

SUPREME COURT OF ARIZONA

In the Matter Of) Arizona Supreme Court
) No. R-08-0027
PETITION TO PROMULGATE RULE)
57.1 AND 57.2, ARIZONA RULES OF)
CIVIL PROCEDURE)
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ORDER ADOPTING RULES 57.1 and 57.2, RULES OF CIVIL PROCEDURE, ON AN
EMERGENCY BASIS

A petition having been filed proposing to add Rules 57.1 and 57.2, Rules of Civil Procedure, in order to implement House Bill 2321 (adding new A.R.S. §§ 12-771 and 12-772), which was passed in the Second Regular Session of the Forty-eighth Legislature (2008), with an effective date of January 1, 2009. Upon consideration,

IT IS ORDERED that Rules 57.1 and 57.2, Rules of Civil Procedure, be adopted on an emergency basis in accordance with the attachment hereto, effective January 1, 2009.

IT IS FURTHER ORDERED that the Petition shall be opened for public comment pursuant to Rule 28(C), Rules of the Supreme Court. The petition may be viewed by going to:
<http://www.supreme.state.az.us/> and clicking on "Court Rules Forum" under the heading "Quick Links". Comments shall be due on or before May 20, 2009.

Comments may be posted electronically by going to:
<http://www.supreme.state.az.us/>, clicking on "Court Rules Forum" and following the instructions for submitting a comment.

Alternatively, comments may be submitted by filing an original and six (6) paper copies and one copy of the written comments and supporting documents in Microsoft Word format on a CD, disk or other compatible electronic medium with the Clerk of the Supreme Court, 1501 West Washington St., Room 402, Phoenix, AZ 85007 in an envelope marked "Rule Comment".

Any person filing a comment shall send a copy thereof to Petitioner.

DATED this _____ day of December, 2008.

RUTH V. MCGREGOR
Chief Justice

TO:
Rule 28 Distribution

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ATTACHMENT

Rule 57.1. Declaration of Factual Innocence

- A. Scope of 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.
- B. Filing. A petition brought under this rule shall be filed in the Superior 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 be captioned: In re: (name of petitioner).
- C. Service. The Petitioner shall serve the petition in the manner prescribed by A.R.S. section 12-771 and by these rules.
- D. Transmission of Records. If the petition is related to a charge filed in a justice of the peace court or a municipal court, the Clerk of the Superior Court shall request the justice of the peace or presiding officer of the municipal court to transmit a copy of the file to the Clerk's office.
- E. Discovery. Discovery may be conducted upon stipulation of the parties, or by order of the court.
- F. Evidence. The Petitioner must establish factual innocence by clear and convincing evidence.
- G. Hearing and Determination.
 - 1. The Court may hold a hearing to determine the Petitioner's factual innocence.
 - 2. If the Court holds a 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. Order. On a finding of factual innocence related to an arrest, citation, or charge, the Court shall notify the following persons, if applicable: the Petitioner; 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. Scope of rule. 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. Filing. A petition brought under this rule shall be filed in the Superior Court for the county in which the Petitioner's name was entered as of record in a civil action or judgment because of alleged improper use of the Petitioner'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.
- C. Service. The Petitioner shall serve the petition in the manner prescribed by these rules on all parties in the civil action in which the Petitioner's identity was allegedly used.
- D. Transmission of Records. If the petition is related to a case filed in a justice of the peace court, the Clerk of the Superior Court shall request the justice of the peace to transmit a copy of the file to the Clerk's office.
- E. Discovery. Discovery proceedings may be conducted on a petition brought pursuant to this rule upon stipulation of the interested parties, or by order of the court.
- F. Evidence. The Petitioner must establish improper party status by clear and convincing evidence.
- G. Hearing.
 - 1. The Court may hold a hearing on the petition.
 - 2. 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. 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.