

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-13-0035
PETITION TO AMEND LOCAL RULES OF)
PRACTICE AND PROCEDURE, MUNICIPAL)
COURT, CITY OF YUMA)
)
) **FILED 8/28/2013**
)
_____)

**ORDER
APPROVING LOCAL RULES OF PRACTICE AND PROCEDURE
FOR THE YUMA MUNICIPAL COURT**

A petition having been filed seeking approval for the promulgation of the Local Rules of Practice and Procedure for the Yuma Municipal Court, upon consideration,

IT IS ORDERED approving the Local Rules of Practice and Procedure for the Yuma Municipal Court in accordance with the attachment hereto, effective January 1, 2014.

DATED this _____ day of August, 2013.

REBECCA WHITE BERCH
Chief Justice

TO:
Rule 28 Distribution
Douglas S Stanley, Presiding Judge, Yuma Municipal Court

ATTACHMENT

LOCAL RULES OF PRACTICE AND PROCEDURE FOR THE YUMA MUNICIPAL COURT

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Rule 1. Criminal Cases

Rule 1.1. Pretrial conference.

There is hereby established a Pretrial Conference (PTC) procedure for this Court.

Rule 1.2. Purpose of pretrial conference.

The purpose of the PTC shall be:

- A. to provide a forum and procedure for the fair, orderly, and just disposition of cases without trial;
- B. to permit the parties, without prejudice to their rights to trial, to engage in disclosure and conduct negotiations for dispositions without trial;
- C. to provide discovery as hereafter set forth;
- D. to eliminate the need for trial settings for cases which may be concluded without trial, thereby enabling the court to administer its trial docket in a just and efficient manner; and
- E. to enable the court and the parties to have trial settings on a day certain in all cases which cannot be concluded without trial.

Rule 1.3. Cases affected.

At arraignment the court may set a PTC for the following cases:

- A. All cases wherein defendant is of right entitled to trial by jury.
- B. Any other case where, in the opinion of the court, justice will be served.

Rule 1.4. Attendance.

A. Attendance is mandatory upon the defendant, his counsel, if any, and the prosecutor at the pre-trial conference. The defendant need not attend the PTC in those instances where defendant's counsel avows to have been in contact with the defendant regarding the action, and that, as a result of such contact, counsel is reasonably certain that defendant will be in attendance at any further proceeding.

B. The sanctions set forth in Rule 33 of the Arizona Rules of Criminal Procedure may be implemented by the court for failure to appear as required by subsection A of this rule.

C. Failure of the defendant to appear in person also may result in any or all of the following:

1. vacating any previous trial setting;
2. forfeiture of bond;

3. issuance of a warrant for defendant's arrest and appearance before the court for further proceedings, including the giving of appropriate bail to secure attendance when required; and

4. such other actions as the court finds necessary in the interests of justice.

D. The defendant need not appear if, before the PTC, he or she has executed a plea agreement pursuant to the provisions of Rule 17.4(b) of the Arizona Rules of Criminal Procedure, and the same is presented to the court at the PTC.

Rule 1.5. Discovery.

A. At any PTC the defendant may inspect and copy all relevant written information in the possession of the prosecutor, excluding work product and the names of informants whose disclosure may result in their substantial risk. The defendant may inspect and review physical evidence in the possession of the prosecutor.

B. Nothing in this rule shall be construed in any manner as altering the procedure pursuant to the Arizona Rules of Criminal Procedure (presently Rules 15.1 and 15.2) relating to disclosure.

C. The court, may issue orders relating to disclosure including the following:

1. requiring additional disclosure by either party;

2. sanctioning either party where the court deems necessary in the interest of justice for failure to make good faith disclosures; and

3. such other orders as the court deems necessary to promote the interests of justice.

Rule 1.6. Judge's duties.

A. The judge presiding at a PTC shall make such orders for disposition of cases that fulfill the purposes of this rule and as justice may require.

B. When apparent by advice from the parties or otherwise that no disposition can be expected, the court shall set the matter for trial. Absent good cause to depart from them, the following rules shall apply:

1. In the event more trials are set on a given day than facilities and personnel of the court can accommodate, the matter shall be continued from hour-to-hour or from day-to-day until completed. Such continued case shall take precedence for trial over any case set the following day.

2. In the event the trial date conflicts with other professional responsibilities of counsel, or with other matters of serious import to a client or to any material witness, the parties shall advise the court of the conflict at the earliest practical date to secure a resetting in accordance with the law or to arrange for representation by other counsel.

C. The judge presiding at the PTC may advise the parties of the matters set forth in subsection B when the case is set for trial.

Rule 1.7. Change of judge.

In any criminal case in the City Court, any party shall be entitled to one peremptory change of judge pursuant to the provisions of Arizona Rules of Criminal Procedures, Rule 10.2., Change of Judge upon Request.

Rule 1.8. Juries; size and challenges for cause.

In jury eligible trials within the jurisdiction of this court, the jury shall consist of six persons but may also, by consent of both parties, consist of three, four, or five jurors. Jurors are subject to challenge for cause, which challenge shall be tried by the court. At the time set for a jury trial, the list of potential jurors summoned shall be called and shall constitute the jury, unless excused or successfully challenged, in which case other potential jurors sufficient to complete the jury shall be summoned. If the court finds good cause, one or more alternate jurors may be chosen.

Rule 1.9. Applicability of State rules.

The Arizona Rules of Criminal Procedure shall apply to all criminal proceedings in city court.

Rule 2. Civil Cases

Rule 2.1. Definitions.

- A. "Charging Document" means a complaint or civil citation.
- B. "City" means the City of Yuma or State of Arizona where implied or otherwise, such as in the title of the charging document.
- C. "City Code" means the City Charter, City Code, and City Ordinances of the City of Yuma.
- D. A "civil parking infraction" means any violation of a City Code section that regulates the time, place, or method of parking.
- E. A "civil violation" means any civil violation or infraction of the City Code, as defined in subsection C, or any section of Title 28 of the Arizona Revised Statutes pertaining to civil traffic violations in which the enforcement action undertaken may result in the imposition of a civil sanction or penalty.
- F. "Court" means the Municipal Court of the City of Yuma.
- G. "Defendant" means the person or entity charged with a violation of the City Code or Title 28 of the Arizona Revised Statutes pertaining to civil traffic.

H. “Judicial officer” means a judge, magistrate, special magistrate, hearing officer, or limited special magistrate.

I. “State” means the State of Arizona.

Rule 2.2. Scope.

These rules shall apply in all proceedings involving the adjudication of civil parking infractions or civil violations under the City Code and shall supplement the Rules of Civil Procedure in Civil Traffic and Civil Boating Violation Cases.

These rules shall in no way serve to restrict or limit a judicial officer’s lawful authority or discretion.

Rule 2.3. Civil violations and civil parking infractions; charging document and summons; rules.

A. Civil violation actions, except civil parking infraction actions, shall be commenced either by citation or civil complaint. Any city employee responsible for the enforcement of any provision of the City Code bearing a civil sanction or penalty may issue a citation. Alternatively, the city attorney/prosecutor may file a civil complaint with the court. Upon receipt of the complaint, the court shall issue a summons.

B. The charging document and summons may be served by any method authorized by the Arizona Rules of Civil Procedure. In addition, a citation or summons may be served by certified or registered mail, return receipt requested. Return of the signed receipt shall be prima facie evidence of service.

C. The charging document and summons shall direct the respondent to appear not more than 30 calendar days after personal service or mailing, if service is made by certified mail.

D. The charging document and summons shall contain at least the following information: the time, date, and place of the alleged violation; reference to the City Ordinance or Code provisions violated; the time, date, and place for the respondent to appear; an affirmation signed by the citing official that the violation took place; and warning of default in the event of failure to appear.

E. Civil parking infraction actions shall be commenced by the issuance of a citation, which shall include the date, time, and location of the violation, the state license number of the vehicle unlawfully parked, reference to the City Ordinance or Code provision violated, and notice that within 30 calendar days from the date on which the citation was issued the fine for the violation must be paid to and received by the City or a request must be made to and received by the court for a hearing to contest the citation. A copy of the citation may be served by attaching a copy to the vehicle; personal service is not required. The citation, or copy

thereof, issued in accordance with these Rules shall constitute prima facie evidence of the parking infraction.

F. If the defendant involved in a civil parking infraction fails to respond within 30 calendar days from the date on which the citation was issued by one of the methods prescribed in Rule 2.7, a default fee shall be assessed pursuant to section 39-10 of the City Code. The court shall, within 30 days of the default date, send a default letter to the owner's address on file with the Arizona Motor Vehicle Department, advising the owner that the citation is in default and may be sent to a collection agency.

G. The Rules of Procedure in Civil Traffic Violation and Boating Violation Cases shall apply to all court proceedings for civil traffic violations. Rule 2 of these local rules shall apply to all proceedings for civil parking infractions and to all other civil violation actions.

Rule 2.4. Cases to be heard by a judicial officer.

A judicial officer shall hear and dispose of civil violations and civil parking infractions and may make such orders as may be necessary and proper to such dispositions. Cases shall be heard without a jury.

Rule 2.5. Sufficiency of the charging document.

No charging document shall be deemed insufficient for failure to contain a definite statement of the essential facts constituting the specific violation the defendant is alleged to have committed if the charging document contains either a written description of the violation or a reference to the section of the City Code or Title 28 of the Arizona Revised Statutes alleged to have been violated. However, a judicial officer may require additional clarifying language when deemed appropriate. Failure to comply may result in dismissal of the charging document without prejudice.

Rule 2.6. Amending the charging document.

A. The court may permit a charging document to be amended at any time before judgment if no additional or different violation is charged and if substantial rights of the defendant are not prejudiced.

B. The charging document may be amended to conform to the evidence adduced at hearing if no additional or different violation is charged and if substantial rights of the defendant are not thereby prejudiced.

C. All amendments to a charging document relate back to the date of violation.

Rule 2.7. Appearance and entry of plea.

A. The defendant or defendant's attorney may admit the allegations of the charging document by appearing in person or, for those violations with a fixed fine amount, by mail

received by the city within 30 calendar days admitting responsibility for the violation and paying the prescribed fine.

B. The defendant or defendant's attorney may deny the allegations of the charging document by appearing in person. The defendant may also deny the allegations of the charging document by delivering to the court and the city a written denial signed by the defendant or defendant's attorney. Upon denial, the court shall set the matter for hearing and notify the defendant and the City of the date, time, and place for the hearing, in writing or through electronic notification such as email. Unless a different address is provided to the court in writing by the defendant or defendant's attorney, the defendant's notice shall be sent to the address set forth on the charging document or Motor Vehicle Division address of record.

C. A request for a hearing to contest a civil violation for which Defensive Driving School is an option shall constitute a waiver of that option.

D. The defendant shall respond to a citation for a civil parking infraction within 30 calendar days from the date on which the citation was issued by one of the following methods:

1. by defendant or defendant's attorney appearing in person or by mail (including email or fax) received within the 30 calendar day period, admitting responsibility for the violation, and paying the fine prescribed for the violation; or
2. by contacting the court in person, through counsel, or by mail (including email or fax) requesting a hearing to contest the citation within the 30 calendar day period.

If the owner or operator of the vehicle involved in the violation fails to respond by one of the methods prescribed in subsections A or B within 30 calendar days from the date the citation was issued, the court shall enter judgment for the City, impose a civil sanction, and, in addition to any time payment fee required, assess a default fee pursuant to the City Code. The court shall send a default letter to the defendant's last known address on file with the court, giving notice that the citation is in default.

Rule 2.8. Notice of intent to be represented by counsel.

Absent extraordinary circumstances, if a notice of appearance by defendant's counsel is not received by the court at least ten calendar days before the hearing, defendant's right to counsel is deemed waived.

Rule 2.9. Right of City to be represented.

The City need not be represented by counsel at the hearing on a charging document. The City's right to be represented by counsel at the hearing is waived unless the City notifies the court and the defendant of its election to be represented by counsel. Absent extraordinary circumstances, such as lack of notice to the prosecutor that the defendant will be represented by counsel, the City must notify the court at least ten calendar days before the hearing date, or

within ten calendar days of receipt of notice that the defendant will be represented by counsel, whichever is later.

Rule 2.10. Motion to withdraw.

Defense counsel shall not be permitted to withdraw except by court order upon counsel's written motion. The motion shall include:

- A. the reason for the withdrawal;
- B. that the defendant consents to the withdrawal or why defendant's consent is unobtainable; and
- C. the defendant's last known address.

Rule 2.11. Discovery.

- A. No pretrial discovery shall be permitted.
- B. Immediately before the hearing, both parties shall produce for inspection any prepared exhibits and written or recorded statements of any witness which may be offered at the hearing. Failure to comply with this rule may result in sanctions, in the court's discretion, including granting a recess or continuance to permit such inspection or precluding the evidence not so exchanged.

Rule 2.12. Consolidated cases.

If civil and criminal cases are based on the same conduct or are otherwise connected together in their commission, the court may consolidate the cases, but either party may file a motion to sever before the cases proceed to hearing. Cases may be consolidated at any point in the proceedings on the motion of any party, or on the court's own motion. At the trial of any consolidated case, the rules governing the criminal case shall apply, but the civil case shall be tried to the court, and the standard of proof in the civil case shall be by a preponderance of the evidence.

Rule 2.13. Continuances and rescheduling.

A. The court may, upon motion of any party or on its own motion, continue or reschedule the hearing in a civil violation action for a period not exceeding 60 days, if it appears that the interest of justice so require.

- 1. Absent extraordinary circumstances, any motion to continue or reschedule a hearing shall be filed no fewer than five calendar days before the scheduled hearing.
- 2. A motion to continue or reschedule does not excuse a party or that party's counsel from attending the hearing while the motion remains pending.

B. Absent extraordinary circumstances, the court shall not continue or reschedule a hearing without notice to both parties.

C. The court shall notify both parties in writing of the new hearing date and time.

Rule 2.14. Oath.

All testimony shall be given under oath or affirmation.

Rule 2.15. Questioning of witnesses.

A. The court may, on its own motion, call and examine witnesses present at the hearing, including the defendant.

B. No person may be examined or cross-examined at a hearing except by the court, an attorney for a party, or the defendant.

Rule 2.16. Rules of evidence.

The Arizona Rules of Evidence shall not apply in civil violation cases. Any evidence offered may be admitted subject to the judicial officer's determination that the offered evidence is relevant and material and has some probative value to a fact at issue. Nothing in this rule shall be construed as abrogating any statutory provision relating to privileged communications.

Rule 2.17. Witnesses.

The City shall present all witnesses for its case-in-chief, other than the defendant, before the defendant is required to testify or produce any evidence. A witness not called to testify in the City's case-in-chief may be called in rebuttal.

Rule 2.18. Order of proceedings.

The order of proceedings shall be as follows:

- A. testimony of City's witnesses;
- B. testimony of defense witnesses;
- C. testimony of City's rebuttal witnesses, if any;
- D. testimony of defense surrebuttal witnesses, if any;
- E. argument of the parties or their counsel, if permitted by the court; and
- F. ruling by the court.

Rule 2.19. Record.

A record of the proceedings shall be made by a court reporter, by audio/video or audio recording, or by any other method approved by the Supreme Court.

Rule 2.20. Default by the defendant.

A. If the defendant fails to appear as required, the allegations of the charging document shall be deemed admitted, and the court shall enter judgment for the State and impose a civil sanction.

B. If it appears from the face of the charging document that the defendant was in the active military service, no default judgment may be entered. In such case, the court may notify the defendant's commanding officer, if known, of the defendant's failure to appear.

Rule 2.21. Default by the City.

If no witness for the City, excluding the defendant, appears at the time set for hearing on a civil violation, the court shall dismiss the complaint, without prejudice, unless the court, for good cause shown or in the interest of justice, continues the hearing to another date. This rule shall not apply to cases such as civil parking infractions in which the citation constitutes prima facie evidence of the violation.

Rule 2.22. Findings and judgment.

A. If the court finds in favor of the City, the court shall enter judgment for the City and impose a civil sanction.

B. The court may enter any lawful order to enforce the court's judgment, including, if appropriate, an order of abatement and a date for compliance with the order.

Rule 2.23. Setting aside default judgment.

A. For good cause shown, and upon terms the court deems just, the court may set aside a judgment entered upon a failure to appear. A motion to set aside a default judgment shall be made in writing within 30 days after entry of the default judgment.

B. At any time, the court shall set aside a judgment entered upon an initial failure to appear in response to the court's summons if it appears that the defendant was not served as provided by law with a copy of the charging document and summons, or for any other reason to prevent a manifest injustice.

Rule 2.24. Right to appeal.

A. Any party may appeal to the Superior Court from a final order or judgment in a civil violation case as provided by law. Any appeal shall be governed by the Superior Court Rules of Appellate Procedure—Civil.

B. Immediately following judgment and imposition of civil sanction after hearing, the court shall notify the defendant in writing of the right to appeal. Such notice shall state that a right to appeal exists, the applicable time limit, and the location and manner of filing the notice of appeal. It shall also refer the defendant to the rules governing the appeal process.

C. A defendant who admits responsibility waives the right to appeal.

Rule 2.25. Consolidated appeals.

When an appeal is taken in both civil and criminal cases consolidated for trial, the rules governing criminal appeals shall apply, including the Superior Court Rules of Appellate Procedure–Criminal.

Rule 2.26. Appeal; how taken.

A. An appeal shall be taken by filing a written notice of appeal with the court within 14 calendar days after the entry of the order or judgment appealed from.

B. The notice of appeal shall identify the order or judgment appealed from. It shall be signed by the appellant or appellant's attorney, if any, and shall contain the names, addresses and telephone numbers of all parties and their attorneys.

C. When a party appeals, the court shall send a copy of the notice of appeal to the other party or the other party's attorney, if any.

Rule 3. Administrative Provisions

Rule 3.1. Administrative rules and regulations.

The Presiding Judge may, from time to time, adopt administrative rules and regulations, consistent with statewide court rules, as are necessary to assist the Court and its administrative staff in the administration and implementation of these rules.

Rule 3.2. Court attire and demeanor.

The Presiding Judge may adopt reasonable rules of dress and conduct for persons who appear at the Yuma Municipal Court. Those rules will be posted in the lobby of the court.