

Photo Enforcement Questions

Following are some common questions and answers concerning the processing of photo enforcement citations, arranged under broad subject headings. We have not attempted to address every issue that may arise and the answers given may not apply in every situation, so you are encouraged to consult with your local legal counsel regarding a problem in your court. Additional issues and topics may be added as they arise.

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Service

Q: *Does delivery by mail constitute valid service of a photo enforcement citation?*

A: Yes, but only if the defendant signs and returns the acknowledgement of receipt and waives personal service. In *Tonner v. Paradise Valley Magistrate's Court*, 171 Ariz. 449, 831 P.2d 448 (Ariz.App 1992) the court held that the summons and complaint may be served by first-class mail along with two copies of a notice and acknowledgment of receipt of summons and complaint and a postpaid return envelope, but service is not complete until the acknowledgment of receipt is executed.

Q: *Is personal service still necessary if a party fails to sign and return the affidavit for waiver of service but responds in some other way to the complaint?*

A: Actions by the defendant, such as requesting a hearing, pleading responsible, responding that he is not the driver of the vehicle or that he will attend defensive driving school probably constitute an appearance under Rule 4(f) and make personal service unnecessary. Although few Arizona cases address this issue, the rule in most jurisdictions is that a claim of defective or inadequate service can be successfully overcome by evidence that the party complied as if they acknowledged the complaint and summons. However, Arizona rules provide specific requirements for waiver of service. Rule 4.1(c)(2)(F), Rules of Civil Procedure, allows the defendant 30 days to notify the court whether he is waiving service. After that, the defendant has another 30 days to decide how to handle the photo enforcement citation (Rule 4.1(c)(3)). The AOC recommends that the court should comply with these rules in processing waiver of service on photo enforcement citations.

Q: *What constitutes "a person of suitable age and discretion" for personal service?*

A: There is no generally accepted answer. Instead, courts appear to make the determination based upon the facts of the individual case. Most courts have found that delivery of service to persons at least 13 years of age is sufficient. Where service is required to be made on defendant's residence, it is generally not sufficient to rely solely on MVD or other records for the defendant's address. Some confirmation is needed that the defendant actually resides at the address.

Electronic Filing

Q: Can the court accept an electronically filed photo enforcement citation?

A: Yes, if the court has requested and received approval of a substantial variation to the ATTC form from the AOC pursuant to Rule 4, Rules of Procedure in Civil Traffic Violation Cases.

Q: Photo enforcement citations do not include the defendant's social security number. Doesn't the court need this information for collections?

A: This information is generally not available for photo enforcement citations, since there is no personal contact with the defendant. If the court wants to ensure that the social security number is available for later collection efforts, the court will need to obtain the number during its processing of the case.

Q: Does the fact that photo enforcement citations are filed electronically affect how appeals are processed?

A: A.R.S. § 28-1558(A) requires an original or a copy of the citation to be delivered to the court. Whether the citations are in paper or electronic form, the court should be able to reproduce the original or some likeness of the original citation for appeals and other purposes. ACJA 1-506(D)(6) provides "The forms-based electronic filing system shall be capable of reproducing or printing the form with the data supplied by the filer, however, courts are not required to preserve the form's text and data together in PDF. The forms-based electronic filing system shall comply with all other requirements of this section."

Role of the Vendor

Q: Can employees of the photo enforcement vendor prosecute and dismiss these citations?

A: No. Once it is filed, all motions to dismiss or amend a citation should come from the prosecutor. The vendor's employees have no more authority regarding citations than the police. Prior to filing a civil traffic complaint with the court, an officer or agent may correct a charge in a separate written document if notice is given to the defendant. Employees of the vendor may appear as witnesses in court, but have no standing to prosecute, amend or dismiss a complaint once it is filed.

Role of the Court

Q: What is the court's role in the issuance, processing and filing of photo enforcement citations?

A: The court may not ethically advise law enforcement or the contractor regarding the issuance and processing of photo enforcement citations, but may cooperate by establishing electronic filing procedures to accept the citations. It is the responsibility of the law enforcement and prosecutorial agencies to use this technology in a manner that complies with current law and the rules of procedure, and the court may dismiss any citation that does not comply with the statutes and rules.

Q: Can the court issue a warrant pursuant to A.R.S. § 13-3903 if the defendant fails to appear on a criminal photo enforcement citation?

A: No, unless the defendant has given a written promise to appear pursuant to the statute. Otherwise, the court should issue a "rule" warrant pursuant to Rule 3.1, Rules of Criminal Procedure, or a failure to appear warrant based on the prosecutor's complaint under A.R.S. § 13-2506.

Q: Can the court issue a failure to pay warrant for a defendant's failure to pay process server fees in a criminal case?

A: Yes. A.R.S. § 13-810 and Rule 26.12 require the court to notify the prosecutor or probation officer when the defendant fails to pay any monetary obligation, set an OSC hearing and issue a summons or warrant.

Fines and Fees

Q: Can the court charge a flat fee for service of process when the defendant fails to respond to the mailed notice of violation?

A: A flat fee is not in compliance with the Rules of Civil Procedure. Rule 4.1 requires the court to impose costs actually incurred in effecting service, unless good cause is shown why the defendant failed to comply with the request for waiver of service. These costs may include the cost of any motion required to collect the cost of service, including reasonable attorney fees. Since the costs to effect service may differ in different cases, a flat fee is not appropriate.

Q: Can the court refuse to schedule a hearing or not allow a defendant to attend DDS until process server fees are paid?

A: No. There's no authority in the statutes or rules that permits the court to limit access to a hearing or defensive driving school for non-payment of unrelated fees. The reasonableness of the fee may be an issue to be resolved at the hearing.

Q: Can the court issue a civil traffic default judgment for failure to pay process server fees?

A: No, unless the defendant also fails to appear on the citation. The only grounds for default under Rule 22, Rules of Procedure in Civil Traffic Violation Cases, is failure to appear. Process server fees should be assessed and collected the same as any other costs in civil cases.

Q: Can the court establish a fine schedule that provides a greater fine for a photo enforcement citation to provide funds to pay the program costs? If not, can the city or county adopt a "surcharge" or "cost recovery fee" to recoup those costs?

A: Different fines for photo and non-photo citations are not encouraged, since the same offense should be subject to the same penalty, no matter how the offense is cited. In addition, the presiding judge of the county is required to coordinate the fine schedule for the entire county. Cities and counties can establish fees to be collected by the court only as authorized by law.

Records

Q: How do the records retention requirements apply to electronic photo enforcement citations?

A: The records retention and disposition schedule for limited jurisdiction courts was approved by the Supreme Court as ACJA § 4-302. The code applies equally to an electronic citation record and the paper equivalent. Records of all matters filed with the court should be retained by the court as provided in the schedule.

Q: Can the court decline to process a public records request for data on photo enforcement cases if the requester will use the data to provide information to the defendants about how to contest the violations?

A: No. These requests are subject to the same standards as any other request for access to public records. The court cannot prohibit or delay access to the records based upon the use of the records or the motive for the request.