

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 05-02
(August 9, 2005)

**Contact with Law Enforcement Agencies to Determine
Status of Original Citations**

Issue

Is it permissible for courts to *sua sponte* contact law enforcement agencies about the status of a missing or late original traffic citation?

Answer: Yes, with qualifications.

Facts

It has been the practice of some justices of the peace and city magistrates to instruct or permit their court clerks to contact the sheriff's office, local police department or the county jail to obtain an original traffic citation when it has not yet been filed with the courts. The courts are under no obligation to do this, but some consider it a helpful practice to the parties and the court. Some court managers and others are concerned that this practice may give the impression that the court is showing favoritism to law enforcement agencies.

Discussion

Canon 3B(7) of the Arizona Code of Judicial Conduct permits a judge to initiate *ex parte* communications for "scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits." "Administrative purposes" are not defined in the code, prior committee opinions, or pertinent Arizona case law. The only published opinion found that addresses Canon 3B(7) discusses "routine scheduling, administrative, or other matters not involving the merits of the adjudication." *San Carlos Apache Tribe v. Bolton*, 194 Ariz. 68, 73, 977 P.2d 790, 795 (1999). The canon itself suggests that administrative purposes are those things related to scheduling and other non-substantive matters in the case. *See also* ABA Model Code of Judicial Conduct, Canon 3B(7), commentary (2003).

How the court is made aware of the citation is not specified, but this likely does not affect the analysis. A.R.S. § 28-1592(A) appears to provide two ways for a traffic case to be initiated, stating that a "traffic violation case is commenced by issuance or filing of a uniform traffic complaint as provided in this article." Although that statute applies to civil violations, A.R.S. §§ 28-1556 and 28-1558 provide similar procedures for criminal traffic infractions. In either case, inquiring into the status or location of the original citation would seem to be an administrative matter because it does not appear to advance the interest of one party over another, and, indeed, may be of primary benefit to the court itself. In any event, it appears there is no disadvantage to the defendant nor any advantage to the state resulting from the questioned practice.

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A.R.S. § 28-1593(B) requires that an original citation be filed with the court within ten days of issuance, but provides no sanction for failure to do so. Similarly, Rule 4 of the Arizona Rules for Traffic Cases and Boating Cases, 17B A.R.S., provides that the complaint shall be delivered to the court prior to the designated appearance date, but includes no consequence for failure to comply. In neither case, nor under the criminal traffic provisions, is dismissal required or authorized if the original citation is not timely delivered. Indeed, the court likely lacks jurisdiction to dismiss a complaint not yet filed. Furthermore, even if the court dismisses the citation once it is filed, the state can either appeal the dismissal, *see* A.R.S. § 13-4032(1), or re-issue the citation. *See* A.R.S. §§ 28-1592, 28-1593(B).

Inquiring about the status of the citation may be analogous to determining if a pleading has been filed, particularly in a case where the hearing is already scheduled and the paper is simply missing. It is notable that Rule 6, Arizona Rules for Traffic Cases and Boating Cases requires the court to record the proceedings on the reverse of the original citation. This committee has previously concluded that “it is entirely proper to determine the status of a case.” Op. 95-18.

Opinion 95-18 found no ethical bar to judicial staff contacting the prosecutor’s office about the status of a criminal complaint prior to a mandatory release deadline. In that case no criminal complaint had yet been filed, multiple attempted murder charges were at issue, and the court would have been required to release the defendant if no complaint were filed by the deadline. The opinion states that “judges have the discretion to remind either party of approaching deadlines . . . inquire if pleadings were filed and otherwise communicate on matters which are essentially administrative in nature.” This is sound policy for the judiciary because the purpose and effect of such inquiries is to help keep the court system operating efficiently which, in turn, benefits litigants and the public. By allowing court staff to inquire about the status of a complaint, the court is better able to keep cases moving, avoid having to reschedule matters, and avoid burdening a defendant with having to return on another date for the same matter.

The present situation may be analogous to when a court instructs a clerk or bailiff to contact or locate a defense attorney or prosecutor who has not appeared for a hearing, or when a court adjourns and reconvenes at a later time the same day to permit a defendant to appear without issuing a warrant. Courts at all levels may do so, on occasion or even routinely, without appearing to favor one side or the other or engendering complaints by the parties. Canon 3E(1) discusses a judge removing himself or herself in proceedings where “the judge’s impartiality might reasonably be questioned,” and one Arizona ethics opinion has outlined a “reasonableness test,” for making that determination which is “whether a person of ordinary prudence in the judge’s position knowing all the facts known to the judge could find that there is a reasonable basis for questioning the judge’s impartiality.” Ariz. Op. 95-11.

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Merely inquiring about the status of a traffic complaint is unlikely to raise any reasonable concerns about the court's impartiality, particularly when it is not the judge himself or herself who makes the contact but a judicial employee. In the former situation, there may be a greater opportunity for at least the perception that the judge has taken a direct and personal interest in the case. Any such perception is significantly attenuated when the contact is made only by a judicial employee, which is probably the better practice. Indeed, that is the factual situation presented here. It is notable that although Canon 3 of the Code of Conduct for Judicial Employees requires court staff to perform their duties impartially, that code contains no references to *ex parte* communications. Contacts with parties, their counsel and others such as witnesses and police officers are routinely made by court staff for a variety of purposes. When such purposes include determining the status of an original citation that is found missing, the practice fairly may be characterized as an administrative duty regularly and impartially performed by the employee.

Accordingly, while not necessarily advocating the practice, we conclude it is not unethical for judicial staff to contact law enforcement agencies to determine the whereabouts of an original citation if done as a routine accommodation in any case in which the question arises when there is no intent to specifically aid the prosecution and doing so has no substantive effect on the merits or outcome of the case. It should be noted, however, that this conclusion does not suggest courts may not freely adopt court policies and procedures restricting or prohibiting such contacts.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 3B(7) and 3E(1) (2004).

Arizona Code of Conduct for Judicial Employees, Canon 3 (1997).

References

American Bar Association, Model Code of Judicial Conduct, Canon 3B(7), commentary (2003).

Arizona Judicial Ethics Advisory Committee, Opinions [95-11](#) (June 16, 1995); [95-18](#) (Sept. 13, 1995).

Arizona Revised Statutes, §§ 13-4032(1), 28-1556, 28-1558, 28-1592, 28-1593(B).

Arizona Rules of Procedure in Traffic and Boating Cases, Rules 4, 6, 17B A.R.S.

San Carlos Apache Tribe v. Bolton, 194 Ariz. 68, 73, 977 P.2d 790, 795 (1999).