

SUPREME COURT OF ARIZONA

In the Matter Of ) Arizona Supreme Court  
 ) No. R-08-0027  
PETITION TO ADOPT RULES 57.1 AND )  
57.2, ARIZONA RULES OF CIVIL )  
PROCEDURE )  
 )  
 )  
 )  
 )  
 )  
 )  
\_\_\_\_\_ )

**ORDER  
AMENDING AND ADOPTING ON A PERMANENT BASIS RULES 57.1 AND 57.2,  
ARIZONA RULES OF CIVIL PROCEDURE**

A petition having been filed proposing to adopt new Rules 57.1 and 57.2, Arizona Rules of Civil Procedure, the rules having been adopted on an emergency basis effective September 26, 2008, and comments having been received, upon consideration,

IT IS ORDERED that Rules 57.1 and 57.2, Arizona Rules of Civil Procedure, be amended and adopted on a permanent basis, in accordance with the attachment hereto, effective January 1, 2010.

DATED this \_\_\_\_\_ day of September, 2009.

\_\_\_\_\_  
REBECCA WHITE BERCH  
Chief Justice

TO:  
Rule 28 Distribution

mwa

**ATTACHMENT<sup>1</sup>**

**Arizona Rules of Civil Procedure**

**Rule 57.1. Declaration of Factual Innocence**

aA. Scope of ~~the~~ Rule. This rule governs the determination of factual innocence of a person who claims pursuant to A.R.S. ~~section~~ § 12-771 that the person's personal identifying information was taken, and as a result the person's name was used by another person who was arrested, cited, or charged with a criminal offense, or entered as of record in a judgment of guilt in a criminal case.

bB. Filing. A petition brought under this rule shall be filed in the ~~S~~superior ~~C~~court in the county in which the other person was arrested for, or cited or charged with, a criminal offense. The petition shall be assigned a civil case number. If applicable, the petition shall state the specific court location where the underlying charge was filed, or the judgment of guilt was entered, and the case number of that prior filing. The petition shall identify, as applicable, the names and mailing addresses of all persons and entities entitled under A.R.S. § 12-771(H) to notice of a finding of factual innocence. The petition shall be captioned: In re: (name of petitioner).

cC. Service. The ~~P~~petitioner shall serve the petition in the manner prescribed by A.R.S. ~~section~~ § 12-771 and by these rules.

d. Redacted Filings and Filings Under Seal. A person may request, and the court may order, that a filing containing potentially sensitive identifying information such as the person's birth date, social security number, or financial account numbers, be filed or retained in redacted form or under seal.

D e. Transmission of Records. If the petition is related to a charge filed in a justice of the peace court or a municipal court, the ~~C~~lerk of the ~~S~~superior ~~C~~court shall request the justice of the peace or presiding officer of the municipal court to transmit a copy of the file to the ~~C~~lerk's office.

E f. Discovery and Disclosure. Discovery may be conducted and disclosure under Rule 26.1 may be required only upon stipulation of the parties, or by order of the court.

F g. Evidence. The ~~P~~petitioner must establish factual innocence by clear and convincing evidence.

G h. Hearing and Determination.

1. The ~~C~~court may hold a hearing to determine the ~~P~~petitioner's factual innocence.
2. The court may enter an order pursuant to this rule upon submission of proof by affidavit.

---

<sup>1</sup> Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

~~23. If the Court holds a~~ At any hearing, the victim of the offense identified in a judgment of guilt, or committed by the person arrested for, or cited or charged with, a criminal offense, has a right to be present and to be heard at the hearing.

~~3. If the Court does not hold a hearing, an order entered pursuant to this rule may be entered upon submission of proof by affidavit.~~

~~H~~ i. Order. On a finding of factual innocence related to an arrest, citation, or charge, the Ccourt shall notify the following persons, if applicable: the Ppetitioner; the prosecuting agency which filed the charge; the law enforcement agency which made the arrest or issued the citation; the defense attorney.

### **Rule 57.2. Declaration of Factual Improper Party Status**

a~~A.~~ Scope of r~~u~~le. This rule governs petitions alleging factual improper party status pursuant to A.R.S. section § 12-772, if as a result of a person's personal identifying information being taken, the person's name was entered as of record in a civil action or judgment.

b~~B.~~ Filing. A petition brought under this rule shall be filed in the Superior Ccourt for the county in which the Ppetitioner's name was entered as of record in a civil action or judgment because of alleged improper use of the Ppetitioner's personal identifying information. The petition shall be assigned a civil case number. The petition shall state the specific court location where the underlying action was filed, and the case number of the prior filing. The petition shall be captioned: In re: (name of petitioner).

c~~C.~~ Service. The Ppetitioner shall serve the petition in the manner prescribed by these rules on all parties in the civil action in which the Ppetitioner's identity was allegedly used.

d. Redacted Filings and Filings Under Seal. A person may request, and the court may order, that a filing containing potentially sensitive identifying information such as the person's birth date, social security number, or financial account numbers, be filed or retained in redacted form or under seal.

D~~e.~~ Transmission of Records. If the petition is related to a case filed in a justice of the peace court, the Clerk of the Superior Ccourt shall request the justice of the peace to transmit a copy of the file to the Clerk's office.

E f. Discovery and Disclosure. Discovery proceedings may be conducted and disclosure under Rule 26.1 may be required only on a petition brought pursuant to this rule upon stipulation of the interested parties, or by order of the court.

F g. Evidence. The Ppetitioner must establish improper party status by clear and convincing evidence.

G h. Hearing and Determination.

1. The Ccourt may hold a hearing on the petition.

2. ~~If the Court does not hold a hearing,~~ The court may enter an order entered pursuant to this rule ~~may be entered~~ upon submission of proof by affidavit.

¶ i. Order. The Court shall provide notice of the Court's findings to the Petitioner and to all parties in the civil action in which the Petitioner's identity was allegedly used.