

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

IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:)
)
PETITION TO AMEND RULES 1, 2) Supreme Court No. R-08-0021
AND 22, ARIZONA RULES OF)
PROCEDURE IN CIVIL TRAFFIC) AMENDED PETITION
CASES, AND ADD RULES 38-46,)
ARIZONA RULES OF PROCEDURE)
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 amends his petition in this matter in response to a request from Maricopa County Justice Court Administration that one additional rule of civil traffic procedure be adopted that will standardize case processing time frames for DPS traffic citations issued pursuant to A.R.S. §41-1722.

The Justice Courts in Maricopa County anticipate that the §41-1722 photo enforcement program will substantially increase traffic case filings in

a manner that threatens to overwhelm available justice courts resources. The establishment of additional standards for case processing is vital to meeting the demand imposed by this new program. Petitioner agrees that the new rule will assist the courts statewide, and has attached a modified version of his original rules proposal that includes a new Rule 45, Arizona Rules of Procedure in Civil Traffic Cases, applicable only to citations issued under A.R.S. §41-1722. (Appendix A). Petitioner may seek to expand these rules at a later date to all civil traffic matters involving photo enforcement, depending on the courts' experience with this new process.

Civil traffic and other types of civil cases proceed dissimilarly in many ways, and the Rules of Civil Procedure do not always offer an appropriate solution for filling the gaps left open in the current Civil Traffic Rules. In addition, the statutes governing procedures in civil traffic violations, A.R.S. §§28-1591 et seq., enacted in 1997, and the Rules of Procedure in Civil Traffic Cases, originally adopted in 2002, both pre-date the proliferation in traffic enforcement technology.

Under A.R.S. §28-1592(B)(2) the citing agency has 90 days from the date of filing to serve the complaint on the defendant in civil traffic cases. As established by the decision in *Tonner v. Paradise Valley Magistrate's Court*, 831 P.2d 448 (Ariz. Ct. App. Div. 1, 1992), a civil traffic case cannot

be resolved in the absence of evidence of personal service on the defendant or until the 90 days for effecting service has run.

The Civil Traffic Rules do not impose any deadlines for responding to a citation. Under the only standard offering guidance on this issue, Rule 4.1(c), A.R.Civ.Proc., the respondent has 30 days to acknowledge receipt of service by mail and another 30 days to file an answer. In the civil traffic arena, the extra 30 days to file an answer is not warranted.

In a conventional traffic case, the citation is served on the scene and later filed in court, so personal service has not been an issue in traffic cases until the advent of photo enforcement. In most traffic cases, the defendant does not file a written response to the citation, but responds by requesting a continuance, mailing the required payment to the court before, registering and completing a defensive driving class, or attending the scheduled appearance, typically 20 to 60 days after the citation issues.

Citations filed in photo enforcement cases are generally served by first class mail, which injects uncertainty into the process as the court must await evidence of acknowledgement of service before acquiring jurisdiction of a case. Law enforcement agencies generally do not attempt personal service until it appears that the defendant is not going to acknowledge receipt of the citation.

The statewide photo enforcement program established by A.R.S. §41-1722 attempts to reduce the number of cases that must be filed in court by providing a pre-filing process under which DPS can mail defendants an initial Notice of Violation, and defendants can resolve their tickets directly with DPS before their citations are filed in court. DPS will only file and serve citations in those cases where the defendant failed to adequately respond to the Notice of Violation.

Despite this statutory pre-filing process, DPS is expected to file an unprecedented number of §41-1722 cases in many justice courts, especially in urban areas. The proposed Rule 45 comes into play once the citation is filed. It offers defendant one more opportunity to resolve the case without substantial court involvement. The new rule creates a standardized process, modeled after Civil Rule 4.1, which permits the defendant to avoid the costs of personal service, establishes a deadline for filing the defendant's written response, and directs the court to impose the cost of service of process, if the defendant fails to respond in a timely fashion.

By requiring all defendants to notify the court whether they intend to admit or deny responsibility or otherwise acknowledge personal receipt of the citation within an established time frame, processing of §41-1722 cases will be more predictable and easier to automate, and should reduce the

number of cases in which personal service is made unnecessarily. The time frame set by the rule will also leave DPS approximately 60 days to effect service in those cases where a defendant does not respond to the mailing.

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 15th day of August, 2008.

By /S/ _____
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APPENDIX A

Arizona Rules of Procedure in Civil Traffic Violation 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 or 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.

(e 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 to Notice of Violation

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. Service of Complaint; Hearing Date; Notice; Response to Complaint

(a) Service of the Complaint. Within 10 days after filing the Arizona Traffic Ticket and Complaint, the Department shall mail by first class mail to the defendant a copy of the complaint and provide the defendant the option to respond to the complaint by filing an admission or denial of responsibility with the court.

(b) The scheduled hearing date appearing on the complaint shall be calendared for a date that is not less than 30 days after the Department mails the citation to the defendant.

(c) Notice of option to respond. The notice of option to respond shall:

(1) be in writing and addressed directly to the defendant,

(2) set forth the date on which the complaint and notice of option to respond were mailed,

(3) inform the defendant of the date after which the defendant's failure to either file a written response with the court or appear in court may

result in personal service at the defendant's expense, unless good cause for the failure to respond is shown,

(4) inform the defendant that if the defendant denies responsibility because the defendant was not the driver of the vehicle at the time of the violation, the defendant may additionally request that the Department review the complaint based on this ground for denial, as directed in the notice,

(5) inform the defendant that filing an admission or denial of responsibility with the court is an appearance that has the effect of personal service, and

(6) provide the defendant with a prepaid means of filing the admission or denial of responsibility with the court.

(d) Time period. The defendant shall have 30 days after the date the complaint and notice of option to respond was mailed in which to file an admission or denial of responsibility with the court. Filing of an admission or denial of responsibility shall constitute an appearance that shall have the force and effect of personal service.

(e) Failure to respond. If a defendant fails to file a response with the court, service may be effected in the manner prescribed by Rule 4.1(d), Arizona Rules of Civil Procedure, and the court shall impose the costs

subsequently incurred in effecting personal service on the defendant, unless good cause for the failure is shown.

Rule 46. Responsibilities of the Department; Retention of 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~~ ^{Appendix A} regarding each of these options.

ADDITIONAL INFORMATION:

[Insert additional agency information]