

CIVIL LAWS

ONLINE

PRESENTED BY:

DPS - Law Enforcement Academy
Santa Fe, New Mexico

Date: _____

GOALS

- Students will understand the significance of civil process laws.
- Students will become familiar with a variety of civil laws that involve law enforcement.
- Students will become familiar with selected civil papers served by law enforcement.

OBJECTIVES

Upon completion of this course, the student will be able to:

- Explain why our legal system has a civil process.
- Explain what's involved in a civil action.
- Explain what the different kinds of warrants do.
- Define what a writ is.
- Discuss what's involved when the court orders the seizure of property.
- Discuss what remedies the court can take to ensure compliance with a civil action.
- Define what injunctive relief is.
- Distinguish the difference between a subpoena and a summons.
- Describe what a subpoena duces tecum is.

SOURCES

- New Mexico Criminal and Traffic Manual.
- New Mexico Statutes Annotated.
- State and federal case law.

ESTIMATED TIME Two hours.

PREPARED BY

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DATE APPROVED _____

ACCREDITATION NUMBER _____

INTRODUCTION

- Typically, the sheriff's department will enforce civil laws. Example: assisting in serving warrants in civil lawsuits. However, it's possible for any officer to become involved in an incident where knowledge of the civil process will be helpful.
- Although the title of this class is civil laws, some people refer to it as civil procedure or civil process.
- The Court will order something – a subpoena, a summons, an order to return property, a warrant or an injunction to stop doing something. Someone has to enforce that order. That's where law enforcement comes in.

This outline will cover the following:

- A discussion of definitions, terms that may be new to you.
- What's involved once the court orders repossession or seizure of property.
- Discussion of what an injunction is.
- An explanation of what's involved in a civil case when one party sues another.
- Examples of how law enforcement is using the court system to reduce crime.

Warning:

If you haven't used the words and definitions that follow on a regular basis, some of the material in this outline may be confusing and tedious.

DEFINITIONS USED IN THE CIVIL PROCESS

What is a summons?

- This refers to a defendant. It is a written order by a Judge requiring a person to appear in court at a specific time to answer criminal charges or appear for a civil hearing.
- Summons may be served in person by a law enforcement officer or by another person authorized to do so (but not by a person involved in the action).

What is a subpoena?

- This refers to witnesses. It is a written order by a Judge, prosecutor, defense attorney or grand jury that requires a person to appear at a specified time to testify.
- Subpoenas may be served in person by a law enforcement officer or by another person authorized to do so (but not by a person involved in the action).
- If a person is served with a subpoena and decides to ignore it, he or she may be found in

contempt of court. This can result in a fine or imprisonment or both.

What is a subpoena duces tecum?

- Some people are served with a subpoena duces tecum. This means to bring material with you. Examples: bank records, insurance records, blood alcohol test results, etc.
- Personal service is best, especially when a person signs for it. In some cases, a subpoena is served by leaving it on the door or mailing it to the person.

What is a writ?

- A written order issued by the court ordering or prohibiting an action by the person to whom it is addressed.
- Writs may be served in person by a law enforcement officer or by another person authorized to do so (but not by a person involved in the action).

Probate Orders

- A written order from the Probate Court. This court has general powers over probate of wills and administration of estates. Sometimes it involves seizing or transferring property and that's where law enforcement comes in.

Warrants

- These are orders of the court that direct law enforcement officers to perform specific acts. For example, a warrant may authorize an arrest or search.
- A bench warrant is a warrant issued by a Judge from the bench – from the court itself – for the arrest of a person. It may be for failure to appear or contempt of court.
- Warrants are served in person by law enforcement officers.
- An arrest warrant remains in force until it is returned.
- A search warrant is obtained by submitting a warrant and affidavit to a Judge.

COURT ORDERED REPOSSESSION & SEIZING PROPERTY

- Using a court order, law enforcement gets involved in repossession and seizing of property. In most jurisdictions this is done by the sheriff's department.
- There are two types of property involved in these actions: (1) real property – houses, things growing on land, etc. and (2) personal property – personal items.

Attachments and writs

- An attachment is a writ issued by the court directing the taking into custody of real or personal property.
- Wage attachment, for example – this involves garnishment of wages. Example: in a child support action, an employer may be directed to take a certain amount out of a person's paycheck to be used for child support.
- Writ of replevin – writ to seize items to be returned to the original owner.
- A writ of possession is used to recover the possession of land. A judge signs a writ. It's filed and the sheriff assists in the return of the land to its owner. This may include the ejectment of the current resident or simply the transfer of title documents.
- Writ of execution – a general writ which puts in force the judgment of the court. Example: a writ may order the seizing of items to satisfy a money judgment.
- Property seized as a result of the civil process must be inventoried following the same procedures as would be used for property seized in a criminal investigation.
- Notice of sheriff's sale. After a seizure pursuant to a writ of execution, where items are seized in order to satisfy a money judgment, the sheriff will notify the public of the sale of those items.

DISCUSSION OF INJUNCTIVE RELIEF

What is injunctive relief?

- This is an order prohibiting the defendant from doing a certain act or ordering that person to do an affirmative act. Example: suppose a nightclub has really loud music. Neighbors may seek an injunction that would reduce the loud noise.
- Preliminary injunction is granted at the beginning of a suit to restrain the defendant from continuing or doing an act.
- A permanent injunction will last for the duration of the case.
- An injunction, restraining order or order of protection is only enforceable if the offending party is personally served.
- If there is a violation, the remedy is contempt of court.

WHAT'S INVOLVED IN A CIVIL ACTION?

- In a civil action one citizen is suing another.
- A civil action begins with the filing of a complaint.
- The complaint states the claim or cause of action upon which the claim is based.
- The person suing is called the plaintiff.
- Normally the plaintiff is required to pay a filing fee.
- A summons, signed by a judicial officer, informs the defendant in a civil action that he or she has been sued and must respond within a certain period of time.
- If the defendant fails to respond, a default judgment in favor of the plaintiff may issue.
- Subpoenas may be issued to witnesses. Failure to respond to a lawfully served subpoena may result in contempt of court or a bench warrant.
- Depositions are sometimes used in civil cases. A deposition is arranged by the parties and their attorneys whereby questions are answered under oath and recorded.
- Unlike criminal cases, the jury in a civil case does not have to be unanimous and the burden of proof is the lower standard of preponderance of the evidence.
- The next step in a civil action is to collect upon the judgment. If the losing party does not obey the court's order of judgment, then a writ of some kind may be issued to enable law enforcement to assist in collecting the judgment or for the return of property.

HAS LAW ENFORCEMENT EVER BECOME A PLAINTIFF IN A CIVIL SUIT?

- In recent years, law enforcement has begun to use the civil court process.

VEHICLE FORFEITURE

Vehicle forfeiture in New Mexico started in Albuquerque in the 1990's as a tool to reduce drunk driving.

- A vehicle is seized, generally after two DWI convictions, and goes to auction.
- Several other cities have since adopted vehicle forfeiture programs. In 2011, a bill to have a state-wide vehicle forfeiture program failed to pass the state legislature.

PUBLIC NUISANCE

Many jurisdictions are using civil laws to declare something – a bar, an apartment complex with a lot of drug dealing – a public nuisance.

Public Nuisance and Bars

NMSA 1978, Section 60-7A-15 (Public nuisance)) gives a district attorney authority to pursue civil remedies against a public nuisance.

- A. Any premises used for the unlawful purpose of sale, manufacture, storage, possession or consumption of alcoholic beverages in violation of the Liquor Control Act . . . is a public nuisance.
- B. The district attorney in the county in which the nuisance exists is authorized to maintain an action to abate and temporarily and permanently enjoin the nuisance. The district attorney shall not be required to post bond.
- C. Upon final judgment, the court shall enjoin the owner, lessee, tenant or occupant from maintaining or assisting in maintaining the nuisance, and shall order the premises to be closed until bond is furnished with sufficient surety in such sum as the court in its discretion shall order . . .

CODE ENFORCEMENT

A number of jurisdictions are using code enforcement as a tool to reduce criminal activity. However, civil procedures must be followed.

News item: City Agrees to Pay \$495K Settlement

The city of Albuquerque has agreed to settle part of a class-action lawsuit filed by residents who claimed the city's code enforcement policy caused significant damages, including displacement from their homes.

Their residence (often in run down motels) would be red-tagged by code enforcement, compelling them to leave without an appropriate court order. The lawsuit includes both landlords and tenants. One policy change will require the city to provide a hearing before someone is evicted from their property. Albuquerque Journal, May 7, 2011.

CONCLUSION

An awareness of the legal and procedural requirements for civil actions will help law enforcement officers provide better assistance to citizens.