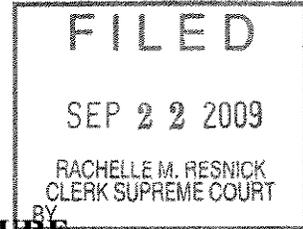


IN THE TUCSON CITY COURT
IN THE CITY OF TUCSON,



**ORDER AMENDING THE
LOCAL RULES OF PRACTICE AND PROCEDURE,
IN CITY COURT CIVIL PROCEEDINGS CITY OF TUCSON**

A majority of the judges of the Tucson City Court having approved, pursuant to Rule 83, Ariz. R. Civ. Proc., the proposed Local Rules of Practice and Procedure in City Court Civil Proceedings City of Tucson,

IT IS ORDERED amending Local Rules of Practice and Procedure in City Court Civil Proceedings City of Tucson for the Tucson City Court, in accordance with the attachment hereto,* effective January 1, 2010.

DATED in the City of Tucson, Arizona, this 19th day of August, 2009.



Antonio Riojas Jr.
Presiding Magistrate
Tucson City Court

APPROVED this 22nd day of September, 2009.



Rebecca White Berch, Chief Justice
Arizona Supreme Court

* Changes or additions in text are indicated by underlining and deletions from text are indicated by ~~strikeouts~~.

LOCAL RULES OF PRACTICE AND PROCEDURE IN CITY COURT CIVIL PROCEEDINGS CITY OF TUCSON

Rule 1. Scope

These rules shall apply in all proceedings involving the adjudication of violations deemed to be civil violations or civil infractions under the ~~Tucson~~ City Code, including civil parking infractions, ~~but excluding~~ and civil traffic violations, as defined in Rule 2(a), Rules of Procedure in Civil Traffic and Civil Boating Violation eCases, and shall serve as a supplement thereto pursuant to Rule 5 thereof.

The rules set forth herein shall in no way serve to restrict or limit the lawful authority or discretion of the magistrates, special magistrates, or limited special magistrates.

Rule 2. Definitions

~~(a)~~ A. For purposes of these rules, a “civil infraction” means any civil violation or civil infraction of the City Charter, City Code or City ordinances wherein the enforcement action undertaken may result in the imposition of a civil sanction or penalty.

~~(b)~~ B. A “civil parking infraction” means any violation of the City Code or City ordinances which regulates the time, place or method of parking.

~~(c)~~ C. “City” means the City of Tucson.

~~(d)~~ D. “Court” means the City Court of the City of Tucson.

~~(e)~~ E. “City Code” means the Charter and City Code of the City of Tucson.

F. “Respondent” means the person or entity charged with a violation of the City Code or Title 28 of the Arizona Revised Statutes pertaining to civil traffic.

G. “Charging Document” means complaint or civil citation.

Rule 3. Civil Infraction and Civil Parking Infraction; Complaint and Summons; Citation

~~(a)~~ A. Civil infraction actions, except civil parking infraction actions, shall be commenced either by citation or civil complaint. Any city employee responsible for the enforcement of any provision of the City Charter, City Code, or City Ordinance, bearing a civil sanction or penalty may issue a citation. Alternatively, the city attorney may file a civil complaint with the court. Upon receipt of the complaint, the court shall issue a summons.

~~(b)~~ B. The ~~citation or civil complaint~~ charging document and summons may be served by any method authorized by the Arizona Rules of Civil Procedure. ~~If service is made by certified mail, the return receipt shall be prima facie evidence of service.~~ In addition, a citation or summons may

be served by certified or registered mail, return receipt requested. Return of the signed receipt shall be prima facie evidence of service.

~~(e) C.~~ The citation or civil complaint charging document and summons shall direct the defendant respondent to appear not more than twenty (20) thirty (30) calendar days after personal service or twenty-five (25) days after date of mailing, if service is made by certified mail.

~~(d) D.~~ The citation or civil complaint charging document and summons shall contain at least the following information: The time, date, and place of the alleged violation; reference to the City Ordinance or Code provisions violated; the time, date, and place for the defendant respondent to appear; an affirmation signed by the citing official that the violation took place; and warning of default in the event of failure to appear.

~~(e) E.~~ Civil parking infraction actions shall be commenced by the issuance of a citation, which shall include the date, time, and location of the violation, the state license number of the vehicle unlawfully parked, reference to the eCity ordinance or Code provision violated, and notice that within seven (7) working thirty (30) calendar days from the date on which the citation was issued the fine for the violation must be paid to and received by the eCity or a request must be made to and received by the court for a hearing to contest the citation. A copy of the citation may be served by attaching a copy to the vehicle; personal service is not required. The citation, or copy thereof, issued in accordance with these Rules shall constitute prima facie evidence of the parking infraction.

1. When a citation is issued to a vehicle registered within the State of Arizona, the court shall within seven (7) working days send a citation letter to the owner address on file with the Arizona Department of Motor Vehicles advising the owner of the citation and containing the date, time, and location of the violation as well as the vehicle description and violation description; or a duplicate copy of the citation.

2. If the respondent involved in a civil parking violation or infraction fails to respond within thirty (30) calendar days from the day the citation was issued by one (1) of the prescribed methods in Rule 7, a default fee pursuant to section 8-6.7 of the City Code shall be assessed and the court shall, within seven (7) working days of the default date, send a default letter to the owner's address on file with the Arizona Motor Vehicle department, advising the owner that the citation is in default and that the vehicle may be subject to boot or impoundment.

Rule 4. Cases to be Heard by Magistrate, Special Magistrate, or ~~Special Limited~~ Special Magistrate

A magistrate, special magistrate, or limited special magistrate shall hear and dispose of civil traffic, civil infraction, and civil parking infraction cases, and may make such orders as may be necessary and proper to such dispositions. Cases shall be heard without a jury.

Rule 5. Sufficiency of the ~~Complaint~~ Charging Document

No ~~complaint~~ charging document shall be deemed insufficient for failure to contain a definite statement of the essential facts constituting the specific violation which the ~~defendant~~ respondent is alleged to have committed if the ~~complaint~~ charging document contains either a written description of the violation or a ~~designation section~~ of the City Code and, or Title 28 of the Arizona Revised Statutes section or City ordinance provision alleged to have been violated. However, the presiding magistrate, special magistrate, or limited special magistrate may require additional clarifying language when deemed appropriate. Failure to comply may result in dismissal of the charging document without prejudice.

Rule 6. Amending the ~~Complaint~~ Charging Document

~~(a)~~ A. The court shall permit a ~~complaint~~ charging document to be amended at any time before judgment if no additional or different violation is charged and if substantial rights of the ~~defendant~~ respondent are not prejudiced.

~~(b)~~ B. The ~~complaint~~ charging document shall be amended to conform to the evidence adduced at hearing if no addition or different violation is charged and if substantial rights of the ~~defendant~~ Respondent are not thereby prejudiced.

~~(c)~~ C. All amendments to a ~~complaint~~ charging document shall relate back to the date of violation.

Rule 7. Appearance and Entry of Plea

~~(a)~~ A. The ~~defendant~~ respondent or ~~defendant's~~ respondent's attorney may admit the allegations of the ~~complaint~~ charging document by appearing in person or for those violations with a fixed fine amount, by mail received by the City within ~~20~~ thirty (30) calendar days admitting responsibility for the violation and paying the prescribed fine.

~~(b)~~ B. The ~~defendant~~ respondent or ~~defendant's~~ respondent's attorney may deny the allegations of the ~~complaint~~ charging document by appearing in person. The ~~defendant~~ respondent or respondent's attorney may also deny the allegations of the charging document ~~complaint~~ through defendant's attorney by delivering to the court and the City a written denial signed by the ~~defendant~~ respondent or defendant's respondent's attorney. Upon denial, the court shall set the matter for hearing and notify the ~~defendant~~ respondent and the City of the date, time, and place for the hearing, in writing or through electronic notification such as email. ~~The defendant's~~ Unless a different address is provided to the court in writing by the respondent or respondent's attorney, the respondent's notice shall be sent to the address set forth on the ~~complaint~~ charging document or Motor Vehicle Division address of record unless a different address is provided to the court in writing by the defendant or defendant's attorney.

C. A request for a hearing to contest a civil traffic violation or City Code violation shall constitute a waiver (where otherwise eligible) of the opportunity to attend Defensive Driving School (DDS).

~~(e) D.~~ In proceedings for civil parking infractions, the owner or operator of the vehicle involved in the violation respondent shall respond to the citation within ~~seven (7) working~~ thirty (30) calendar days from the day on which the citation was issued by one of the following methods:

~~(1) 1.~~ By respondent or respondent's attorney appearing in person, ~~by representation,~~ or by mail received ~~by the City~~ within the ~~seven-day~~ thirty (30) calendar day period, admitting responsibility for the violation, and paying the fine prescribed for the violation.

~~(2) 2.~~ By contacting the court in person, ~~by mail received within the seven-day period,~~ by phone, ~~or by representation,~~ and requesting a hearing to contest the citation through representation, or by mail requesting a hearing to contest the citation within the thirty (30) calendar day period.

If the owner or operator of the vehicle involved in the violation fails to respond by one of the methods prescribed in sections ~~(1) A or (2) B~~ of this subsection, within ~~seven (7) working~~ thirty (30) calendar days from the day the citation was issued, ~~the fine for the violation shall automatically double, except if the violation was of Tucson Code section 20-222, 20-223, 20-224, 20-226, 20-227, or 20-233, in which case the fine shall increase by ten dollars (\$10.00) the court shall enter judgment for the City, impose a civil sanction and a default fee pursuant to section 8-6.7 of the City Code shall be assessed in addition to any time payment fee required.~~ The magistrate, special magistrate, or limited special magistrate shall send written notice to the owner or operator advising of the violation and of the increased fine, and giving notice to either pay the fine or request a hearing to contest the citation within ten (10) working days of the date of the notice. The court shall send a default letter to the respondent's last known address on file with the court, providing notice that the citation is in default.

Rule 8. Notice of Intent to be Represented by Counsel

~~(a) If a hearing is set on the complaint or citation, the court shall promptly provide the defendant with written notice that the right to be represented by counsel is waived unless the defendant notifies the court and the City in writing at least 10 days prior to the hearing date of defendant's election to be represented by counsel. Such notice shall specify the appropriate place and manner for filing the notice of counsel.~~

~~(b) Absent extraordinary circumstances, failure of a defendant to timely notify the court of the election to be represented by counsel constitutes a waiver of the right to counsel.~~

Absent extraordinary circumstances, if a notice of appearance by respondent's counsel is not received by the court at least ten (10) calendar days prior to the hearing, a respondent's right to counsel is deemed waived.

Rule 9. Representation of the City

The City need not be represented by counsel at the hearing on a ~~complaint or citation~~ charging document. The City's right to be represented by counsel at the hearing is waived unless the City notifies the court and the respondent of its election to be represented by counsel. Absent extraordinary circumstances, notice must be made at least ten (10) calendar days prior to the

hearing date, or within ten (10) calendar days of receipt of notice that the respondent will be represented by counsel, whichever is later.

Rule 10. Motion to Withdraw

Withdrawal of respondents' representation is only upon written motion stating:

A. the reason for the withdrawal;

B. the consent of the respondent or why such consent is unobtainable; and

C. The last known address of the respondent.

Rule 10-11. Discovery

~~(a)~~ A. No pre-trial discovery shall be permitted.

~~(b)~~ B. Immediately prior to the hearing, both parties shall produce for inspection any exhibits and written or recorded statements of any witness which have been prepared and may be offered at the hearing. Failure to comply with this rule may result, in the court's discretion, in the granting of a recess or continuance to permit such inspection or the exclusion of the evidence not so exchanged.

~~(c)~~ C. Either party may subpoena witnesses as provided by A.R.S. Sec. 13-4072. Such witnesses are not entitled to fees for appearing in connection with a civil traffic, civil infraction, or civil parking infraction proceeding.

Rule 11-12. Consolidated Cases

If civil and criminal cases are based on the same conduct or are otherwise connected together in their commission, the ~~eases~~ court may consolidate the cases, but either party may file a motion to sever before the cases proceed to hearing. Cases may be consolidated at any point in the proceedings on the motion of any party, or on the court's own motion. At the trial of any consolidated case, the rules governing the criminal case shall apply, except that the civil case shall be tried to the court, and the standard of proof in the civil case shall be by a preponderance of the evidence.

Rule 12-13. Continuances and Rescheduling

~~(a)~~ A. The court may, upon motion of any party or on its own motion, continue or reschedule the hearing on a civil violation or civil infraction under the City Code or civil traffic proceeding for a period not exceeding 60 days, if it appears that the interests of justice so require.

1. Absent extraordinary circumstances, any motion to continue or reschedule a hearing shall be filed no less than five (5) calendar days prior to the scheduled hearing.

2. A motion to continue or reschedule does not excuse a party or representative from attending the hearing while the motion remains pending.

~~(b)~~ B. Absent extraordinary circumstances, no hearing shall be continued or rescheduled by the court without notice to both parties.

~~(e)~~ C. The court shall notify both parties in writing of the new hearing date and time.

Rule ~~13~~-14. Oath

All testimony shall be given under oath or affirmation.

Rule ~~14~~-15. Questioning of Witnesses

~~(a)~~ A. The court may, on its own motion, call and examine witnesses present at the hearing, including the ~~defendant~~-respondent.

~~(b)~~ B. No person may be examined or cross-examined at a hearing except by the court, an attorney for a party, or the ~~defendant~~-respondent.

Rule ~~15~~-16. Rules of Evidence

The Arizona Rules of Evidence shall not apply in civil traffic, civil infraction, or civil parking infraction proceedings. Any evidence offered shall be admitted subject to a determination by the magistrate, special magistrate, or limited special magistrate that the offered evidence is relevant and material and has some probative value as to a fact at issue. Nothing in this rule is to be construed as abrogating any statutory provision relating to privileged communications.

Rule ~~16~~-17. Witnesses

All witnesses for the eCity's case-in-chief, other than the ~~defendant~~-respondent, shall be required to testify prior to the ~~defendant~~-respondent being required to testify or produce any evidence. A witness not called to testify in the eCity's case-in-chief may be called to testify in rebuttal.

Rule ~~17~~-18. Order of Proceedings

The order of proceedings shall be as follows:

~~(a)~~ A. Testimony of eCity's witnesses.

~~(b)~~ B. Testimony of defense witnesses.

~~(e)~~ C. Testimony of eCity's rebuttal witnesses, if any.

~~(d)~~ D. Testimony of defense surrebuttal witnesses, if any.

~~(e)~~ E. Argument of the parties or their counsel if permitted by the court.

~~(f)~~ F. Ruling by the court.

Rule 18-19. Record

A record of the proceedings shall be made by ~~audiotape~~ digital audio recording or audiotape.

Rule 19-20. Default by the Defendant-Respondent

(a) ~~A.~~ If the ~~defendant~~ respondent fails to appear as required, the allegations of the ~~complaint or citation~~ charging document shall be deemed admitted, and the court shall enter judgment for the City and impose a civil sanction.

(b) ~~B.~~ If it appears ~~from the face of the complaint that the defendant~~ that the respondent is was in the active military service, no default judgment may be entered. In such case, the court may notify the ~~defendant's~~ respondent's commanding officer, if known, of the ~~defendant's~~ respondent's failure to appear.

Rule 20-21. Default by the City

If no witness for the City, excluding the ~~defendant~~ respondent, appears at the time set for hearing on a civil infraction, the court shall dismiss the complaint without prejudice, unless the court, for good cause shown, continues the hearing to another date. This rule shall not apply to those instances (such as civil parking infractions) where the citation constitutes prima facie evidence of the civil ~~infraction~~ parking violation.

Rule 21-22. Findings and Judgment

(a) ~~A.~~ If the court finds in favor of the City, the court shall enter judgment for the City and impose a civil sanction.

B. If appropriate, the court shall enter an order of abatement and a date for compliance with that order.

(b) ~~C.~~ If the court finds in favor of the ~~defendant~~ respondent, the court shall ~~dismiss the complaint with prejudice~~ enter a finding of not responsible.

Rule 22-23. Setting Aside Default Judgment

(a) ~~A.~~ For good cause shown, and upon terms the court deems just, the court may set aside a judgment entered upon a failure to appear. A motion to set aside a default judgment shall be made in writing within 30 days after entry of the default judgment.

(b) ~~B.~~ At any time, the court may set aside a judgment entered upon a failure to appear, if it appears that the ~~defendant~~ respondent was not served with a copy of the ~~complaint or citation~~ charging document as provided by law, or for any other reason where necessary to prevent a manifest injustice.

Rule 23-24. Right to Appeal

(a) A. Any party may appeal to the Superior Court from a final order or judgment in a civil infraction case as provided by law. Any appeal shall be governed by the Superior Court Rules of Appellate Procedure-Civil, except that the appeal shall be on the record unless the Superior Court adjudges the record insufficient or not in proper condition to enable the court to adjudicate the issues, in which case a trial de novo shall may be granted.

(b) B. Immediately following judgment and imposition of a civil sanction after hearing, the court shall notify the ~~defendant~~ respondent in writing of the right to appeal. Such notice shall state that a right to appeal exists, the applicable time limit, and the location and manner of filing the notice of appeal, and shall refer the ~~defendant~~ respondent to the rules governing the appeal process.

C. A respondent who admits responsibility waives the right to appeal.

Rule 24-25. Consolidated Appeals

When an appeal is taken in both civil and criminal cases consolidated for trial, the rules governing criminal appeals shall apply.

Rule 25-26. Appeal; How Taken

(a) A. An appeal shall be taken by filing a written notice of appeal with the lower court within ~~ten~~ fourteen (14) calendar days after the entry of the order or judgment appealed from.

(b) B. The notice of appeal shall identify the order or judgment appealed from. It shall be signed by the appellant or appellant's attorney, if any, and shall contain the names, addresses and telephone numbers of all parties and their attorneys.

(c) C. When a party appeals, the lower court shall send a copy of the notice of appeal to the other party or the other party's attorney, if any.