

Germantown Police Department

Policies and Procedures

Number: 2-15
Effective Date: January 1, 2003
Subject: Civil Matters
Previous Revisions:

I. PURPOSE

The purpose of this policy is to provide officers of the Germantown Police Department with guidelines for dealing with civil matters, which are generally outside the control of the Germantown Police Department.

II. POLICY

It is the policy of the Germantown Police Department for all officers to handle civil matters in accordance with established policies and procedures and with Tennessee state statutes.

III. BACKGROUND

Generally, an officer of the Germantown Police Department is not authorized to enforce the civil law or settle civil disputes unless a breach of the peace occurs or is about to occur. Members of the Shelby County Sheriff's Department are authorized to enforce civil court decrees. There are numerous types of court orders with which officers must be familiar, and each is handled differently.

IV. CIRCUIT COURT AND CHANCERY COURT INJUNCTIONS

In the event an officer makes a call to a domestic disturbance and is shown an injunction purporting to prohibit a spouse from coming about the premises, etc., the officer should act as follows:

- A. Notify the offending spouse that the injunction may be binding upon that party even though the injunction has not been served upon him/her, and that a stamp stating "True Copy Attest" means the injunction has been signed by the judge.
- B. Advise the enjoined spouse to leave, so as not to be subject to contempt of court and to contact his/her attorney.

- C. Do not make an arrest on the basis of the enjoined spouse's refusal to leave, unless a disturbance continues or a misdemeanor is committed in the presence of the officer, i.e., vandalism, public drunkenness, etc.

V. PROTECTIVE ORDERS

Protective orders are a different form of judicial order than a regular injunction. In the heading of the court order, it should specifically state "Protective Order," rather than "Injunction." Members of this Department may enforce the provisions of a protective order. An officer who makes a disturbance call and finds one party that has a protective order should contact the Communications Center to determine the terms of the protective order. The Communications Center will verify the terms of a protective order because the court is required to send a copy to the appropriate Police Department. Some protective orders authorize the Germantown Police Department to make arrests.

The dispatcher can make an inquiry into the state S.T.O.P. file. Officers who encounter a situation where an Ex Parte protective order is produced must determine if it has been served on the responding party.

No Ex Parte Order of Protection can be enforced if it has yet to be served on the responding party. The Communications Center will have this information on hand for the officer.

An Ex Parte order is one issued by a civil court without the knowledge or presence of one of the individuals involved in a dispute. If, for example, Jane Smith goes to Circuit Court and Mike Smith isn't present at the hearing and the judge issues a protective order, Mike Smith has no knowledge of the order. Officers are called to a scene where Jane and Mike are involved in an argument and Jane produces the order. Officers, upon checking with the Communications Center, must determine if the order is an Ex Parte order and, if so, if Mike has been served with it. If he has been served with the order and is in violation, then an arrest may be made. If he has not been served and denies knowledge of the order, then the officer may verify the existence of the order, advise Mike that he is in violation, and advise him that refusal to comply with the order might result in his immediate arrest.

The following guidelines are used if an arrest is made pursuant to a violation of a protective order.

In the event an officer makes an arrest pursuant to a violation of a protective order, the appropriate charge is Tenn. Code Ann. 36-3-611, "Arrest for Violation of Protective Order." It is critical that the officer include in the Affidavit of Complaint all pertinent information from the protective order (i.e., name and division of court). This will allow the prosecutor's office to contact the appropriate court and notify it of the arrest.

VI. ATTACHMENTS, REPLEVIN, ETC.

These orders generally allow one person to reclaim or get possession of personal property (appliances, furniture, etc.). Usually a Shelby County Sheriff's Deputy will be present to serve these papers. Germantown Police Department officers are not authorized to do so. If a Sheriff's Deputy is not present, then the police officer called to the scene will only ensure that no

disturbance of the peace occurs. If the person with the court order already has complete possession of the item, he/she will be allowed to leave with it without interference. If the party does not have complete possession of the item, he/she is to be referred to the Shelby County Sheriff's Department for assistance.

VII. EVICTIONS

A person having a valid court order may forcibly evict another from a house, apartment, etc. The Shelby County Sheriff's Department usually assists in these matters. If a person is attempting to evict another, he/she will be allowed to do so if the other party is not resisting the eviction. If a disturbance occurs, the evicting party should be referred to the Shelby County Sheriff's Department for assistance.

VIII. REPOSSESSION OF AUTOMOBILES

In Tennessee, a repossession agent may legally take a vehicle as long as he/she does so peaceably and does not destroy any private property. A court order is not necessary. An example is when a repossession agent tows away a vehicle from private or public property without the owner's knowledge.

If the owner catches the repossession agent and the Germantown Police Department is called, the matter is civil in nature. If the repossession agent has full control of the vehicle, off the private property of the owner, he/she should be permitted to retain custody. If the repossession agent does not have full control of the vehicle or he/she is still on the owner's property, he/she must notify the Shelby County Sheriff's Department for assistance. The owner will be allowed to keep the property until such time as the Shelby County Sheriff's Department takes over.

A repossession agent who is taking a vehicle is required to have the lien papers on his/her person and must notify the Shelby County Sheriff's Department immediately upon taking the vehicle.

Whenever an officer is called to a scene where a wrecker driver is attempting to effect a removal of any vehicle pursuant to a contract, the officer's involvement should be restricted to preventing any sort of violence or other type of altercation. It should be noted that the role of a police officer in any civil dispute, unless mandated by law to the contrary, is to maintain the peace and provide for the safety of the parties. This necessarily requires a neutral approach and would preclude any assertive action on behalf of one individual to the detriment of another (i.e., owner of private property calls a wrecker to said location to tow a vehicle which is improperly parked; the owner of the vehicle arrives on the scene and confronts the owner of the property and the wrecker driver. If the police are called, they should stand by only to prevent personal injury and should not become a participant in the civil dispute).

IX. STRIKES/PICKETING

It is the policy of the Germantown Police Department, when confronted with situations involving strikes and picketing activities, to consider the matter as a private dispute between the employers and the striking or picketing employees. Certain federal laws regulate private labor picketing.

Should officers of the Germantown Police Department receive a call from a business owner to a location where picketing activity is taking place, the officers should advise the store owner that he/she must obtain a warrant for any activity which the officer has not witnessed. The officer may arrest in only those situations where a misdemeanor has been committed in his/her presence or a felony has occurred, and the officer has probable cause to believe that a given individual committed the felony.

In situations where officers receive a call regarding picketers blocking ingress and egress to a business, where the business is located on a shopping center lot, the officer should require the picketers to conduct their picketing on the sidewalk adjacent to the street. Numerous cases have held that the shopping center lot and the sidewalks in front of the business on these lots can be used by persons conducting lawful picketing activity, as long as the ingress and egress to a building is not obstructed.

X. REVIEW PROCESS

An annual review of this policy shall be conducted to determine if it should be revised, cancelled or continued in its present form.

This order shall remain in effect until revoked or superseded by competent authority.