

The Municipal Court Trial---Part Eight

A trial before a Municipal Court Judge is very much the same as any other trial. There are some minor differences between trials held in the municipal court and trials held in other courts, primarily because the municipal court is not a court of record and is a court of limited jurisdiction. All trials in the municipal court are held in front of the Municipal Judge without a jury. Jury trials are not authorized in the municipal court. Trials in municipal court are often conducted without the assistance of lawyers in the case. Often, the police officer or code enforcement officer will act as the “prosecutor” while the defendant may choose to represent himself/herself *pro se*. If the police officer or code enforcement officer is representing the municipality, it must be the same police officer or code enforcement officer who actually wrote the ticket or criminal complaint who is acting as the prosecutor. This is because the police officer or code enforcement officer will be not only acting as prosecutor, but will be a witness as well. There is, however, nothing that prevents either side from being represented by an attorney; this is true also when only one side is represented by an attorney. Many municipalities have a policy that if a defendant is representing themselves *pro se* that the municipality will not call in the City Attorney, but will require the police officer or code enforcement officer to represent the interests of the municipality. Conversely, many municipalities also have a policy that if the defendant retains a lawyer, the City Attorney will represent the municipality.

The trial process is very similar to all other trials. After the case has been called or announced by the judge, the prosecution may make an opening statement. In most cases this is waived because municipal court cases are normally not overly complicated. If an opening statement is given, its purpose is to briefly advise the judge what evidence the

parties intend to produce. In other words, it is a short explanation of what the case is about and what evidence the prosecution intends to introduce. After the prosecution's opening statement, the defendant may also make an opening statement, or may reserve the opening statement until the conclusion of the prosecution's case.

After opening statements, the prosecution may begin putting on its case. The prosecution may call any witnesses it deems necessary to prove its case, so long as the information being provided is relevant to the case and complies with the New Mexico Rules of Evidence. Evidence is introduced primarily through personal testimony. Witnesses will be placed under oath and then will tell the judge what they witnessed, observed. Following the testimony of each witness for the prosecution, the defendant will be provided an opportunity to ask questions of the witness that are relevant to the testimony given by the witness. This is known as cross examination. The judge may allow the defendant to directly question the witness or may require that all questions be funneled through the judge. The latter procedure is employed primarily to ensure that the parties remain civil with one another and that the decorum of the courtroom is preserved. Following the presentation of all the witnesses for the municipality, the defendant will be provided an opportunity to present his/her case. The defendant may also call any witness who has information that is relevant to the case. These witnesses will also be sworn and subject to cross examination by the representative of the municipality. In some cases the defendant himself/herself will testify in the case. If the defendant does testify, s/he will also be subject to cross examination from the representative of the municipality. It is important to note, however, that the defendant has an absolute right NOT to testify or to be compelled to answer any questions during the trial unless s/he chooses to do so. This

is a right that is guaranteed by the Fifth Amendment to the United States Constitution. If the defendant does give up this right to remain silent by offering testimony, then s/he is subject to cross examination.

Unless the judge has dismissed the case prior to the conclusion of the trial, the judge must announce a verdict at the conclusion of the trial. The judge is required to enter a final disposition in every case coming before the judge. Two possible verdicts may be entered by the judge; guilty or not guilty. In order for the judge to find a defendant guilty, s/he must be satisfied that each and every element of the crime has been established by the prosecution beyond a reasonable doubt. If there is any doubt in the judge's mind that any element of the crime has not been proven beyond a reasonable doubt, s/he should find the defendant not guilty.

If the defendant is found guilty, the judge may proceed directly to sentencing, or may enlist the assistance of court personnel to review any prior record or prior convictions suffered by the defendant.