



ROCHESTER POLICE DEPARTMENT TRAINING BULLETIN



EFFECTIVE DATE: March 8, 2018	SUBJECT: Civil Matters	Bulletin # L-63-18
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ATTACHMENT(S):		

Rochester Police Department members respond to calls that are sometimes civil in nature. The following circumstances can be considered civil: motor vehicle repossessions, disputes over motor vehicle repairs resulting in the claim of a mechanic's lien, rented merchandise repossession or retrieval and one party of a domestic being locked out of a residence.

We find that members are responding to more and more of these types of calls at the request of one or both of the parties involved.

The RPD regulation which most aptly applies to such situations is Rules & Regulations, Section 3.11, CIVIL CASES, which states:

"Employees shall not use the powers of their office to render assistance in the pursuit of matters which are strictly private or civil in nature except in those matters where they are required by law to exercise their powers or where a breach of the peace has occurred or is imminent."

A. Once the Police arrive on the scene, the nature of the call can change dramatically from a purely personal civil matter to one involving "State action."

1. The statute which covers "self-help repossession" is the New York State Uniform Commercial Code, Section 9-503, which states:

"Unless otherwise agreed, a secured party has on default the right to take possession of the collateral. In taking possession, a secured party may proceed WITHOUT JUDICIAL PROCESS, if this can be done "WITHOUT BREACH OF THE PEACE..."

"Without judicial process" means that a creditor can retrieve his property from a debtor without going through the courts to obtain an order. The one stipulation in the law is that a "breach of peace" does not occur during this repossession of the property. There have been arguments in the courts for years over what constitutes a breach of the peace. There is some case law which holds that mere verbal protests by a debtor constitute a breach of the peace, and removes the self-help repossession

option from a creditor. Case law also exists which holds that if a police officer is present at the scene of a repossession, it can be inferred that a breach of the peace has occurred.

While an individual or corporation may employ self-help repossession under the provision of the Uniform Commercial Code, the "state" or government cannot remove property without due process. A police officer in the performance of his or her duties is acting as an agent of the state. If he or she assists in the repossession, even if only standing by to preserve the peace, many courts have found that this constitutes state action. Because due process (notice and an opportunity to be heard) was not followed, such action will be ruled unconstitutional. As you can see, these interpretations regarding police involvement may leave members and the City of Rochester very vulnerable to a civil suit. If police presence at a scene means that a repossession occurs that would not have occurred had the police not been there, the Department and/or the member may be liable.

2. The same action constraints would apply in lien situations as well. A car mechanic, for example, may hold a vehicle until a customer pays for service performed on that vehicle. The police may be called to such incidents, especially if the price or the authorization for repairs is disputed. The police cannot compel the mechanic to release the vehicle, as such assistance would constitute state action.
3. Because of these and other considerations, if Rochester Police Department members are called to assist in a civil matter such as a repossession or enforcement of a lien, members will not participate other than to keep the peace and enforce any criminal violations of the law. If there is a dispute, they should maintain the status quo, that is, leave the property where it is and advise both parties that if further action is necessary or desired, they will have to proceed through the courts.

Note: The mere fact that the police were called is some indication that the matter is not proceeding without breach of the peace.

Court Orders for repossession are issued by courts or their officers, and they are enforced by the City Marshal's Office. If the City Marshal needs police assistance, a member will respond in a backup capacity to insure his/her safety, keep the peace and enforce the Penal Law if the need arises. The Rochester Police Department member cannot and will not enforce a civil order for repossession. The City Marshal can be reached at 381-2583 (direct line) or through the Civil Branch Court Clerk at 428-2444 during normal business hours if a member has any questions.

When members refer parties to the courts, they may wish to know in further detail what their options are. In some instances, a matter may be settled in Small Claims Court. Keep in mind that the monetary ceiling is \$3,000.00, and this court only deals in monetary awards. That is, the transfer of property cannot be ordered in Small Claims Court. The Small Claims Court Clerk (428-2446) can answer specific questions a party may have.

Other courts can issue an order of repossession, and parties will normally need an attorney to bring these matters before a court. This will involve some expense. Rochester Police Department members cannot recommend an attorney to do this. If a member is asked for direction in obtaining legal advice, the parties can be referred to the Lawyers Referral Service (546-2130), a service provided by the Monroe County Bar Association, which can direct callers to an appropriate attorney.

4. A creditor may also ask the police to enforce NYS Penal Law sections relating to larceny. In these situations, the burden of proof needed to show that the debtor's original intent was to default is virtually unattainable. The proof required to satisfy a penal law charge may consist of multiple instances of the same conduct establishing a systematic scheme to defraud or an admission by the debtor. The District Attorney's Office will not prosecute these cases unless we have that proof. In the absence of the proof, the creditor should be advised that the matter is not prosecutable and is a civil matter.

Creditors may have a clause in their rental agreements allowing for retrieval of their property by a forcible entry if necessary. Most courts have held that these clauses are **unenforceable** and the police should not assist or allow this type of action under any circumstances without a court order and the presence of the City Marshal. Even then, the forced entry will be by the City Marshal, not by the Rochester Police Department member.

5. When Rochester Police Department members respond to domestic-related incidents, which involve one party having been locked out of his or her residence, or having lost the key to the residence, members will not advise citizens that they have a right to "break in" to the residence, or that members will stand by while he or she does so. The basis for members not doing so is the fact that there is no definitive means for members to establish residency at the scene. Aside from the fact that members cannot definitively establish residency, allowing such behavior by one party, of the domestic, can possibly create a violent confrontation between the person(s) inside the residence and the individual attempting to gain entry.

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In summary, Departmental Rules and Regulations and the constraints of "state action" preclude officers from becoming involved in matters which are civil in nature. Police officers have an obligation to enforce the Penal Law and keep the peace. They cannot become involved in civil processes. If the creditor and the debtor are in agreement on a solution to their dispute, then the police should leave so that their presence cannot be construed as assisting in the repossession or enforcement of a lien. If there is a disagreement, the officer can insist that the status quo be maintained and refer the parties to the courts for the resolution of their differences.

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