

IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:)
)
PETITION TO AMEND RULES 1, 2 AND) Supreme Court No. R-08-____
22, ARIZONA RULES OF PROCEDURE)
IN CIVIL TRAFFIC CASES, AND ADD)
RULES 38-45, ARIZONA RULES OF)
PROCEDURE IN CIVIL TRAFFIC CASES)
_____)

Pursuant to Arizona Supreme Court Rule 28, David K. Byers, Administrative Director of the Administrative Office of the Courts, Arizona Supreme Court, respectfully petitions this Court to adopt the attached proposed amendments to Rules 1, 2 and 22, Arizona Rules of Procedure in Civil Traffic Cases, the new Rules 38-45 of the Arizona Rules of Procedure in Civil Traffic Cases (Attachment A) and the Notice of Violation form (Appendix C of the Rules of Procedure in Civil Traffic Cases, Attachment B to this petition) to govern the photo enforcement system created by the legislature in the recently concluded Forty-Eighth Legislature, Second Regular Session in enacting A.R.S. § 41-1722.

I. Background and Purpose of the Proposed New Rule.

In the Second Regular Session of the Forty-Eighth Legislature (2008), the Legislature passed House Bill 2210, now Chapter 286, amending A.R.S. § 28-1593, “Service of uniform traffic complaint,” and adding A.R.S. § 41-1722, “State photo enforcement system; penalties; fund,” that created a state photo enforcement system to be managed by the Arizona Department of Public Safety (DPS).

A.R.S. § 41-1722 requires the establishment of a statewide photo enforcement system managed by the DPS with the mandate to place cameras anywhere in the state in order to enforce the provisions of Title 28, Chapter 3, Article 3 (Traffic signs, signals and markings) and Article 6 (Speed restrictions). In reality, the cameras are expected to be placed on interstate and state highways to enforce speed and traffic signal violations

The bill mandates a \$165.00 civil penalty with a 10% surcharge required pursuant to A.R.S. § 16-954, Clean Elections. The penalty is directed to a newly created photo enforcement fund in part to be used by DPS to administer the program. Other provisions of § 41-1722 provide for an exemption from judicial productivity credits through June 30, 2009 for photo enforcement citations, the Department of Transportation, Motor Vehicle Division (MVD) cannot consider the violation for purposes of determining whether to suspend or revoke a driver license and courts are prohibited from transmitting records of the violation to MVD.

This bill also amends § 28-1593 by (1) permitting a pre-filing resolution of violations issued pursuant to § 41-1722 through a Notice of Violation, (2) providing for the filing of a citation if the alleged violator does not respond to the notice of violation or contests responsibility, and (3) requiring the Supreme Court to established rules governing the issuance, service and processing of the Notice of Violation.

The proposed rules are intended to establish a process permitting a significant number of photo enforcement cases to be resolved prior to court filing, thus relieving the burden on the courts and providing the alleged violator with an efficient, less time consuming way in which to admit responsibility, but still being able to contest the citation if that is the choice. For purposes of this petition the term, "photo enforcement citation"

refers to only those citations issued pursuant to A.R.S. § 41-1722 unless otherwise stated.

II. Contents of the Proposed New Rule.

The proposed rules develop a process that commences with the issuance of a “Notice of Violation”. The Notice of Violation is sent by the Department of Public Safety or someone acting on behalf of the Department (A.R.S. § 28-1593 (B), Chapter 286, HB 2210), prior to a case being filed in court. If the case is not resolved by the issuance of a Notice of Violation, the Department may file an Arizona Traffic Ticket and Complaint (ATTC) in the appropriate court as a civil traffic violation.

The petition requests amendment of three current rules. Rule 1, Scope; hearing and appeals, is expanded to assist persons in understanding that proposed Rules 38-45 only apply to photo enforcement cases commenced pursuant to A.R.S. § 41-1722. Rule 2, Definitions, would now include a definition of “Department.” This photo enforcement program is limited to the DPS only and the term “Department of Public Safety” or “Department” is used throughout the proposed rules. Rule 2 would also include a definition of “Photo enforcement” and of “Notice of violation.” The amendment to Rule 22, “Default by Defendant at Hearing,” would add photo enforcement cases to civil boating cases where a default for failure to appear would not be reported to MVD.

The petition then proposes adding eight rules of procedure to deal solely with photo enforcement cases. The rules, where applicable are drafted using language similar to current rules or statutes in order to achieve as much consistency as possible.

Proposed Rules 38 and 39 provide the authority to commence a photo enforcement case by the issuance of a Notice of Violation. Similar to the ATTC, the

Notice of Violation shall be in a form approved by this court and any substantial deviation shall also be approved by the court.

Proposed Rule 40 outlines the procedure for issuing and delivering the Notice of Violation. As the Notice of Violation is a method to resolve a photo enforcement case prior to court filing, service by first class mail is appropriate. The language of proposed Rule 40(b) is derived in part from A.R.S. § 28-3318 and is currently employed by MVD in serving by first class mail.

Proposed Rule 41, similar to current Rule 8, Rules of Procedure in Civil Traffic Violation Cases sets the requirements for the sufficiency of a complaint.

Proposed Rule 42 establishes the time frame for delivery of the Notice of Violation. Required time periods written into the proposed rules are designed to comport with A.R.S. § 28-1592, requiring a civil traffic violation to be filed into court within 60 days of the date of violation. If the photo enforcement case is not resolved by Notice of Violation, the next step is issuance of an ATTC which is required to be filed within this sixty day time period.

Proposed Rule 43 sets forth the options and procedure in entering a plea. Again, the 40 day time limit in which to admit or deny responsibility works in concert with § 28-1592.

Rule 44 describes the procedure if the person denies responsibility or simply does not respond. It is noted that a non-response could be due to the person not receiving the Notice of Violation.

Rule 45 provides for minimum standards of record keeping by the Department of Public Safety, both in maintaining the enforcement copy of the citation and record of the case. However, the manner of record keeping is left to the Department.

III. Pre-Petition Distribution and Comment

The proposed rules were distributed to the Department of Public Safety because the rules would govern the process for the Notice of Violation in the Department of Public Safety's photo enforcement program. For this same reason, the rules were not distributed to the court community since the Notice of Violation process is handled outside of the courts, and therefore would not change current court processes. The significant comments received from DPS were incorporated. In addition, in a meeting with Maricopa County Justice Courts, some concerns were expressed regarding impact to the courts from the Notice of Violation process as described in the proposed rules. In particular, Maricopa County suggested that the Department of Public Safety, or its designee, ensure successful personal service of a complaint as a prerequisite to filing the photo enforcement complaint in the court. In revisiting the rules proposed here and the statutes governing the filing of complaints, we saw no way to accommodate this request.

IV. Effective Date of the Proposed New Rule

Petitioner respectfully requests that the proposed new rules be adopted on an emergency basis effective on and after September 26, 2008 with a comment period to follow, as Chapter 286, HB 2210 is effective on this date.

RESPECTFULLY SUBMITTED this 1st day of August, 2008:

By _____
David K. Byers
Administrative Director
Administrative Office of the Courts
Arizona Supreme Court
1501 W. Washington St.
Phoenix, AZ 85007-3231

Attachment A

PROPOSED AMENDMENTS TO THE RULES OF CIVIL TRAFFIC CASES

RULES OF PROCEDURE CIVIL TRAFFIC CASES

Rule 1. Scope; Hearings and Appeals

These rules shall apply in all cases involving the adjudication and appeals of civil traffic violations except those violations consolidated pursuant to Rule 14 of these rules.

Rules 38-45 shall apply only to photo enforcement cases that are commenced pursuant to A.R.S. § 41-1722

Rule 2. Definitions

(a) "Civil traffic violation" means any violation designated as such under the provisions of A.R.S. § 28-121 or expressly designated as such by a traffic ordinance of a city or town and any boating violation punishable by a civil sanction under Articles 1 through 11 of Chapter 3, Title 5 of the Arizona Revised Statutes, or expressly designated a civil violation by a boating ordinance of a city or town.

(b) "Court" means a justice court or a court established by a city or town. Unless the context otherwise requires, "trial court" also means the justice or municipal court.

(c) "Department" means the Arizona Department of Public Safety acting directly or through their duly authorized officers, agents and contractors.

(~~c~~ d) "Judge" means a justice of the peace, judge, or magistrate.

(~~d~~ e) "Hearing officer" means a person appointed as such under the provisions of A.R.S. § 28-1553.

(f) "Notice of violation" means a document charging a civil traffic offense pursuant to A.R.S. § 41-1722 which is issued to a violator in accordance with these Rules and not filed in court.

(g) "Photo enforcement" means enforcement of violations detected by photo enforcement equipment for the purpose of capturing violations within Title 28, Chapter 3, Articles 3 and 6 relating to vehicle traffic and speed, pursuant to A.R.S. § 41-1722.

(e h) In computing time limits, the "last day" means that when the last day of any period of time prescribed herein falls on a Saturday, Sunday, or day when the court is closed, the "last day" shall be the next day court is open. The day of the act or event from which the designated time period begins is not to be included. Except as stated by these rules or by order of court in a particular case, filing deadlines are not enlarged when sent by mail.

(f i) "Party" means the state or the defendant. A law enforcement officer, police aide, traffic investigator, or parking enforcement volunteer is not a party.

(g j) Unless the context otherwise requires, the requirements of these rules may be performed by an attorney who has filed a proper notice of appearance.

Rules 3-21 (No change)

Rule 22. Default by Defendant at Hearing

(a) Except where Rule 21 is applicable, if the defendant fails to appear as required, the allegations of the complaint shall be deemed admitted, and the court shall enter a judgment for the State, impose a civil sanction, and report such judgment to the Department of Transportation, except that civil boating and photo enforcement violation judgments shall not be reported to the Department of Transportation.

(b) If it appears that the defendant is in active military service, no default judgment may be entered.

Rules 23-37 (No change)

Rule 38. Photo enforcement; Notice of Violation

A photo enforcement case may be commenced by a Notice of Violation, which is issued prior to the filing of an Arizona Traffic Ticket and Complaint.

Rule 39. Notice of violation; form

(a) The Notice of Violation shall be substantially in a form approved by the Supreme Court as set forth in Appendix B of these rules.

(b) Any substantial variation from the form of the Notice of Violation must first be approved by the Supreme Court.

(c) Notice of Violation forms need not be sworn to if they contain a form of certification by the Department in substance as follows "I hereby certify that I have reasonable grounds to believe and do believe that the person named herein committed the civil violation described herein contrary to law."

(d) The Department shall promptly forward one form copy and any subsequent changes therein, to the Supreme Court.

Rule 40. Issuance and delivery of the Notice of Violation

The Department shall properly complete, certify and deliver the Notice of Violation as follows:

(a) Issuance of the notice of violation. The Notice of Violation may be issued by the Department.

(b) Delivery of the notice of violation; defendant copy. The Notice of Violation may be delivered by any of the following means:

(1) Delivering a copy to the person charged with the violation,

(2) Mailing the Notice of Violation by first class mail to the person charged with the violation at the address provided to the Arizona Department of Transportation. If an address has not been provided to the Department of Transportation, the notice may be sent to any address known to the Department of Transportation, including the address listed on a traffic citation received by the Department of Transportation.

(3) Service of process authorized by the Rules of Civil Procedure.

Rule 41. Sufficiency of the Notice of Violation

The Notice of Violation is legally sufficient if it contains either a written description or the statutory designation of the alleged violation.

Rule 42. Notice of Violation; Time for Delivery

Delivery of a Notice of Violation must be initiated within ten days of the date of violation on the person charged in accordance with Rule 40 of these rules. If delivery is not initiated within ten days of the date of violation, the Notice of Violation is void.

Rule 43. Response.

Upon receipt of a Notice of Violation the violator may submit as directed by the Department a signed statement within 40 days of the date of violation that:

(a) Admits responsibility for the allegations of the Notice of Violation, agrees to tender the full amount of the civil penalty and surcharge as directed on the Notice of Violation and agrees that this admission is final, and may not be withdrawn;

(b) Denies responsibility because the violator was not the driver of the vehicle at the time of the violation; or

(c) Denies responsibility for the allegations of the Notice of Violation.

Rule 44. Procedure if violator does not admit responsibility.

(a) If the Department excludes the violator as the driver, the Department shall notify the violator.

(b) The Department may file a complaint in the court having jurisdiction of the violation within 60 days of the date of the violation and serve upon the defendant an Arizona Traffic Ticket and Complaint as otherwise provided by law, if any of the following occur:

(1) The violator denies responsibility, except if the violator is excluded as the driver of the vehicle.

(2) The violator fails to respond to the Notice of Violation within 40 days of the date of violation.

(3) The violator admits responsibility but fails to tender the full amount of the civil penalty and surcharge as required by Rule 43 of these rules.

Rule 45. Responsibilities of the Department; retention or records

(a) Enforcement copy. The Department shall retain the enforcement copy of the Notice of Violation in accordance with a procedure established by the Department.

(b) Case record. If a person admits responsibility, the Department shall retain the record of the case in accordance with a procedure established by the Department and not transmit the record to the court.

Attachment B

(Insert name of law enforcement agency)
AUTOMATED TRAFFIC ENFORCEMENT

NOTICE OF VIOLATION

NOTICE OF VIOLATION NO. [Insert #]															
Driver's License Number					State			Class							
DEFENDANT		FIRST			MIDDLE			LAST							
Residential Address/Mailing							City			State		Zip			
Sex		Eyes		Hair		Height		Weight		Date of Birth					
VEHICLE		Color		Year		Make		Model		Style		License Plate		State	Expiration
Registered Owner						Address				Vehicle Identification Number					
ON	Month	Day	Year	Time	AM <input type="checkbox"/>	PM <input type="checkbox"/>	SPEED	Approx	Posted	R & P	Speed Measurement Device				
AT	Location							Precinct		County		State of Arizona			
IN VIOLATION OF		ARS			Violation					Civil Traffic		Sanction \$ 181.50			

I hereby certify that I have reasonable grounds to believe, and do believe, based on my examination of digital images and data associated with this violation, that the person named herein committed the civil violation described above.

Signature _____ ID # _____ Date Issued/Mailed _____

NOTICE: To comply with this Notice of Violation, pay the full penalty and surcharge of **\$ 181.50** by [insert respond by date (40 days from violation date)]. No points will be assessed to your driving record. This Notice of Violation is not subject to dismissal due to defensive driving school attendance. If you do not pay the full penalty and surcharge indicated above, you contest responsibility, or you fail to respond to this notice, a complaint will be filed into court, which may result in additional costs assessed.

Your options to comply with this Notice of Violation are: pay the penalty and surcharge indicated above, indicate that you are not the driver, or contest responsibility.

Additional information is provided by the Arizona Department of Public Safety regarding each of these options.

ADDITIONAL INFORMATION:

[Insert additional agency information]