

Wisconsin Civil Process Group

www.wiscpg.com

March 18, 2009

9:00 am - Noon

Waushara County Sheriff's Office

Lieutenant Rick Olig

Fond du Lac County Sheriff's Office

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(920) 929-3378

Tomorrow at this time.....



2009 Conference

- Location – Holiday Inn Hotel and Conference Center in Stevens Point
- September 30 & October 1, 2009



Ballroom



Meeting Room



Bar and Lounge



- Regular Breakfast – not continental
- Breakfast and Lunch in adjoining room
- Breaks every hour
- Break Out at 2:30 pm first day
 - Possibly 2 break outs
 - New personnel – review basics
 - “Veteran” personnel – advanced issues
 - Turn in questions/discussion items in the am
 - Your thoughts????

2009 Conference Continued

- More time spent on TRO's and Injunctions
- NO DOR Speaker....
- Better lunch set up
- We will have 80+ of the 120 rooms in the hotel, we are the Primary Event
- Topics still being worked on:
 - Basic Process review will be broken down through out the 2 days
 - TRO's
 - Satisfaction of Judgments (big issue)
 - Revised manual update
 - Current Issues

Manual Revision Committee

- 11 members
 - La Crosse Co
 - St Croix Co
 - Dane Co
 - Vilas Co
 - Fond du Lac Co
 - Dodge Co
 - Oconto Co
 - Rock Co
 - Marathon Co
 - Pierce Co
- First meeting was Jan 16th
- Goal is to meet 4 times before the Conference
 - Meetings are at Holiday Inn Stevens Point
- Draft Manual will be posted as it changes
- YOUR input is necessary

- Format changes
 - Entire section on Sheriff's Sales
 - Runs from Start "Notice of Foreclosure paper"
 - Ends with "Sheriff's Report of Sale"
 - Entire section on Executions Against Property
 - Includes various options
 - Cash only and Till Taps
 - Property taken and turned over to Debtor
 - Property taken and auctioned
 - Real estate Liens
- Update as we go, posting drafts on website
- Goal is to have draft done for Conference

Paper	Statute	Timing
Eviction Summons	799.05(3)(b) 799.16(3)	Return date shall be not less than five working days nor more than thirty days from the issue date. The paper must be served not less than five working days prior to the return date. **If unable to serve as above, after due diligence. The paper can be posted on the premises at least seven days prior to the court date, with a copy mailed to the plaintiffs last known address at least five days prior to the court date. This may require you to obtain a new court date.
Notice of Mortgage Foreclosure	815.31	Sale shall be advertised by posting at least three weeks prior to the date of sale.
Notice of Sale of Personal Property	815.29	Sale shall be advertised by posting at least 20 days before the date of sale.
Garnishment Summons	812.07 812.35(2)(3)(4)	A garnishment summons and complaint shall be served on the “Garnishee defendant” in conformity with the standard procedure for a small claims action or a large claims action-whichever is applicable. Notice of such service or a copy of the garnishee summons and complaint, together with the summons in the principal action, shall be served on the “principal defendant: no later than ten business days after service on the “garnishee defendant.”
Large Claims Action	801.02(1) 801.11(1)	Paper must be served within ninety days of filing with the clerk of courts.
Replevin Summons	799.05 801.02	Replevin as a small claims action – The paper must be served eight business days before the return date. The return date for the summons served must be not less than eight business days from the issue date nor more than thirty days from the issue date. Replevin in a large claims action – Paper must be served within ninety days of filing.
Restraining Orders Injunctions	813.12	Unless otherwise specified they can be served right up to the time of the hearing. Note: If the restraining order states 48 hours (or 24, 72...etc), check with your courts to see if holidays and weekends are excluded from the time limit.

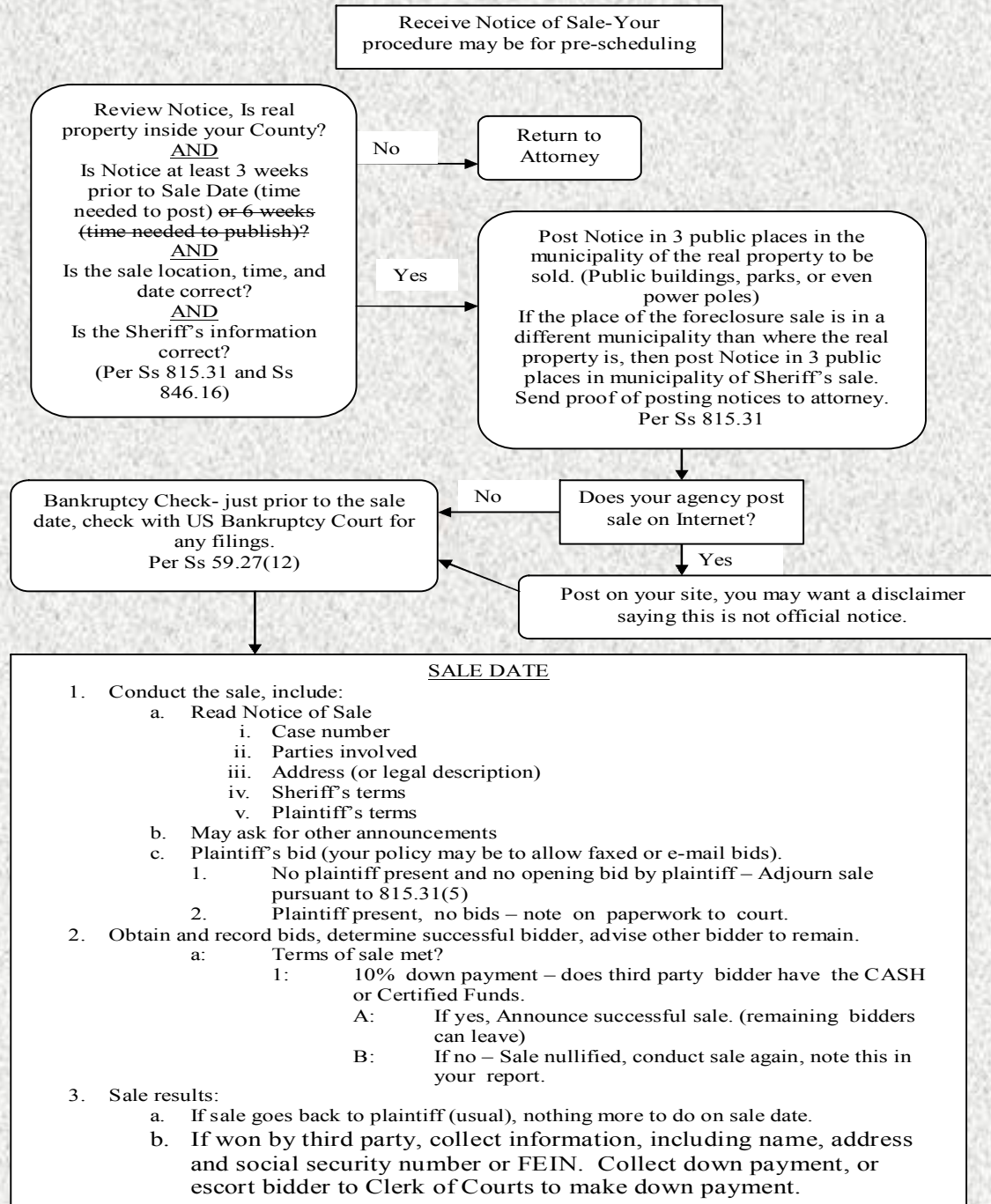
Small Claims Action	799.05(3)	General – a small claims action must be served at least eight working days before the date the party must appear. The date of appearance shall be not less than eight working days from the issue date and no more than thirty days from the issue date. Small Claims – Eviction...see Evictions above.
Writ of Restitution	799.45	No writ shall be executed if received by the Sheriff more than thirty days after issuance by the courts. The Sheriff must execute the Writ and return it to the court within 10 days.
Subpoena	885.03 885.06	Unless otherwise specified, they may be served up to the time of the hearing.
Order to Appear before Court Commissioner		Unless otherwise specified, this must be served forty eight hours prior to the hearing.
Motion and Order for Hearing on Contempt		Must be served eight working days prior to the court date.
Writ of Attachment	811	No set limits other than the normal time limits for a writ, which would be 60 days.
Terminating Tenancy, 5, 14 or 28 day notices	704.21	No time limit, only a notice.
Action in Enforce Judgment of Child Support	707.813(3)	Serve within time limits listed on the documents.
Notice of Appointment of Guardian	54.38(2) 55.09	Must be served ten days prior to hearing
Search Warrant (Criminal)	968.15(1) 968.17	Must be executed within five days of the date of issue, this includes holidays and weekends. The search warrant must be returned to the clerk of courts within 48 hours of execution. 48 hours does not include holidays and weekends.
Search Warrant (Civil)	810.09	No specific time limit within the statutes and no requirement for a return to the clerk of court for Civil search warrants. These should be served within a reasonable time after issuance pursuant to the replevin or execution against property.

TRO - Injunctions

- Petition: All restraining orders require the petitioner to file a petition with the courts. This petition contains information relating to the specific request as well as the reasons why the petitioner is asking for a restraining order. The petition is reviewed by a Court Commissioner or Judge and a decision is made regarding the petition.
- The Court Commissioner or Judge may:
 - A: Issue a Temporary Restraining Order and Notice of Hearing. This restraining order has specific requirements including no contact between the Petitioner and Respondent and may require the respondent to be removed from a shared premises. Read the actual Temporary Restraining Order to determine what, if any action, is required by the server. Be sure to check the “order” to ascertain whether or not the “If requested, the sheriff shall accompany the petitioner/protected person and assist in placing the petitioner/protected person in physical possession of his or her residence.” Temporary Restraining Orders must be entered into the TIME system within 24 hours; or,
 - B: Issue a Notice of Hearing without a Temporary Restraining Order. This is a notice to appear and must be served on the respondent. There are no restrictions and no temporary order, just a notice for a court date and a notice regarding failure to appear. This notice is not entered into the TIME system; or,
 - C: Deny the petition without a hearing nor a restraining order. This is based on the merits of the petition and will not involve law enforcement.

- Each order may provide for different actions by the serving party. Typically Temporary Restraining Orders for Domestic Abuse, Child Abuse and Individuals at Risk, will require the Sheriff to assist in the removal of the Respondent from a residence. Harassment Temporary Restraining orders do not involve the removal of the Respondent from a residence.
- Injunction: After a hearing the Court Commissioner or Judge may issue an injunction which has specific prohibitions for a time period up to four years. If the respondent is present for the hearing, he/she is served a copy of the Injunction. If the respondent does not appear for the hearing, the Injunction may need to be served upon the respondent.
- If you are unable to serve the respondent, the injunction may still be able to be enforced if the respondent was served the initial notice of hearing. The notice of hearing informs the respondent that failure to appear could result in an injunction being issued with specific restrictions.

Foreclosure Sale Flowchart



Issues and Questions

Sheriff's Sales

- Is there a limit on how many times it can be adjourned? Or is it the amount of time from start to sale?
- 815.31 (5) leads me to believe that the sale has to be done within 3 months. Do you agree? It has been adjourned for the 4th time but we are trying to get in before the 3 months run out.

815.31(5)

- 815.31(5)
(5) If at the time appointed for any such sale the sheriff considers it in the interest of all persons concerned, the sheriff may adjourn the sale from time to time, not exceeding in all 3 months. In case of such adjournment public notice thereof shall be given at the time and place fixed for the sale. If the adjournment shall be for more than one day further notice shall be given by posting or publishing the same, or both, as the time and circumstances may admit.

- Based on the statute:
- If this is postponed for MORE than 3 months, what has to happen?
 - Court Review?
 - New Publication for 6 weeks?
 - New posting?

Service on “Unknown Spouse”

- I'm sure many of you know which attorney sends service for the following:

"Please serve the spouse of defendant's and NOTATE their name on your proof of service. If they ARE NOT currently married, please INDICATE so on your proof of service."

The general consensus here is that we shouldn't have to be the attorney's investigator. How do the rest of you handle this situation?

Is there a statute stating we have to do this?

- They send a paper for Phillip Morris and “Jane Doe, unknown spouse” and they send us 2 copies along with the fee for 2 service fees.
- We serve Phillip Morris and ask if there is a Mrs. Morris,
 - **if yes**, we ask her name and when we can serve her.
 - This is a completed service on Phillip and an attempted service on “Jane Doe”.
 - If she is not present, we then continue to try to serve Mrs Morris.
 - On the 3rd attempt we can substitute serve Phillip Morris
- If he says he is not married, we return the Certificate of Service on Phillip Morris as Personally served and another certificate of service on “Jane Doe” as “Attempted, not found” we then indicate on the certificate that there is no “Jane Doe/Unknown spouse”.
-
- Either way they pay for service on 2 parties.
-
- The statute that covers this would be Chapter 59 which states the Sheriff shall serve all papers etc brought to him/her for service.
- We are attempting to serve Jane Doe and although it might seem like we are doing the attorneys work, he is required to attempt service on any “unknown spouse”. And we get paid a full service fee for this. (We still have to find Phillip Morris to serve him anyway, so its not really much more work.)

Eviction - Bond

- When we're doing a lock in place for an eviction, does the bond that the landlord provides to us need to be filed with the Clerk of Courts or do we just keep the original in our file? I've never filed it before and I have a feeling I'm in the wrong here. Any advice? We're doing a big one this afternoon at 4 p.m.

What do you do?

- **810.03 Requisition to sheriff.** Upon the issuance of an order making a factual determination set forth in [s. 810.02](#) and upon the execution of a bond in an amount approved by the judge or judicial officer and with sufficient sureties approved by the judge or judicial officer, to secure the value of the property, the prosecution of the action, the return of the property to the defendant, if the return thereof be adjudged, and payment to the defendant of such sum as may be recovered against the plaintiff, the sheriff shall then take the property from the defendant or such persons as are acting on behalf of, in concert with or under control of the defendant, and deliver possession of the property to the plaintiff.
- **No mention of where to file it**
- **811.06 Bond; justification.** Before the writ of attachment is executed, a bond on the part of the plaintiff in a sum set by the judge or the judicial officer issuing the writ of attachment in an amount sufficient to provide adequate security to the defendant for any damages the defendant may sustain by reason of the attachment, shall be filed with the court to the effect that if the defendant recovers judgment the plaintiff shall pay all damages which the defendant may sustain by reason of the attachment. The affidavit of the surety annexed to the bond shall state that the surety is a resident and householder or freeholder within the state and worth double the sum specified in the bond in property therein above his or her debts and exclusive of property exempt from execution. No bond is necessary when this state or any county, town or municipality therein is plaintiff.
- **Specifically says "Filed with the court"**
- **815.24 Indemnity may be required.** If there is any reasonable doubt as to the ownership of the property or as to its liability to be taken on the execution the officer may require sufficient security to indemnify the officer for levying upon such property.
- **No mention of where to file it**

A few thoughts

- Who does the bond protect?
- Does your clerk of courts want the bond?
- As long as you do it the same way every time, you can find the bond if you need it.
- #1 issue....where is it when the Sheriff gets sued and needs to use the bond.

Publishing of Sheriff's Sale

- I have two questions and the law firm that is raising these questions is O'Dess.
- Sheriff sale postings have to be published in the newspaper 6 consecutive weeks (42 days) before the sale, correct?
- We have noticed that they are publishing before the Sheriff signs, what can we do with that?

- The publishing in the paper must be for 42 days prior to the sale, and yes, many times it will be done before the Sheriff signs the actual notice of posting.
- My corp counsel says that is not an issue since the Sheriff is only signing the actual notice that we post.

-

What is required when a sale is adjourned?

- 815.31(5)
(5) If at the time appointed for any such sale the sheriff considers it in the interest of all persons concerned, the sheriff may adjourn the sale from time to time, not exceeding in all 3 months. In case of such adjournment public notice thereof shall be given at the time and place fixed for the sale. If the adjournment shall be for more than one day further notice shall be given by posting or publishing the same, or both, as the time and circumstances may admit.

- Postponed for a week?
 - Can the attorney draft and get you a new notice to be posted? (Possible??)
 - Can the notice be published? Most papers need 10 days to publish legal notices
 - Be sure to announce the new date at the initial sale date.

- Postponed for 2 weeks?
 - Can the attorney draft and get you a new notice to be posted? (There is no reason why they cannot)
 - Can the notice be published? Most papers need 10 days to publish legal notices
 - Be sure to announce the new date at the initial sale date.

- Postponed for a month or more?
 - Can the attorney draft and get you a new notice to be posted? (This must be reposted)
 - Can the notice be published? Most papers need 10 days to publish legal notices, now there is no reason not to publish at least a few times.

Faxed Papers for Service?

- I have one question for you. It has always been our office policy to NOT accept faxes of papers to serve except TRO's, then they are followed up by the mail. Is this also your policy? I'm thinking it is because we can't see if the papers coming in on fax are legitimate to serve or if it has been altered. Is this correct? What if it's from another county w/hearing date soon?

Writ of Assistance - Property

- Apartment. Writ of Assistance, with a bond, have you ever just ousted the people, have the locks changed and have the landlord and tenant work together to get the stuff out? I have done that once.
-
- Would you ever do that without a bond - - like get the person out and leave the stuff in there for them to work out?

- Legally, once the Sheriff does a Lock in place, we need a bond to protect us, once we leave, whatever deal the landlord and tenant make out to get the property back is fine with us, we are done once we remove them and lock it up.
- But yes.....get a bond to protect yourself

Execution Against Property

I have an execution against property. It deals with an eleven piece china set and states so in the execution. .

The china set is currently at the Judg Creditor's business. The debtor brought it in to have it reset and cleaned and never made good on the bill.

The total Judg costs are \$7279. I have a bond for \$14,559.

I have had no luck in tracking down the Debtor, he is not from the area.

What I plan to do Monday is arrive at the business and take pictures of the china and tag it. I was going to ask the owner of the business if it could be stored there (it has been for at least the past year) and ask if the sheriff sale could be held at his business.

I have been told antique china needs to be specialty wrapped and stored so it is not ruined. I plan then to inform the attorney to draw up postings and I will post them for at least twenty days in the municipality of sale.

Now the questions:

Do you think an outside appraisal of the china should be done?

I Believe the store owner would know but he is involved in the writ. I believe I would need to find out if he is bonded and insured as I am seizing the property when I tag it and storing with him.

If I am unable to contact the Debtor, I am unable to make demand for cash. I believe a letter and phone call to last known address and phone number should be enough.

If all these steps are taken, and a sale is done, what usually happens if a bid is not received?

Who is then responsible for the china?

- You have to exercise due diligence in locating the debtor, which would include inhouse records, post office and other reasonable efforts. If you cannot locate him/her then you have to document your efforts and make sure they are forwarded to the courts for placement in the file.
-
- Normally I would not let the creditor hold the items but in this case it might not matter...since he has had it for a while already.
- I would actually do this a bit differently, ask the creditor if he will pay for an outside appraiser that YOU pick. Then I would get the appraisal and have the creditor take the appraisal to the courts. If the appraisal is close to the judgment amount, the creditor could ask the courts to just award him the china to satisfy the judgment.
- The risk with going to a sale is unless it is published and you get the right people at the sale, you will not get much for the china.
-
- As for the sale, if no one shows or bids, the property is returned to the debtor and the creditor has to look for other property to seize. Also if the bid is below 70% of the value of the property, the courts can invalidate the sale.
-
- I would see if the creditor is willing to pay a hundred or so for the appraisal and then petition the court to just get the items and avoid a sale. Then he can sell them or keep them.
-

TRO Service

- **2) Commencement of action and response.**

-

813.12(2)(a)

(a) No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under [sub. \(5\) \(a\)](#). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. If the judge or a circuit court commissioner extends the time for a hearing under [sub. \(3\) \(c\)](#) and the petitioner files an affidavit with the court stating that personal service by the sheriff or a private server under [s. 801.11 \(1\) \(a\)](#) or [\(b\)](#) was unsuccessful because the respondent is avoiding service by concealment or otherwise, the judge or circuit court commissioner shall inform the petitioner that he or she may serve the respondent by publication of a summary of the petition as a class 1 notice, under [ch. 985](#), and by mailing or sending a facsimile if the respondent's post-office address or facsimile number is known or can with due diligence be ascertained. The mailing or sending of a facsimile may be omitted if the post-office address or facsimile number cannot be ascertained with due diligence. A summary of the petition published as a class 1 notice shall include the name of the respondent and of the petitioner, notice of the temporary restraining order, and notice of the date, time, and place of the hearing regarding the injunction.

801.11(1)(a) & (b)

- 801.11
801.11 Personal jurisdiction, manner of serving summons for. A court of this state having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in [s. 801.05](#) may exercise personal jurisdiction over a defendant by service of a summons as follows:
- 801.11(1)
(1) Natural person. Except as provided in [sub. \(2\)](#) upon a natural person:
- 801.11(1)(a)
(a) By personally serving the summons upon the defendant either within or without this state.
- 801.11(1)(b)
(b) If with reasonable diligence the defendant cannot be served under [par. \(a\)](#), then by leaving a copy of the summons at the defendant's usual place of abode:
- 801.11(1)(b)1.
1. In the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof;
- 801.11(1)(b)1m.
1m. In the presence of a competent adult, currently residing in the abode of the defendant, who shall be informed of the contents of the summons; or
- 801.11(1)(b)2.
2. Pursuant to the law for the substituted service of summons or like process upon defendants in actions brought in courts of general jurisdiction of the state in which service is made.
-

Dave Perlman's response

- Hi Rick:

I wasn't aware that the consensus was that all TRO's injunctions had to be personally served...The statute seems pretty clear that if personal service can not be achieved with due diligence then the more liberal provisions of (11)(b) kick in. It does seem surprising but hard to run away from the clear language of the statute. I can't find statutory language requiring that service can only be made personally for TRO's/Injunctions issued under 813.12...so it was news to me but it is what it is...

Dave

- I agree that substitute service is acceptable, and I appreciate that your officers will continue to personally serve whenever possible. The biggest problem I see if there isn't personal service, is that your officers may be called to testify regarding their "reasonable diligence" if the Respondent challenges either service or any charge of violation in the future. Since a Injunction can be granted for up to 4 years, and I suppose an arrest/challenge could occur at any time during the 4 years, your officers may need to keep notes/records on their service attempts in order to establish reasonable diligence. Otherwise, I guess you could modify your Affidavit of Service to simply state something along the lines of... "after due diligence, substitute service on _____ or by _____, was done," perhaps with a place to list the previous attempts made. These thoughts are just off the top of my head and made without too much thought given – although, as you state, personal service is preferable, I don't have any real problem with substitute

-
- Sally-Anne Danner
- Fond du Lac County
- Family Court Commissioner
- 160 South Macy Street
- Fond du Lac, WI 54935
-

TRO Conflicts

Person A and Person B are roommates.

A files TRO on B.

B is kicked out.

B then files on A.

A is served at the apartment.

B Stays at the apartment.

B shows up for the hearing but A doesn't show up.

Judge cancels A's order but enforces B's order.

- NOW WHAT?

For a minute i was confused about who stays at the apt,

Since A is there and B was kicked out, but B's order is in effect, that "A" can't reside where "B" lives.

We removed A and put B back in the apartment.

Just so happens A re-filed and the order was enforced that B not contact him, but we left B in the apartment, as his was enforced first.

Scenario B

- Husband and wife live together.
- husband has wife arrested for a domestic dc.
- he enforces a 72 hr no-contact and she stays elsewhere temporarily.
- before the 72 hr is up, she goes and gets a TRO against him, with the box checked to remove him from the residence (he doesn't get a TRO during the 72 hour no contact).
- Now What????

Court Response:

- We checked with the court commissioners (2 of them-realizing they have been known to make decisions on these issues in the past, without much thought). they advised the TRO takes president over the 72 hr no-contact.
- we also looked up the statute on TRO's and there was some language talking about how TRO's supersede other orders. We served him at work and told him not to return, and then instructed the female that she could move back in. again, just FYI.

Sheriff's Sale Paperwork

What paperwork do you check before you sign the Sheriff's report of sale?

- Sheriff's Deed? (Signed by Sheriff)
- Sheriff's Report of Sale? (Signed by Sheriff)
- Real Estate Transfer Forms? (Sheriff Name on it)
- Affidavit of Publication? (relates to the report)
- Notice of Sale? (Sheriff's Name is on it)

- Who is responsible for making sure:
- Posting was 3 weeks prior to sale?
- Posting was in proper locations
- Publication was for 42 days?
- 10% down payment was made and deposited with clerk of courts

Sheriff's Report of Sale

"as provided by law, proofs of which are attached hereto."

Pursuant to a judgment of foreclosure and sale heretofore rendered by this court, after posting and publication of notice as provided by law, proofs of which are attached hereto, the undersigned sheriff did conduct a sale of the mortgaged premises as advertised at public auction.

"Sheriff give public notice of the time and place of such sale according to law"

By virtue of and pursuant to a Order for Judgment and Judgment of foreclosure entered in the above-entitled action on June 10, 2005, by which it was, among other things, ordered and adjudged that the premises mentioned in the complaint in this action, as hereinafter described, be sold at public auction, by or under the direction of the Fond du Lac County Sheriff (the "Sheriff"), where the premises are situated, and that the Sheriff give public notice of the time and place of such sale according to law and the rules and practice of this Court:

I, Gary M. Pucker Sheriff, do respectfully certify and report, that in conformity with the Judgment entered in this action, I advertised the mortgaged premises to be sold by me, at public auction to the highest bidder, at the City-County Government Building, 160 South Macy Street, Fond du Lac, Wisconsin, at 9:00 a.m. on October 11, 2005; that prior to the sale