services Division.

QUESTION: What kind of training did you have, to become an EMT?

ANSWER: EMT training is similar in length to a 6-credit college course. We learn to perform CPR, administer oxygen, control bleeding, splint fractures, immobilize patients with spinal injuries, use a defibrillator to start hearts that have stopped beating, administer certain medications, and operate emergency vehicles quickly and safely. (A paramedic would describe the didactic and clinical components of a paramedic curriculum, and would go on to describe endotracheal intubation, intravenous infusion, medication administration, and cardiac monitoring and pacing.) All Boston EMS personnel receive some level of training in hazardous materials, and mass casualty incidents.

QUESTION: What kind of continuing education courses are you required to take?

ANSWER: Every two years, EMTs must take 24 hours of continuing education courses on various topics. (Forty-eight hours for paramedics.) EMTs and paramedics also must attend a month-long “refresher course” every two years. EMTs must maintain certification in CPR. Paramedics also must maintain certification in Advanced Cardiac Life Support.

QUESTION: What’s the difference between an EMT and a paramedic?

ANSWER: The job descriptions are very similar, but paramedics have more training and can perform certain procedures that EMTs are not trained to perform.

QUESTION: How many calls does Boston EMS respond to in a year?

ANSWER: About 100,000.

## VII. Testifying Before a Grand Jury

Occasionally, EMS personnel must testify before a grand jury. Unlike a trial, a grand jury investigation is a closed proceeding. Only the ADA, the grand jurors, and witnesses called by the ADA may be present. A judge does not oversee the proceedings, and the defendant has no opportunity to respond to the ADA’s allegations. In fact, the defendant and the defense attorney are not even allowed to be present.

Overall, testifying before a grand jury is quite similar to testifying in court. The ADA asks the same kinds of questions, and the same principles apply when answering. Grand jury testimony differs from trial testimony in two important respects, however. Since no defense attorney is present, the witness does not have to contend with objections. There is no cross-examination, obviously.

The other main difference is that the members of the grand jury get to question the witness directly at the conclusion of the ADA's questioning. Often, the grand jury members will ask only one or two questions about a matter that has confused them. At times, though, they will ask questions about material the ADA did not cover.

### VIII. Decorum

Courtrooms have a code of etiquette that is strictly enforced. Everyone in the courtroom must stand up when the judge enters. Address the judge as "your honor." Reading is strictly prohibited, except when referring to a document while testifying. Since physical appearance affects credibility in the eyes of the jury, EMS personnel should always come to court wearing a clean, long-sleeved uniform with a tie.

### IX. Civil Actions

A civil action—also known as a lawsuit—is a legal proceeding held for the purpose of resolving a dispute or enforcing a private right. This type of action may arise, for example, when one motorist sues another over injuries suffered in a collision. The person who initiates the civil action is known as the plaintiff. The person being sued is the defendant. Together, the plaintiff and defendant are known as the "parties" to the suit.

As EMS personnel, you may be directly involved in legal proceedings where the Boston Public Health Commission is the defendant in a lawsuit. You may be directly involved simply because you were the operator of a motor vehicle involved in a collision and the other operator has sued the Commission for personal injuries. Or, your involvement may directly relate to care and treatment you are alleged to have rendered in an emergency situation. In those cases where the Boston Public Health Commission has been named as a party, your participation in these legal matters will be directed by the General Counsel's Office of the Boston Public Health Commission. You must participate in these legal proceedings by answering written questions and appearing as witnesses at depositions and trials.

Boston EMS personnel are required to appear as witnesses in civil actions that do not involve the Boston Public Health Commission. The notification procedure for civil actions and criminal actions is identical, except that the written notice—known as a "subpoena"—is issued by the attorney for one of the parties and approved by the clerk of the court before delivery to the witness. Do not ignore a subpoena. Like a witness

who fails to appear at a criminal trial, a witness who does not show up to testify in a civil trial may be held in contempt by the judge, fined, and even jailed.

To reduce the length of a civil action, the parties often agree to question some or all of the witnesses outside the courtroom, before the trial begins. These proceedings, known as depositions, are conducted with all the formality of a trial, except that they do not occur in the presence of a judge. Witnesses receive subpoenas just as they do before a civil trial, and the penalty for failing to appear at a deposition can be the same as the penalty for failing to appear in court.

## **BOSTON EMS COURTHOUSE DIRECTORY**

### **Federal Court**

Federal District Court for the District of Massachusetts  
Northern Avenue at Fort Point Channel, South Boston  
(617) 748-9152

*Parking available on street, or may be available in adjacent lot; inquire of U.S. Marshal on site.*

### **Suffolk County District Attorney**

Suffolk County District Attorney's Office  
1 Bulfinch Place, Boston (adjacent to BPD Area A-1)  
(617) 619-4000

*Parking may be available at BPD Area A-1; inquire by telephone in advance.*

### **Suffolk County Superior Courts**

Suffolk County Superior Court (Criminal Division)  
1 Post Office Square  
(617) 788-8160

*Parking available in Post Office Square underground parking lot (for fee).*

Suffolk County Superior Court (Civil Division)  
1 Post Office Square  
(617) 788-8175

*Parking available in Post Office Square underground parking lot (for fee).*

### **Suffolk County District Courts**

Boston Municipal Court  
Pemberton Square, Boston (on hill adjacent to Ashburton Street)  
(617) 788-8793

*Parking may be available at BPD Area A-1; inquire by telephone in advance.*

Brighton District Court  
52 Academy Hill Road, Brighton  
(617)782-6521

*Parking available on street, and sometimes in lot behind courthouse (with permission of court officers).*

Charlestown District Court  
City Square, Charlestown (on north side of City Square Common)  
(617)242-5400

*Limited parking available on street.*

Dorchester District Court  
510 Washington Street, Dorchester  
(617)288-9500

*Parking available on street.*

East Boston District Court  
Paris Street, East Boston (adjacent to BPD Area A-7)  
(617)569-7550

*Parking available on street.*

Roxbury District Court  
Dudley Square, Roxbury (adjacent to BPD Area B-2)  
(617)427-7000

*Parking may be available at BPD Area B-2; inquire by telephone in advance. Parking also may be available in lot behind courthouse and police station (with permission of court officers).*

South Boston District Court  
535 East Broadway, South Boston  
(617)268-9292

*Parking available on street.*

West Roxbury District Court  
445 Arborway, Jamaica Plain (adjacent to Forest Hills overpass)  
(617)971-1200

*Parking available on street. Parking also may be available in lot behind courthouse (with permission of court officers).*