

**Hon. J. Matias Tafoya, Presiding Judge
Mesa Municipal Court
Chairman, Rules Subcommittee
Committee on Limited Jurisdiction Courts
245 W. 2nd Street
Mesa, AZ 85201
480-644-2255**

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
PETITION TO AMEND) Supreme Court R. No.
RULE 10, RULES OF PROCEDURE –) 2006- _____
CIVIL TRAFFIC VIOLATION CASES)
_____)

Pursuant to Rule 28 of the Rules of the Supreme Court, the Hon. J. Matias Tafoya, Chair of the Rules Subcommittee of the Committee on Limited Jurisdiction Courts, petitions the Supreme Court to approve the amendment to Rule 10 of the Rules Of Procedure In Civil Traffic Violation Cases as set forth in the proposed amendment attached in Appendix A to this Petition. This proposed rule change would set up a standard procedure throughout the state whereby a court may allow a person charged with a civil traffic violation, upon a showing of substantial hardship, to waive their appearance and have a trial in absentia.

DESCRIPTION AND RATIONALE FOR THE AMENDMENT

The Committee on Limited Jurisdiction Courts requested its Rules Subcommittee to research the need for and to write a standard rule for trying civil traffic cases in absentia. The subcommittee sought and received input from many courts and the pros and cons of the rule were extensively considered. It was the consensus of the subcommittee that, for those courts that did some form of trial in absentia, standardization by rule was necessary. The Committee on Limited Jurisdiction Courts unanimously concurred that there was a need for a rule for trials in absentia in civil traffic cases.

The current Rules Of Procedure In Civil Traffic Violation Cases do not provide for a trial in absentia. Courts throughout the state have individuals who are charged with a civil traffic violation who want a trial but, due to substantial hardship such as living out of state, are unable to exercise their right to a trial. Courts throughout the state vary in their procedures on how trials in absentia are conducted and are accountable for procedural safeguards that are not currently in place in the rules. There have been many appeals in which the courts have been reversed for what is a lack of procedural and constitutional safeguards for those individuals who waived their right to appear and were tried in absentia. This rule will standardize

how trials in absentia are to be conducted throughout the state by providing the necessary procedural and constitutional safe guards.

Respectfully submitted this 31st day of October, 2006.

Hon. J. Matias Tafoya, Presiding Judge
Mesa Municipal Court
Chairman, Rules Subcommittee
Limited Jurisdiction Courts Committee
245 W. 2nd Street
Mesa, AZ 85201
480-644-2255

APPENDIX A

Rule 10. Entry of Plea; Appearance of Counsel; Hearing in Absentia

(a) The defendant may admit responsibility by appearing in person, or by submitting a form or a statement signed by the defendant admitting the allegations of the complaint. The defendant shall, at the same time, tender the civil sanction listed in the court's deposit schedule for the civil traffic violation(s).

(b) The defendant may deny responsibility by appearing in person or by notifying the court in writing. The defendant may, at the same time, tender the civil sanction listed in the court's deposit schedule for civil traffic violations to insure that no driver's license suspension will result from failure to appear. Upon receipt of said notice, the court shall set the matter for hearing and notify the defendant, **citing officer, and any counsel** of the date, time, and place for the hearing.

(c) At the time of denial of responsibility, or such other time as the court determines appropriate in the interest of justice, the defendant may file a written request for a hearing in absentia. The defendant shall show why attending a civil traffic hearing would cause a substantial hardship. A substantial hardship is more than mere inconvenience and must be based on extraordinary circumstances. Along with the request, the defendant may tender the civil sanction listed in the court's deposit schedule for the civil traffic violation(s) at issue in the hearing.

(d) If the court grants the request for a hearing in absentia, the court shall set the matter for hearing and notify the defendant, the citing officer, and any counsel in the case of the date, time, and place for the hearing.

(e) Prior to a scheduled hearing in absentia, the defendant shall file a statement or statements made under the penalty of perjury, along with any physical

evidence the defendant requests the court to consider. The Court may also allow the State's witness, or witnesses, to testify through written statements or in person on the date, time, and place scheduled for the hearing in absentia. The State shall file any statement or statements, made under penalty of perjury, along with any physical evidence the State requests the court to consider, prior to the hearing.

(f) Failure to personally appear, or file a statement or statements prior to the hearing, shall result in default pursuant to Rules 21 and 22.

(g) If a hearing in absentia is held, the defendant waives the following rights: to personally appear to present evidence; to review evidence before the hearing (Rule 13 (b)); to compel production of any citing officer notes (Rule 13 (c)); to testimony under oath (Rule 16(a)); to cross examine the State's witnesses (Rule 16(c)); to present rebuttal evidence (Rule 19(d)); to present a closing argument (Rule 19(e)); and to immediate delivery of written notice of appeal following judgment and imposition of civil sanction (Rule 25(a)).

(h) If a hearing in absentia is held, the 14-day period for filing a notice of appeal pursuant to Rule 28 (a) is extended by 7 calendar days. The record of a hearing in absentia for purposes of Rule 29(b)(vii) shall also include the statements, as well as the recording or transcript, if any, of the hearing.

(10/30/2006)

**RULES OF PROCEDURE
in CIVIL TRAFFIC VIOLATION CASES**

Form 7. Defendant's Request for a Civil Traffic Hearing in Absentia

{CAPTION}

STATE OF ARIZONA,)	
Plaintiff,)	
)	
vs.)	DEFENDANT'S REQUEST FOR
)	A CIVIL TRAFFIC HEARING
)	IN ABSENTIA AND WAIVER
)	OF RIGHTS
)	
_____)	Case No.
Defendant.)	
_____)	

Defendant's name: _____.

State in detail why attending a civil traffic hearing would be a substantial hardship. A substantial hardship is more than mere inconvenience. Examples of substantial hardship may include residing a considerable distance from the court or having a medical or physical condition that significantly impairs the ability to participate in a hearing.

If the Court grants my request and conducts a hearing in absentia, I waive the following rights: to personally appear to present evidence; to review evidence before the hearing (Rule 13(b)); to compel production of any citing officer notes (Rule 13(c)); to testimony under oath (Rule 16(a)); to cross examine the State's witnesses (Rule 16(c)); to present rebuttal evidence Rule 19(d)); to present a closing argument Rule 19(e)); and to immediate delivery of written notice of appeal after the imposition of any civil sanction (Rule 25(a)).

I acknowledge that if the Court does not receive my declaration of the facts by the hearing date, a default judgment may be entered against me, a civil sanction may be imposed, and my driving privileges may be suspended.

Dated: _____

Defendant's signature

**RULES OF PROCEDURE
in CIVIL TRAFFIC VIOLATION CASES**

Form 8. Defendant's Declaration for a Civil Traffic Hearing in Absentia

{CAPTION}

STATE OF ARIZONA,)	DEFENDANT'S DECLARATION
Plaintiff,)	AND WAIVER OF RIGHTS
vs.)	FOR A HEARING IN ABSENTIA
)	
)	Case No.
)	
_____)	
Defendant.)	
_____)	

Declarant's name: _____.

State the facts of the case in your own words. If you have any exhibits, explain their significance in the statement and attach. Please print clearly or attach a written statement.

Continued on ____ attached pages.

By having a hearing in absentia, I waive the following rights: to personally appear to present evidence; to review evidence before the hearing (Rule 13(b)); to compel production of any citing officer notes (Rule 13(c)); to testimony under oath (Rule 16(a)); to cross examine the State's witnesses (Rule 16(c)); to present rebuttal evidence Rule 19(d)); to present a closing argument Rule 19(e)); and to immediate delivery of written notice of appeal after the imposition of any civil sanction (Rule 25(a)). I acknowledge that if the Court does not receive this declaration by the hearing date, a default judgment may be entered against me, a civil sanction may be imposed, and my driving privileges may be suspended.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

Declarant's signature

