ABSENCE AS AN EXPERT WITNESS **8594.2**
(Revised 03/02)

Generally, an expert witness testifies upon opinions formed from specialized knowledge or courses of study. An employee, when called as an expert witness, is not bound by any court limitation on fees but is free to negotiate any reasonable amount agreeable to the employee (or the State) and the party requesting the testimony (Government Code Section 68092.5). Normally, an expert witness gives testimony by arrangement or negotiation and is not subpoenaed.

The treatment of fees and travel expenses of an employee serving as an expert witness depends upon whether the employee testifies on behalf of the State or not on behalf of the State. Following are payment and leave instructions to be used by the employing department when an employee serves as an expert witness:

Testimony on Behalf of the State

The employing department will bill the party or court requesting the appearance for all costs in accordance with SAM Sections 8752 – 52.1 (e.g. preparation, travel, appearance, and indirect). The hourly rate of the employee's salary will be calculated in accordance with SAM Section 8740. The employee's absence as an expert witness is authorized time off with pay; vacation, annual leave, or CTO will not be charged. The employee will submit a Travel Expense Claim form, STD. 262, for travel expenses. The employee must remit to the State all court fees.

Testimony Not on Behalf of the State

When an employee appears as an expert witness not on behalf of the State, the employee must use vacation, annual leave, CTO, or be charged dock time for the period of absence. The employee will not submit a Travel Expense Claim for travel expenses. The employee will retain all negotiated attendance and travel fees.

If the employee's expertise has been gained from State employment, the employee should check with the department's human resources office to determine whether a conflict of interest exists regarding the retention of fees.