

## **Pre-Trial Proceedings before the Municipal Court**

**By Randy Van Vleck, General Counsel for the New Mexico Municipal League**

All cases in the Municipal Court must be brought in the name of the municipality as plaintiff. This is regardless of whether the charges are initiated by a police officer, zoning official, animal control officer, or private citizen. A defendant may be brought into Municipal Court in one of four ways:

1. A person may be arrested on the spot for violating a municipal ordinance in the presence of a police officer.
2. A person may be arrested because of an arrest warrant has been issued based upon the sworn affidavit of any person having reasonable grounds to believe that the defendant has violated a municipal ordinance.
3. A person may be summoned to court, upon receipt of the traffic citation, a non-traffic citation, or a summons in cases not involving a breach of the peace.
4. A person may be arrested on a bench warrant, which is a warrant issued by the court for the defendant's failure to appear before the court or failure to comply with a lawful and reasonable court order.

Option three is the preferred method of bringing defendants before the court.

A criminal complaint is the document filed with the court that formally brings criminal charges against an individual. It is an official court document and serves to initiate the criminal proceedings. The complaint is the initial stage of any misdemeanor criminal prosecution and may take the form of a written complaint or it may be in the form of a uniform citation issued by law enforcement or other individuals authorized by law to issue citations.

The purpose of the criminal complaint is to notify the defendant of the charges leveled against him/her and to advise the defendant of the method of responding to the charges. The criminal complaint must contain sufficient information to alert the defendant that certain conduct of the defendant is alleged to be in violation of a criminal ordinance of the municipality. Thus, the criminal complaint must contain a recitation of the facts of the given controversy and a reference to the specific ordinance the defendant is alleged to have violated. A criminal complaint is normally served on the defendant by mail.

Charges for violations of municipal ordinances must be filed within one year of the violation, or prosecution for the offense will be barred. Once a complaint has been filed, a trial must begin within six months or the charge shall be dismissed. This time may be extended under very limited circumstances.

A defendant's first contact with the municipal judge is a proceeding called an arraignment. At this time, the judge will read the charges against defendant and explain to the defendant the possible penalties attached to each charge. The judge will inform the defendant of his/her right to an attorney, right to a free attorney if the defendant cannot afford one, right to a trial on the matter, right to confront and cross-examine witnesses, right to subpoena witnesses, right to present evidence, and right to have all the elements of the charges proved beyond a reasonable doubt. It is important that the defendant understand all of these rights at the time of the arraignment. After informing the defendant of all of the defendant's rights, a defendant will be asked to enter a plea to the charges. Defendants may enter a plea of guilty, not guilty, or no contest.

Pleas of not guilty are generally entered when the defendant believes (s)he did nothing wrong or that the municipality is unable to prove the charges beyond a reasonable doubt. If the defendant pleads not guilty, a trial date will be set and the judge will set certain conditions of release (bail) if necessary.

Guilty pleas are entered by the defendant when (s)he agrees that they violated the law as charged and were not justified in doing so. If the defendant pleads guilty, the judge will ask additional questions of the defendant to ensure that the defendant understands the charges, the consequences of pleading guilty, and that the plea is done knowingly and voluntarily. If the judge accepts the guilty plea, there will be no trial and the judge may pronounce sentence at that time. Alternatively, the judge may send the defendant for a pre-sentence evaluation and require them to report back to court at a later date for sentencing. A plea of guilty eliminates a defendant's right to appeal the case in most circumstances.

During the course of the trial, the defendant may ask for a continuance of the trial date. Continuances are granted in the sole discretion of the judge; neither the defendant nor the prosecution has a right to reset the trial date set by the judge.

Under the law, private citizens are afforded the right to file a criminal complaint alleging violations of municipal ordinances. These complaints usually are filed as a result of a dispute between neighbors or a domestic problem. Even though these are commonly "neighborhood disputes," they are still brought in the name of the municipality as plaintiff. Often the party first filed upon will file a similar complaint (cross-complaint) against the party originally filing the complaint. This must be treated as a completely separate complaint. Although these cases should more properly be resolved in a civil court proceeding or through mediation, the court is obligated to accept any properly prepared private complaint and process it as any other criminal case. Individuals initiating private complaints do not have the right to have their private attorney prosecute the case on their behalf, unless the private attorney is first appointed as a special prosecutor by the City Attorney. The municipal attorney has the right to dismiss the case or to enter an appearance on behalf of the municipality and assume prosecutorial control over the case.

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