

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) SUPPLEMENTAL
CASES, AND ADD RULES 38-46,) PETITION
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 submits this Supplement to his Amended Petition in response to a request from the Department of Public Safety (DPS). The supplement affects only proposed Rule 45, Arizona Rules of Procedure in Civil Traffic Cases, attached hereto.

The amendment requires DPS to provide the defendant with a copy of the photograph of the violation and a prepaid means of requesting DPS to review the evidence in advance of the scheduled hearing in court. This process more closely mirrors the current practice under which DPS notifies

the court if the Department agrees the wrong driver was cited and recommends dismissal of the citation.

Past experience with photo enforcement has taught that a significant number of cited drivers were not operating the vehicle photographed by the traffic camera at the time of the violation or cannot be identified as the operator due to the quality of the photograph. Under the new process applicable to the DPS statewide program, at the pre-filing Notice of Violation stage governed by Rules 43 and 44, defendants will have the opportunity to challenge the identity of the violator before the citation is filed. The supplemental amendment to Rule 45 will provide that opportunity a second time to those who do not respond to the Notice of Violation. The defendant will thus have not one but two opportunities to seek resolution of the case on this basis, thereby avoiding an appearance in court and reducing the number of court hearings that would otherwise be scheduled.

The amendment to Rule 45 also includes a reference to the defendant's option to resolve a citation by attending a defensive driving school class. The Administrative Office of the Courts has asked the Arizona Attorney General for an opinion on whether citations issued pursuant to § 41-1722 are eligible for the defensive driving school diversion program established by A.R.S. §§ 28-3392 et seq. Depending on the Attorney

General's analysis of this issue, the reference to defensive driving school may need to be removed from the proposed amendment. The Attorney General's response is expected prior to the Court's consideration of this petition in September.

RESPECTFULLY SUBMITTED this 27th day of August, 2008.

By _____
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Arizona Supreme Court
1501 W. Washington St.
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Attachment to Supplemental Petition

Arizona Rules of Procedure in Civil Traffic Violation Cases

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 appearance date stated 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) include a copy of the photograph of the violation,

(4) inform the defendant of the date after which the defendant's failure to either file a written response with the court, appear in court, or register to attend a defensive driving school program may result in personal

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

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

(6) provide a prepaid means of requesting the Department to review the evidence, if the defendant denies responsibility because the defendant was not the driver of the vehicle at the time of the violation, and

(7) 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 or attend a defensive driving school program. Filing of an admission or denial of responsibility with the court shall constitute an appearance by which the defendant becomes subject to the personal jurisdiction of the court.

(e) Failure to respond. If a defendant fails to respond by either filing a written response with the court or appearing in court on the scheduled appearance date, 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.