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IN THE SUPREME COURT  
STATE OF ARIZONA

In the Matter of:

PETITION TO REPEAL THE	)	
RULES OF PROCEDURE IN TRAFFIC	)	Supreme Court No.
CASES AND BOATING CASES;	)	R-15-0009
TO AMEND THE RULES OF	)	
PROCEDURE IN CIVIL TRAFFIC AND	)	Petitioner’s Reply
CIVIL BOATING CASES; and TO	)	
AMEND RULES 1, 2, AND 3 OF THE RULES	)	
OF CRIMINAL PROCEDURE	)	

Petitioner appreciates the comment filed by the Tyler Allen Law Firm, but for the reasons set out below, Petitioner disagrees with the three recommendations in that comment.

**First**, the comment requests a further amendment to Rule 10(c) to specify that a defendant may appear personally or by counsel. However, this concept is already expressed in current Rule 2(j), which would be retained by the proposed

amendments. Rule 2(j) reads as follows: “Unless the context otherwise requires, the requirements of these rules may be performed by an attorney who has filed a proper notice of appearance.” While the verbiage proposed by the comment would do no harm, it is redundant and unnecessary.

**Second**, the comment proposes an amendment to Rule 16 concerning the questioning of witnesses. The rule petition does not request changes to Rule 16, and the comment therefore is beyond the scope of this petition. Petitioner believes the matter addressed by the comment could be the subject of a future rule petition, but it exceeds the latitude of the current petition.

With regard to its substance, the comment concedes that the court should be permitted to examine a witness. However, the comment asks the rule to provide that “the court may not ask direct questions of the witness for the purpose of establishing elements of the offense.” Petitioner finds this problematic. Would such a rule amendment preclude the court from asking an officer simple questions that might elicit those elements, such as, “What happened?” or “Can you tell me what you observed?” A judge might ask, “Did these events occur within the jurisdiction of this court?” The question is not leading or adversarial, but the rule change proposed by the comment would preclude the question. Moreover, if the answer is “no,” it would benefit the defendant. Would it be improper for the court to ask questions that establish elements of a defense? The comment does not address this. Petitioner

believes that the requested amendment is impractical. The court cannot, and should not, be limited in its questions in the manner proposed by the comment.

**Third**, in those cases where the State does not appear by counsel, the comment proposes amending Rules 9 and 12. Once again, the rule petition requests amendments to neither of these rules. Whether it is proper procedure to use a comment for proposing an amendment to a rule not addressed in the petition is a question that Petitioner noted above.

Regarding its substance, the comment's proposed amendment to Rule 9 ("Amending the complaint") would allow amendments to a complaint by "stipulation of the parties." The amendment to Rule 12 ("Representation by the State") would allow "the state's witness [e.g., a law enforcement officer]" to "enter into a stipulation to amend or dismiss any of the charges listed in the complaint."

Note that current Rule 2(i) --which would be renumbered as Rule 2(g) -- expressly provides that "a law enforcement officer, police aide, traffic, investigator, or parking enforcement volunteer is not a party." Petitioner believes that these rules should neither permit nor encourage a non-party (including a law enforcement officer) to perform acts that are exclusively within the prerogative of a party, such as entering into stipulations to dismiss or to amend the complaint. The comment's proposed amendments to Rules 9 and 12 should be denied.

**Correction.** Appendix 2 to the rule petition contained incorrect section designations for Rule 2. A substitute version of Rule 2, shown in Appendix 4 and which is appended to this reply, corrects those errors.

**Conclusion.** With the corrected Appendix, Petitioner requests adoption of the amendments proposed by this rule petition.

RESPECTFULLY SUBMITTED this 29th day of June 2015

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## **Appendix 4 (Correction to Rule 2)**

This Appendix shows additions by underline, and deletions by ~~strikethrough~~.

### **Rule 2. Definitions; computing time; attorneys**

(a) “Civil traffic violation” means any violation designated as such under the provisions of A.R.S. § 28-121 or expressly designated as such by a traffic ordinance of a city or town, or by any other statute, charter, ordinance, rule, or regulation relating to the operation or use of a motor vehicle or other motorized or human powered device, or to the operation of any other vehicle, or to the use of streets and highways by pedestrians, which is punishable by a civil sanction. ~~and any boating violation punishable by a civil sanction under Articles 1 through 11 of Chapter 3, Title 5, of the Arizona Revised Statutes, or expressly designated a civil violation by a boating ordinance or a city or town.~~

(b) “Civil boating violation” means any violation of Articles 1 through 11, Chapter 3, Title 5, Arizona Revised Statutes (entitled “boating and water sports”) or of any other statute, charter, ordinance, rule or regulation in relation to the operation or use of motorized watercraft, motorboats, or sailboards, or by operation of any other watercraft, that is punishable by a civil sanction.

~~(b)~~ (c) “Court” means a justice court or a court established by a city or town. Unless the context otherwise requires, “trial court” also means the justice or municipal court.

~~(c)~~ “Department” means ~~the Arizona Department of Public Safety acting directly or through its duly authorized officers, agents and contractors.~~

(d) “Judge” means a justice of the peace, judge, or magistrate.

(e) “Hearing officer” means a person appointed as such under the provisions of A.R.S. § 28-1553.

~~(f) “Notice of violation” means a document charging a civil traffic offense pursuant to A.R.S. § 41-1722 that is issued to an alleged violator in accordance with these rules and not filed in court.~~

(f) “Parking or standing violation” means any violation of Article 13, Chapter 3, Title 28, Arizona Revised Statutes (entitled “stopping, standing or parking”), or of any other statute, ordinance, rule or regulation, arising solely from the parking, stopping, or standing of a vehicle.

~~(g) “Photo enforcement” means enforcement of violations detected by photo enforcement equipment for the purpose of capturing violations within Title 28, Chapter 3, Articles 3 and 6 relating to vehicle traffic and speed, pursuant to A.R.S. § 41-1722.~~

~~(h) In computing time limits, when the last day of any period of time prescribed herein falls on a Saturday, Sunday, or day when the court is closed, the “last day” shall be the next day court is open. The day of the act or event from which the designated time period begins is not to be included. Except as stated by these rules or by order of court in a particular case, filing deadlines are not enlarged when sent by mail.~~

~~(i) (g) “Party” means the state or the defendant. A law enforcement officer, police aide, traffic investigator, or parking enforcement volunteer is not a party.~~

(h) The “uniform traffic ticket and complaint” as referenced in Articles 3 and 4, Chapter 5, Title 28, Arizona Revised Statutes, is identified in these rules by the name “Arizona Traffic Ticket and Complaint,” or by the abbreviation, “ATTC.”

(i) Computing time. In computing time limits, when the last day of any period of time prescribed herein falls on a Saturday, Sunday, or day when the court is closed, the “last day” shall be the next day court is open. The day of the act or

event from which the designated time period begins is not to be included.  
Except as stated by these rules or by order of court in a particular case, filing  
deadlines are not enlarged when sent by mail.

(j) Attorneys. Unless the context otherwise requires, the requirements of these rules may be performed by an attorney who has filed a proper notice of appearance.