

**Hon. George T. Anagnost
Peoria Municipal Court
8401 West Monroe St.
Peoria AZ 85345
(Tel 623 773 7420)**

ARIZONA SUPREME COURT

In Re)	No.
)	
RULE 10, CIVIL TRAFFIC)	Rule 28 Petition to Amend
RULES)	Rule 10 to Allow Interactive
)	Audio Visual and Telephonic
)	Appearances
_____)	

Connecting Technology and the Hearing Process

This petition proposes an amendment to the Rules of Procedure for Civil Traffic Violations. The amendment would create a new subsection, Rule 10.1, to allow (1) appearances by parties and witnesses by interactive audio visual means, and (2) appearances by the defendant by telephone.

Audio visual technology has advanced to the stage that it is reliable, widely accessible, and user-friendly. Allowing appearances by interactive audio visual means would reduce the inconveniences of travel to the court house and time away from work, increase law enforcement availability for other duties, and lessen demands on court house parking, security, and court staff.

Key Concepts

This rule change prescribes a process that deals with: (1) the use of interactive audio visual appearances to simplify the hearing process, (2) the posting of a deposit by a defendant as a precondition to a remote appearance by the defendant to insure that any sanction imposed may be efficiently processed, (3) allowing the court to require exhibits be filed before time of hearing and to

limit size or number of same to control the hearing process, and (4) making clear that any expense or cost to appear off-site is not, as such, a recoverable court cost.

The Proposed Rule

Rules of Civil Traffic Procedure, Rule 10.1. Interactive Audio Visual and Telephonic Appearances.

(a) General Standards. A court may allow parties, their attorneys, and witnesses to appear by audio visual interactive means that follow these general standards: (1) all parties, attorneys, and witnesses shall be able to be seen and heard at the same time and the audio portion shall be captured accurately on the record; (2) a facsimile, email, or other suitable means shall be available to allow the court to transmit copies of exhibits during the hearing, and, if necessary, a “Notice of Right to Appeal” to defendant; (3) the court may require any person requesting to appear under this rule to be responsible for the cost of same and such cost shall not be awarded as a recoverable cost by a prevailing party; (4) the court shall provide instructions to the participants as to how the remote appearance shall be initiated; (5) a party allowing a subpoenaed witness to appearing by remote means shall pay the cost there for and no witness fee shall be required or allowed for such an appearance; and (6) an appearance under this rule may be referred to as a “Rule 10.1 Appearance”.

(b) Rule 10.1 Appearance Request; Deposit. Unless a different time limit is allowed by the court, a party, attorney, or witness may appear under this rule by filing a “Notice of Rule 10.1 Appearance” at least 14 calendar days prior to hearing. The Notice shall set forth the requestor’s name, mailing

address, and day-time phone number. As to a defendant who wishes to appear under this rule, the court may condition the appearance upon the posting of a deposit in an amount not to exceed the total possible sanction amount of all violations at issue based on the court's sanction schedule.

(c) *Rule 10.1 Appearance Procedures.* Upon receipt of a Notice of Rule 10.1 Appearance, the court shall provide instructions as to the date and time of the proceeding and designate how the appearance shall be initiated. The court may also set forth instructions as to pre-hearing deadlines to file exhibits and limitation on exhibit sizes and numbers. The hearing itself shall proceed as otherwise set forth in the rules governing civil traffic cases. In the event defendant is found responsible at the conclusion of the hearing, a Notice of Right to Appeal may be sent to the defendant by fax or electronic means and the 14 calendar-day appeal period shall commence from that transmission date.

(d) *Telephonic Appearance by Defendant; Deposit; Waiver of Identity Defense.* Notwithstanding the foregoing, a court may, upon written request at least 14 calendar days before the hearing date, permit a defendant to appear telephonically. The request shall include defendant's telephone number, mailing address, and a copy of a valid drivers license or identification card acceptable to the court. The court may condition a telephonic appearance upon the posting of a deposit in an amount not to exceed the total possible sanction amount of all violations at issue based on the court's sanction schedule. Unless otherwise permitted by the court, a defendant appearing telephonically shall be deemed to waive any defense

based on failure of the state to establish an in-court identification of defendant as the cited violator. Identity shall be sufficiently established if at the hearing the state offers proof of the name of the driver as listed on a drivers license, state or government identification card, or other acceptable means of identification matching the violator to defendant.

Conclusion

Civil traffic matters represent a sizable portion of limited court caseloads. Technologies that make better use of law enforcement, court staff, and citizen time benefit all stakeholders and at the same time may still satisfy fundamental principles of fairness and due process.

Date: January 4, 2009

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[Original filed electronically this date]