



Photo Enforcement Basics

The Law and Procedure

East Valley Bar Association CLE, 8-15-2014

Michael Kielsky

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-Admitted in in Arizona & California

-J.D., *summa cum laude*, 2001, Thomas Jefferson School of Law, San Diego, CA

-Before practicing law, Software Engineer & Technology Consultant

-Board Member, East Valley Bar Association, East Valley Bar Association

-Member, State Bar Technology Committee; EVBA Lawyer Referral Service

-Pro Tem Judge, Maricopa County Justice Courts

-First Photo Enforcement case in 4/2009; as of 5/12/2014, 292 cases or appeals

- 213 cases won at trial or upon motion / 46 lost / 11 pending
 - of those lost, appealed 4: 3 won / 1 lost
- 16 other dispo. (invoke rights letter [6], DDD [5], withdrew [4], plea deal [1])
- 6 appeals (only) cases: 3 won / 3 lost
- In sum, about 82% success rate

-JP: Arcadia Biltmore (11), Arrowhead (4), Downtown (19), Encanto (10), Estrella, Highland (4), Maryvale, Moon Valley (11), North Valley (3), S.Mountain (5), W. McDowell (20)

-City Courts: Avondale, Chandler (15), El Mirage (14), Mesa (46), Paradise Valley (16), Phoenix (21), Prescott Valley, Scottsdale (64), Star Valley (2), Surprise, Tempe (16)

-Appellate Courts: Maricopa County Superior, Pima County Superior, Gila County Superior



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Commission on Judicial Conduct, Case No. 11-259, Statement of Charges; see also Commission on Judicial Conduct, Disposition of Complaint 10-201

Private Warning

8. In 2010, Respondent stated during a hearing that “neither substantive nor procedural due process was applicable in these photo enforcement matters” and was unable to provide any authority for this comment other than declaring to the litigant that “there is a whole bunch of case law I guess you have not been able to find.” Respondent was likewise unable to identify any legal authority for her assertion when asked by the Commission to do so in response to the complaint. On December 20, 2010, the Commission sent Respondent a private but strongly worded warning letter reminding Respondent of her obligations under the Code, and particularly of her obligation to remain patient, dignified, and courteous and to act consistently in a manner that promotes confidence in the judiciary.





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The Applicable Statutes

The Complaint

- A.R.S. § 28-1592(B)(2): Complaint must be filed in court within 60 days, and served within 90 days of the court filing
- A.R.S. § 28-1593(A): Complaint may be served by any means authorized by civil procedure rules, and is complete upon filing the service receipt
- A.R.S. § 28-1593(B): Complaint may be issued by peace officer, or duly authorized agent or someone paid on behalf of traffic enforcement agency
- A.R.S. § 28-1561(A): Complaint need not be sworn to if certified by an officer [but what if it is not certified by an officer?]
- A.R.S. § 28-1593(C) [mailed complaint] and A.R.S. § 28-1602 [notice of violation]: must state that there is no duty to identify the driver or respond, but that not responding will likely result in personal service with the costs charged to the defendant





The Applicable Statutes

The Court

- A.R.S. § 28-1596(C): If a defendant admits the allegation with an explanation, the court enters judgment but must consider the explanation
- A.R.S. § 28-1596(D): Civil traffic hearing is informal, without jury, and technical rules of evidence do not apply; State carries the burden of proof, by a preponderance of the evidence; Counsel must provide 10 days notice
- A.R.S. § 28-1596(E): If a defendant fails to appear on a served complaint, the court shall deem the allegations admitted and enter judgment
- A.R.S. § 28-1597(A): State and defendant may subpoena witnesses under the provisions of A.R.S. § 13-4072, and witness are not entitled to fees
- A.R.S. § 28-1204: Mandates location of signs, or court may dismiss
- A.R.S. § 28-1205: Red light tickets only valid if device complies with MUTCD
- A.R.S. § 28-1206: state highway enforcement valid only with current permit





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The Applicable Procedures

Rules of Procedure in Civil Traffic and Civil Boating Violation Cases

- 2(i): no police officer, aide, or witness may make motions, or object, or argue law, only the Defendant or Defense counsel, or prosecutor
- 2(j): a properly noticed attorney may appear without Defendant
- 10.1: permits appearing by audio-visual/telephonic means, with the court's permission
- 11: Notice of Appearance 10 days before trial, or no right to counsel
- 12: Prosecutor must also give 10 days notice
- 13: no pre-trial discovery, but both sides must review evidence just before hearing, and defendant may review officer's notes; Tip: use witness subpoena and public record requests, if appropriate





The Applicable Procedures

Rules of Procedure in Civil Traffic and Civil Boating Violation Cases

- 16(c): no police officer, aide, or witness may question any witness, only the Defendant or Defense counsel, or prosecutor, or the court
- 17: Rules of Evidence do not apply, and only evidence not probative to a determination of a relevant fact may be excluded
- 19: sets forth order of proceedings
- 23: provides for setting aside a default
- 26-36: applies to appeals
- 38-46: no longer operative, as the statewide process is inactive





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The Usual Process Leading to the Issuance of the Notice of Violation and/or the Complaint

- Automated system records possible violation
- Possible violation recording is reviewed by police officer, or police aide, or by contractor
- The driver is compared to the MVD records for drivers associated with the vehicle registration
- If a driver is readily matched, a complaint is issued
- If the driver is unknown, a Notice of Violation issues





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Service of Process

- If a complaint is not served, or there is no waiver of service, court has no power to enter a judgment
- Waiver of service may be in writing, or in open court
- Service may be by any method permitted by the rules of civil procedure, but, usually
 - Personal service at the residence (even out-of-State)
 - Substitute service upon a co-resident of suitable age and discretion
 - Rare (Scottsdale only?): alternative service





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Options for Defendants





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Traffic Court Procedures

Initially, before hearings are set:

- Notice of Appearance (without waiving personal jurisdiction if not yet served, or if service questionable)
- Notice on Sufficiency of Service, if appropriate
- Motion to Dismiss (for lack of personal jurisdiction, or defects in complaint, or procedural defects)
- Request Subpoenas, if appropriate
- File Public Records Requests, if appropriate





Traffic Court Procedures

At service of process hearing:

- Before hearing, speak with process server, review server's notes, compare notes to Affidavit of Service
- On witness stand, question server about service and the Affidavit of Service, especially the signature
- Question whether demographic details on Affidavit were merely copied from the served complaint
- Challenge signature on Affidavit if someone other than server placed it there





Traffic Court Procedures

At hearing/trial:

- Before hearing, review witness notes and evidence
- Raise proper objections to the introduction of the evidence, and *voir dire* state's witness to establish source
- Question state's witness regarding their knowledge, experience, training, qualifications; object if witness not the complainant (due process/confrontation rights)
- State must show, by a preponderance of the evidence, that defendant committed a civil traffic violation

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MVD Consequences

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 - Points: 3 for Speeding; 2 for Red Light Violation
 - 8 or more points in 12-month period -> MVD action
 - 12 or more points in 24-month period -> MVD action
 - Traffic Survival School (8-hours, about \$65); or
 - Suspension of up to 12 months
 - Red Light Violation -> MVD action (TSS)
 - 1st moving viol. for under-18 -> MVD action (TSS)
 - Failure to successfully complete TSS -> Suspension

See: <http://www.azdot.gov/mvd/driver/driverimprovement.asp>

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I want my attorney. I invoke my right to remain silent.

I do not consent to a search of any kind, not of me, my effects, premises, immediate location, or vehicle. I hereby invoke all rights, including but not limited to those in the 4th, 5th, 6th, 9th & 14th Amendments to the US Constitution and the Declaration of Rights in our State Constitution. I want my attorney present before and during any questioning and before discussing any waivers.



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