

CIVIL JUSTICE FOR VICTIMS OF CRIME

—
IN NEW MEXICO



PARNALL

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ATTORNEY BERT PARNALL

I'm Bert Parnall. I had my first murder trial in my first year as a prosecutor in 2001 – the jury convicted. In my four years as a prosecutor, through 20 felony jury trials, I sent many murderers and rapists to prison.

I was proud of the work I did. It gave me satisfaction to help bring some sense of justice and accountability, and sometimes a degree of closure for crime victims. But I felt there was still more I could do. I wanted to work directly with crime and injury victims to help them with their tragic situations. I transitioned from being a criminal prosecutor into what I now call a “civil prosecutor” – representing victims of personal injury.

While I was a criminal prosecutor, I was vaguely aware that crimes could trigger another form of recovery: financial assistance, through insurance coverage or otherwise.

Now, as a “civil prosecutor,” it is my honor and privilege to help crime victims recover civil justice – like how Ron Goldman’s family recovered a civil jury verdict against O.J. Simpson¹.

I wrote this book for crime victims to help educate them about the civil justice system, which is the only practical way to recover compensation for negligent or recklessness acts committed against them.

My team at Parnall Law has recovered money for hundreds of victims of violent assaults and shootings. If you have been victimized by crime, you have already suffered enough. Whether or not we can help you recover damages, we can also help guide you to other resources. There are no upfront costs, and it is free to meet with one of our trusted Parnall Law Attorneys.

Let me help you get the justice you deserve. Contact Parnall Law today at 505-268-6500 or visit our website at HurtCallBert.com.

I hope that you find this book helpful.

A handwritten signature in black ink that reads "Bert Parnall". The signature is written in a cursive, flowing style.

¹<https://www.nytimes.com/1997/02/11/us/jury-decides-simpson-must-pay-25-million-in-punitive-award.html>



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THE PURPOSE OF THIS BOOKLET



The general purpose of this booklet is to give crime victims a basic understanding of how they can use the civil justice system to recover compensation from the perpetrator or others whose negligence or recklessness made the crime possible. The goal is to help crime victims understand how the compensation system works and prepare them for a more detailed and advanced discussion of their legal options with a qualified attorney or victim advocate



SOURCES OF COMPENSATION FOR A CRIME VICTIM'S FINANCIAL LOSSES

Every year, more than 22 million Americans become victims of crime. These individuals face challenges and costs that continue for years. Crime costs our society approximately \$450 billion every year. However, allowing the victims of crime to seek compensation from the perpetrators for financial losses related to injuries, medical treatment, rehabilitation, lost income, and property damage can help ease the financial burden for the victims and society at large, as well as take some steps toward justice.



Criminal “Restitution”

In New Mexico, courts order persons convicted of violating the Criminal Code to pay restitution to their victims to compensate them for economic damages sustained due to the crime. A court can order restitution as part of a criminal sentence, as a condition of parole, as a part of probation, and to the extent that the perpetrator can pay.

Whenever a court orders criminal restitution, it will also order the defendant to prepare and submit to the court a restitution payment plan, along with any recommendations from his or her probation or parole officer. The payment plan must detail a schedule of restitution payments, along with their specific amounts, that the defendant will pay to the court's clerk. The clerk will then send this money to the victim.

If the defendant is unable to make restitution payments, the payment plan must specify the conditions and circumstances under which the defendant will make restitution payments in the future. After the defendant submits the restitution payment plan, the court will either approve, deny, or

modify the plan. It will become a condition of the defendant's probation or parole for the entire period of that parole or probation period, but not beyond.

The defendant may petition the court to modify his or her restitution payment plan at any time. Likewise, the court may decide to modify the payment plan at its discretion.

If the court determines that either: 1) the defendant cannot make any restitution payments during the probation period, or 2) the defendant's criminal behavior did not result in anyone suffering any actual damages, the court may file a written statement citing the reasons for this finding, along with any supporting facts.

After the court enters the approved or modified restitution plan, it becomes a legally enforceable judgment that may be filed as a lien against any assets owned by the defendant for the full amount that the defendant must pay to the victim. Lastly, every known victim should receive a copy of the final restitution order from the court.

Crime Victim “Reparation”

The New Mexico Crime Victim Reparation Commission administers the Crime Victims Compensation Program. This program reimburses eligible crime victims for certain out-of-pocket expenses related to the crime.

Assault
Battery
Aggravated Assault
Murder
Manslaughter
Homicide by Vehicle
Great Bodily Injury by Vehicle
Aggravated Stalking
Kidnapping

The Crime Victims Compensation Program limits eligibility to persons who sustained physical injuries or extreme psychological trauma as a result of one or more of the following criminal offenses:

Aggravated Arson
Arson Resulting in Bodily Injury
Negligent Use of a Deadly Weapon
Dangerous Use of Explosives
Aggravated Indecent Exposure
Criminal Sexual Penetration
Criminal Sexual Contact of a Minor
Abuse or Abandonment of a Child.

The Crime Victim Compensation Program also limits eligibility to the direct victims of crime. Other persons who suffer harm, including relatives and dependents of the victim, and those who assume the victim's funeral or medical expenses may also qualify for compensation

FOR A CRIME TO QUALIFY FOR COMPENSATION FROM THE CRIME VICTIM COMPENSATION PROGRAM, IT MUST MEET THE FOLLOWING REQUIREMENTS:

- 1 The crime must have occurred in New Mexico;
- 2 The claimant must have reported the crime to the police within 30 days of its occurrence. Victims of domestic violence and sexual assault and certain minors have up to 180 days to report the crime to the police;
- 3 The claimant must cooperate with law enforcement, the prosecution, and the Crime Victim Reparation Commission during the investigation and prosecution of the offender; and
- 4 The claimant must apply within two years of the crime.



THE NEW MEXICO CRIME VICTIM COMPENSATION PROGRAM PAYS OUT A MAXIMUM OF \$20,000 TO \$50,000 FOR CASES INVOLVING PERMANENT PHYSICAL DISABILITY. RECOVERABLE LOSSES INCLUDE THE FOLLOWING:

The cost of medical and dental treatment related to the crime;

Up to 30 sessions of mental health counseling;

Up to \$6000 for funeral and burial expenses;

Compensation for lost wages and income;

Up to \$300 for eyeglasses; and

The cost of other necessary medical devices.

Property losses, pain and suffering, lost enjoyment of life, attorney's fees, property losses, punitive damages and other costs associated with filing a victim compensation claim are not compensable through "Reparation."

CRIME VICTIMS REPARATION COMMISSION

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A Civil Lawsuit Can Help Where Restitution and the Crime Victim Compensation Program Cannot

The compensation available through criminal restitution or the Victim Compensation Program is generally limited to "economic" losses, like medical bills. However, by filing a civil lawsuit, a crime victim may be able to obtain significantly more compensation above and beyond economic losses, such as:

Pain and suffering

Property losses

Punitive Damages.

Lost Enjoyment of Life

Attorney's Fees

For this reason, the victim should not stop at seeking Reparation, but should seek the advice of a lawyer concerning filing a civil lawsuit.





WHY SHOULD A CRIME VICTIM FILE A CIVIL LAWSUIT?



CONTROL - As the plaintiff in a civil lawsuit, a crime victim will enjoy more control over what happens than in a criminal case. In a civil lawsuit, the victim cannot be excluded from the courtroom. Also, the victim has the right to decide if (and when) to settle the case.

COMPENSATION - Civil lawsuits allow victims to recover far more compensation than is recoverable through criminal restitution or victim's compensation. The court may award a crime victim compensation for economic losses, such as the cost of medical treatment and lost wages, as well as compensation for non-economic losses, such as pain and suffering, loss of consortium (loss of time spent with, or support by, loved ones), and more. A crime victim may also recover compensation for legal costs incurred while pursuing a claim against the defendant and punitive damages.

JUSTICE AND ACCOUNTABILITY - Civil lawsuits enable victims to hold offenders accountable for their actions, regardless of the outcome of any criminal investigation or prosecution or lack thereof.

CRIME PREVENTION - Besides filing a civil lawsuit against the actual offender, a crime victim can also sue others who were responsible and contributed, by action or inaction, to the harm the victim may have suffered. Civil lawsuits deter crime by holding landlords, property management companies, hotels, and shopping centers financially accountable for failing to implement sufficient security measures. As such, it is more advantageous for these entities to install the right security measures, to protect their customers or clients, and the public at large, and to avoid being sued and having to pay a crime victim thousands or even millions of dollars because they failed to do so. The result is greater security in both public and private places, which leads to less crime.



CRIMINAL VS. CIVIL JUSTICE



The primary difference between the civil and criminal justice systems is that the victim makes all the critical decisions that shape the civil case. Most notably, the victim decides to file a lawsuit, settle the lawsuit early, or take the case to trial.

In New Mexico, a wrongful act is any act performed by a person or entity that is either a violation of the Criminal Code or the legal rights of another person or entity. Wrongful acts are either civil or criminal wrongs.

A civil wrong is an act that a person or entity commits against another, and that can form the basis for a legal cause of action to recover monetary damages and other appropriate relief.

A cause of action is a set of facts sufficient to justify a right to sue, such as causing physical harm to

another (intentionally or unintentionally), slander and libel, invasion of privacy, and property destruction.

A criminal wrong is an act that a person illegally commits, which may lead to an arrest and criminal prosecution. Examples of criminal wrongs include theft, murder, assault, battery, domestic abuse, and rape.

The Criminal Justice System

The criminal justice process starts after someone commits a crime, and law enforcement has gotten involved. Once law enforcement has arrested and charged a suspect with the crime, the State may prosecute the suspect to the full extent of the law.

In a criminal case, the prosecution accuses the defendant of committing a crime against the State. The victim only takes part in the process as the prosecution's primary witness, and the prosecuting attorney's role is to represent the State, not the victim.

The goal of the criminal justice process is to find the defendant innocent or guilty, and if guilty, to sentence the defendant to the appropriate punishment for his or her crime, including prison, jail, and/or probation (supervised or unsupervised).



The Civil Justice System

The civil justice process does not concern itself with innocence or guilt. Its only concern is whether the defendant is liable or responsible to the victim for injuries and losses sustained as a result of the crime. If the court finds the defendant liable in a criminal case, it may order them to pay monetary damages to the victim, their family, or their estate. If the criminal justice process does not bring justice for crime victims, the civil justice process can sometimes give them the

compensation needed to recover from their injuries and losses. So, rather than holding offenders accountable for crimes against the State, the civil justice system holds them financially responsible for their victims' injuries and losses, also known as damages.

IN CRIMINAL CASES:

- The objective is to hold the defendant accountable for a crime against the State.
- The State initiates and controls the case from start to finish.
- The victim essentially only takes part in the process as a witness but does not have any power of direction or control over the prosecution of the case.
- The defendant is presumed innocent until he or she is proven guilty.
- The defendant must be proven guilty beyond a reasonable doubt.
- If the court finds the defendant is guilty, he or she may be sentenced to a period of probation or incarceration, or even sentenced to death. The court may also order the defendant to pay fines, court fees, and restitution to the victim.
- If the court finds the defendant not guilty, he or she cannot be tried for the same crime again.

IN CIVIL LAWSUITS:

- The objective is to hold the defendant financially accountable to the victim.
- The victim initiates and controls a civil lawsuit.
- The victim is a party to the lawsuit and has the right to access all information related to the case. The victim also has the right to decide when to settle the case and under what circumstances.
- There is no presumption made regarding the defendant's liability for the victim's injuries and losses. Both the defendant and victim are viewed as being on equal footing.
- The victim must only prove that a defendant is more likely to be liable than not.
- If the defendant is found liable, he or she may be obliged to compensate the victim for economic losses, such as the cost of medical care to treat physical injuries, psychological counseling for mental and emotional distress, rehabilitation, lost income, and loss of support. The court may also oblige the defendant to compensate the victim for non-economic losses such as pain and suffering, loss of enjoyment of life, and loss of companionship. The court may even award the victim with punitive damages.
- The victim can pursue a civil case against the offender, whether a criminal case was (or will be) brought against the offender, and whether the offender was found guilty or innocent in that case.



Burden of Proof

Because the consequences of a criminal conviction can be more severe for the defendant than those resulting from a civil case, the burden of proof is higher in criminal cases than in civil cases. In a criminal case, the prosecutor must prove that the defendant is guilty beyond a reasonable doubt--the highest standard of proof used in the American justice system.

However, in civil cases, the plaintiff must only prove their case by a preponderance of the evidence. This means the plaintiff must only convince the court that there is a greater than 50% chance that their claim is true.

EXAMPLE:

In the famous murder case, *The People of the State of California v. Orenthal James Simpson*, the State was unable to prove beyond a reasonable doubt that football star O.J. Simpson had murdered his wife Nicole Brown Simpson and her friend Ronald Goldman. Consequently, Simpson was acquitted of the murder charge.

However, despite Simpson's acquittal, the Brown and Goldman families were able to pursue a wrongful death lawsuit against Simpson in civil court. In the civil case, the plaintiffs were successful in proving, by a preponderance of the evidence, that Simpson was liable for the deaths of Brown and Goldman. So, despite Simpson being acquitted in the criminal case, the Brown and Goldman families were able to recover a judgment of \$33.5 million in civil damages.

In many cases, a successful conviction in a criminal case will increase the likelihood of an offender being found liable in a related civil case as well. However, the lack of a criminal conviction does not prevent a victim from bringing a civil lawsuit against an offender and being awarded compensation



THE PARTIES INVOLVED IN A CIVIL LAWSUIT



THE PLAINTIFF

The party who initiates the lawsuit. The plaintiff has the right to access all information related to the case and decides whether the case will proceed to trial or be settled earlier. In a civil case, the plaintiff is usually the victim, but may also be a family member, such as a spouse, child, parent, or sibling.

THE DEFENDANT

The defendant is the party against whom the civil suit is filed. The defendant may be the actual offender or anyone else who contributed to or made possible the offending behavior. Note, there may be more than one defendant named in a civil lawsuit. Likewise, there may be more than one plaintiff.

THE OFFENDER

The offender is the actual perpetrator of the offending crime, whether they have been found guilty in a criminal court or not.

THIRD-PARTY

A third-party is a defendant in a civil lawsuit who is not the actual offender, but who either contributed to or made possible the offending conduct. Common examples of third-party defendants include the following:

- A landlord whose failure to keep an apartment complex safe and secure resulted in someone being victimized or injured on the property.
- A university that failed to install adequate security measures in a dormitory (or some other campus facility) and, as a result, a student was assaulted, robbed, or otherwise victimized.
- A shopping mall that knowingly failed to hire enough security guards, or to implement adequate security measures, even though its stores and customers are attractive targets for criminals.
- A parent or another adult that failed to secure a firearm (or some other dangerous weapon) properly and, as a result, a child was able to access the weapon and use it to injure someone.
- A church, school, or daycare center where a child, who was in their care, was abused by a staff member.
- A bar or bartender that continued to serve alcohol to a patron who was already drunk, and who later injured others while engaging in drunk driving.

VI STATUTES OF LIMITATIONS

In New Mexico, a crime victim generally has three years to initiate a civil lawsuit against the perpetrator. This is referred to as the statute of limitations. The statute of limitations typically begins to toll from the date of the crime. In other words, a crime victim in New Mexico typically has three years from the date of the crime to initiate a civil lawsuit.



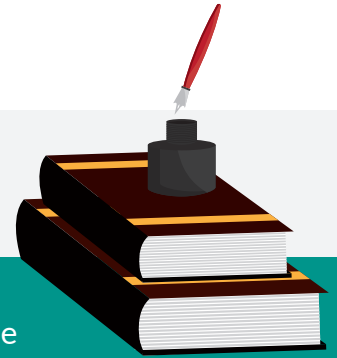
For civil lawsuits involving fraud or trespass, the statute of limitations in New Mexico is four years. For lawsuits involving the sexual abuse of a minor, the statute of limitations is the later of:

- 1 The first instant of the person's twenty-fourth birthday; or
- 2 Three years from the date that a person first disclosed the person's childhood sexual abuse to a licensed medical or mental health care provider in the context of receiving health care from the provider. (NM Stat. Ann. § 37-1-30).

For claims against the State or a local government entity (such as a municipality, police department, or school board), the claimant must first deliver a tort claim to the appropriate government entity within 90 days of the injurious incident, after which the claimant has two years to file a lawsuit.

The statutes of limitations for various lawsuits and tort claims frequently change. Therefore, if a crime victim believes they have a valid civil claim, they should consult with a competent attorney as soon as possible.

VII TYPES OF CIVIL LAWSUITS



There are many causes of actions that a plaintiff in a civil lawsuit can allege. These include negligence and wrongful death, and criminal offenses, such as assault, battery, and sexual assault.

Wrongful conduct that is the basis for a cause of action is referred to as a tort. Examples of common torts include the following:

BATTERY

An intentional harmful or offensive contact, including rape, sexual battery, molestation, fondling, forcible sodomy, and attempted murder.

WRONGFUL DEATH

Conduct that results in the inexcusable and unjustifiable death of a person, including vehicular homicide, manslaughter, and murder.

FALSE IMPRISONMENT

Confining or holding a person against their will for any length of time. False imprisonment is associated with other criminal offenses, such as rape, robbery, and kidnapping.

INTENTIONAL OR RECKLESS INFLICTION OF EMOTIONAL DISTRESS

Intentionally causing someone to experience severe emotional pain through extreme offensive or outrageous conduct, such as sexual harassment, stalking, and racial insults.

FRAUD

An intentional misrepresentation of material facts to secure an unfair or unlawful gain, or to deprive someone of a legal right. Fraud is associated with white-collar crimes, such as identity theft, computer fraud, credit card fraud, and forgery.

CONVERSION

Intentionally stealing or destroying someone else's personal property or money, such that they are permanently deprived of the enjoyment of that property or money, e.g., embezzlement, larceny, and concealment.

NEGLIGENCE

Negligence occurs when one party fails to use a reasonable amount of care to avoid causing injury to another party and, as a result, someone is harmed. Negligence is the most common cause of action for civil lawsuits. Common examples of negligence include poorly lit corridors and stairwells, insufficient security measures, and failure to perform background checks on employees. Other examples include automobile accidents, medical malpractice, and other personal injury claims.

SOME TORTS ARE ALSO CRIMINAL OFFENSES AND WILL RESULT IN CRIMINAL PROSECUTION AS WELL.

Defenses

There are several legal defenses that the defendant in a civil case may claim to evade liability, most commonly:

Self Defense:

The defendant asserts that their actions were justified to defend themselves or others from harm.

Comparative Negligence:

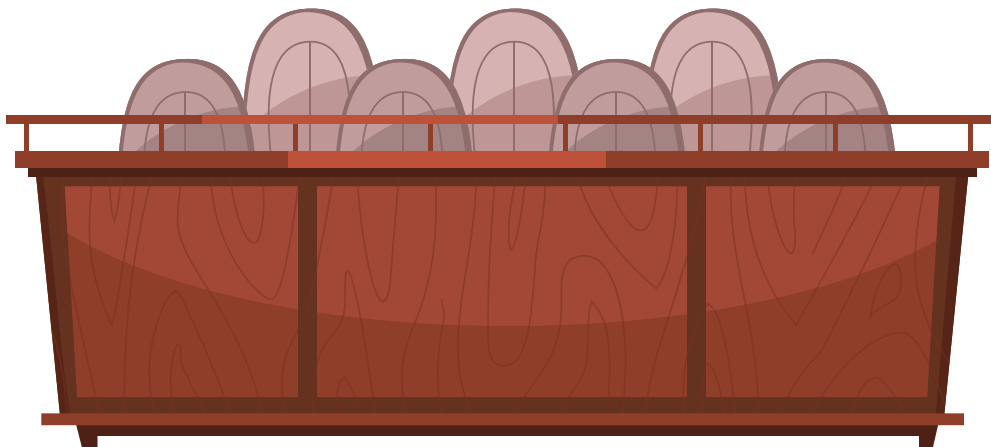
The defendant asserts that the victim's behavior contributed to the circumstances that led to the victim's injuries or losses. In a New Mexico civil case, the amount of the victim's recoverable damages will be reduced by his or her percentage of liability.

Assumption of Risk :

The defendant asserts that he or she is not liable for the victim's injuries because the victim was fully aware of the risks, and voluntarily entered a dangerous situation or engaged in the dangerous behavior that ultimately led to their injuries.

Immunity:

In some cases, the government, individuals acting on behalf of the government, or government agencies may be immune from civil liability for their actions.



VIII CRIME VICTIM PRIVACY



A crime victim's rights to privacy can be found in the United States Constitution, the State constitution, statutory victim's rights acts, privileges that protect the privacy of

communication between a victim and their attorney, doctor, and other professional areas of the law.

During the pretrial and trial phases of the case, the victim's attorney may be able to protect the victim's right to privacy by:

Opposing attempts by the defendant to gain access to the victim's sensitive information, such as their diaries, social media accounts, and mental health records.

Requesting that the victim be identified in court documents by a synonym, such as Jane Doe, John Doe, or Doe #1, instead of their full name.

Ensuring that the victim's address and other personal information are not disclosed and redacted from court documents; and

Ensuring that the case is filed "under seal" or, in other words, that the case is closed to the public.

These are just a few examples of the various possible methods a victim's attorney can use to protect the victim's right to privacy. In general, however, it is difficult to maintain complete privacy in a civil lawsuit.

IX FILING A CIVIL LAWSUIT



THERE ARE GENERALLY THREE STAGES OF A CIVIL LAWSUIT:

- 1 INVESTIGATION
- 2 NEGOTIATION
- 3 LITIGATION.

Often, these stages will overlap, and in some cases, a civil lawsuit will be resolved without the need for litigation at all. Generally, however, the victim can expect the following in a civil lawsuit at each stage of the process:

X INVESTIGATION



Depending on the severity of the victim's injuries, the victim may still be undergoing medical treatment during the investigation stage of a civil lawsuit. While the victim seeks treatment for his or her injuries, the victim's attorney will collect and review important information needed to support the victim's claim for compensation, including:

The victim's medical records and related medical bills;

Emergency room records and reports made by first responders and the victim's treating physician;

The police report;

Witness statements;

Any statements the victim gave to law enforcement;

Photos and/or videos;

Other physical or documentary evidence related to the case;

During the investigation stage, the victim and their attorney may be required to exercise a great deal of patience. Some injuries can be long lasting or permanent, and the victim's prognosis for recovery can be difficult to diagnose early on. Therefore, the victim should not accept any settlement offer until:

- 1 The victim's physicians have had ample time to evaluate the victim's injuries;
- 2 The victim and their attorney have a good idea of how much medical treatment, rehabilitation, and long-term care the victim will need going forward.

Once the victim and their attorney are satisfied that they know enough about the victim's injuries, treatment, and prognosis for recovery, a decision can be made to either negotiate a settlement with the defendant (or their insurance provider) or to initiate a lawsuit.

XI NEGOTIATION



After a thorough investigation of the victim's injuries and losses, their attorney should be able to provide them with an accurate appraisal of the value of their claim.

Evaluating a civil lawsuit for settlement is not an exact science, and no specific dollar amount is the right amount. However, an experienced attorney should be able to provide the victim with a range of settlement values from which the victim should select two amounts:

- 1 The amount of money the victim will initially demand at the start of negotiations; and
- 2 The amount of money the victim will accept to settle the case.

Once these two values have been decided upon, the victim's attorney can contact the defendant or their insurance provider to:

- ① *Summarize the evidence in the case;*
- ② *Provide them with the victim's initial settlement demand; and*
- ③ *Explain how that demand was reached.*

A good settlement demand will be an amount high enough to allow room for negotiation, but not so high that the defendant will refuse to negotiate any further. Bear in mind, the victim does not have to accept any offer if they do not believe that the offer is fair.

The victim's attorney can simply inform the defendant that the victim is not willing to accept the defendant's offer and that the victim will get back to the defendant with a fair counteroffer, given the full extent of the victim's injuries.

ULTIMATELY,
if a settlement cannot be reached, the civil lawsuit will have to be litigated.

XII LITIGATION



Larger civil claims must often be litigated to oblige the defendant or their insurance company to compensate the victim fairly. Civil litigation is the process of resolving a civil lawsuit through the court system. Here is a brief overview of what a crime victim should expect if their civil lawsuit must be litigated:

Complaint and Answer

The victim's attorney will begin the litigation process by drafting and filing a complaint with the court. In this complaint, the victim (plaintiff) will:

Name all the parties involved in the lawsuit;

Explain why the defendant is responsible for their injuries and losses; and

Provide the reason for bringing the lawsuit against the defendant;

Specify the damages they want to receive in compensation for their injuries and losses.

In New Mexico, the defendant (or his or her attorney) has 30 days to respond to the complaint in writing. If there is no response to the complaint, the judge will issue a default judgment in the victim's favor. Generally, however, the defendant will file an answer with the court admitting to or denying the victim's claims and offering a defense.



Discovery

After the complaint and answer phase, the victim and the defendant will engage in a formal fact-finding process called discovery. As part of this process, each party will send written interrogatories (questions), requests for documents, and requests for admission to each other.

Once each party has responded to the other's discovery demands, the attorneys will begin taking pretrial testimonies (depositions) from the victim, the defendant, and eyewitnesses from both sides.

Discovery may also involve requesting and reviewing police records and gathering photographs, videos, and other evidence from the scene of the crime.

Finally, if the victim's claim involves compensation for injuries, the victim may be asked to undergo a medical examination administered by a physician hired by the defendant. The defendant's physician will then draft a report summarizing his or her findings and opinions on the case and the victim's claims.



Pretrial Motions

When discovery and all other pretrial procedures have been completed and medical reports exchanged, the attorneys for both parties will begin filing pretrial motions with the court. Pretrial motions are filed to get the court to throw out all or part of the victim's claims or to limit what may be admitted as evidence at trial.

Suppose there is no real disagreement between the parties concerning what happened and who is responsible. In that case judge will usually grant a pretrial motion for summary judgment in favor of the victim, following what the law prescribes in that case.

If no summary judgment is granted, the victim and their attorney must decide if they will move forward with the case given the following factors:

- The strengths and weaknesses of the victim's claims;
- The likelihood of the lawsuit succeeding at trial; and
- Whether or not they believe that a fair settlement can be obtained.



Final Attempts to Settle Before Trial

Settlement negotiations can continue throughout the litigation process and may take on greater urgency as the trial approaches. It is, therefore, highly possible and often desirable to settle a lawsuit before going to trial.

Many legal teams will typically agree to pursue a settlement instead of going to trial whenever one or more of the following is true.

The amount of money in question is relatively small;

The defendant wishes to avoid negative publicity or the stress of a trial; or

The potential legal costs are high;

The defendant finally accepts responsibility for the victim's injuries and losses.

If a settlement amount is agreed upon between the parties, the agreement may also include certain stipulations, such as a Confidentiality or a No Admission of Wrongdoing clause. The victim's attorney should keep the victim involved and informed in the settlement negotiation process, ensuring that the victim's best interest is at the forefront of the negotiations.



The Trial

If the parties to the lawsuit cannot agree on a settlement, the case will proceed to trial, where the victim will have the choice of having the case decided by a judge or jury. The victim's attorney will advise them on which is best for their situation.

Once the trial begins, the attorneys for each side will be allowed to do the following:

Make opening arguments;

Examine and cross-examine witnesses; and

Present evidence;

Deliver closing arguments.

Finally, the judge or the jury will render a decision in the case. Unlike a criminal trial, where the case must be proven beyond a reasonable doubt, the judge or jury in a civil lawsuit will decide the case based on a preponderance of the evidence that suggests that the defendant is either liable to compensate the victim for damages, or not.

If the judge or jury finds in favor of the victim, the defendant must pay whatever monetary damages the

judge or jury awards to the victim. The amount of damages awarded to the victim will be an amount considered appropriate given the extent of the victim's injuries and losses.

If the judge or jury finds in favor of the defendant, the victim's request for compensation will be denied, and the lawsuit will end, pending any appeal filed by the victim.



The Trial

When a victim wins a civil lawsuit, the judge or jury may award them damages. The two main categories of damages that may be awarded in a civil lawsuit are the following:

- ① *Compensatory damages; and*
- ② *Punitive damages.*

Compensatory damages are awarded to compensate the victim for injuries and losses they have sustained as a result of the defendant's crime. Compensatory damages may include compensation for past and future medical expenses and other financial losses, past and future pain and suffering, loss of quality of life, and various other losses related to the crime in which the victim was injured and for which the defendant is responsible.

A judge or jury may award a victim punitive damages, in addition to compensatory damages. Punitive damages are awarded to punish the defendant for particularly outrageous or egregious conduct and to deter others from committing the same or similar offenses.



Judgment and Enforcement

Crime victims must understand that filing and winning a civil lawsuit does not guarantee compensation. Damages awarded by the court can be difficult to collect. In many cases, the defendant will not be able to pay the compensation they have been ordered to pay. Therefore, the victim and their attorney should consider other possible sources of recovery, such as

any liability insurance under which the defendant is covered. The victim and their attorney should also examine the available enforcement options if payment is not made, including garnishments of the defendant's wages and the placement of levies on their bank accounts and assets.



WHEN A DEFENDANT FILES A COUNTERSUIT AGAINST THE VICTIM

Sometimes, a defendant in a civil lawsuit will retaliate or attempt to intimidate the victim into dropping the lawsuit by filing a countersuit. These countersuits often accuse the victim of slander and defamation.

However, crime victims should remember that the truth is an absolute legal defense to any allegation of slander or defamation.

XIV ABOUT ATTORNEYS



Selecting a Good Attorney

A good attorney understands that their clients need to be fully informed about their claim and the process involved. Consequently, most attorneys provide a free initial consultation, during which the attorney will do the following:

Listen to the victim's concerns and recollection of the crime;

Explain the claims process to the victim; and

Ask questions about the crime and the resulting injuries the victim sustained to better evaluate the victim's claim;

Discuss the strengths and weaknesses of the victim's claim.

During this free consultation, the victim will also be able to learn about the attorney, specifically, the attorney's experience handling civil lawsuits where a crime victim is suing the perpetrator for damages. A crime victim should feel free to ask the attorney as

many questions as he or she wants. Furthermore, the victim should never hire an attorney if they do not feel comfortable and confident in the attorney's ability to represent them well.

The Fee Arrangement

During the consultation, the attorney should also explain to the crime victim how they will be compensated for handling the victim's civil lawsuit. Most crime victims are unable to pay an attorney on an hourly basis. So, the law allows them to pay an attorney a percentage of the funds the attorney recovers on their behalf. This is called a contingency fee.

Under this fee arrangement, the victim's attorney will only be entitled to a percentage of the funds recovered if he or she recovers money on the victim's behalf by either negotiating a settlement or winning a judgment in court. Except for medical malpractice claims, the typical legal fee for civil cases is one-third of the net sum recovered.

In most cases, the victim's attorney will also advance the costs incurred to prosecute the victim's claim. The attorney will recover these costs from the funds

recovered after they are divided between the victim and their lawyer.

For example, if the case is settled for \$3 million and the attorney spent \$50,000 prosecuting the victim's claim, the fee will typically be calculated first, and then the costs of \$50,000 will be paid back to the attorney first. A 1/3 fee would be \$1 million in attorney fees, plus any tax. Then, the remaining \$50,000 fee would be reimbursed to the attorney on top of that.

If the victim decides to hire an attorney to represent them in their civil claim, the attorney will prepare a fee agreement. This document should clearly explain what the victim is hiring the attorney to do and how the attorney will be compensated. But, before signing the fee agreement, the victim should ensure that he or she has thoroughly read the agreement and fully comprehends what it says.



Information Your Attorney May Need

When consulting with an attorney, the crime victim should be ready to provide important information that will enable the attorney to evaluate the case properly, including the answers to the following questions:

REGARDING THE CRIME:

- ⓪ When, where, and how did the crime occur?
- ⓪ What circumstances enabled the crime to occur?
- ⓪ Did anyone witness the crime taking place?
- ⓪ Is there any physical evidence of the crime?
- ⓪ Was a police report filed?
- ⓪ In what police precinct was the complaint filed?
- ⓪ What is the complaint or report number?
- ⓪ What is the name of the officer or detective assigned to the case?
- ⓪ Was there any criminal investigation conducted?
- ⓪ What was the nature of the criminal investigation?
- ⓪ Were there any statements taken during that investigation?
- ⓪ Is there a criminal case related to the crime?
- ⓪ Who is the prosecutor assigned to the case?
- ⓪ At what stage is the criminal case?
- ⓪ What were the circumstances that led to the crime?
- ⓪ Are there any third parties who may have contributed to the crime and or enable it to happen?

REGARDING THE PERPETRATOR:

If the victim knows the perpetrator:

- ⓪ How does the victim know the perpetrator?
- ⓪ What is the perpetrator's name?
- ⓪ Does the perpetrator have any aliases?
- ⓪ Where does the perpetrator live?
- ⓪ Where does the perpetrator work?
- ⓪ What is the perpetrator's date of birth, Social Security Number, etc.?
- ⓪ Was the perpetrator insured?
- ⓪ Who is the perpetrator's insurance carrier?

If the victim does not know the perpetrator:

- ⓪ How can the perpetrator be described physically: height, weight, sex, ethnicity, age, hair color, etc.?
- ⓪ Did the perpetrator have any unique features that can identify them?

XV

CONCLUSION

The civil justice system provides a crime victim with another way to hold the perpetrator accountable. Whether or not a criminal case is filed against the perpetrator, and whether the perpetrator is found guilty or acquitted of the crime, a crime victim can bring a civil lawsuit to request that the court hold the perpetrator financially accountable for their crime. While no amount of money can truly compensate a crime victim for the trauma of being victimized, or for the death of a loved one, it can provide them with the resources they need to put their lives back together.



At Parnall Law we are committed to seeking justice for crime victims. Our lawyers will fight to hold the offender and other responsible parties accountable for your injuries. We offer caring and compassionate client service, and are ready to fight for your rights. Call us today at 505-268-6500 or reach us at www.HurtCallBert.com to set up a free consultation.

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