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## IN THE SUPREME COURT OF THE STATE OF ARIZONA

PETITION TO AMEND THE  
RULES OF PROCEDURE CIVIL  
TRAFFIC CASES, RULE 9

Supreme Court No. R-07 \_\_\_\_

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the Hon. Dennis Lusk, petitions the Supreme Court to amend the Rules of Procedure Civil Traffic Cases, Rule 9, as set forth in Appendix A. The petition is the result of changes to manner and method with which civil traffic violations are filed by law enforcement. The proposed amendment is designed to allow law enforcement to withdraw a complaint that was electronically filed prior to service by citing agency.

### I. INTRODUCTION

The proliferation of photo enforcement projects in Arizona has led to an increase in case filings primarily in limited jurisdiction courts. The initial project undertaken by the Town of Paradise Valley for speeding violations has spawned

similar projects in other jurisdictions that have grown incrementally in the intervening years. It is now common place for cities and towns to have photo enforcement cameras documenting speed and red light violations. County and state law enforcement agencies are now also undertaking similar projects.

## **2. THE ISSUE**

The proliferation of photo enforcement projects has lead to the computerization and privatization for issuance of the complaints. Several vendors now operate within the state and have developed XML interfaces with individual courts or with the Administrative Office of the Courts to electronically file complaints generated by these programs. The petitioner recognizes that the law enforcement agencies are the party responsible for filing the complaints, sending notice to the offending party and ensuring that proper equipment standards are maintained. However, they have no authority to request the complaint be withdrawn even in those circumstances where the defendants photograph has been misidentified or the equipment has malfunctioned. The Limited Jurisdiction Committee and the Arizona Judicial Council both having reached that same conclusion in 1997 during the Title 28 rewrite as evidenced by the following quote from the *Court Implementation Guide*.

*2. Guideline:* Prior to the filing of a civil complaint with the Court, an officer may correct a charge in a separate written document if notice is given to the defendant. Law enforcement does not have standing to amend a citation after it has been filed with the court.

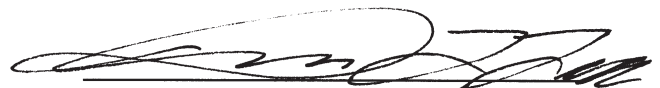
*Basis:* The Court does not have a legal interest in the complaint prior to it being filed with, the court. A number of courts have instituted a policy of allowing law enforcement to file advisory motions to amend civil complaints since the State has "opted out" of prosecuting these kinds of cases. However, the Committee on the Limited Jurisdiction Courts and Arizona Judicial Council have determined law enforcement does not have standing to do this and the Rules of Procedure in Civil Traffic Cases do not allow it.

The petitioner seeks the Court's approval granting law enforcement standing to withdraw the filed complaint in the aforementioned limited circumstance.

### **3. DESCRIPTION OF PROPOSED AMENDMENTS**

Rule 9, Rules of Procedure Civil Traffic Cases, provides for the amendment of civil traffic complaints. Petitioner proposes a new section (d) granting law enforcement standing to withdraw a complaint due to the fact that the party has been misidentified or the equipment used malfunctioned or was improperly calibrated.

DATED this 10<sup>th</sup> day of JANUARY, 2007.



Judge Dennis Lusk  
Justice of the Peace

## APPENDIX A

Rules of Procedure Civil Traffic Cases  
Rule 9. Amending the Complaint

(a) – (c)[No change in text.]

(d) A civil traffic complaint may be withdrawn by the law enforcement agency that initiated the complaint if:

1. The defendant was misidentified, or
2. The device used to measure or capture the infraction malfunctioned or was improperly calibrated.