Highway Patrol, witness fees

Number: INFORMAL

Date: January 14, 2013

Mr. Don Barbee, Jr.
Chief Deputy Clerk and General Counsel
Hernando County Clerk of Circuit Court
20 North Main Street, Room 240
Brooksville, Florida 34601

Dear Mr. Barbee:

On behalf of The Honorable Karen Nicolai, Clerk of Circuit Court, you ask whether a Florida Highway Patrol Trooper appearing in traffic court outside his or her normal working hours is entitled to payment of the $5 per day witness fees specified in section 92.142, Florida Statutes.

In sum, while a law enforcement officer, and specifically a Florida Highway Patrol Trooper, is entitled to receive the daily witness pay, exclusive of the mileage allowance, provided by section 92.142, Florida Statutes, when the officer is appearing as a witness during time which is not compensated as a part of his or her normal duties, whether a Highway Patrol trooper is appearing during a time compensated as a part of his or her normal duties is a determination which must be made in consultation with the Florida Highway Patrol.

Section 92.142, Florida Statutes, provides:

"Witnesses; pay.—
(1) *Witnesses in all cases*, civil and criminal, in all courts, now or hereafter created, and witnesses summoned before any arbitrator or general or special magistrate appointed by the court *shall receive for each day's actual attendance $5 and also 6 cents per mile for actual distance traveled to and from the courts.* A witness in a criminal case required to appear in a county other than the county of his or her residence and residing more than 50 miles from the location of the trial shall be entitled to per diem and travel expenses at the same rate provided for state employees under s. 112.061, in lieu of any other witness fee.
(2) *An employee of the state who is required, as a direct result of employment, to appear as an official witness* to testify in the course of any action in any court of this state, or before an administrative law judge, a hearing officer, hearing examiner, or any board or commission of the state or of its agencies, instrumentalities, or political subdivisions, *shall be considered to be on duty during such appearance and shall be entitled to per diem and travel expenses as provided in s. 112.061. Except as provided in s. 92.141 and as provided in this subsection, such employee shall be required to tender to the employing agency any witness fee and other expense reimbursement received by the employee for such appearance.*
(3) Any witness subpoenaed to testify on behalf of the state in any action brought pursuant to s. 895.05 or chapter 542 who is required to travel outside his or her county of residence and more than 50 miles from his or her residence, or who is required to travel from out of state, shall be entitled to per diem and travel expenses at the same rate provided for state employees under s.

112.061 in lieu of any state witness fee." (e.s.)

Addressing witness compensation for law enforcement officers, section 92.141, Florida Statutes, states:

"Any employee of a law enforcement agency of a municipality or county or the state who appears as an official witness to testify at any hearing or law action in any court of this state as a direct result of his or her employment in the law enforcement agency is entitled to per diem and travel expenses at the same rate provided for state employees under s. 112.061, except that if the employee travels by privately owned vehicle he or she is entitled to such travel expenses for the actual distance traveled to and from court. In addition thereto, *such employee is entitled to receive the daily witness pay*, exclusive of the mileage allowance, provided by s. 92.142, *except when the employee is appearing as a witness during time compensated as a part of his or her normal duties.*" (e.s.)

Thus, the plain language of the statute indicates that when an employee of the state is required as a direct result of his or her employment to appear as an official witness to testify in any court of this state, such employee is considered to be on duty during such appearance and is entitled to per diem and travel expenses, but is not entitled to receive the witness fee if the appearance is during time compensated as a part of the employee's normal duties. Law enforcement officers employed by the state are specifically authorized in section 92.141, Florida Statutes, to receive the daily witness fee, "except when the employee is appearing as a witness during time compensated as a part of his or her normal duties."

Section 321.05(4)(a), Florida Statutes, in pertinent part specifically relating to Highway Patrol troopers, provides:

"A patrol officer is not entitled to any fee or mileage cost except when responding to a subpoena in a civil cause or *except* when the patrol officer is appearing as an official witness to testify at any hearing or law action in any court of this state as a direct result of his or her employment as a patrol officer *during time not compensated as a part of his or her normal duties.*" (e.s.)

It would appear, therefore, that a trooper is entitled to a witness fee when he or she is appearing as an official witness during time that is not compensated as a part of his or her normal duties.

While the Florida Highway Patrol has policies which address matters of duty and leave when members of the patrol are required to appear in court,[1] this office must defer to that agency's interpretation of its policies. It would be advisable, therefore, for you to consult with the Florida Highway Patrol in order to determine the employment status of a patrol member when he or she is a witness in a judicial proceeding.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tsrh

[1] *See* Policy 5.04, Florida Highway Patrol (revised 07/18/2012).