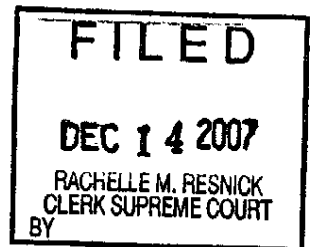


**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

Supreme Court No. R-07-0007



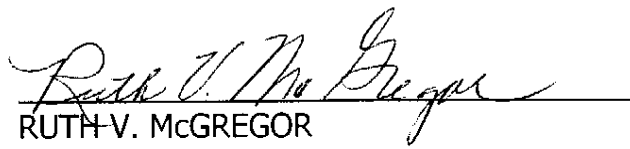
ORDER ADDING  
RULE 65.2, Ariz. R. Civ. P.

IT IS ORDERED that the Arizona Rules of Civil Procedure be amended to add Rule 65.2 in accordance with the attachments hereto,\* on an emergency basis pursuant to Rule 28(G), Rules of the Supreme Court, effective as of January 1, 2008.

IT IS FURTHER ORDERED that this matter shall be reopened for additional comment in accordance with Rule 28(C), Rules of the Supreme Court, until May 20, 2008.

DATED in the City of Phoenix, Arizona, at the Arizona Courts Building, this 14<sup>th</sup> day of December, 2007.

For the Court:

  
RUTH V. MCGREGOR  
Chief Justice

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\* Changes or additions in text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~. A clean copy of the rule is also attached.

ATTACHMENT A

ARIZONA RULES OF CIVIL PROCEDURE

\* \* \*

Rule 65.2. Action pursuant to A.R.S. § 23-212

(a) Commencement of Action. An action brought by the county attorney pursuant to A.R.S. § 23-212 shall be commenced by filing a verified complaint with the clerk of the superior court. The attorney signing the complaint shall verify that the attorney believes the assertions in the complaint to be true on the basis of a reasonably diligent inquiry.

(b) Contents of Complaint. A complaint filed under this Rule shall include the following:

- (1) The name and address(es) of the employer;
- (2) Specification of one or more business licenses subject to suspension or revocation under A.R.S. § 23-212 that are held by the employer, and the identity and address of the licensing agency(ies), including the identity(ies) and mailing address(es) of the agency official(s) authorized to accept service under this Rule;
- (3) A statement of specific facts alleged to show that one or more employees are unauthorized aliens;

(4) A statement of specific facts alleged to show that the employer intentionally or knowingly employed one or more unauthorized aliens; and

(5) In the case of an action for a second violation of A.R.S. § 23-212, the case number of the first action and the date of the order or judgment finding a first violation of A.R.S. § 23-212. The complaint shall also include as an attachment a copy of the court's order or judgment finding a first violation of A.R.S. § 23-212.

(c) Nature of Proceedings. An action brought pursuant to A.R.S. § 23-212 shall be denominated as a civil action and assigned a specific sub-category code for purposes of case tracking. An action brought pursuant to A.R.S. § 23-212 shall be heard and decided by the court sitting without a jury, except as otherwise permitted by Rule 39(m).

(d) Venue. An action brought pursuant to A.R.S. § 23-212 shall be brought against the employer by the county attorney in the county where the unauthorized alien employee is or was employed by the employer. If the employee is or was employed by the employer in more than one county, the action shall be proper in any county in which the employee is or was employed by the employer.

(e) Expedited Proceedings. The court shall expedite an action brought pursuant to A.R.S. § 23-212.

(f) Scheduling Conference. Simultaneously with the filing of the complaint required by subsection (a) of this Rule, the county attorney shall file an application and submit a form of order requesting the court to set a date for a scheduling conference to determine the schedule for expedited proceedings. A copy of the signed order shall be served on the employer and may be served with the complaint. At the scheduling conference, the court may address the matters set forth in Rule 16(b) and may set such additional hearings as it deems necessary. On or before the date of the scheduling conference, the employer shall file and serve a written disclosure of the identity of all business licenses that it holds in this State.

(g) Evidentiary Hearing; Summary Judgment. The court may not order a license suspension or license revocation pursuant to A.R.S. § 23-212 without first affording the parties the opportunity for an evidentiary hearing, unless all parties waive the hearing. Rule 56 shall not apply to these proceedings except upon the agreement of all parties.

(h) Standard of Proof. All factual issues required to be determined by the court shall be determined by a preponderance of the evidence.

(i) Applicability of Rules of Evidence. Except as provided in A.R.S. § 23-212(H), the Arizona Rules of Evidence shall apply to proceedings under this Rule.

(j) Enforcement of Court Orders.

(1) After the entry of an order under A.R.S. § 23-212(F) (1) or A.R.S. § 23-212(F) (2) for a first violation, if an employer fails to file a timely sworn affidavit required by A.R.S. § 23-212(F) (1) (c) or A.R.S. § 23-212(F) (2) (d), the county attorney shall file an application for an order to show cause why the employer's licenses with the appropriate licensing agencies should not be suspended beyond any period prescribed in any prior court order. The application shall be accompanied by an affidavit or other proof demonstrating that the employer has failed to file the required sworn affidavit and shall set forth the identity and address of any appropriate licensing agency, including the identity and mailing address of the agency official authorized to accept service under this Rule.

(2) Within five (5) days after service of an application for an order to show cause, the employer may file an opposition to the relief sought in the application and to any further license suspension on the ground that the employer has filed an affidavit meeting the requirements of A.R.S. § 23-212(F) (1) (c) or A.R.S. § 23-212(F) (2) (d). If such an opposition is timely filed, the court shall hold a hearing and shall not order any further

license suspension until it renders its decision on whether to grant the relief sought in the application. If no opposition is timely filed or if the court grants the relief sought in the application, the court shall order the appropriate licensing agencies to suspend indefinitely all applicable licenses held by the employer.

(3) After the entry of an order suspending a license for a first violation for failure to file a required sworn affidavit, the employer may, by motion or stipulation, seek relief from the order on the ground that the employer has filed a sworn affidavit required by A.R.S. § 23-212(F)(1)(c) or A.R.S. § 23-212(F)(2)(d). If such a showing is made and subject to the completion of any term of license suspension ordered under A.R.S. § 23-212(F)(1)(d) or A.R.S. § 23-212(F)(2)(c), the court shall enter an order terminating any further license suspension.

(4) The clerk of the superior court shall distribute by any method authorized by Rule 58(e) a certified copy of any order suspending or revoking a license, or terminating a license suspension, entered under this Rule or A.R.S. § 23-212 to the parties, the Arizona Attorney General, and any licensing agency ordered to suspend an employer's license.

(k) Action for Second Violation. An action alleging a second violation under A.R.S. § 23-212(F)(3) shall be filed and served as a new action.

(l) Requirement of Electronic or Facsimile Service. After a party has appeared in a proceeding brought under this Rule, any papers served on that party by mail under Rule 5(c) shall also be served at the same time by electronic mail or by facsimile, or as agreed to by the parties or ordered by the court. If the party on whom service is to be made does not have access to electronic mail or facsimile, then service shall be made as otherwise provided by Rule 5(c).

(m) Fees. The court shall assess such fees in these proceedings as may be prescribed by A.R.S. §§ 12-284, 12-284.01, and 12-284.02.

#### Comment

This Rule applies only to actions filed pursuant to A.R.S. § 23-212. The rule is intended to supplement, not supplant, statutory procedures.

ATTACHMENT B

ARIZONA RULES OF CIVIL PROCEDURE

\* \* \*

Rule 65.2. Action pursuant to A.R.S. § 23-212

(a) **Commencement of Action.** An action brought by the county attorney pursuant to A.R.S. § 23-212 shall be commenced by filing a verified complaint with the clerk of the superior court. The attorney signing the complaint shall verify that the attorney believes the assertions in the complaint to be true on the basis of a reasonably diligent inquiry.

(b) **Contents of Complaint.** A complaint filed under this Rule shall include the following:

- (1) The name and address(es) of the employer;
- (2) Specification of one or more business licenses subject to suspension or revocation under A.R.S. § 23-212 that are held by the employer, and the identity and address of the licensing agency(ies), including the identity(ies) and mailing address(es) of the agency official(s) authorized to accept service under this Rule;
- (3) A statement of specific facts alleged to show that one or more employees are unauthorized aliens;

(4) A statement of specific facts alleged to show that the employer intentionally or knowingly employed one or more unauthorized aliens; and

(5) In the case of an action for a second violation of A.R.S. § 23-212, the case number of the first action and the date of the order or judgment finding a first violation of A.R.S. § 23-212. The complaint shall also include as an attachment a copy of the court's order or judgment finding a first violation of A.R.S. § 23-212.

**(c) Nature of Proceedings.** An action brought pursuant to A.R.S. § 23-212 shall be denominated as a civil action and assigned a specific sub-category code for purposes of case tracking. An action brought pursuant to A.R.S. § 23-212 shall be heard and decided by the court sitting without a jury, except as otherwise permitted by Rule 39(m).

**(d) Venue.** An action brought pursuant to A.R.S. § 23-212 shall be brought against the employer by the county attorney in the county where the unauthorized alien employee is or was employed by the employer. If the employee is or was employed by the employer in more than one county, the action shall be proper in any county in which the employee is or was employed by the employer.

**(e) Expedited Proceedings.** The court shall expedite an action brought pursuant to A.R.S. § 23-212.

(f) **Scheduling Conference.** Simultaneously with the filing of the complaint required by subsection (a) of this Rule, the county attorney shall file an application and submit a form of order requesting the court to set a date for a scheduling conference to determine the schedule for expedited proceedings. A copy of the signed order shall be served on the employer and may be served with the complaint. At the scheduling conference, the court may address the matters set forth in Rule 16(b) and may set such additional hearings as it deems necessary. On or before the date of the scheduling conference, the employer shall file and serve a written disclosure of the identity of all business licenses that it holds in this State.

(g) **Evidentiary Hearing; Summary Judgment.** The court may not order a license suspension or license revocation pursuant to A.R.S. § 23-212 without first affording the parties the opportunity for an evidentiary hearing, unless all parties waive the hearing. Rule 56 shall not apply to these proceedings except upon the agreement of all parties.

(h) **Standard of Proof.** All factual issues required to be determined by the court shall be determined by a preponderance of the evidence.

(i) **Applicability of Rules of Evidence.** Except as provided in A.R.S. § 23-212(H), the Arizona Rules of Evidence shall apply to proceedings under this Rule.

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(1) After the entry of an order under A.R.S. § 23-212(F)(1) or A.R.S. § 23-212(F)(2) for a first violation, if an employer fails to file a timely sworn affidavit required by A.R.S. § 23-212(F)(1)(c) or A.R.S. § 23-212(F)(2)(d), the county attorney shall file an application for an order to show cause why the employer's licenses with the appropriate licensing agencies should not be suspended beyond any period prescribed in any prior court order. The application shall be accompanied by an affidavit or other proof demonstrating that the employer has failed to file the required sworn affidavit and shall set forth the identity and address of any appropriate licensing agency, including the identity and mailing address of the agency official authorized to accept service under this Rule.

(2) Within five (5) days after service of an application for an order to show cause, the employer may file an opposition to the relief sought in the application and to any further license suspension on the ground that the employer has filed an affidavit meeting the requirements of A.R.S. § 23-212(F)(1)(c) or A.R.S. § 23-212(F)(2)(d). If such an opposition is timely filed, the court shall hold a hearing and shall not order any further

license suspension until it renders its decision on whether to grant the relief sought in the application. If no opposition is timely filed or if the court grants the relief sought in the application, the court shall order the appropriate licensing agencies to suspend indefinitely all applicable licenses held by the employer.

(3) After the entry of an order suspending a license for a first violation for failure to file a required sworn affidavit, the employer may, by motion or stipulation, seek relief from the order on the ground that the employer has filed a sworn affidavit required by A.R.S. § 23-212(F)(1)(c) or A.R.S. § 23-212(F)(2)(d). If such a showing is made and subject to the completion of any term of license suspension ordered under A.R.S. § 23-212(F)(1)(d) or A.R.S. § 23-212(F)(2)(c), the court shall enter an order terminating any further license suspension.

(4) The clerk of the superior court shall distribute by any method authorized by Rule 58(e) a certified copy of any order suspending or revoking a license, or terminating a license suspension, entered under this Rule or A.R.S. § 23-212 to the parties, the Arizona Attorney General, and any licensing agency ordered to suspend an employer's license.

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#### **Comment**

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