

DANIEL ARTHUR GUTENKAUF  
1847 East Apache Boulevard, No. 41  
Tempe, Arizona 85281  
(480) 966-7018  
[dgutenkauf@getnet.net](mailto:dgutenkauf@getnet.net)

Plaintiff, *in propria persona*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

<input checked="" type="checkbox"/> FILED	<input type="checkbox"/> LODGED
<input type="checkbox"/> RECEIVED	<input type="checkbox"/> COPY
MAR 11 2011	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY <u>                    </u> DEPUTY	

DANIEL ARTHUR GUTENKAUF,  
an unmarried man

Plaintiff,

Vs.

THE CITY OF TEMPE, a municipal corporation and  
body politic, et al.:

Defendants.

)  
)  
) Civil Action No.  
) 2:10-cv-02129-FJM  
)  
) **PLAINTIFF'S RESPONSE TO**  
) **MOTION TO DISMISS BY**  
) **DEFENDANTS GODDARDS'**  
) **HALIKOWSKIS' AND**  
) **VANDERPOOLS'**  
)  
) **(Oral Argument Requested)**  
)  
)

Plaintiff hereby submits his Response to Rule 12 (b)(1) and Rule 12 (b)(6) Motion to Dismiss by Defendants GODDARDS', HALIKOWSKI, AND VANDERPOOLS'.. Plaintiff's Response to MTD is supported by Affidavit of Plaintiff, exhibits, and the following Memorandum of Points and Authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Defendants Terry and Monica Goddard, John and Ruth Halikowski, and Roger and Valerie Vanderpool , (herein after collectively "State Defendants") assert that Plaintiff lacks subject matter jurisdiction under **Rule 12 (b)(1)** and has failed to state a claim upon which relief can be granted, pursuant to **Rule 12 (b)(6), F. R. Civ. P.** Federal courts construe *pro se* complaints liberally and thus, *pro se* complaints are held to less rigorous standards than formal

pleadings drafted by lawyers. *Haines v. Kerner*. 404 U.S. 519, 92 S.Ct. 594, 30 L. Ed. 2d 652. A motion to dismiss raising the issue at the initial pleading stage, however *is not favored* and *sua sponte* dismissals for failure to state a claim are *strongly disfavored*. *Acker v. Chevira*, 188 Ariz. 252, 934 P.2d 816 (App. 1997). In considering such a motion, all material allegations of the complaint are taken as true and read in the light most favorable to the plaintiff. *Fidelity Security Life Insurance Company v. State of Arizona*, 191 Ariz. 222, 954 P.2d 580 (1998) A motion to dismiss for failure to state a claim admits the truth of facts alleged, for purposes of the motion, and merely contends that plaintiffs are not entitled to relief under any legal theory. *State v. Superior Court of Maricopa County* (1979) 123 Ariz. 324, 599 P.2d 777.

The motion to dismiss *should not be granted* unless it appears that the plaintiff would not be entitled to relief under any state of facts susceptible of proof under the pleadings. *Doe ex rel. Doe v. State of Arizona*, 200 Ariz. 174, 24 P3d 1269 (2001). *San Manuel Copper Corp. v. Redmond* (App. 1968) 8 Ariz. App. 214, 445 P.2d 162. If the deficiency in the Complaint is one that can be cured by further pleading, *the motion should be denied* or, if granted, the plaintiff should be given leave to amend. *Sun World Corp. v. Pennysaver Inc.* 130 Ariz. 585, 637 P.2d 1088 (App. 1981) *In re Cassidy's Estate*, 77 Ariz. 228, 270 P.2d 1079 (1954).

#### **I. Motion to Dismiss Standards**

A complaint is subject to dismissal under Fed. R. Civ. P. 12(B)(6) if it fails to set forth a cognizable legal theory, or if it fails to plead sufficient fact to support a cognizable legal theory. *Balisteri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9<sup>th</sup> Cir, 1990) Pro Se pleadings are to be liberally construed, particularly where civil rights claims are involved. *Christensen v. C.I.R.*, 786 F.2d 1382, 1384-85 (9<sup>th</sup> Cir. 1986); *Bretz v. Kelman*, 773 F2d 1026, 1027 n. 1 (9<sup>th</sup> Cir. 1985) (en banc). Plaintiff has stated a cognizable legal theory under 42 USC 1983, deprivation of rights under color of State law. He has stated facts which support the required elements that each of the

1 defendants were acting under color of Arizona State law, as Attorney General, Director of  
2 Arizona Department of Transportation, and former Director of Department of Public Safety at  
3 the time of the events described in the complaint. Plaintiff has stated facts in his complaint that  
4 show he was deprived of Constitutional rights under the Fourth, Sixth, and Fourteenth  
5 Amendments.

6 To sustain an action under section 1983, a plaintiff must show (1) that the conduct  
7 complained of was committed by a person acting under color of state law; and (2) that the  
8 conduct deprived the plaintiff of a constitutional right. *Rinker v. Napa County*, 831 F.2d 829, 831  
9 (9<sup>th</sup> Cir. 1987) (citing *Parratt v. Taylor*, 451 U.S. 527, 535, 101 S.Ct. 1908, 1912, 68 L.E. 2d 420  
10 (1981)). Clearly, Plaintiff has stated facts in support of both elements of that cause of action.  
11

12 A complaint should not be dismissed under Rule 12 (b)(6) “unless it appears beyond  
13 doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him  
14 to relief. *Conley v. Gibson* 355 U.S. 41, 45,46, 78 S.Ct. 99, 101-02, 2 Led. 2d 80 (1957). Plain-  
15 tiff’s complaint has stated facts, events, dates, and circumstances with particularity. Plaintiff  
16 has included Exhibits as evidence , including a Redflex manual used by DPS to determine  
17 issuance of tickets based on “gender match”, in violation of state law **A.R.S. 28-1561**, and in  
18 violation of Due Process of Law under the Fourteenth Amendment. Plaintiff’s exhibits attached  
19 to his complaint support and prove his factual allegations. Those exhibits become part of the  
20 pleadings, pursuant to **Rule 10 (c) Fed. R. Civ. P.** It is significant that Defendants’ Motion to  
21 Dismiss has not challenged any of those exhibits.  
22

23 Plaintiff has clearly alleged “enough facts to state a claim to relief that is plausible on its  
24 face” in order to survive a motion to dismiss for failure to state a claim, under the standard set by  
25 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). Plaintiff has clearly made a “showing”  
that he is entitled to relief, “rather than a blanket assertion” as “*shown*” in Plaintiff’s Notice of

1 Claim against the State Defendants, **Exhibit E** of Plaintiff's First Amended Complaint.

2 Plaintiff has also alleged facts showing liability for acts and omissions by Defendant Goddard,  
3 paragraphs 143 through 152, para. 157 (**Exhibit K**), and para. 222, and for Defendant  
4 Vanderpool, para. 157 (**Exhibit K**) paragraphs 163 through 174, and para. 222, and for Defendant  
5 Halikowski, para 222 and **Exhibit K**.

6 Plaintiff's facts and evidence clearly go beyond the "threadbare recitals of the elements  
7 of a cause of action" and beyond "mere conclusory statements" standard articulated in *Ashcroft*  
8 *v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). Plaintiff has not simply made "legal conclusion(s)  
9 couched as factual allegation(s)" Plaintiff has stated facts with particularity, and on a motion to  
10 dismiss, the court accepts the facts alleged in the complaint as true. *Shah v. County of Los*  
11 *Angeles*, 797 F. 2d 743, 745 (9<sup>th</sup> Cir. 1986)

12  
13 **II. State Defendants' "Lack of Standing" argument fails based on separate Notice of**  
14 **Claim against State of Arizona and "Collateral Source" rule**

15 State Defendants argue that Plaintiff lacks standing in the instant case, based on the false  
16 premise that municipal Defendants City of Tempe (COT) had settled with Plaintiff, by sending  
17 him check for \$699, which he refused and sent back twice. State Defendants make a LARGE  
18 LEAP ahead from paragraph 69 to para. 92, disingenuously omitting all the facts regarding the  
19 reasons for Plaintiff not reaching "a meeting of the minds" with Tempe Risk Management. City  
20 of Tempe mailed a check to Plaintiff for \$699 on May 18, 2010 (para. 91) nearly six weeks after  
21 Plaintiff mailed a written withdrawal of his initial offer (para.83).

22 State Defendants' *red herring* argument about COT settlement with Plaintiff fails for two  
23 reasons. First, Plaintiff's Notice of Claim filed against the State of Arizona (**Ex. E**, 1st Amend.  
24 Compl.) was separate from Notice of Claim for COT Defendants. (**Ex. A**, 1st Amend. Compl.)  
25 *Arguendo*, even if Plaintiff's claim against COT Defendants had been settled, it does not aid the  
State Defendants, based on Arizona's "Collateral Source" Rule.

1 “[The] collateral source rule” as our supreme court has stated, requires that  
 2 “[p]ayments made to or benefits conferred on the injured party from other  
 3 sources are not credited against the tortfeasor’s liability, although they  
 4 cover all or a part of the harm for which the tortfeasor is liable” *Taylor v.*  
 5 *S. Pac. Transp. Co.* 130 Ariz. 516, 519, 637 P.2d 726, 729 (1981 quoting  
 6 Restatement (Second) of Torts sec. 920A(2) (1979); *see also Hall v. Olague*,  
 7 119 Ariz. 73, 73, 579 P.2d 577, 577 (App. 1978) (“The so called “collateral  
 8 source rule’ states that total or partial compensation for an injury which the  
 9 injured party receives from a collateral source wholly independent of the  
 10 wrongdoer does not operate to reduce the damages recoverable from the  
 11 wrongdoer.”) “The collateral source rule is well established in Arizona tort  
 12 law.” *Michael v. Cole*, 122 Ariz. 450, 452, 595 P. 2d 995, 997 (1979)

13 In many respects, the rule “is punitive” because it “allows a plaintiff to fully recover  
 14 from a defendant for an injury even when the plaintiff has recovered from a source other than the  
 15 defendant for the same injury.” *Norwest Bank (Minnesota), N.A. v. Symington*, 197 Ariz. 181.  
 16 Under the collateral source rule, when an injured plaintiff has been compensated for his injuries  
 17 from a source other than the defendant, the latter cannot benefit from the recovery. *Olivas v.*  
 18 *United States*, 9<sup>th</sup> Cir 506 F.2d 1158 (1974). State Defendants alleged settlement argument fails.

19 **III. Plaintiff has Article III Standing for “Actual and Imminent Harm”; Therefore His**  
 20 **Claims Should Not be dismissed for Lack of Subject Matter Jurisdiction**

21 Plaintiff has been damaged in his property, (money spent to file his appeal), plus  
 22 deprivation of his Constitutional rights. Plaintiff has suffered both “actual and imminent harm.”  
 23 Plaintiff meets all three elements to establish standing under Article III, as cited in *Lujan*  
 24 *v. Defenders of Wildlife*, 504 U. S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed. 2d 351 (1992). First,  
 25 Plaintiff has suffered an injury in fact-an invasion of a legally protected interest which is (a)  
 concrete and particularized...(1) actual financial loss of cost of filing his traffic appeal fee (\$149)  
 plus trial transcript (\$485) plus other costs for a total of at least \$699.00. See itemized receipts in  
 Notice of Claim to the State of Arizona (**Exhibit E**, First Amended Complaint).

Plaintiff has been injured by (2) Deprivation of his inalienable rights protected by the  
 U.S. Constitution under the Fourth, Sixth, and Fourteenth Amendments, cited in Plaintiff’s

1 Notice of Claim to State of AZ and in the First Amended Complaint. (b) imminent injury  
2 because the Redflex cameras are still operational in Tempe, where Plaintiff lives and drives  
3 everyday, and he is at risk of the same repeated injury to his property and Constitutional rights  
4 every time he drives. In the context of a suit for injunctive relief, this requirement may only be  
5 satisfied where a plaintiff demonstrates “ a sufficient likelihood that he will again be wronged in  
6 a similar way...” That is, he must establish a “real and immediate threat of repeated injury.”  
7 *Fortune v. American Multi-Cinema Inc.*, 364 F. 3d 1075, 1081, (9<sup>th</sup> Cir 2004) The State Photo  
8 Enforcement Fund continues to receive 84% of proceeds from each photo speed ticket paid to  
9 City of Tempe.  
10

11 Second, there is a causal connection between the injury and the conduct complained of-  
12 the injury is fairly traceable to the challenged action of the defendant, and not the result of the  
13 independent action of some third party not before the court. The State Defendants each had a  
14 role in Plaintiff’s injuries. Defendant Goddard’s had a duty as the State’s chief legal advisor to  
15 review and approve use of the Redflex/ DPS manual, which violates **A.R.S. 28-1561**. Goddard’s  
16 deliberate indifference to the use of a manual which violates State law was a proximate cause of  
17 the Plaintiff’s injuries, cited in Complaint.  
18

19 Defendant Vanderpool, as former DPS Director had a duty to protect the public by  
20 monitoring vendor Redflex for any ethical or legal violations, pursuant to **A.R.S. 41-1722**, and in  
21 accord with page 4 of Goddard’s AG Opinion No. I10-001 R09-027 (**Ex. A** attached hereto..  
22 Defendant Halikowski knew or should have known that Redflex was issuing traffic citations  
23 based only on a gender match with registration information obtained from MVD, which he had  
24 supervisory responsibility for as Director of ADOT. The State Defendants worked in an  
25 *interdependent* fashion (not independent) with the other parties who are also before the court in  
this action, Redflex, City of Tempe. and AAA Photo Safety Defendants.

1 Third, it is likely, as opposed to merely speculative, that the injury will be addressed by a  
 2 favorable decision by this Court, as evidenced by Plaintiff's appeal victory. In evaluating  
 3 whether a civil rights litigant has satisfied these requirements (for standing) "[t]he Supreme  
 4 Court has instructed us to take a broad view of constitutional standing..." *D'Lil v. Best Western*  
 5 *Encina Lodge & Suites*, 538 F.3d 1031, 1036 (9<sup>th</sup> Cir. 2008) (quoting *Trafficante v. Metro Life*  
 6 *Ins. Co.*, 409 U.S. 205, 209, 93 S. Ct. 364, 34 L. Ed. 2d 415 (1972). Plaintiff has clearly  
 7 established facts showing that he has suffered an "actual and imminent" injury sufficient to  
 8 confer Article III standing.  
 9

10 **IV. Plaintiff has Clearly Stated a Cause of Action against State Defendants under**  
 11 **42 U.S.C. 1983**

12 In civil rights cases, where the Plaintiff is pro se, the court has an obligation to construe  
 13 the pleadings liberally and to afford the plaintiff the benefit of any doubt. *King v. Atiyeh*, 814  
 14 F.2d 565 (9<sup>th</sup> Cir. 1987) citing *Bretz v. Kelman*, 773 F.2d 1026, 1027, n. 1 (9<sup>th</sup> Cir 1985)  
 15 (en banc); see also *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 595, 30 L. Ed. 2d  
 16 652 (1972) (per curiam).

17 To state a claim under section 1983 a plaintiff must allege that he suffered a specific  
 18 injury as a result of the conduct of a particular defendant; and he must allege an affirmative link  
 19 between the injury and the conduct of that defendant. *Rizzo v. Goode* 423 U.S. 362, 371-72,  
 20 377 (1976); *King v. Atiyeh*, 814 F.2d 565, 568 (9<sup>th</sup> Cir. 1987). In the *King* case, the District Court  
 21 dismissed that action as to the governor and the attorney general because "the amended  
 22 complaint is barren of any allegations that the governor or the attorney general *knew of*, or took  
 23 part in the constitutional deprivations. *King*, Id. at 568. However, in the instant case, Plaintiff  
 24 alleged in para. 149 of his First Amended Complaint:  
 25

"Attorney General GODDARD *knew or should have known* that the system  
 used by DPS, REDFLEX TRAFFIC SYSTEMS, INC., and the TEMPE



1 POLICE DEPARTMENT to issue citations in photo speed cases was not properly  
2 following the certification provisions required to identify the driver under A.R.S.  
3 28-1561, based on notification from Arizona Superior Court Rulings, which  
4 reversed finding of responsibility in the case of Stephen Thomas Palermo  
(LC2006-000235-001 DT) and Craig Cameron Gillespie (LC2005-000597)

5 Defendant Goddard himself, by his own words, has shown the affirmative link between  
6 the Plaintiff's injury and the conduct of that Defendant. "Issuing traffic citations is a State  
7 function." AG Op.No I10-001(R09-027) . See para. 144, First Amended Complaint, and page 4  
8 of **Exhibit A**, attached hereto. The affirmative link between the Plaintiff's injury and the  
9 conduct of the State Defendants is clearly established in Paragraphs 142 through 152 and  
10 paragraphs 163 through 174 of the First Amended Complaint.

11 A second affirmative link is also stated in the same AG Opinion, again on page 4, **Ex A**  
12 "Under the statutes governing photo enforcement, the regulation and oversight through the  
13 contracting process with DPS protects the public..." and "the intent of the Legislature was to  
14 protect the public from unscrupulous private investigators...." At the bottom of page 3, **Ex A**  
15 "A license may be suspended or revoked for a wide range of misconduct, including acts of  
16 dishonesty or fraud..." DPS is in charge of P.I. licensing, and Defendant Vanderpool, as former  
17 DPS Director at the time of the incident, had a supervisory duty over the procedures employed  
18 by Redflex Traffic Systems Inc, which was using a procedures manual that instructs law  
19 enforcement to certify traffic tickets based on simply a "gender match" , instead of positive ID  
20 of the driver, as required under **A.R.S. 28-1561**.

21 State Defendant Halikowski, as Director of ADOT and supervisor over MVD, *knew or*  
22 *should have known* that Redflex was only obtaining vehicle owner registration info from his  
23 agency, and not obtaining the MVD driver's license photo ID required to positively identify the  
24 driver. Defendant Halikowski *knew or should have known* that the Redflex Procedures manuals  
25 for both DPS and City of Tempe instructed law enforcement to issue traffic citations for photo



1 speed tickets, when there was only a “gender match”, and *even if there was not a gender match*.

2 See Ex. K and Ex L, 1st Amend. Compl.

3 To hold a supervisor liable under section 1983, a plaintiff must allege and show that the  
4 supervisor personally participated in or had direct responsibility for the alleged violations.

5 *Martin v. Sargent*, 780 F.2d 1334 at 1338 (8<sup>th</sup> Cir.) Or a plaintiff could show that the supervisor  
6 actually knew of and was deliberately indifferent to or tacitly authorized the unconstitutional  
7 acts. *Pool v. Missouri Dept of Corr. & Human Resources*, 883 F.2d 640, 645 (8<sup>th</sup> Cir. 1989)  
8 See *McDowell v. Jones*, 990 F.2d 433 at 435 (8<sup>th</sup> Cir.). Clearly, Plaintiff has met the burden of  
9 establishing the affirmative link to State Defendants conduct, acts, and omissions causing the  
10 Plaintiff’s injuries.  
11

12 **A. Plaintiff Has Clearly Articulated a Cognizable Procedural Due Process Claim**

13 State Defendants cite *Hudson v. Palmer*, 468 U.S. 517, 533, 104 S.Ct.3194, 3204 (1984)

14 “[A]n *unauthorized* intentional deprivation of property by a state employee  
15 does not constitute a violation of the procedural requirements of the Due  
16 Process Clause of the Fourteenth Amendment if a meaningful postdeprivation  
remedy for the loss is available.” (*italics added*)

17 State Defendants argument lacks merit in the instant case, because the holding in *Hudson*  
18 applied to only to a *single unauthorized, random* intentional deprivation of property by a state  
19 employee. In the instant case, the violation of procedural requirements of the Due Process Clause  
20 was an *authorized* intentional deprivation of Plaintiff’s property, authorized by the Redflex/DPS  
21 and Redflex/COT procedures manual, Ex. K and Ex. L, 1st Amend. Compl. As stated in  
22 *Hudson*,

23 “Two Terms ago, we reaffirmed our holding in *Parratt* in *Logan v. Zimmerman*  
24 *Brush Co.*, 455 U. S. 422 (1982), in the course of holding that the postdeprivation  
25 remedies do not satisfy due process where a deprivation of property is caused by  
conduct pursuant to established state procedure, rather than random and unauthorized action.” *Hudson v. Palmer*, 468 U.S. 517, at 532. Also see fn 13 at 532.

*Parratt* “was not designed to reach...a situation where the deprivation is the result of an

1 established state procedure.” 455 U.S., at 436. Clearly, it cannot be denied that the use of a  
 2 “gender match” as a basis for the State of Arizona to issue a traffic citation is “an established  
 3 state procedure”. And further, when State Defendant’s did not respond to Plaintiff’s Notice of  
 4 Claim, (Ex E, 1st Amend. Compl.), he had no further State postdeprivation remedy to  
 5 collect the costs of his appeal. As Judge Eartha K. Washington ruled on Plaintiff’s appeal, the  
 6 procedure to issue the traffic ticket violated State law. Clearly, Plaintiff has demonstrated a  
 7 damage, both in his property and his procedural Due Process rights.

9 **B. Plaintiff Has articulated a Cognizable Substantive Due Process Claim.**

10 State Defendants cite the S.Ct. holding in *Albright v. Oliver* that there is no substantive  
 11 due process right under the Fourteenth Amendment to be free from prosecution without probable  
 12 cause. *Albright v. Oliver* 610 U.S 266, 301 (1994) However, Albright also states that the Four-  
 13 teenth Amendment contains only one Due Process clause. Though it is sometimes helpful as a  
 14 matter of doctrine to distinguish between substantive and procedural due process, the two  
 15 concepts are not mutually exclusive, and their protections often overlap. *Albright, Id.*, at 301.

17 State Defendants assert that at issue here is a civil traffic fine under **A.R.S. 28-701(A)**,  
 18 not a criminal prosecution. However, Traffic violation cases implicate criminal defendant’s  
 19 rights. Though Arizona’s prosecution of traffic offenses is ostensibly a “civil” matter, that  
 20 designation is not determinative regarding certain constitutional rights. The U.S. Supreme Court  
 21 has held that the statutory classification of an action as civil or criminal must be assessed in light  
 22 of the sanction or fine. “The labels affixed whether to the proceeding or to the relief imposed...  
 23 are not controlling and will not be allowed to defeat the applicable protections of federal  
 24 constitutional law” *United States v. Halper*, 490 U.S. 435, 448 (1989), citing *Hicks v. Feiock*,  
 25 485 U.S. 624, 631 (1988).

“[I]n determining whether a particular civil sanction constitutes criminal

1 punishment, it is the purposes actually served by the sanction in question,  
 2 not the underlying nature of the proceeding giving rise to the sanction,  
 that must be evaluated.” Halper, at 447, FN7

3 “Retribution and deterrence are not legitimate nonpunitive governmental objectives”. *Bell v.*  
 4 *Wolfish*, 441 U.S. 520, 539, n. 20, 99.S.Ct 1861, 1874, n.20 (1979). “[A] civil sanction that  
 5 cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also  
 6 serving either retributive or deterrent purposes, is punishment.” *Halper*, at 448. It cannot be  
 7 fairly argued that the penalty assessed in this type of traffic violation matter, though designated  
 8 “civil penalty” pursuant to A.R.S. 28-1521, is anything be retributive or for purposes of  
 9 deterrence. As such important constitutional rights attach.

10  
 11 State Defendants then argue that “There is no constitutional right to be free from  
 12 *erroneous* traffic tickets” *Gibson v. Inacio*, Slip Copy, 2010 WL 3943684, \*4 (D.N.J. 2010) and  
 13 thus, the Plaintiff has not and cannot allege a cognizable section 1983 substantive due process  
 14 claim against the State Defendants. However, *Gibson* is inapposite. In the instant case, it was  
 15 not simply *erroneous*, but rather a clear pattern, policy, and custom of knowingly issuing falsely  
 16 certified traffic tickets, based on a “gender match” of the vehicle’s registered owner, in clear  
 17 violation of State law. The knowing, deliberate, and intentional issuance of perjured traffic  
 18 tickets violates Plaintiff’s procedural right to due process, protected by the 14th Amendment.  
 19 **A.R.S. 28-1561(B)** provides that false certification of the traffic ticket is perjury. “Our cases  
 20 make clear that procedural regularity notwithstanding, the Due Process Clause is violated by the  
 21 knowing use of perjured testimony...” *Albright v. Oliver*, 510 U.S. at 299. *Napue v. Illinois*, 360  
 22 U.S. 264 (1959) (failure of State to correct testimony known to be false violates due process);  
 23 *Pyle. V. Kansas*, 317 U.S. 213, 215-216 (1942) (allegations of the knowing use of perjured  
 24 testimony ...“sufficiently charge a deprivation of the rights guaranteed by the Federal  
 25 Constitution...” ) There can be no doubt that Plaintiff has alleged a cognizable section 1983 Due

1 Process claim against the State Defendants for ratifying and knowingly permitting the issuance  
2 of perjured traffic tickets. As Mr. Goddard stated, “issuing traffic citations is a State function.”

3 **C. Plaintiff Has Stated a Claim for Violation of His Fourth Amendment Rights.**

4 Justice Ginsberg’s concurring opinion in *Albright v. Oliver* stated that a defendant is  
5 indeed “seized” for trial, so long as he is bound to appear in court and answer the state’s charges.  
6 He is equally bound to appear, and is hence “seized” for trial, when the state employs less  
7 strong-arm means of a summons in lieu of arrest to secure his presence in court. And if *Oliver*  
8 gave misleading testimony at the preliminary hearing, that testimony served to maintain and  
9 reinforce the unlawful haling of Albright into court, and so perpetuated the Fourth Amendment  
10 violation. See *Albright*, Id at 279. Plaintiff was served with process, so he was required  
11 to appear, and he was unlawfully haled into court on the basis of Officer Colombe’s perjured  
12 traffic ticket, issued without any probable cause or “reasonable grounds”. Failure to appear  
13 would mean default, fine, points against license, suspension of license, and raised insurance  
14 rates (property interests). *Brower v. County of Inyo*, 489 U.S. 593, 599, 1989. (unreasonable  
15 seizure in violation of the Fourth Amendment gives rise to section 1983 liability).  
16

17 In order to succeed either on malicious prosecution claim or claim of due process  
18 violation based on alleged want of probable cause on part of state trooper in endorsing two traffic  
19 citations against plaintiff, the plaintiff, who brought civil rights suit, was required to prove that  
20 trooper lacked probable cause. *Curran v. Dural*, E.D. Pa. 1981, 512 F. Supp. 699. The appeal  
21 court ruled that Tempe officer Colombe lacked probable cause to issue the ticket to Plaintiff.  
22

23 State Defendants assert that a claim of malicious prosecution is not cognizable under 42  
24 U.S.C. section 1983 if process is available within the state judicial system to provide a remedy.  
25 *Usher v. City of Los Angeles*, 828 F. 2d 556 (9<sup>th</sup> Cir. 1987). However, “an exception exists  
to the general rule when a malicious prosecution is conducted with the intent to deprive a person

1 of equal protection of the laws, *or is otherwise intended to subject a person to a denial of*  
 2 *constitutional rights.*” *Usher*, Id. at 562, quoting *Bretz v. Kelman* 773 F.2d 1026, 1031 (9<sup>th</sup> Cir.  
 3 1985) And notwithstanding the possible availability of a state tort action for malicious prose-  
 4 cution, section 1983 provides a federal remedy for the constitutional violation alleged by the  
 5 petitioner. *Monroe v. Pape*, 365 U.S. 167, 183 (1961) (The federal remedy is supplementary  
 6 to the state remedy, and the latter need not be first sought and refused before the federal one is  
 7 invoked”). See *Albright v. Oliver*, 510 U.S. 266 at 314-315 (1994). Section 1983 provides a  
 8 federal cause of action against “[e]very person” who under color of state authority causes the  
 9 “deprivation of any rights, privileges, or immunities secured by the Constitution and laws.” 42  
 10 U.S.C. 1983.

12 There are five elements to a claim for wrongful prosecution of a civil action. Plaintiff  
 13 must prove defendant (1) instituted a civil action which was (2) motivated by malice, (3) begun  
 14 without probable cause, (4) terminated in plaintiff’s favor and (5) damaged plaintiff. *Carroll*  
 15 *v. Kalar*, 112. Ariz 595, 596, 545 P.2d 411, 412, (1976). Plaintiff has met all the elements.

16 State Defendants assert that Plaintiff was provided process that resulted in a ruling in his  
 17 favor and the refunding of the monies previously paid. While Plaintiff was refunded the \$197  
 18 fine, Plaintiff still has an *actual property injury* of \$699 for the costs of his appeal, not a *possible*  
 19 *property deprivation*, or *mere inconvenience*. Plaintiff exhausted the only other State remedy  
 20 available, through his Notice of Claim against State Defendants, which was ignored. State  
 21 Defendants fail to cite any authority matching the all the particular facts in this case; a State  
 22 custom of issuing perjured traffic tickets based on gender match, (Ex. K and L, 1<sup>st</sup> Amend.  
 23 Compl. , pre-arranged agreements with judges trained to rule against Defendants based on Court  
 24 Administration Modules (Ex.O, 1stAmend. Compl.) Due process under the 14th Amendment  
 25 requires that the judicial officer deciding the case be impartial. *Goldberg v. Kelly*, 397 U.S. 254,

267 (1970). None of the cases cited by State Defendants are photo speed enforcement cases, and none of the cases cited deal with computer-generated signatures without personal involvement in deliberate defiance of *State v. Johnston*, 184 Ariz. 521, 911 P.2d 527 (App. Div. 1, 1994).

Therefore, Plaintiff has properly stated a section 1983 claim, in what appears to be a case of first impression in the Ninth Circuit, and absent any citation of precedent by State Defendants.

**D. Plaintiff Has Plead His 42 USC 1983 Claims with Required Specificity**

To hold a supervisor liable under section 1983, a plaintiff must allege and show that the supervisor personally participated in or had direct responsibility for the alleged violations.

*Martin v. Sargent*, 780 F.2d 1334 at 1338 (8<sup>th</sup> Cir.) Or a plaintiff could show that the supervisor actually knew of and was deliberately indifferent to or tacitly authorized the unconstitutional acts. *Pool v. Missouri Dept of Corr. & Human Resources*, 883 F.2d 640, 645 (8<sup>th</sup> Cir. 1989) See *McDowell v. Jones*, 990 F.2d 433 at 435 (8<sup>th</sup> Cir.). See allegations in Section IV above.

**V. Plaintiff adequately Stated a Claim of Conspiracy To Deprive Plaintiff's Rights under Color of State Law.**

Plaintiff has alleged and shown evidence to prove that State Defendants reached a meeting of the minds and entered into an agreement with Redflex to violate the civil rights of all Defendant drivers, including Plaintiff, with a procedure manual and custom that violates State law and Due process. Plaintiff's evidence is shown in **Exhibits K and L**, 1st Amend. Compl., see paras. 184, 185, 216, 222, 240, and **Ex O and W**, 1st Amend. Compl. The Fourth Amendment violation due to the malicious prosecution, and the deprivation of Plaintiff's right to a fair trial under Due Process Clause of the 14th Amendment were pursuant to the government policy and custom set by DPS, the Attorney General and ADOT in adopting the Redflex manual. The deprivations were authorized by official policy and custom, the standard set under *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 694, 98 S. Ct. 2018, 2037, 56 L. Ed. 2d 611 (1978).

**VI. Plaintiff adequately Stated a Claim under RICO**

Plaintiff's Ex. T, 1st Amend. Compl. gives a visual depiction of all those elements of 18 U.S.C. 1962(c) for each of the State Defendants with specificity. As stated in *Reeves v. Ernst & Young*, 507 U.S. 170 at 179 in order to "participate, directly or indirectly in the conduct of such enterprise's affairs," one must have *some* part in directing those affairs. Defendants Vanderpool and Halikowski both wear the title "Director". Their statutory duties are listed in Ex. B and Ex. C, attached hereto. A.R.S. 41-1711. Department of public safety; section B provides in part: The department shall formulate plans with a view to establishing modern services for prevention of crime, apprehension of violators, training of law enforcement personnel, and the promotion of public safety. In section E, The director shall be directly responsible to the governor for the *conduct* and the administration of the department. A.R.S. 41-1722. State photo enforcement system provides in part in section A:

Notwithstanding any other law, the department shall enter into a contract or contracts with a private vendor or vendors pursuant to chapter 23 of this title to establish a state photo enforcement system consisting of cameras placed throughout the state as determined by the director to enforce the provisions of title 28 chapter 3, articles 3 and 6 relating to vehicle traffic and speed.

As previously cited in Ex. A. attached hereto, DPS is charged with protecting public safety and protecting the public from unethical photo enforcement vendors through the contracting process. Paragraphs 298 through 307 pleads facts sufficient to give notice under Rule 8(a), with sufficient specificity, not simply conclusory allegations.

**A. Plaintiff has shown State Defendants "Participated" in RICO Enterprise Committing Predicate RICO Acts**

Paragraphs 143 through 152, show Defendant Goddard's participation which intertwined with the RICO allegations. It cannot be denied that Defendant Goddard participated directly *or indirectly*, in the RICO enterprise, as he directed the prosecution of Defendant as a matter of law



1 **A.R.S. 28-333.** ( **Ex. D**, attached). In order to “participate, directly or indirectly, in the conduct  
 2 of such enterprise’s affairs,” one must have *some* part in directing those affairs. *Reves v. Ernst &*  
 3 *Young* 507 U.S. 170, 179 (1993) Goddard’s AG Opinion says “Issuing traffic citations is a State  
 4 function.” The State prosecution was initiated by use of the mails to send the falsely certified  
 5 traffic ticket. The vehicle registration information from ADOT/MVD was sent to Redflex or  
 6 accessed via Internet. (See **Ex. E**, attached hereto, Redflex flow chart). Defendant Halikowski  
 7 is “Director” of ADOT the agency supervising and directing MVD.

8  
 9 **B. Pro Se Plaintiff pleadings and RICO provisions are to be liberally construed  
 and Plaintiff is entitled to have his claims Judicially resolved after discovery.**

10 Section 904 (a) of RICO, 84 Stat. 947 directs that “[t]he provisions of this Title shall be  
 11 liberally construed to effectuate its remedial purposes.” *U. S. v. Turkette*, 452 U.S.576, 587  
 12 (1981) A court may deny a motion to dismiss for failure to plead with sufficient particularity  
 13 where a plaintiff represents that he or she cannot plead with specificity because the facts under-  
 14 lying the claim are particularly within the defendant’s knowledge, and if granted an opportunity  
 15 to take discovery, will file an amended complaint and cure any pleading defect which revolves  
 16 around the failure to plead with specificity. See Fed. R. Civ. P. Rule 15(a); *Eaby v. Richmond*  
 17 561 F. Supp. 231 (E.D. Pa. 1983) Plaintiff needs discovery to determine if Attorney General  
 18 Goddard did in fact approve the Redflex manual for DPS and COT, and the date it was approved.  
 19

20 Further proceedings, either by way of summary judgment or by trial on  
 21 the merits are required. The complaining parties are entitled to be heard  
 22 more fully than is possible on a motion to dismiss a complaint. We hold  
 only that, on the allegations of their respective complaints, they were  
 entitled to have them judicially resolved.

23 *Scheuer. V. Rhodes*, 416 U. S. 231, 250 (1974)

24 Rule 9(b) does not require an exhaustive cataloguing of facts but only sufficient factual specifi-  
 25 city to provide assurance that the plaintiff has investigated the alleged fraud and reasonably  
 believes that a wrong has occurred. *Bernstein v.IDT Corp.* 582 F. Supp. 1079 (D. Del 1984)

**C. Plaintiff has Stated a Claim for the Predicate Acts of Mail Fraud & Wire Fraud**

To establish a violation of Section 1962 (c) the plaintiff must allege that each defendant committed at least two predicate acts of racketeering activity. See *DeFalcom* 244 F.3d at 306. However, under the mail fraud statute “it is not necessary to allege... that the defendants have personally used the mails or wires: it is sufficient that a defendant ‘causes’ the use of the mails or wires” *Sobel v. Fleck* 2003 WL 22839799 at \*6 (S.D.N.Y. Dec.1, 2003) (citing 18 U.S.C. sections 1341, 1343); see also *United States v. Bortnovsky*, 879 F.2d 30, 36 (2d Cir 1989)

(“[I]t is not significant for purposes of the mail fraud statute that a third-party, rather than [the] defendant wrote and sent the letter at issue, provide[ed]...the defendants could reasonably have foreseen that the third-party would use the mail in the ordinary course of business as a result of [the] defendants’ act”) See *Wood v. Incorporated Village of Patchogue of NY*, 311 F. Supp. 2d 344 at 359 (E.D. N.Y. 2004)

Each of the Defendants depicted in **Ex. T**, 1<sup>st</sup> Am. Compl., had a particular role in the acts of mail fraud and wire fraud. Redflex accessed MVD via the internet for registration information. The perjured traffic ticket was sent by Redflex to the Tempe traffic court via the Internet, in another predicate act of Wire Fraud. Use of the Internet to transmit images or data satisfies the interstate commerce element for Wire Fraud. Once user submits connection request to a website server or image is transmitted back to user, data has traveled in interstate commerce, given the nature of the Internet. See *U. S. v. MacEwan* 445 F3d 237 at 244 (3<sup>rd</sup> Cir. 2006)

Notwithstanding the State Defendants citation of *Wilkie* regarding extortion under RICO, Plaintiff has plead a sufficient number of predicate acts of Mail Fraud and Wire Fraud by State Defendants acting in concert with Redflex and City of Tempe for purposes of conspiracy. All the Defendants agreed to use the Redflex Procedures manual which the State Superior Court has ruled violates Arizona State law (**A.R.S. 28-1561**). In prosecution for conspiracy to violate Racketeer Influenced and corrupt Organizations Act, it only need be shown that “at least one

1 conspirator committed at least one act in the furtherance of the conspiracy.” *United States v.*  
 2 *Fuiman*, 546 F. 2d 1155, 1158 (5<sup>th</sup> Cir.) cert. denied, 434 U.S. 856, 98 S.Ct. 176, 54 L.Ed. 2d  
 3 127 (1977)  
 4

5 In *United States v. Sutherland*, 656 F.2d. 1181 (1981) the defense was not entitled to  
 6 instruction that each defendant must have committed at least two predicate crimes in furtherance  
 7 of the conspiracy, and instruction that at least one of the conspirators had committed at least two  
 8 of the overt acts described in the indictment was sufficient. *U.S. v. Sutherland* is instructive in  
 9 the instant case, as it involves a RICO conspiracy in the context of traffic tickets in a Municipal  
 10 Court, and it is instructive as to Plaintiff’s **Exhibit T** and **Exhibit U**, 1st Amend. Compl.

11 **D. Only DPS had regulatory authority over Redflex and power to contract under**  
 12 **A.R.S. 41-1722**

13 State Defendants allege that throughout the Complaint, Plaintiff confuses the State’s photo  
 14 Enforcement program and contract with Redflex with Tempe’s photo enforcement program and  
 15 Separate contract with Redflex. Plaintiff understands there are two different programs and  
 16 contracts, both with Redflex, making DPS and COT and Redflex an “association in fact” for  
 17 purposes of an “enterprise”. Tempe Mayor Hallman has stated that 84% of COT photo speed  
 18 fines go to the State Photo Enforcement fund, showing a financial relationship. (Ex P, 1<sup>st</sup> Amend.  
 19 Comp.) Under **A.R.S. 41-1722** only DPS is granted authority to contract with a private vendor  
 20 for photo enforcement. AG Goddard makes no mention of any local chiefs of police having  
 21 regulatory and supervisory powers over the photo enforcement vendors.  
 22

23 Under the Rules of Procedure in Civil Traffic and Civil Boating Violation cases, (Ex. F)  
 24 **Rule 2 Definitions** section (g) “Photo enforcement “ means enforcement of violations detected  
 25 by photo enforcement equipment for the purpose of capturing violations within Title 28, Chptr 3,  
 Articles 3 and 6 relating to vehicle traffic and speed, pursuant to **A.R.S. 41-1722**. **Rule 1** states

that Rules 38-45 shall apply only to photo enforcement cases that are commenced pursuant to A.R.S. 41-1722. Rules 39, 40, 43, and 44 all reference "The Department". Under the definitions at Rule 2 (c) "Department" means the Arizona Department of Public Safety acting directly through its duly authorized officers, agents, or contractors. And under Transportation A.R.S. 28-1602, **Photo enforcement**, section C. states "For the purposes of this section, "state photo enforcement system" means the state photo enforcement system established pursuant to section 41-1722." Only DPS had statutory authority to contract with Redflex, and supervisory authority over Redflex, pursuant to the limited language in A.R.S. 41-1722 , which is clearly under State Government. This explains Plaintiff's statements in paragraphs 376 and 377.

#### **VII. State Defendants have NO Qualified Immunity.**

Defendant Goddard himself has stated that issuing traffic citations is a State function. (Ex A attached hereto). Superior Court Judge Eartha K. Washington ruled on Plaintiff's appeal that the procedure used to issue the traffic ticket *clearly violated State law*. (See Ex. A, First Amended Complaint. That procedure was based on the Redflex procedures manual used by DPS and COT which was required to be reviewed and approved by then Attorney General Goddard.

Since *Ex parte Young*, 209 U.S. 123, 28. S.Ct. 441, 52 L.Ed. 714 (1908), it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he deprived another of a federal right under the color of state law. *Ex parte Young* teaches that when a state officer acts under a state law in a manner violative of the Federal Constitution, he

"comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected *in his person* to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States."

*Ex parte Young*, 209 U.S. 209 at 159-160, 28 S.Ct., at 454 (emphasis supplied)  
See *Scheuer v. Rhodes*, 94 S.Ct. 1683 at 1687.


1 *Monroe v. Pape* held that 42 USC 1983 was meant “to give a remedy to parties deprived  
 2 of constitutional rights, privileges, and immunities by an officials abuse of his position.” *Id.*,  
 3 365 U.S. at 172, 81 S.Ct. at 476. Qualified immunity shield government officials from liability  
 4 for civil damages only in so far as their conduct does not violate clearly established constitutional  
 5 or statutory rights of which a reasonable person should have known. *Harlow v. Fitzgerald*, 457  
 6 U.S. 800, 818. If the law was clearly established, the immunity defense ordinarily should fail,  
 7 since a reasonably competent public official should know the law governing his conduct. *Id.*,  
 8 818-19. The rule of qualified immunity “provides ample support to all but the plainly  
 9 incompetent or those who knowingly violate the law.” *Burns v. Reed* 500 U.S. 478, 494-95  
 10 (1991) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986))

## 12 VIII. CONCLUSION

13 Plaintiff has clearly been damaged in both his property and his Constitutional rights, and  
 14 he has stated facts of fraud with particularity under Rule 9 (b), and has provided evidence to  
 15 support those facts. Plaintiff has stated a claim for which relief can be granted, for all three  
 16 alleged causes of action. Therefore, the Motion to Dismiss by State Defendants Terry and  
 17 Monica Goddard, John and Ruth Halikowski, and Roger and Valerie Vanderpool should be  
 18 denied as a matter of law. The above named Defendants should be ordered to file an Answer to  
 19 the Complaint within the time specified by the Court. Plaintiff requests oral argument on  
 20 Defendants’ Motion.

21  
 22 RESPECTFULLY SUBMITTED,

23 DATED this 11<sup>th</sup> day of March, 2011.

24   
 25 Daniel Arthur Gutenkauf, Pro Per  
 1847 E. Apache Blvd. #41  
 Tempe, Arizona 85281  
 480-966-7018

**ATTESTATION**

I, Daniel Arthur Gutenkauf, am the Plaintiff in this action, and I hereby attest and solemnly affirm that I have read the foregoing, and the facts stated within this document are based in part upon information and belief, and based in part on personal knowledge, and those facts are true, correct, and accurate, to the best of my knowledge and ability at this time, under penalty of Perjury.

DATED this 11<sup>th</sup> day of March, 2011.

Daniel Arthur Gutenkauf  
Daniel Arthur Gutenkauf, Pro Per  
1847 E. Apache Blvd. #41, Tempe, Arizona 85281

**CERTIFICATE OF SERVICE**

I, Daniel Gutenkauf, hereby certify that copies of the foregoing were served in the following manner:

ORIGINAL and One Copy of the foregoing  
Filed this 11<sup>th</sup> day of March, 2011 with:  
Clerk of the Court  
United States District Court- District of Arizona  
Sandra Day O'Connor Courthouse  
401 W. Washington St.  
Phoenix, AZ  
85003

A copy of the foregoing mailed by U. S. Postal Service this 12<sup>th</sup> day of March, 2011 to  
Nicole M. Goodwin, Attorney for Redflex Traffic Systems Defendants  
Quarles & Brady LLP  
One Renaissance Square  
Two North Central Avenue  
Phoenix, AZ 85004

A copy of the foregoing mailed by U.S. Postal Service this 12<sup>th</sup> day of March, 2011 to  
Clarence Matherson, Jr., Assistant City Attorney for City of Tempe Defendants  
Tempe City Attorney's Office  
21 E. Sixth Street, Suite 201  
Tempe, AZ 85281

A copy of the foregoing mailed by U.S. Postal Service this 12<sup>th</sup> day of March, 2011 to  
Terrence E. Harrison, attorney for Defendants Goddard, Vanderpool, and Halikowski  
Assistant Attorney General  
1275 W. Washington  
Phoenix, Arizona 85007-2926

1 A copy of the foregoing mailed by U.S. Postal Service this 19<sup>th</sup> day of March, 2011 to  
2 Law Offices of J.D. Dobbins PLLC, attorney for AAA Photo, Pickrons, and Arnett  
3 4121 East Valley Auto Drive, Suite 116  
4 Mesa, AZ 85206  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



# **Exhibit A**



**STATE OF ARIZONA**  
**OFFICE OF THE ATTORNEY GENERAL**

ATTORNEY GENERAL OPINION

by

TERRY GODDARD  
ATTORNEY GENERAL

January 14, 2010

No. 110-001  
(R09-027)

Re: Whether Private Investigator Licensing  
Requirements Apply to Photo-Enforcement  
System Vendors

To: The Honorable Sam Crump  
Arizona House of Representatives

**Question Presented**

You have asked for an opinion on the following two questions:

1. Must a vendor contracting with the Department of Transportation<sup>1</sup> to provide a state photo-enforcement system pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1722 meet the private investigator licensing requirements of Title 32, Chapter 24?
2. Is a contract to provide a state photo-enforcement system pursuant to A.R.S. § 41-1722 invalid if a vendor fails to meet the licensing requirements of Title 32, Chapter 24?

<sup>1</sup> Section 41-1722 provides for the Arizona Department of Public Safety, not the Department of Transportation, to enter into a contract with a vendor to establish a state photo-enforcement system. This discrepancy, however, does not alter the analysis or opinion rendered.

**Summary Answer**

A vendor contracting with the Department of Public Safety ("DPS") to provide a state photo-enforcement system is not required to meet the private investigator licensing requirements of Title 32, Chapter 24. Because a vendor need not be a licensed private investigator, the second question is moot.

**Analysis**

In 2008, the Legislature established a state photo-enforcement system. 2008 Ariz. Sess. Laws ch. 286, § 23 (codified as A.R.S. § 41-1722). Section 41-1722(A) provides as follows:

~~Notwithstanding any other law, the department [of public safety] shall enter~~  
into a contract or contracts with a private vendor or vendors . . . to establish a  
state photo enforcement system consisting of cameras placed throughout the  
state . . . to enforce the provisions of title 28, chapter 3, articles 3 and 6  
relating to vehicle traffic and speed.

Section 41-1722(C) establishes the photo-enforcement fund, and the Legislature appropriated over \$20 million from the fund "to the department of public safety for contract payments to private vendors for the operation of photo enforcement cameras and the processing of citations." 2008 Ariz. Sess. Laws ch. 286, § 35. In the same bill, the Legislature amended A.R.S. § 28-1593(B) to allow persons, in addition to peace officers or duly authorized agents, to be paid to act on a traffic enforcement agency's behalf to issue traffic complaints. 2008 Ariz. Sess. Laws ch. 286, § 16.

Chapter 24 of Arizona Revised Statutes, Title 32, regulates the conduct of private investigators. A private investigator is defined in A.R.S. § 32-2401(16), which provides as follows:

"Private Investigator" means a person . . . who, for any consideration, engages in business or accepts employment to:

- (a) Furnish, agree to make or make any investigation for the purpose of obtaining information with reference to:
  - (i) Crime or wrongs done or threatened against the United States or any state or territory of the United States.

- (ii) The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person or group of persons.
  - (iii) The credibility of witnesses or other persons.
  - (iv) The whereabouts of missing persons, owners of abandoned property or escheated property or heirs to estates.
  - (v) The location or recovery of lost or stolen property.
  - (vi) The causes and origin of, or responsibility for, a fire, libel, slander, a loss, an accident, damage or an injury to real or personal property.
- (b) Secure evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefor.
- (c) Investigate threats of violence and provide the service of protection of individuals from serious bodily harm or death.

Private investigators are required to be licensed by DPS. See A.R.S. §§ 32-2402, -2411.

The power to enact licensing laws is based upon the legislature's police power, which is the power "to enact any law deemed necessary for the protection of the property, peace, life, health and safety of the inhabitants of the state." *State Bd. of Technical Registration v. McDaniel*, 84 Ariz. 223, 228, 326 P.2d 348, 351 (1958). The purpose of an act which is promulgated under the state's police power is to protect the public health, safety or welfare. *State v. Beadle*, 84 Ariz. 217, 221, 326 P.2d 344, 347 (1958).

The purpose of licensing and regulating private investigators is to protect the public from "unscrupulous and unqualified investigators." *Landi v. Arkules*, 172 Ariz. 126, 135, 835 P.2d 458, 467 (App. 1992). The court reasoned as follows:

The public policy behind licensing and regulating private investigators is apparent from the Legislature's enactments. Qualifications for licensing are set forth by statute and include the applicant's good moral character and prior investigative experience. The statute imposes specific duties on licensees with respect to the confidentiality and accuracy of information and the disclosure of investigative reports to the clients. A license may be suspended or revoked for a wide range of misconduct, including acts of dishonesty or

fraud, aiding the violation of a court order, or soliciting business for an attorney.

*Id.* (citations omitted).

In *Landi*, the defendant entered into a private contract with the plaintiff to locate potential heirs to an estate. The court found that persons who provide heir locating services must be licensed as private investigators because the “genealogical research” contracted for in the case squarely fell within the definition of private investigator. *Id.* at 134, 835 P.2d at 466. Since the defendant acted as a private investigator without a license, the court found the contract unenforceable as contrary to public policy. *Id.* at 135, 835 P.2d at 467.

The public policy concerns behind the private investigator statutes do not, however, apply to a vendor operating photo-enforcement cameras and processing citations pursuant to A.R.S. § 41-1722(A). Unlike in *Landi*, which involved a private service which any member of the public may hire, a photo-enforcement system vendor does not provide a private service and is not available to the public to hire. Issuing traffic citations is a state function, and the Legislature enacted A.R.S. § 41-1722 allowing the vendor to issue citations on behalf of the state. Under the statutes governing photo enforcement, the regulation and oversight through the contracting process with DPS protects the public, separate and apart from the private investigator licensing statutes.

A previous Arizona Attorney General Opinion addressed a similar question with respect to whether engineers who investigate the origin of fires involving electrical apparatuses and then testify at trial as expert witnesses must have a private investigator’s license. Ariz. Att’y Gen. Op. No. I91-011. The opinion concluded that interpreting the private investigator licensing statute to include engineers would frustrate the intent of the Legislature, which was to protect the public from unscrupulous private investigators and detectives operating privately. *Id.*; see also *Kennard v.*

*Rosenberg*, 127 Cal. App. 2d 340, 345-46, 273 P.2d 839, 842 (1954) (holding that California's private investigator licensing requirement could not be applied to engineers, because the intent of the law was not to encompass persons employed to gather data in cases requiring the use of technical knowledge). In so concluding, the opinion noted that a literal interpretation of the private investigator licensing statute would produce an absurdity. *Id.* (citing *City of Phoenix v. Superior Court*, 101 Ariz. 265, 267, 419 P.2d 49, 51 (1966) (holding that if literal interpretation produces absurd result, legislation must be construed so that it is a reasonable and workable law)).

That rationale applies here. The Legislature established a photo-enforcement system that ~~does not contemplate requiring vendors to be private investigators. Extending the definition of~~ private investigator pursuant to A.R.S. § 32-2401(16)(b) to apply to a photo-enforcement system vendor under A.R.S. § 41-1722 imposes additional requirements unintended by the Legislature. "If reasonably practical, a statute should be explained in conjunction with other statutes to the end that they may be harmonious and consistent." *State ex rel. Larson v. Farley*, 106 Ariz. 119, 122, 471 P.2d 731, 734 (1970).

Thus, vendors operating photo-enforcement cameras and processing citations pursuant to A.R.S. § 41-1722 need not be licensed as private investigators.

#### Conclusion

A vendor who contracts to provide a state photo-enforcement system, pursuant to A.R.S. § 41-1722, is not required to be licensed as a private investigator.

Terry Goddard  
Attorney General

## **Exhibit B**



## STATE GOVERNMENT Title 41

correctional supervision,  
ers.

afety.

of public safety.

rtment designated by the  
of this chapter.

/ reserve.

red as § 41-1701. Amend-  
1978, Ch. 173, § 10; Law

Laws 1968, Ch. 209, § 1  
by adding the above chapter un-  
cles 1 to 8, inclusive, beginning  
Laws 1968, Ch. 198, § 1,  
for the establishment of the  
it of corrections, also added a  
title 41, beginning with § 41-  
ve chapter relating to public  
numbered as chapter 12, the first  
apter was renumbered as § 41-  
following sections and internal  
renumbered to conform, under  
§ 41-1304.02.

Pursuant to authority of § 41-  
efinitions of "Criminal history  
ation" and "Criminal justice  
placed in alphabetical order un-  
nd 3 and the remaining para-  
ction were renumbered.

see § 28-369.

s  
-808.

icer advisory council. Op.Atty.  
8.

of funding does not affect the  
tatus of an otherwise duly ap-  
ll time deputy sheriff. Op.Atty.

ampus security officers, liquo-  
, and motor vehicle division  
te "peace officers" just as do

## PUBLIC SAFETY DEPARTMENT Ch. 12

highway patrol officers, narcotics agents, and  
town and city policemen, and state law enforce-  
ment advisory council has authority to prescribe  
reasonable minimum qualifications for such of-  
ficers. Op.Atty.Gen. No. 69-17.

### 2. Accident reports

Accident reports of Arizona department of  
public safety are public records and should not  
include arrest information, since disclosure of  
criminal history record information would be a

violation of § 41-1750 relating to criminal iden-  
tification. Op.Atty.Gen. No. 181-088.

### 3. Criminal justice agency

Bingo Section of the Arizona Department of  
Revenue is a criminal justice agency. Op.Atty.  
Gen. No. 186-079.

Public defender's office or private law firm  
performing contract defense work are not  
"criminal justice agencies" authorized to re-  
ceive criminal history record information under  
A.R.S. § 41-1701(3). Op.Atty.Gen. No. 185-  
116.

## ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY

### § 41-1711. Department of public safety; purpose; location; qualifications of director; responsibilities

A. There shall be a department of public safety which is responsible for  
creating and coordinating services for use by local law enforcement agencies in  
protecting the public safety. The principal office and headquarters of the  
department shall be in Phoenix.

B. The department shall formulate plans with a view to establishing modern  
services for prevention of crime, apprehension of violators, training of law  
enforcement personnel, and the promotion of public safety. The department  
shall in no way preempt the authority and jurisdiction of established agencies  
of political subdivisions of the state.

C. The director shall be selected on the basis of training and experience  
with a minimum of five years' experience in the administration of law enforce-  
ment.

D. The director shall be appointed by the governor pursuant to § 38-211 to  
serve for a term of five years and shall be subject to removal for cause,  
including but not limited to malfeasance, misfeasance and nonfeasance in  
office. The term shall expire on the third Monday in January of the appropri-  
ate year. The director shall receive annual compensation as determined  
pursuant to § 38-611.

E. The director shall be directly responsible to the governor for the conduct  
and the administration of the department. If the director is unable to act, the  
deputy director shall direct the activities of the department during the period in  
which the director is unable to act. If the director and deputy director are  
unable to act, the governor shall direct the activities of the department during  
the period in which the director and deputy director are unable to act.

F. The director shall prescribe procedures for use of department personnel,  
facilities, equipment, supplies and other resources in assisting search or rescue  
operations.

G. The director shall be responsible for the establishment, operation and  
maintenance of the statewide emergency medical services communication  
system prescribed by § 41-1835.

**§ 41-1711****STATE GOVERNMENT****Title 41**

**H.** The director may purchase, lease, equip, staff and operate air ambulances, including ambulance helicopters, pursuant to § 41-1834.

**I.** To limit the expenditures of monies derived from the state highway fund established pursuant to article IX, § 14, Constitution of Arizona, to traffic safety and traffic law enforcement purposes, the department of public safety shall:

1. Maintain a strict account of all costs incurred by each function of the department. Such costs shall be determined and allocated between traffic safety or traffic law enforcement functions and all other departmental functions and shall include such costs as wages or salaries, materials or supplies and equipment or facility use.

2. Immediately following the determination of all such costs certify to the office of strategic planning and budgeting the full amount of all such costs relating to the various functions within the department.

**J.** The office of strategic planning and budgeting shall annually submit a separate report to the legislature compiled from the department's functional costs certification indicating the complete breakdown between those costs which are related to traffic safety or traffic law enforcement functions and the various other functions within the department. The director of the department of administration shall include within the director's annual report to the legislature a recommendation for a separate appropriation to reimburse the state highway fund from the state general fund for any expenditures from the state highway fund during the prior fiscal year in excess of the total of all costs related to traffic safety or traffic law enforcement functions of the department.

**K.** The director shall establish a special hazardous materials emergency response organizational unit within the department to function as the initial response element of the hazardous materials emergency management program pursuant to § 26-305.02.

**L.** The department is designated as this state's recipient of federal victims of crime act grants.

Added as § 41-1611 by Laws 1968, Ch. 209, § 1, eff. July 1, 1969. Renumbered as § 41-1711. Amended by Laws 1970, Ch. 204, § 176; Laws 1971, Ch. 51, § 11, eff. April 12, 1971; Laws 1972, Ch. 163, § 50; Laws 1972, Ch. 189, § 3, eff. May 22, 1972; Laws 1980, Ch. 137, § 1, eff. April 22, 1980; Laws 1984, Ch. 61, § 47, eff. April 6, 1984; Laws 1986, Ch. 340, § 6; Laws 1995, Ch. 240, § 21; Laws 2000, Ch. 193, § 455; Laws 2000, Ch. 362, § 3.

**Historical and Statutory Notes****Reviser's Notes:**

Prior to the 1980 amendment, this section contained the amendments made by Laws 1972, Ch. 163, § 50 and Ch. 189, § 3, which were blended pursuant to § 41-1304.03.

In the section heading, "responsibility" was changed to "responsibilities" and "; coopera-

tion with state departments" was deleted pursuant to § 41-1304.02.

**2000 Note.** This section contains the amendments made by Laws 2000, Ch. 193, sec. 455 and Ch. 362, sec. 3 that were blended together as shown above pursuant to authority of § 41-1304.03.

**Cross References**

Administration of public safety personnel retirement system, see § 38-847.

**PUBLIC SAFETY DEPT  
Ch. 12**

Payment of agency accounts, s

Search or rescue operations, s

Criminal Law ⇨ 1222.1, 12;  
States ⇨ 45 to 47, 51, 67, 8;  
Westlaw Topic Nos. 110, 36

Merit system 3  
Qualifications 1  
Searches and rescues 2  
Term of office 4

**1. Qualifications**

The director of the department is a public officer and the requirements of Const. Art. that he be a qualified voter i for appointment. Op.Atty.Gen

**2. Searches and rescues**

Laws 1971, Ch. 51, does not department, as result of its search and rescue missions, funds in violation of Const. A as monies are available in general highway fund at time incurred against highway fund. 71-37.

**§ 41-1712. Organiz****A. The department s**

1. Arizona highway
2. Narcotics enforce
3. Scientific crimina
4. Training and edu

**B.** The department various places in the st personnel and equipme the headquarters and st

**C.** The director may consolidate the departm

Added as § 41-1612 by 1 § 41-1712. Amended by

## § 41-1701

Section  
ARTICLE 8.1. PEACE OFFICERS  
MEMORIAL

41-1829. Arizona peace officers memorial  
board.

Section  
41-1829.01. Arizona peace officers memorial  
board; duties.

ARTICLE 12. ARIZONA PUBLIC SAFETY  
COMMUNICATIONS COMMISSION  
(RENUMBERED)

41-1830.41 to 41-1830.42. Renumbered.

## ARTICLE 1. DEFINITIONS

## § 41-1701. Definitions

## Administrative Code References

Temporary license, see A.A.C. R4-19-304.

## Research References

## Treatises and Practice Aids

11 Arizona Practice A.R.S. § 1-215, Definitions.

## ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY

## § 41-1711. Department of public safety; purpose; location; qualifications of director; responsibilities

## Historical and Statutory Notes

Laws 2010, Ch. 74, § 1, provides:

"Section 1. Immigration; seismic sensors; grants; pilot program; report; delayed repeal

"A. The department of public safety shall seek grants to implement a one-year pilot program that would use seismic sensors to monitor rural airport runways and other rural areas of this state where illegal drug traffic and illegal alien traffic or human smuggling are likely to occur.

"B. If the grant allows for reimbursement of application expenses, the department shall include on the grant application a request for a reimbursement of all costs related to the application process.

"C. On or before July 1, 2012, the department of public safety shall submit a report

regarding the effectiveness of the pilot program to the governor, the speaker of the house of representatives and the president of the senate and shall provide a copy of this report to the secretary of state.

"D. This section is repealed from and after December 31, 2012."

## Executive Orders:

Executive Order No. 05-06, dated February 23, 2005, established an AzGU Governing Board.

Executive Order No. 05-22, dated August 5, 2005, established the Governor's Executive Oversight Committee of the Arizona Counter-Terrorism Information Center and Reporting Channels.

## Notes of Decisions

from the state DNA database was a department of the state, rather than a nonparty to the proceedings that was not required to appeal the expungement order and could move for corrected sentence at any time. *State v. Bryant* (App. Div.2 2008) 219 Ariz. 514, 200 P.3d 1011. Criminal Law ¶ 1226(6)

## Correction of sentence

## 5. Correction of sentence

Department of Public Safety (DPS), which moved for correction of erroneous sentence that expunged the defendant's DNA profile

190

## STATE GOVERNMENT

## § 41-1713

## § 41-1713. Powers and duties of director; authentication of records

A. The director of the department shall:

1. Be the administrative head of the department.

2. Subject to the merit system rules, appoint, suspend, demote, promote or dismiss all other classified employees of the department upon the recommendation of their respective division superintendent. The director shall determine and furnish the law enforcement merit system council established by § 41-1830.11 with a table of organization. The superintendent of each division shall serve at the concurrent pleasure of the director and the governor.

3. Make rules necessary for the operation of the department.

4. Annually submit a report of the work of the department to the governor and the legislature, or more often if requested by the governor or the legislature.

5. Appoint a deputy director with the approval of the governor.

6. Adopt an official seal that contains the words "department of public safety" encircling the seal of this state as part of its design.

7. Investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a license or registration certificate issued pursuant to title 32, chapter 26.<sup>1</sup>

8. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

9. Adopt and administer the breath, blood or other bodily substances test rules pursuant to title 28, chapter 4.<sup>2</sup>

10. Develop procedures to exchange information with the department of transportation for any purpose related to §§ 28-1324, 28-1325, 28-1326, 28-1462 and 28-3318.

11. Collaborate with the state forester in presentations to legislative committees on issues associated with wildfire prevention, suppression and emergency management as provided by § 37-622, subsection B.

B. The director may:

1. Issue commissions to officers of the department.

2. Request the cooperation of the utilities, communication media and public and private agencies and any sheriff or other peace officer in any county or municipality, within the limits of their respective jurisdictions when necessary, to aid and assist in the performance of any duty imposed by this chapter.

3. Cooperate with any public or private agency or person to receive or give necessary assistance and may contract for such assistance subject to legislative appropriation controls.

4. Utilize the advice of the board and cooperate with sheriffs, local police and peace officers within the state for the prevention and discovery of crimes, the apprehension of criminals and the promotion of public safety.

191



**§ 41-1713****STATE GOVERNMENT**

5. Acquire in the name of the state, either in fee or lesser estate or interest, all real or any personal property that the director considers necessary for the department's use, by purchase, donation, dedication, exchange or other lawful means. All acquisitions of personal property pursuant to this paragraph shall be made as prescribed in chapter 23 of this title<sup>3</sup> unless otherwise provided by law.

6. Dispose of any property, real or personal, or any right, title or interest in the property, when the director determines that the property is no longer needed or necessary for the department's use. Disposition of personal property shall be as prescribed in chapter 23 of this title. The real property shall be sold by public auction or competitive bidding after notice published in a daily newspaper of general circulation, not less than three times, two weeks before the sale and subject to the approval of the director of the department of administration. When real property is sold, it shall not be sold for less than the appraised value as established by a competent real estate appraiser. Any monies derived from the disposal of real or personal property shall be deposited, pursuant to §§ 35-146 and 35-147, in the Arizona highway patrol fund as authorized by § 41-1752, subsection B, paragraph 6.

7. Sell, lend or lease personal property directly to any state, county or local law enforcement agency. Personal property may be sold or leased at a predetermined price without competitive bidding. Any state, county or local law enforcement agency receiving personal property may not resell or lease the property to any person or organization except for educational purposes.

8. Dispose of surplus property by transferring the property to the department of administration for disposition to another state budget unit or political subdivision if the state budget unit or political subdivision is not a law enforcement agency.

9. Lease or rent personal property directly to any state law enforcement officer for the purpose of traffic safety, traffic control or other law enforcement related activity.

10. Sell for one dollar, without public bidding, the department issued handgun or shotgun to a department officer on duty related retirement pursuant to title 38, chapter 5, article 4.<sup>4</sup> Any monies derived from the sale of the handgun or shotgun to the retiring department officer shall be deposited, pursuant to §§ 35-146 and 35-147, in the Arizona highway patrol fund as authorized by § 41-1752, subsection B, paragraph 6.

11. Conduct state criminal history records checks for the purpose of updating and verifying the status of current licensees or registrants who have a license or certificate issued pursuant to title 32, chapter 26. The director shall investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a registration certificate issued pursuant to title 32, chapter 26.

12. Grant a maximum of two thousand eighty hours of industrial injury leave to any sworn department employee who is injured in the course of the employee's duty, any civilian department employee who is injured in the course of performing or assisting in law enforcement or hazardous duties or any civilian department employee who was injured as a sworn department employee rehired after August 9, 2001 and would have been eligible pursuant to this paragraph and whose work-related injury prevents the employee from performing the normal duties of that employee's classification. This industrial injury leave is in addition to any vacation or sick leave earned or granted to the employee and does not affect the employee's eligibility for any other benefits, including workers' compensation. The employee is not eligible for payment pursuant to § 38-615 of industrial injury leave that is granted pursuant to this paragraph. Subject to approval by the law enforcement merit system

**STATE GOVERNMENT****§ 41-1720**

council, the director shall adopt rules and procedures regarding industrial injury leave hours granted pursuant to this paragraph.

13. Sell at current replacement cost, without public bidding, the department issued badge of authority to an officer of the department upon the officer's promotion or separation from the department. Any monies derived from the sale of the badge to an officer shall be deposited, pursuant to §§ 35-146 and 35-147, in the department of public safety administration fund to offset replacement costs.

C. The director and any employees of the department that the director designates in writing may use the seal adopted pursuant to subsection A, paragraph 6 of this section to fully authenticate any department records and copies of these records. These authenticated records or authenticated copies of records shall be judicially noticed and shall be received in evidence by the courts of this state without any further proof of their authenticity.

Added as § 41-1618 by Laws 1968, Ch. 209, § 1, eff. July 1, 1969. Renumbered as § 41-1713. Amended by Laws 1971, Ch. 55, § 1; Laws 1974, Ch. 136, § 45; Laws 1978, Ch. 144, § 1; Laws 1980, Ch. 114, § 1; Laws 1980, Ch. 137, § 2, eff. April 22, 1980; Laws 1984, Ch. 61, § 48, eff. April 6, 1984; Laws 1984, Ch. 251, § 36, eff. Jan. 1, 1985; Laws 1985, Ch. 117, § 1; Laws 1989, Ch. 160, § 1; Laws 1989, Ch. 283, § 16; Laws 1994, Ch. 324, § 2; Laws 1997, Ch. 1, § 443, eff. Oct. 1, 1997; Laws 2000, Ch. 230, § 19; Laws 2000, Ch. 251, § 21, eff. Sept. 1, 2000; Laws 2000, Ch. 284, § 2; Laws 2001, Ch. 212, § 1; Laws 2001, Ch. 231, § 9; Laws 2003, Ch. 112, § 14; Laws 2003, Ch. 213, § 9; Laws 2003, Ch. 245, § 5; Laws 2006, Ch. 268, § 1; Laws 2007, Ch. 63, § 1; Laws 2007, Ch. 294, § 1.

<sup>1</sup> Section 32-2601 et seq.

<sup>2</sup> Section 28-1301 et seq.

<sup>3</sup> Section 41-2501 et seq.

<sup>4</sup> Section 38-841 et seq.

**Historical and Statutory Notes****Reviser's Notes:**

2007 Note. This section contains the 1 and Ch. 294, sec. 1 that were blended amendments made by Laws 2007, Ch. 63, sec. § 41-1304.03.

**§ 41-1719. Sex offender community notification coordinator; duties****Law Review and Journal Commentaries**

Considerations for experts in assessing the sexual abuse, 12 Psychol. Pub. Pol'y & L. 419  
credibility of recovered memories of child (2006).

**§ 41-1720. Parity compensation fund; exemption**

A. The parity compensation fund is established consisting of monies deposited pursuant to § 28-5808 and monies appropriated by the legislature. The department shall administer the fund and, considering state revenues and state employee pay adjustments, shall spend monies from the fund for salaries and benefits for law enforcement personnel.

B. On notice from the department, the state treasurer shall invest and divest monies in the fund as provided by § 35-313, and monies earned from investment shall be credited to the fund.

**C. Fund monies:**

1. Do not revert to the state general fund.
2. Are exempt from the provisions of § 35-190 relating to lapsing of appropriations.

**§ 41-1720**

3. Are subject to legislative appropriation.

Added by Laws 2005, Ch. 306, § 2, eff. Aug. 12, 2006, retroactively effective to July 1, 2005.

**STATE GOVERNMENT****Historical and Statutory Notes**

Laws 2005, Ch. 306, § 3 provides:

"This act is effective retroactively to from and after June 30, 2005."

**§ 41-1721. Families of fallen police officers special plate fund**

The families of fallen police officers special plate fund is established consisting of monies received pursuant to § 28-2427. The department of public safety shall administer the fund. The first thirty-two thousand dollars received shall be reimbursed to the entity that paid the implementation fee to the department of transportation pursuant to § 28-2427, subsection A. Not more than ten per cent of monies deposited in the fund annually shall be used for the cost of administering the fund. Monies in the fund are continuously appropriated. The department of public safety shall allocate monies from the fund to the incorporated nonprofit corporation in this state that paid the implementation fee to the department of transportation pursuant to § 28-2427, subsection A and is qualified under section 501(c)(3) of the United States internal revenue code<sup>1</sup> for federal income tax purposes if the nonprofit corporation demonstrates a commitment to helping in the healing of family survivors of police officers who died in the line of duty in this state, provides training to law enforcement agencies on survivor victimization issues and educates the public about the need to support the law enforcement profession and families of fallen police officers.

Added by Laws 2006, Ch. 290, § 8. Amended by Laws 2010, Ch. 145, § 1.

<sup>1</sup> Internal Revenue Code sections may be found in Title 26 of U.S.C.A.

**Historical and Statutory Notes**

The 2010 amendment by Ch. 145 rewrote the section, which had read:

"The families of fallen police officers special plate fund is established consisting of monies received pursuant to § 28-2427. The department shall administer the fund. The first thirty-two thousand dollars received shall be reimbursed to the entity that paid the implementation fee to the department pursuant to § 28-2427, subsection A. Not more than ten per cent of monies deposited in the fund annually shall be used for the cost of administering the fund. Monies in

the fund are continuously appropriated. The department shall allocate monies from the fund to an incorporated nonprofit corporation in this state that is qualified under § 501(c)(3) of the United States internal revenue code for federal income tax purposes if the nonprofit corporation demonstrates a commitment to helping in the healing of family survivors of police officers who died in the line of duty in this state."

Former § 41-1721 was renumbered as § 41-1821.

**§ 41-1722. State photo enforcement system; fund**

A. Notwithstanding any other law, the department may enter into a contract or contracts with a private vendor or vendors pursuant to chapter 23 of this title<sup>1</sup> to establish a state photo enforcement system consisting of cameras placed throughout this state as determined by the director to enforce the provisions of title 28, chapter 3, articles 3 and 6<sup>2</sup> relating to vehicle traffic and speed.

B. The photo enforcement fund is established consisting of monies received from uniform traffic tickets and complaints filed or notices of violation issued pursuant to this section. The director shall administer the fund. Monies in the fund are subject to legislative appropriation and are appropriated to the department for administrative

194

**STATE GOVERNMENT****§ 41-1722**

tive and personnel costs of the state photo enforcement system. Monies remaining in the fund in excess of two hundred fifty thousand dollars at the end of each calendar quarter shall be deposited, pursuant to §§ 35-146 and 35-147, in the state general fund.

Added by Laws 2008, Ch. 286, § 23, eff. Sept. 26, 2008, retroactively effective to July 1, 2008. Amended by Laws 2009, Ch. 187, § 57; Laws 2009, 3rd S.S., Ch. 6, § 18; Laws 2010, Ch. 286, § 8.

<sup>1</sup> Section 41-2501 et seq.

<sup>2</sup> Sections 28-641 et seq. and 28-701 et seq.

**Historical and Statutory Notes**

Laws 2008, Ch. 286, § 37, provides:

"Sec. 37. Retroactivity

"Section 28-1593, Arizona Revised Statutes, as amended by this act, and § 41-1722, Arizona Revised Statutes, as added by this act, are effective retroactively to July 1, 2008."

The 2009 amendment by 3rd S.S. Ch. 6 deleted the second sentence of subsec. B, which had read: "State photo enforcement citations shall not be included in judicial productivity credit calculations for fiscal year 2008-2009."

Laws 2009, 3rd S.S. Ch. 6, § 31, which related to the judicial productivity credit and photo enforcement citations, was repealed by Laws 2010, Ch. 286, § 9 effective July 28, 2010, retroactively effective to July 1, 2009.

Laws 2009, 3rd S.S. Ch. 6, § 39, provides:

"Sec. 39. Conforming legislation

"The legislative council staff shall prepare proposed legislation conforming the Arizona Revised Statutes to the provisions of this act for consideration in the forty-ninth legislature, second regular session."

Laws 2010, 7th S.S., Ch. 6, § 31, provides:

"Sec. 31. Judicial productivity credit;

photo enforcement citations; retroactivity

"A. In fiscal year 2010-2011, state photo

enforcement citations issued pursuant to sec-

tion 41-1722, Arizona Revised Statutes, shall

not be included in judicial productivity credit

calculations.

"B. This section is effective retroactively

to from and after June 30, 2010."

The 2010 amendment by Ch. 286 rewrote

the section, which had read:

"A. Notwithstanding any other law, the

department shall enter into a contract or

contracts with a private vendor or vendors

pursuant to chapter 23 of this title to estab-

lish a state photo enforcement system con-

sisting of cameras placed throughout this

state as determined by the director to en-

force the provisions of title 28, chapter 3, articles 3 and 6 relating to vehicle traffic and speed.

"B. Notwithstanding any other law, the civil penalty or fine for a citation or a notice of violation issued pursuant to this section is one hundred sixty-five dollars and is not subject to any surcharge except the surcharge imposed by § 16-954.

"C. The photo enforcement fund is established consisting of monies received from citations or notices of violation issued pursuant to this section. The director shall administer the fund. Monies in the fund are subject to legislative appropriation and are appropriated to the department for administrative and personnel costs of the state photo enforcement system. Monies remaining in the fund in excess of two hundred fifty thousand dollars at the end of each calendar quarter shall be deposited, pursuant to §§ 35-146 and 35-147, in the state general fund.

"D. Notwithstanding any other law, if a person is found responsible for a civil traffic violation or a notice of violation pursuant to a citation issued pursuant to this section, the department of transportation shall not consider the violation for the purpose of determining whether the person's driver license should be suspended or revoked. A court shall only transmit abstracts of records of these violations to the department of transportation for commercial driver license holders."

Laws 2010, Ch. 286, § 10, provides:

"Sec. 10. Photo enforcement citations; judicial productivity credits; retroactivity

"A. From and after June 30, 2009 until the effective date of this act, state photo enforcement citations issued pursuant to section 41-1722, Arizona Revised Statutes, shall only be included in judicial productivity credit calculations if the filing results in an adjudication, except if the citation is dismissed due to lack of service.

195

## § 28-1601

## TRANSPORTATION

this section or refuse to renew the person's vehicle registration pursuant to article 5 of this chapter.

Added as § 28-3801 by Laws 1995, Ch. 132, § 3, eff. Oct. 1, 1997. Renumbered as § 28-1601 and amended by Laws 1996, Ch. 76, §§ 6, 47, eff. Oct. 1, 1997. Amended by Laws 1997, Ch. 1, § 119, eff. Oct. 1, 1997; Laws 1998, Ch. 302, § 32, eff. Dec. 1, 1998; Laws 1999, Ch. 100, § 1; Laws 2007, Ch. 185, § 1.

<sup>1</sup> Section 28-1630 et seq.

## Historical and Statutory Notes

The 2007 amendment by Ch. 185 inserted sec. F, substituted reference to "subsection E new subsecs. C, D and G, and redesignated of this section" for reference to "subsection C existing subsecs. C and D as E and F, accordingly; and, in the newly designated subsection of the section.

## Cross References

School crossing violations, civil penalties and additional assessments, see § 28-797.

## Research References

Treatises and Practice Aids

5 Arizona Practice § 10:3, Civil Traffic Rules.

## Notes of Decisions

Construction with federal law 2

merous traffic citations he received which eventually resulted in suspension of his driver's license; plaintiff could have appealed to county court the city court's final order or judgment in his civil traffic case concerning various traffic violations, but did not, and plaintiff could have raised in state court his constitutional challenge to Arizona statute providing for suspension of driver's license for failure to pay civil fines. *Normandeau v. City of Phoenix*, D.Ariz.2005, 516 F.Supp.2d 1054. Courts ⇌ 509

2. Construction with federal law

Pursuant to the *Rooter-Feldman* doctrine, federal district court lacked jurisdiction to review plaintiff's §§ 1983 claims against city, law firm, and director of Motor Vehicle Division of the Arizona Department of Transportation (MVD), alleging violations of his constitutional rights arising from numerous traffic citations he received which eventually resulted in suspension of his driver's license; plaintiff could have appealed to county court the city court's final order or judgment in his civil traffic case concerning various traffic violations, but did not, and plaintiff could have raised in state court his constitutional challenge to Arizona statute providing for suspension of driver's license for failure to pay civil fines. *Normandeau v. City of Phoenix*, D.Ariz.2005, 516 F.Supp.2d 1054. Courts ⇌ 509

## § 28-1602. Photo enforcement; notice of violation; complaint; penalties; definition

A. A notice of violation for a civil traffic violation detected by the state photo enforcement system may be issued before a uniform traffic ticket and complaint is filed in court.

B. The civil penalty or fine for a uniform traffic ticket and complaint filed or a notice of violation issued as a result of the state photo enforcement system is one hundred sixty-five dollars and is not subject to any surcharge except the surcharge imposed by § 16-954. The civil penalties and fines shall be deposited, pursuant to §§ 35-146 and 35-147, in the photo enforcement fund established by § 41-1722. A county board of supervisors may establish a processing fee to cover the cost of processing a photo enforcement complaint. The processing fee is not subject to any surcharge.

C. For the purposes of this section, "state photo enforcement system" means the state photo enforcement system established pursuant to § 41-1722.

Added by Laws 2010, Ch. 266, § 6.

182

## TRANSPORTATION

## § 28-1632

## ARTICLE 5. TRAFFIC TICKET ENFORCEMENT ASSISTANCE PROGRAM

## § 28-1630. Definitions

For the purposes of this article, unless the context otherwise requires:

1. "Monetary obligations" includes fines, fees, penalties, court costs, surcharges, restitution, assessments and penalty enhancements.

2. "Restitution" means restitution ordered pursuant to § 13-603, subsection C. Restitution does not include an amount ordered pursuant to § 13-804, subsection F. Added by Laws 2006, Ch. 296, § 1.

## § 28-1631. Traffic ticket enforcement assistance program; establishment

A. The department shall establish procedures to:

1. Assist the courts and political subdivisions of this state to collect delinquent monetary obligations imposed for violations of title 5, chapter 3<sup>1</sup> and for civil and criminal traffic violations.

2. Assist in the enforcement of criminal traffic failure to appear offenses.

B. The program established by this article shall not include collection of delinquent parking tickets.

Added as § 28-3831 by Laws 1995, Ch. 132, § 3, eff. Oct. 1, 1997. Renumbered as § 28-1631 by Laws 1996, Ch. 76, § 6, eff. Oct. 1, 1997. Amended by Laws 1997, Ch. 1, § 120, eff. Oct. 1, 1997; Laws 2006, Ch. 296, § 2.

<sup>1</sup> Section 5-301 et seq.

## § 28-1632. Refusal to renew registration; fees

A. On proper notification by a court or political subdivision pursuant to § 28-1633, the department shall refuse to renew the registration of a vehicle if either:

1. A registered owner of a vehicle is delinquent in paying a monetary obligation for a violation of title 5, chapter 3<sup>1</sup> or for a civil or criminal traffic violation.

2. A registered owner fails to appear in a criminal traffic case.

B. The court or political subdivision shall make at least two attempts to collect the monies owed by an individual or organization before notifying the department to send notice by first class mail to all registered owners of the vehicle listed on the department's records that the court or political subdivision is notifying the department to refuse to renew the vehicle registration due to a registered owner's delinquency in paying a monetary fine or failure to appear pursuant to subsection A of this section.

C. The department may charge a court or political subdivision that chooses to participate in this program a fee that is payable to the department by the court or political subdivision to cover the costs of processing the documents to notify all registered owners that the vehicle registration will not be renewed. The department shall deposit, pursuant to §§ 35-146 and 35-147, these fees in the state highway fund established by § 28-6991.

D. The fees charged by the department to the courts or political subdivisions of this state for processing the documents to notify the registered owner that it is not renewing a person's vehicle registration shall be paid at the same time as the registered owner's outstanding fine or penalty or as part of the penalty for the failure to appear offense for which the vehicle registration was not renewed.

183

# Exhibit C



## § 28-331

## TRANSPORTATION

Title 28

## Library References

States 45.  
Westlaw Topic No. 360.  
C.J.S. States §§ 79, 82, 136.

## § 28-332. Department of transportation jurisdiction; duties; divisions

A. The exclusive control and jurisdiction over state highways, state routes, state owned airports and all state owned transportation systems or modes are vested in the department of transportation.

B. The department shall:

1. Register motor vehicles and aircraft, license drivers, collect revenues, enforce motor vehicle and aviation statutes and perform related functions.
2. Do multi-modal state transportation planning, cooperate and coordinate transportation planning with local governments and establish an annually updated priority program of capital improvements for all transportation modes.
3. Design and construct transportation facilities in accordance with a priority plan and maintain and operate state highways, state owned airports and state public transportation systems.
4. Investigate new transportation systems and cooperate with and advise local governments concerning the development and operation of public transit systems.
5. Have administrative jurisdiction of transportation safety programs and implement them in accordance with applicable law.

C. In order to carry out the responsibilities enumerated in subsection B, the department is organized into the following divisions:

1. Motor vehicle.
2. Transportation planning.
3. Highways.
4. Aeronautics.
5. Public transit.
6. Administrative services.

Added by Laws 1995, Ch. 132, § 3, eff. Oct. 1, 1997.

## Historical and Statutory Notes

## Source:

Laws 1927, 4th S.S., Ch. 2, Subch. 2, §§ 1 to 3; 5 to 8.  
Rev.Code 1928, §§ 1557, 1559.  
Laws 1939, Ch. 18, §§ 1, 3.  
Laws 1945, Ch. 32, § 1.  
Laws 1951, Ch. 120, § 1.  
Code 1939, Supp.1952, §§ 59-101, 59-103.  
A.R.S. former § 18-102.  
Laws 1956, Ch. 127, § 1.  
Laws 1970, Ch. 204, § 40.

Laws 1972, Ch. 163, § 15.  
A.R.S. former § 28-104.  
Laws 1973, Ch. 146, § 9.  
Laws 1974, Ch. 141, § 3.  
Laws 1998, Ch. 263, §§ 12 and 13, provide:  
"Sec. 12. Purpose  
"The purposes of the department of transportation include:

- "1. Designing, constructing and maintaining the highway system for the entire state.

DEPARTMENT OF TRANSPORTATION  
Ch. 2

"2. Providing for orderly titling of vehicles and licensing drivers.

"3. Assisting and promoting industry in this state.

"4. Providing for orderly licensure of general aviation.

## "Sec. 13. Purpose

"The purpose of the motor vehicle division of the department of transportation is to license vehicles, license drivers, enforce motor vehicle statutes and perform related functions."

Laws 2000, Ch. 343, § 1, provide:

## "Sec. 69. Purpose

"Pursuant to § 41-297, Arizona Revised Statutes, the motor vehicle division of the department of transportation shall register motor vehicles, collect revenues, enforce motor vehicle statutes and perform related functions."

## "Sec. 70. Reports on

"A. The department of transportation shall cooperate from the deputy and the Arizona department of transportation shall submit a progress report to the joint legislative budget committee of the governor's office and the committee of representatives and the committee of senators and the committee of representatives and the committee of senators, on or before the report shall include:

"1. The specific acts that have been taken to operate effectively at ports of entry, appropriate, cost-effective operations and customs operations to enhance the operations and customs operations.

"2. The actions that have been taken to further practical cross-training of employees and using interagency agreements and efficient cooperation among the agencies.

"3. Copies of the reports among the agencies.

"4. A demonstration of cross-training of employees, costs and the use of interagency agreements at the ports of entry.

States 67.  
Westlaw Topic No. 121  
C.J.S. States §§ 121

**§ 28-361****TRANSPORTATION  
Title 28****ARTICLE 3. DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION****§ 28-361. Director; appointment; compensation**

A. The governor shall appoint the director pursuant to § 38-211 from a list of qualified candidates submitted by the transportation board. The director serves at the pleasure of the governor.

B. The department of administration in consultation with the governor's office shall prepare a job description for the position of director and shall recruit candidates for the position. The board shall receive and review applications for the position of director and shall forward the names of all qualified applicants to the governor. The governor may ask for additional names and recommendations at any time.

C. The director is eligible to receive compensation pursuant to § 38-611.  
Added by Laws 1995, Ch. 132, § 3, eff. Oct. 1, 1997.

**Historical and Statutory Notes****Source:**

A.R.S. former § 28-107.  
Laws 1973, Ch. 146, § 9.

**Library References**

States 68.  
Westlaw Topic No. 360.  
C.J.S. States §§ 130 to 135, 139.

**§ 28-362. Deputy director of the department**

The director may appoint a deputy director of the department with the approval of the governor. The deputy director serves at the pleasure of the director. The deputy director is directly responsible for the duties delegated to the deputy director by the director.

Added by Laws 1995, Ch. 132, § 3, eff. Oct. 1, 1997.

**Historical and Statutory Notes****Source:**

A.R.S. former § 28-107.  
Laws 1973, Ch. 146, § 9.

**Library References**

States 50.  
Westlaw Topic No. 360.  
C.J.S. States §§ 85, 123.

**§ 28-363. Duties of the director; administration**

A. The director shall:

1. Supervise and administer the overall activities of the department and its divisions and employees.

**DIRECTOR OF DEP.  
Ch. 2**

2. Appoint assistant

3. Provide for the concerning department

4. Delegate functions carry out the efficient

5. Exercise complete use of state highway

6. Coordinate the controlled access highway related grade separation

7. Coordinate the reduced clearance grade and highways under

8. Assist regional tribal governments, regional and local transportation other regionally significant integrated and efficient

9. On or before the first house of representatives expenditures of more than the previous fiscal year of controlled access system as state road controlled access highway plans of the counties

10. Designate the laws the director administers

11. Exercise other out the efficient operation

12. Cooperate with and with research projects in the Unit the department's development in the commission to assess and of the Arizona-

13. Develop a poor visibility in the

B. The assistant from the state personnel

C. The director any policies or procedures

**TRANSPORTATION**  
Title 28

**TRANSPORTATION**

o § 38-211 from a list  
board. The director

1 with the governor's  
of director and shall  
ve and review applica-  
names of all qualified  
additional names and

suant to § 38-611.

department with the  
at the pleasure of the  
he duties delegated to

**DIRECTOR OF DEPARTMENT**  
Ch. 2

§ 28-363

2. Appoint assistant directors for each of the divisions.
  3. Provide for the assembly and distribution of information to the public concerning department activities.
  4. Delegate functions, duties or powers as the director deems necessary to carry out the efficient operation of the department.
  5. Exercise complete and exclusive operational control and jurisdiction over the use of state highways and routes.
  6. Coordinate the design, right-of-way purchase and construction of controlled access highways that are either state routes or state highways and related grade separations of controlled access highways.
  7. Coordinate the design, right-of-way purchase, construction, standard and reduced clearance grade separation, extension and widening of arterial streets and highways under chapters 17 and 18 of this title.<sup>1</sup>
  8. Assist regional transportation planning agencies, councils of government, tribal governments, counties, cities and towns in the development of their regional and local transportation plans to ensure that the streets, highways and other regionally significant modes of transportation within each county form an integrated and efficient regional system.
  9. On or before December 1, present an annual report to the speaker of the house of representatives and the president of the senate documenting the expenditures of monies under chapters 17 and 18 of this title during the previous fiscal year relating to the design, right-of-way purchase or construction of controlled access highways that are accepted in the state highway system as state routes or state highways or related grade separations of controlled access highways that are included in the regional transportation plans of the counties.
  10. Designate the necessary agencies for enforcing the provisions of the laws the director administers or enforces.
  11. Exercise other duties or powers as the director deems necessary to carry out the efficient operation of the department.
  12. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
  13. Develop a plan to increase use of bypass routes by vehicles on days of poor visibility in the Phoenix metropolitan area.
- B. The assistant directors appointed pursuant to subsection A are exempt from the state personnel system.
- C. The director shall not spend any monies, adopt any rules or implement any policies or programs to convert signs to the metric system or to require the

**§ 28-363****TRANSPORTATION**  
Title 28

use of the metric system with respect to designing or preparing plans, specifications, estimates or other documents for any highway project before the conversion or use is required by federal law, except that the director may:

1. Spend monies and require the use of the metric system with respect to designing or preparing plans, specifications, estimates or other documents for a highway project that is awarded before October 1, 1997 and that is exclusively metric from its inception.

2. Prepare for conversion to and use of the metric system not more than six months before the conversion or use is required by federal law.

Added by Laws 1995, Ch. 132, § 3, eff. Oct. 1, 1997. Amended by Laws 1997, Ch. 49, § 2, eff. Oct. 1, 1997; Laws 1997, Ch. 74, § 2, eff. Oct. 1, 1997; Laws 2001, Ch. 231, § 4; Laws 2001, Ch. 371, § 2; Laws 2002, Ch. 342, § 5.

<sup>1</sup> Sections 28-6301 et seq., 28-6501 et seq.

**Historical and Statutory Notes****Source:**

Laws 1927, 4th S.S., Ch. 2, subch. 3, §§ 1 to 4.  
Rev. Code 1928, § 1629.  
Laws 1937, Ch. 67, § 1.  
Code 1939, § 66-201.  
Laws 1955, Ch. 65, § 1.  
A.R.S. former § 28-202.  
Laws 1964, Ch. 14, § 1.  
Laws 1965, Ch. 70, § 2.  
A.R.S. former § 28-108.  
Laws 1973, Ch. 146, § 9.  
Laws 1974, Ch. 108, § 1.  
Laws 1974, Ch. 141, § 5.  
Laws 1976, Ch. 96, § 1.  
Laws 1976, Ch. 137, § 2.  
Laws 1977, Ch. 20, § 5.  
Laws 1980, Ch. 199, § 1.  
Laws 1983, Ch. 10, § 1.  
Laws 1983, Ch. 43, § 1.  
Laws 1984, Ch. 295, § 1.  
Laws 1985, Ch. 62, § 2.  
Laws 1985, Ch. 308, § 9.  
Laws 1986, Ch. 209, § 1.  
Laws 1986, Ch. 275, § 1.  
Laws 1987, Ch. 13, § 1.  
Laws 1989, Ch. 19, § 1.  
Laws 1991, Ch. 91, § 1.  
Laws 1992, Ch. 170, § 1.  
Laws 1992, Ch. 208, § 3.  
Laws 1996, Ch. 16, § 1.

Laws 1996, Ch. 161, § 1.

Laws 1996, Ch. 230, § 1.

Laws 1997, Ch. 49, § 7, provides:

"Sec. 7. Effective date

"Section 2 of this act is effective from and after September 30, 1997."

Laws 1997, Ch. 74, § 3, provides:

"Sec. 3. Conditional enactment

"Because certain sections of this act amend sections of the Arizona Revised Statutes as amended or added by Senate Bill 1009 (title 28 rewrite; conforming legislation), this act is effective from and after September 30, 1997 only if Senate Bill 1009, forty-third legislature, first regular session, relating to transportation, is enacted into law" [S.B. 1009 was enacted as Ch. 1].

**Reviser's Notes:**

**1997 Note.** Prior to the 2001 amendment, this section contained the amendments made by Laws 1997, Ch. 49, sec. 2 and Ch. 74, sec. 2 that were blended together pursuant to authority of § 41-1304.03.

**2001 Note.** Prior to the 2002 amendment, this section contained the amendments made by Laws 2001, Ch. 231, sec. 4 and Ch. 371, sec. 2 that were blended together pursuant to authority of § 41-1304.03.

**Administrative Code References**

Department of transportation, emergency operation provision, see A.A.C. R17-6-112.

**Library References**

States ⇐ 68, 73.  
Westlaw Topic No. 360.  
C.J.S. States §§ 130 to 136, 139 to 140.

**DIRECTOR OF DEPA**  
Ch. 2

Exclusive control and jurisd  
Validity of prior law 1

**1. Validity of prior law**

Former § 28-202 investin  
motor vehicle division of st  
ment with power to make s  
lations within and not inv  
language of the statute as he  
efficiently discharge his dut  
Killingsworth v. West Way  
87 Ariz. 74, 347 P.2d 1098.  
And Procedure ⇐ 386; Aut

**§ 28-364. Powers**

Tex

A. The director m:  
local governments wh  
planning with regio  
transportation planni  
planning authority g  
responsibilities and de

B. If the governor  
and do all things ne  
the residents in the a  
street, rail or air.

C. On a determin:  
authorize payment f  
performed if an exist  
or adjusted due to  
highway. The direct  
of the proposed relo  
and acceptable to th  
actual agreed cost.

D. The director o  
director of the depa  
change information  
28-1462 and 28-331  
Added by Laws 1995, § 1.

For text of seci



**§ 28-336**

attempt by agencies or agents of the United States department of homeland security to secure the implementation of the REAL ID act of 2005 through the operations of the United States department of homeland security.  
Added by Laws 2008, Ch. 272, § 1.

**TRANSPORTATION****§ 28-337. High occupancy vehicle lane; lane degradation; priority use**

A. In accordance with 23 United States Code section 166, the department shall develop procedures to monitor the impact that single occupancy vehicles authorized under §§ 28-2416 and 28-2416.01 have on the operation of the high occupancy vehicle lanes.

B. If a high occupancy vehicle lane becomes degraded due to the authorization of single occupancy vehicles authorized under §§ 28-2416 and 28-2416.01, use of the lane is restricted to the following vehicles in the following priority:

1. Passenger vehicles with two or more occupants, including the driver.
2. Public transit buses.
3. Buses with two or more occupants, including the driver.
4. Motorcycles.
5. Alternative fuel vehicles.
6. Low emission and energy efficient vehicles.

C. The department shall limit use to vehicles in the priority order prescribed in subsection B of this section and shall maintain those restrictions while the lane or portion of the lane remains degraded.

D. For the purposes of this section, a high occupancy vehicle lane is degraded if vehicles operating on the facility, or portions of the facility, are failing to maintain a speed of forty-five miles per hour or greater ninety per cent of the time over a consecutive one hundred eighty day period during morning and evening weekday peak hour periods.

Added by Laws 2009, Ch. 187, § 5.

**Historical and Statutory Notes**

Reviser's Notes:  
2009 Note. Laws 2009, Ch. 143, sec. 1 § 41-1804.02.  
added another § 28-337 that was renumbered as § 28-338.

**§ 28-338. Enhanced driver license prohibition**

This state shall not participate in the implementation of an enhanced driver license program to satisfy the requirements of the federal western hemisphere travel initiative or the real ID act of 2005 (P.L. 109-13, Division B; 119 Stat. 302). The department shall not implement an enhanced driver license program and shall report to the governor and the legislature any attempt by agencies or agents of the United States department of homeland security to secure the implementation of an enhanced driver license program through the operations of the United States department of homeland security.

Added as § 28-337 by Laws 2009, Ch. 143, § 1. Renumbered as § 28-338.

**TRANSPORTATION****§ 28-367****Historical and Statutory Notes**

Reviser's Notes:  
2009 Note. Pursuant to authority of § 28-338.  
§ 41-1304.02, this section, added by Laws

**ARTICLE 3. DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION****§ 28-364. Powers of the director**

A. The director may provide technical transportation planning expertise to local governments when requested, coordinate local government transportation planning with regional and state transportation planning and guide local transportation planning to assure compliance with federal requirements. The planning authority granted by this subsection does not preempt planning responsibilities and decisions of local governments.

B. If the governor declares a state of emergency, the director may contract and do all things necessary to provide emergency transportation services for the residents in the affected areas whether the emergency transportation is by street, rail or air.

C. On a determination that it is in this state's best interest, the director may authorize payment for necessary relocation costs in advance of work being performed if an existing facility owned by the United States must be relocated or adjusted due to construction, modification or improvement of a state highway. The director shall base each advance payment on an estimate of cost of the proposed relocation or adjustment prepared by the federal government and acceptable to the director and shall base the final compensation on the actual agreed cost.

D. The director of the department of transportation in consultation with the director of the department of public safety shall develop procedures to exchange information for any purpose related to sections 28-1324, 28-1325, 28-1326, 28-1462 and 28-3318.

E. The director of the department of transportation in conjunction with the director of the department of weights and measures shall develop procedures to electronically exchange and record information between the departments for enforcement purposes or any other purpose that the directors deem necessary related to the registration and licensing of taxis, livery vehicles or limousines.

Added by Laws 1995, Ch. 132, § 3, eff. Oct. 1, 1997. Amended by Laws 2008, Ch. 213, § 1; Laws 2004, Ch. 323, § 4, eff. Jan. 1, 2005.

**Historical and Statutory Notes**

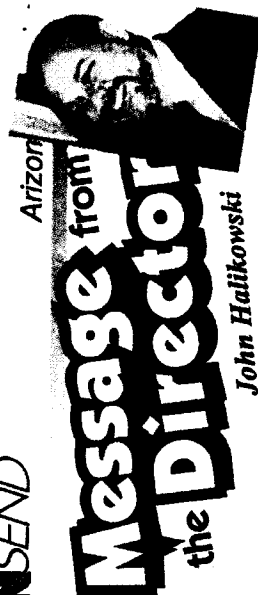
The amendment of this section by Laws 2003, Ch. 168, § 4, which was to become effective January 1, 2005, was repealed by Laws 2004, Ch. 323, § 5, effective January 1, 2005.  
"Sec. 19. Effective date  
"This act is effective from and after December 31, 2004."

The 2004 amendment of this section by Ch. 323, § 4 explicitly amended the amendment of this section by Laws 2003, Ch. 213, § 1.

**§ 28-367. Public transit**

The director shall:

1. Receive, allocate, control and disperse all monies designated for state public transit programs by federal or state law.
2. Pass on projects for construction in cooperation with the United States.



# TRANSEND

TRANSEND is published monthly for the employees and retirees of the Arizona Department of Transportation, by the Creative Services Group of the Communication and Community Partnerships Division.

**John S. Halikowski**  
*ADOT Director*

**Matt Burdick**  
*Communications Director*

**Ronald Loar**  
*Editor*

**John Tucker**  
*Associate Editor*

## Editorial Board

**Lisa Andersen**  
*Intermodal Transportation Division*

**Larry Clark**  
**Cydney Demodica**  
*Motor Vehicle Division*

**Dan Dudzik**  
*Communication & Community Partnerships*

**Teri Kennedy**  
*Multimodal Planning Division*

**Kim Stevens**  
*Aeronautics Division*

**Rob Waddell**  
*Transportation Services Group*

Address comments, suggestions, articles and photo submissions to **TRANSEND** Editors  
1130 N. 22nd Ave., Phoenix, AZ 85009 MD 069R  
or e-mail [Transendeditors@azdot.gov](mailto:Transendeditors@azdot.gov)

*All submissions for publication are subject to editing for spelling, grammar, and technical accuracy; and may be rewritten for clarity, continuity, length and journalistic style.*

We all choose to work at ADOT for various reasons, and while our reasons may differ, we are all connected by a common mission: to provide professional transportation services and safe travel to everyone who lives in or visits Arizona.

Remembering our common bond can be tough because it is so easy to make distinctions and fall into an "us vs. them" mentality. I recall that in my first few days at ADOT, an employee who is no longer with the agency stated that, "Some employees are more important than others." Obviously, this is simply not true.

We all play an important part in delivering ADOT's products, and it is especially critical that we work together to ensure that the agency continues to deliver first class transportation services.

Recent research shows that many of our customers do not know that the Motor Vehicle Division is part of ADOT. Some may say, "Why should I care?" For me the "why" is that we and our customers all have a need for a transportation system. The reasons for those needs may vary, but without roads, revenues, planning, drivers, planes, trains and automobiles – we have no transportation system.

The more the public knows about ADOT and the multitude of services we provide, the more they tend to appreciate the value of the department and to realize our crucial role in getting them home safely every day. That understanding builds credibility and credibility fosters trust. People trust in people or organizations that have high credibility ratings. With trust and credibility comes respect – respect not only for what we do as an agency, but respect for the individuals that make up the agency as a whole.

As employees, we also need to develop a better appreciation of how each employee and each division contribute to making ADOT function as a whole. That appreciation must be based on mutual trust and respect. If we are going to ask the public to invest their hard-earned tax dollars for transportation systems, then the public deserves to know how we collect the money and where it is being spent.

So, why it is important for the public to know that MVD is ADOT? The public needs to understand that ADOT's divisions and programs all work together not only to earn the public's trust and respect, but that the agency is a credible investment of the public's money.

Assessing the value of something is never easy. Everyone has a different opinion. However, there is one thing I am sure of: Collectively, the individuals who make up ADOT give it great value. No division standing alone can deliver the product that ADOT currently delivers to the public. Credibility, trust and respect – we earn these together and we shall share them together.

As you are going through your workday, remember to respect yourself, respect others and realize the value of the whole and not just the individual parts. That is why it is important that the public understands the bond we share as an agency. Have a great day!

# Exhibit D

**§ 28-333****TRANSPORTATION**  
**Title 28****DEPARTMENT OF**  
**Ch. 2****§ 28-333. Legal counsel**

The attorney general is the legal adviser of the department and shall provide legal services as the department requires. Compensation for personnel assigned by the attorney general to perform the services is a charge against appropriations to the department. The attorney general shall prosecute and defend in the name of this state all actions necessary to carry out this title.

Added by Laws 1995, Ch. 132, § 3, eff. Oct. 1, 1997.

**Historical and Statutory Notes****Source:**

Laws 1927, 4th S.S., Ch. 2, Subch. 2, § 19.  
Rev. Code 1928, § 1566.  
Code 1939, § 59-112.  
A.R.S. former § 18-114.

Laws 1960, Ch. 16, § 8.  
Laws 1970, Ch. 204, § 42.  
A.R.S. former § 28-109.  
Laws 1973, Ch. 146, § 9.  
Laws 1974, Ch. 141, § 6.

**Library References**

Attorney General ¶4, 5.  
Westlaw Topic No. 46.  
C.J.S. Attorney General §§ 10 to 11, 13 to 14.

**§ 28-334. Acceptance and expenditure of federal monies; limitations**

A. The department may accept and expend grants, donations, aid or other monies received from the federal government or any agency of the federal government for any transportation purpose.

B. The department may contract and do all things necessary to secure the full benefits available to this state for transportation purposes under federal law and, in doing so, may cooperate with federal, state and local government agencies, Indian tribes, private and public organizations and private individuals.

C. This chapter shall not be construed to affect the authority of other agencies or boards of this state or political subdivisions from accepting, receiving or expending grants or other monies from the federal government or any agency of the federal government for transportation purposes pursuant to other provisions of law or charter.

Added by Laws 1995, Ch. 132, § 3, eff. Oct. 1, 1997. Amended by Laws 1997, Ch. 1, § 53, eff. Oct. 1, 1997; Laws 2003, Ch. 201, § 1, eff. May 12, 2003.

**Historical and Statutory Notes****Source:**

A.R.S. former § 28-112.  
Laws 1975, Ch. 46, § 1.

The 1997 amendment of this section by Ch. 1 explicitly amended the addition of this section by Laws 1995, Ch. 132, § 3.

**Library References**

States ¶114, 117, 119, 121.  
Westlaw Topic No. 360.

C.J.S. States §§ 203 to 212, 215, 218, 220 to 221, 223.

**Mass transportation plan**  
**Minority enterprise prog****1. Mass transportation**

Governor could, with department of transportation receive mass transportation passed on to the department. Op. Atty. Gen. No. 78-169

**§ 28-335. Compi**

A. The department system.

B. The comprehensive certifications of funds reflected in the longed pursuant to §§ federal, state, regulations. All transportation costs, including maintenance and developing the data 2006, the department required in this section agency is unable to

C. The department 31, 2004 and on

D. All state, department in pre to assist the department

E. If the department revenues or costs and use estimate. Added by Laws 200:

Former § 28-335, : 132, § 3, derived from Laws 1990, Ch. 344,

States ¶121.  
Westlaw Topic No. C.J.S. States §§ 20:



**STATE GOVERNMENT**  
**Title 41**

l services to victims of  
 l agencies and courts.  
 t to the governor, the  
 f representatives that  
 .1-191.06, the attorney  
 vel of service, and the  
 e purpose of victims'

the lapsing provisions

ended by Laws 1997, Ch.  
 ws 2001, Ch. 146, § 2.

ie chapter version in subsec-  
 ce after "rights" "implemen-  
 e appeared. Pursuant to au-  
 .04.02, "implementation" is  
 apter version to correct a  
 ror.

ayroll does not include any  
 monies.

r the pro rata share percent-  
 be submitted according to the  
 the accompanying payroll, to  
 administration for deposit in  
 md.

ing agencies are exempt from

ment of water resources.

rtial utility consumer office.

rial commission.

sities.

r general.

ation commission.

of the governor.

ment of law.

**ATTORNEY GENERAL; DEPARTMENT OF LAW**  
**Ch. 1**

**§ 41-192**

- |  |   |
|--|---|
| "9. The house of representatives.                            | "13. The legislative council.                               |
| "10. The senate.   | "14. The department of administration risk management fund. |
| "11. The joint legislative budget committee.                 | "15. The department of transportation. "                    |
| "12. The Arizona state library, archives and public records. |   |

**§ 41-192. Powers and duties of attorney general; restrictions on state agencies as to legal counsel; exceptions**

A. The attorney general shall have charge of and direct the department of law and shall serve as chief legal officer of the state. The attorney general shall:

1. Be the legal advisor of the departments of this state and render such legal services as the departments require.

2. Establish administrative and operational policies and procedures within his department.

3. Approve long-range plans for developing departmental programs therein, and coordinate the legal services required by other departments of this state or other state agencies.

4. Represent school districts and governing boards of school districts in any lawsuit involving a conflict of interest with other county offices.

5. Represent political subdivisions, school districts and municipalities in suits to enforce state or federal statutes pertaining to antitrust, restraint of trade or price-fixing activities or conspiracies, provided that the attorney general shall notify in writing such political subdivisions, school districts and municipalities of the attorney general's intention to bring any such action on its behalf. At any time within thirty days after such notification, such political subdivisions, school districts and municipalities may, by formal resolution of its governing body, withdraw the authority of the attorney general to bring the intended action on its behalf.

6. In any action brought by the attorney general pursuant to state or federal statutes pertaining to antitrust, restraint of trade, or price-fixing activities or conspiracies for the recovery of damages by this state or any of its political subdivisions, school districts or municipalities, in addition to the attorney general's other powers and authority, the attorney general on behalf of this state may enter into contracts relating to the investigation and prosecution of such action with any other party plaintiff who has brought a similar action for the recovery of damages and with whom the attorney general finds it advantageous to act jointly or to share common expenses or to cooperate in any manner relative to such action. In any such action, notwithstanding any other laws to the contrary, the attorney general may undertake, among other things, to render legal services as special counsel or to obtain the legal services of special counsel from any department or agency of the United States, of this state or any other state or any department or agency thereof or any county, city, public corporation or public district in this state or in any other state that has brought or intends to bring a similar action for the recovery of damages or their duly authorized legal representatives in such action.

**§ 41-192****STATE GOVERNMENT  
Title 41**

7. Organize the civil rights division within the department of law and administer such division pursuant to the powers and duties provided in chapter 9 of this title.<sup>1</sup>

8. Compile, publish and distribute to all state agencies, departments, boards, commissions and councils, and to other persons and government entities on request, at least every ten years, the Arizona agency handbook that sets forth and explains the major state laws that govern state agencies, including information on the laws relating to bribery, conflicts of interest, contracting with the government, disclosure of public information, discrimination, nepotism, financial disclosure, gifts and extra compensation, incompatible employment, political activity by employees, public access and misuse of public resources for personal gain. A supplement to the handbook reflecting revisions to the information contained in the handbook shall be compiled and distributed by the attorney general as deemed necessary.

B. Except as otherwise provided by law, the attorney general may:

1. Organize the department into such bureaus, subdivisions or units as he deems most efficient and economical, and consolidate or abolish them.

2. Adopt rules for the orderly conduct of the business of the department.

3. Employ and assign assistant attorneys general and other employees necessary to perform the functions of the department.

4. Compromise or settle any action or claim by or against this state or any department, board or agency thereof. Where such compromise or settlement involves a particular department, board or agency of this state, the compromise or settlement shall be first approved by such department, board or agency. Where no department or agency is named or otherwise materially involved, the approval of the governor shall be first obtained.

5. Charge reasonable fees for distributing official publications, including attorney general legal opinions and the Arizona agency handbook. The fees received shall be transmitted to the state treasurer for deposit in the state general fund.

C. Assistants and employees in any legal division subject to a merit system prior to March 6, 1953 shall remain subject thereto.

D. The powers and duties of a bureau, subdivision or unit shall be limited to those assigned by law to the department.

E. Notwithstanding any law to the contrary, except as provided in subsections F and G of this section, no state agency other than the attorney general shall employ legal counsel or make an expenditure or incur an indebtedness for legal services, but the following are exempt from this section:

1. The director of water resources.
2. The residential utility consumer office.
3. The industrial commission.
4. The Arizona board of regents.

**ATTORNEY GENERAL  
Ch. 1**

5. The auditor ge

6. The corporati  
than the securities d

7. The advocate f

8. The office of tl

9. The constitutic

F. If the attorney  
judicial or quasi-jud  
state agency in rela  
notification to the s  
notification from th  
from providing judic  
relation to any par  
expenditures and in  
sentation or services

G. If the attorne  
cannot agree on the  
the attorney general  
as to any matter or  
attorney general doe  
matter, the director  
to employ attorneys  
with regard to that r

H. Any departm  
legal division or in  
sources other than t  
fund, shall pay from  
general fund of the  
reimbursable basis  
department of law  
legal services.

I. Appropriation  
subject to lapsing p  
ments or agencies to  
applicable shall be  
general.

J. Notwithstandi  
attorney general fro  
legal services relati  
pursuant to §§ 35-1  
Monies in the fund :  
the provisions of § :  
Amended by Laws 19  
§ 36, eff. April 13, 19  
Ch. 192, § 11; Laws 1

**TATE GOVERNMENT**  
**Title 41**

Department of law and  
 ies provided in chapter

agencies, departments,  
 sons and government  
 agency handbook that  
 state agencies, includ-  
 of interest, contracting  
 , discrimination, nepo-  
 , incompatible employ-  
 and misuse of public  
 ook reflecting revisions  
 mpiled and distributed

general may:

divisions or units as he  
 abolish them.

of the department.

and other employees

against this state or any  
 apromise or settlement  
 : state, the compromise  
 ient, board or agency.  
 materially involved, the

publications, including  
 y handbook. The fees  
 or deposit in the state

bject to a merit system

unit shall be limited to

as provided in subsec-  
 in the attorney general  
 our an indebtedness for  
 tion:

**ATTORNEY GENERAL; DEPARTMENT OF LAW**  
**Ch. 1**

**§ 41-192**

5. The auditor general.

6. The corporation commissioners and the corporation commission other  
 than the securities division.

7. The advocate for private property rights.

8. The office of the governor.

9. The constitutional defense council.

F. If the attorney general determines that he is disqualified from providing  
 judicial or quasi-judicial legal representation or legal services on behalf of any  
 state agency in relation to any matter, the attorney general shall give written  
 notification to the state agency affected. If the agency has received written  
 notification from the attorney general that the attorney general is disqualified  
 from providing judicial or quasi-judicial legal representation or legal services in  
 relation to any particular matter, the state agency is authorized to make  
 expenditures and incur indebtedness to employ attorneys to provide the repre-  
 sentation or services.

G. If the attorney general and the director of the department of agriculture  
 cannot agree on the final disposition of a pesticide complaint under § 3-368, if  
 the attorney general and the director determine that a conflict of interest exists  
 as to any matter or if the attorney general and the director determine that the  
 attorney general does not have the expertise or attorneys available to handle a  
 matter, the director is authorized to make expenditures and incur indebtedness  
 to employ attorneys to provide representation or services to the department  
 with regard to that matter.

H. Any department or agency of this state authorized by law to maintain a  
 legal division or incur expenses for legal services from funds derived from  
 sources other than the general revenue of the state, or from any special or trust  
 fund, shall pay from such source of revenue or special or trust fund into the  
 general fund of the state, to the extent such funds are available and upon a  
 reimbursable basis for warrants drawn, the amount actually expended by the  
 department of law within legislative appropriations for such legal division or  
 legal services.

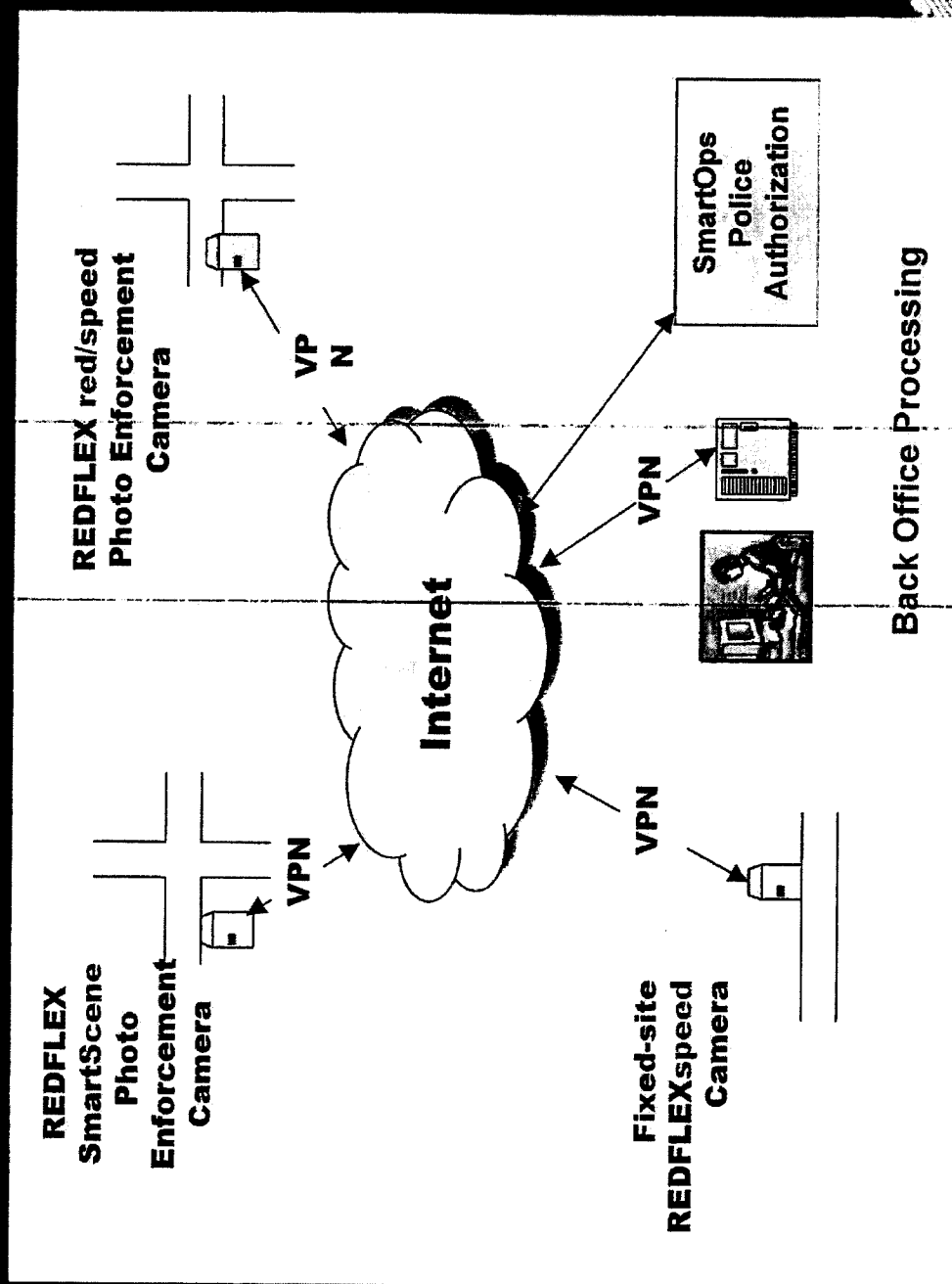
I. Appropriations made pursuant to subsection H of this section shall not be  
 subject to lapsing provisions otherwise provided by law. Services for depart-  
 ments or agencies to which this subsection and subsection G of this section are  
 applicable shall be performed by special or regular assistants to the attorney  
 general.

J. Notwithstanding the provisions of § 35-148, monies received by the  
 attorney general from charges to state agencies and political subdivisions for  
 legal services relating to interagency service agreements shall be deposited,  
 pursuant to §§ 35-146 and 35-147, in an attorney general agency services fund.  
 Monies in the fund are subject to legislative appropriation and are exempt from  
 the provisions of § 35-190, relating to lapsing of appropriations.

Amended by Laws 1967, Ch. 126, § 2; Laws 1970, Ch. 91, § 3; Laws 1971, Ch. 49,  
 § 36, eff. April 13, 1971; Laws 1972, Ch. 48, § 1; Laws 1972, Ch. 171, § 4; Laws 1972,  
 Ch. 192, § 11; Laws 1973, Ch. 157, § 53; Laws 1980, 4th S.S., Ch. 1, § 21, eff. June 12,

# **Exhibit E**

# Redflex Secure Digital Integrated System Architecture

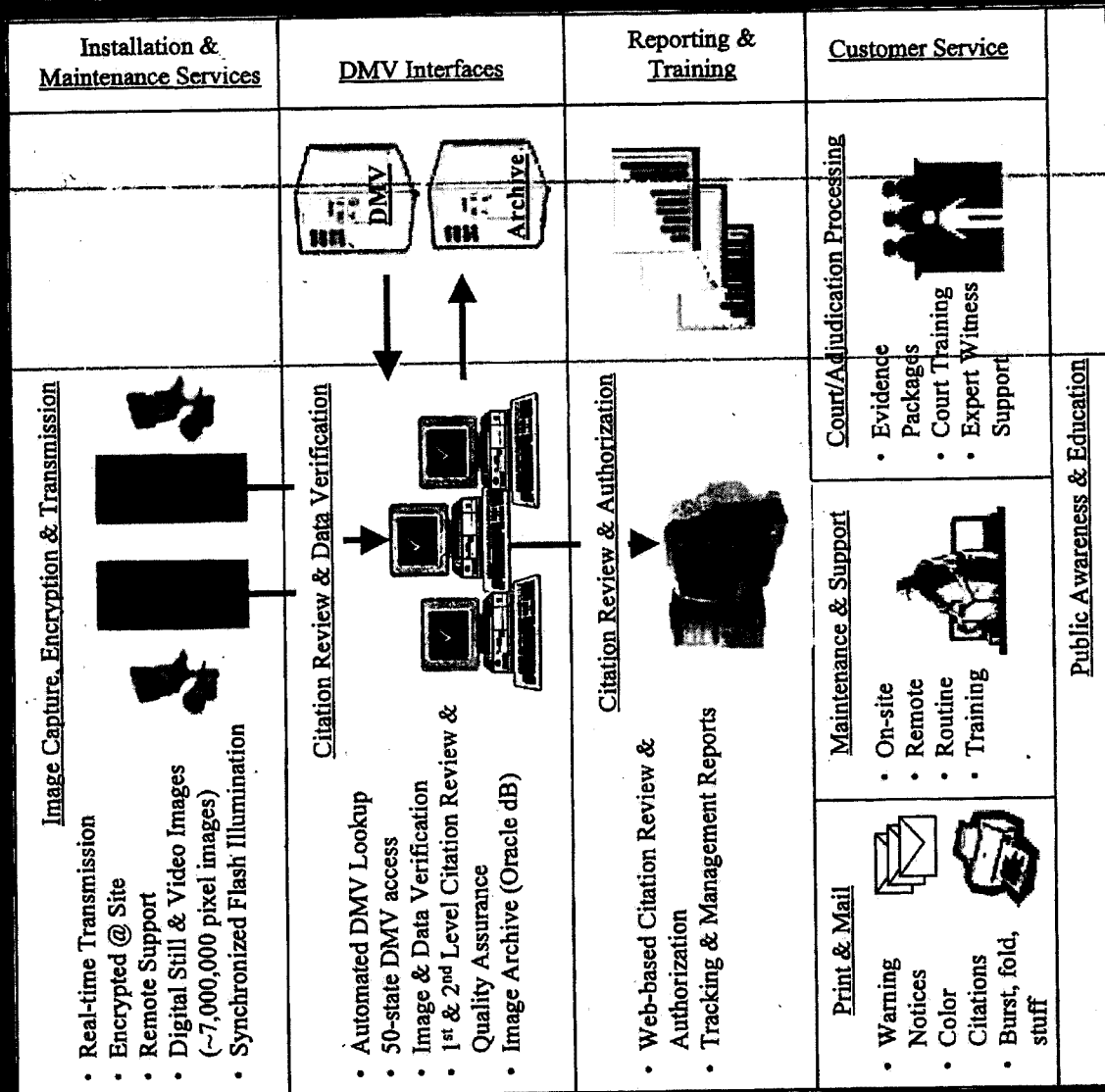


# The RTS End-to-End Turnkey Program

Redflex offers the only fully integrated program.

Redflex manufactures its own all-digital camera units

Redflex operates its own processing centers and personally provides hands-on customer support for the life of the program.



Redflex Proprietary Data


**REDFLEX**  
 TURNKEY SYSTEMS



# Web-Based Citation Authorization

# Options

POLICE AUTHORIZATION

**REDUX**

**Welcome to the SMARTops Incident Authorization Module.**

**Review and verify incidents** listed to the left hand side of the screen by clicking on an incident sorted by date, citation number, or plate number. Upon choosing an incident for review, view an incident detailed image by clicking on one of four thumbnail images. Accept or reject incident views by clicking the corresponding button to the right. Upon acceptance or rejection, an incident may be validated or invalidated and is logged into a central database.

SmartOps

**1. *rubro***

Citation Review Page >  
(Double Left Turn Lane)

- All images are clearly viewable from a single page
- Each image can be enlarged to full-page with a single-click
- All DMV & incident information plainly stated

Page 26

<Citation Review Page

- All citations are accessed by an "inbox" format
- Citations are easily sorted and accessed

Redflex Proprietary Data

**REFLEX**

# Exhibit F



**PROCEDURE**

certified check  
name of court or  
the sum of  
prescribed fine

or (2), above, a  
ll be sent to the  
izona Highway  
t, including the  
license depart-  
arrant may be  
e found in this

udge or Clerk)

enter a plea of  
the above-num-  
dgment impos-

## RULES OF PROCEDURE IN CIVIL TRAFFIC AND CIVIL BOATING VIOLATION CASES

Amended effective December 1, 2002

Including Amendments Received Through October 15, 2010

*See Arizona Revised Statutes Annotated, Volume 17B, for library references.*

*Use Westlaw to find cases citing a rule. In addition, use Westlaw to find a specific term or to update a rule; see the AZ-RULES and AZ-RULESUPDATES Scope Screens for further information.*

**Rule**

1. Scope; Hearings and Appeals.
2. Definitions.
3. Applicability of Rules.
4. Arizona Traffic Ticket and Complaint.
5. Local Rules.
6. Hearing Officer Qualifications and Duties.
7. Non-availability of Right to Notice of Change of Judge.
8. Sufficiency of the Complaint.
9. Amending the Complaint.
10. Entry of Plea; Appearance of Counsel; Hearing in Absentia.
- 10.1. Appearance by Audiovisual and Telephonic Means.
11. Notice of Right to Counsel and Waiver.
12. Representation by the State.
13. Discovery; Officer's Notes.
14. Consolidation; Applicable Rules.
15. Continuances.
16. Oath and Questioning of Witnesses.
17. Rules of Evidence and Burden of Proof.
18. Witnesses.
19. Order of Proceedings.
20. Record; Summary Transfer.
21. Default by State at Hearing.
22. Default by Defendant at Hearing.
23. Setting Aside Default Judgment.
24. Finding of Responsible or Not Responsible.
25. Notice of Right to Appeal After Hearing; Waiver of Right to Appeal.
26. Right to Appeal; Bond on Appeal.
27. Notice of Appeal; Current Address for Further Proceedings.
28. Time for Filing; Payment of Record or Transcript Fee to Trial Court.
29. Record on Appeal; Contents of Record.
30. Trial De Novo and Duty of Trial Court to Transfer Funds.
31. Consolidated Cases.
32. Perfection of Appeal; Dismissal by Trial Court.
33. Appellate Memoranda; Dismissal for Non-filing.
34. Notification to Superior Court; Docketing the Appeal; Payment of the Appeal Fee; Transmission of the Record; Dismissal for Nonpayment.
35. Oral Argument.

**Rule**

36. Disposition by the Superior Court.
37. Forms.
38. Photo Enforcement; Notice of Violation.
39. Notice of Violation; Form.
40. Issuance and Delivery of the Notice of Violation.
41. Sufficiency of the Notice of Violation.
42. Notice of Violation; Time for Delivery.
43. Response to Notice of Violation.
44. Procedure if Violator does not Admit Responsibility.
45. Service of Complaint; Hearing Date; Notice; Response to Complaint.
46. Responsibilities of the Department; Retention of Records.

**Form**

1. Defendant's Notice of Right to Appeal (Civil traffic).
2. Defendant's Notice of Right to Appeal (Civil traffic).
3. Motion to Waive or Reduce Bond and Order.
4. Notice of Summary Transfer to Superior Court for Trial De Novo.
5. Notice to Appellant Re: Payment of Superior Court Appeal Fee.
6. Request for Transmittal of Record to Superior Court.
7. Defendant's Request for a Civil Traffic Hearing in Absentia.
8. Defendant's Declaration for a Civil Traffic Hearing in Absentia.
9. Officer's Declaration for a Civil Traffic Hearing in Absentia.
10. Witness's Declaration for a Civil Traffic Hearing in Absentia.
11. Notice of Violation.

**Rule 1. Scope; Hearings and Appeals**

These rules shall apply in all cases involving the adjudication and appeals of civil traffic violations except those violations consolidated pursuant to Rule 14 of these rules. Rules 38-45 shall apply

**Rule 1**

only to photo enforcement cases that are commenced pursuant to A.R.S. § 41-1722.

Amended Oct. 11, 2002, effective Dec. 1, 2002. Amended and effective on an emergency basis Sept. 26, 2008. Adopted on a permanent basis Sept. 3, 2009, effective Jan. 1, 2010.

**Rule 2. Definitions**

(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 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) "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.

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

**RULES OF PROCEDURE**

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

Amended Oct. 1, 1997, effective Oct. 1, 1997. Adopted in final form effective Jan. 12, 1998; amended Oct. 11, 2002, effective Dec. 1, 2002; Sept. 5, 2007, effective Jan. 1, 2008. Amended and effective on an emergency basis Sept. 26, 2008. Adopted on a permanent basis Sept. 3, 2009, effective Jan. 1, 2010.

**Rule 3. Applicability of Rules**

A civil traffic violation shall be commenced by an Arizona Traffic Ticket and Complaint or by long-form complaint pursuant to Arizona Rules of Criminal Procedure, Rule 2.3.

Amended Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 4. Arizona Traffic Ticket and Complaint**

(a) The Arizona Traffic Ticket and Complaint shall be in a form approved by the Supreme Court. A Court Report copy is required if no other method is used to forward disposition to the Department of Transportation, Motor Vehicle Division. Additional copies are optional.

(b) Any substantial variation from the form of the Arizona Traffic Ticket and Complaint must first be approved by the Supreme Court.

(c) Every court, law-enforcement agency or public body responsible for issuing the Arizona Traffic Ticket and Complaint shall promptly forward one form copy, and any subsequent changes therein, to the Supreme Court.

(d) Any court which maintains disposition information on computer may arrange with the Department of Transportation, Motor Vehicle Division, or the Department of Public Safety, as the case may be, for the electronic forwarding of disposition information without a certification by the judge. Amended July 28, 1992, effective Jan. 1, 1993; Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 5. Local Rules**

Upon the written approval of the Supreme Court, any court may supplement these Rules by local rules, which shall be made available for distribution or examination at such court.

**Rule 6. Hearing Officer Qualifications and Duties**

(a) (A) A hearing officer shall be at least 21 years old, shall be of good moral character, and

**CIVIL TR**

shall have proved by th

(b) A hearing officer shall be a civil traffic officer necessary and Amended Oct

**Rule 7.**

CI

The rules as a matter cases except matters pur Amended Oc

**Rule 8.**

A complaint either a written nation of th Amended Oc

**Rule 9.**

(a) A court at any time different v rights of th

(b) A court to conform no addition if substanti duced.

(c) All at the date th

(d) When describing civil traffic precedence dant are p a criminal determine be dismiss agency not Amended Oc

**Rule 10.**

st

(a) The appearing statement allegations at the sam

**PROCEDURE**

requires, the re-  
performed by an  
justice of appear-

997. Adopted in  
nended Oct. 11,  
07, effective Jan.  
emergency basis  
nt basis Sept. 3,

nnenced by an  
nt or by long-  
Rules of Crim-

2002.

d Complaint  
nd Complaint  
upreme Court.  
other method  
Department of  
on. Addition-

the form of  
aint must first

gency or pub-  
rizona Traffic  
forward one  
ges therein, to

osition infor-  
h the Depart-  
e Division, or  
the case may  
of disposition  
y the judge.  
1993; Oct. 11,

preme Court,  
les by local  
for distribu-

ications and

at least 21  
aracter, and

**CIVIL TRAFFIC & CIVIL BOATING CASES****Rule 10**

shall have completed a course of instruction ap-  
proved by the Supreme Court.

(b) A hearing officer may hear and dispose of  
civil traffic violation cases and make such orders as  
necessary and proper to dispose of such cases.  
Amended Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 7. Non-availability of Right to Notice of Change of Judge**

The rules of procedure regarding change of judge  
as a matter of right shall not apply in civil traffic  
cases except for cases consolidated with criminal  
matters pursuant to Rule 14.

Amended Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 8. Sufficiency of the Complaint**

A complaint is legally sufficient if it contains  
either a written description or the statutory desig-  
nation of the alleged violation.

Amended Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 9. Amending the Complaint**

(a) A court may amend a civil traffic complaint  
at any time before judgment if no additional or  
different violation is charged and if substantial  
rights of the defendant are not prejudiced.

(b) A court may amend a civil traffic complaint  
to conform to the evidence adduced at hearing if  
no additional or different violation is charged and  
if substantial rights of the defendant are not preju-  
diced.

(c) All amendments to a complaint relate back to  
the date the complaint was issued.

(d) Where there is a conflict between the writ-  
ten description and the statutory designation of a  
civil traffic violation, the descriptive text shall take  
precedence unless substantial rights of the defen-  
dant are prejudiced or such action would result in  
a criminal charge. If a judicial officer is unable to  
determine what offense is charged, the charge shall  
be dismissed without prejudice and the issuing  
agency notified.

Amended Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 10. Entry of Plea; Appearance of Counsel; Hearing in Absentia**

(a) The defendant may admit responsibility by  
appearing in person, or by submitting a form or a  
statement signed by the defendant admitting the  
allegations of the complaint. The defendant shall,  
at the same time, tender the civil sanction listed in

the court's deposit schedule for the civil traffic  
violation(s).

(b) The defendant may deny responsibility by  
appearing in person or by notifying the court in  
writing. The defendant may, at the same time,  
tender the civil sanction listed in the court's depos-  
it schedule for civil traffic violations to insure that  
no driver's license suspension will result from fail-  
ure to appear. Upon receipt of said notice, the  
court shall set the matter for hearing and notify the  
defendant, citing officer, and any counsel of the  
date, time, and place for the hearing.

(c) At the time of denial of responsibility, or such  
other time as the court determines appropriate in  
the interest of justice, the defendant may file a  
written request for a hearing in absentia. The  
defendant shall show why attending a civil traffic  
hearing would cause a substantial hardship. A  
substantial hardship is more than mere inconven-  
ience and must be based on extraordinary circum-  
stances. Along with the request, the defendant  
may tender the civil sanction listed in the court's  
deposit schedule for the civil traffic violation(s) at  
issue in the hearing.

(d) If the court grants the request for a hearing  
in absentia, the court shall set the matter for hear-  
ing and notify the defendant, the citing officer, and  
any counsel in the case of the date, time, and place  
for the hearing.

(e) Prior to a scheduled hearing in absentia, the  
defendant shall file a statement or statements made  
under the penalty of perjury, along with any phys-  
ical evidence the defendant requests the court to  
consider. The Court may also allow the State's  
witness, or witnesses, to testify through written  
statements or in person on the date, time, and  
place scheduled for the hearing in absentia. The  
State shall file any statement or statements, made  
under penalty of perjury, along with any physical  
evidence the State requests the court to consider,  
prior to the hearing.

(f) Failure to personally appear, or file a state-  
ment or statements prior to the hearing in absentia,  
shall result in default pursuant to Rules 21 and 22.

(g) If a hearing in absentia is held, the defendant  
waives the following rights: to personally appear  
to present evidence; to review evidence before the  
hearing (Rule 13 (b)); to compel production of any  
citing officer notes (Rule 13 (c)); to testimony  
under oath (Rule 16(a)); to cross examine the  
State's witnesses (Rule 16(c)); to present rebuttal  
evidence (Rule 19(d)); to present a closing argu-  
ment (Rule 19(e)); and to immediate delivery of

## Rule 10

written notice of appeal following judgment and imposition of civil sanction (Rule 25(a)).

(h) If a hearing in absentia is held, the 14-day period for filing a notice of appeal pursuant to Rule 28 (a) is extended by 7 calendar days. The record of a hearing in absentia for purposes of Rule 29(b)(vii) shall also include the statements, as well as the recording or transcript, if any, of the hearing.

Added as Rule 11 Nov. 9, 1983, effective Jan. 1, 1984. Redesignated Rule 10 and amended Oct. 11, 2002, effective Dec. 1, 2002. Amended Sept. 5, 2007, effective Jan. 1, 2008.

### Rule 10.1. Appearance by Audiovisual and Telephonic Means

(a) *General Standards.* A court may allow parties, their attorneys, and witnesses to appear by audiovisual interactive means that follow these general standards: (1) all parties, attorneys, and witnesses shall be able to be seen and heard at the same time and the audio portion shall be captured accurately on the record; (2) a facsimile, email, or other suitable means shall be available to allow the court to transmit copies of exhibits during the hearing, and, if necessary, a "Notice of Right to Appeal" to defendant; (3) the court may require any person requesting to appear under this rule to be responsible for the cost of same and such cost shall not be awarded as a recoverable cost by a prevailing party; (4) the court shall provide instructions to the participants as to how the remote appearance shall be initiated; (5) a party allowing a subpoenaed witness to appearing by remote means shall pay the cost thereof and no witness fee shall be required or allowed for such an appearance; and (6) an appearance under this rule may be referred to as a "Rule 10.1 Appearance".

(b) *Appearance Request; Deposit.* Unless a different time limit is allowed by the court, a party, attorney, or witness may appear under this rule by filing a "Notice of Rule 10.1 Appearance" at least 14 calendar days prior to hearing. The Notice shall set forth the requestor's name, mailing address, and day-time phone number. As to a defendant who wishes to appear under this rule, the court may condition the appearance upon the posting of a deposit in an amount not to exceed the total possible sanction amount of all violations at issue based on the court's sanction schedule.

(c) *Rule 10.1 Appearance Procedures.* Upon receipt of a Notice of Rule 10.1 Appearance, the court shall provide instructions as to the date and time of the proceeding and designate how the ap-

## RULES OF PROCEDURE

pearance shall be initiated. The court may also set forth instructions as to pre-hearing deadlines to file exhibits and limitation on exhibit sizes and numbers. The hearing itself shall proceed as otherwise set forth in the rules governing civil traffic and civil boating cases. In the event defendant is found responsible at the conclusion of the hearing, a Notice of Right to Appeal may be sent to the defendant by fax or electronic means and the 14 calendar-day appeal period shall commence from that transmission date.

(d) *Telephonic Appearance by Defendant; Deposit; Waiver of Identity Defense.* Notwithstanding the foregoing, a court may, upon written request at least 14 calendar days before the hearing date, permit a defendant to appear telephonically. The request shall include defendant's telephone number, mailing address, and a copy of a valid drivers license or identification card acceptable to the court. The court may condition a telephonic appearance upon the posting of a deposit in an amount not to exceed the total possible sanction amount of all violations at issue based on the court's sanction schedule. Unless otherwise permitted by the court, a defendant appearing telephonically shall be deemed to waive any defense based on failure of the state to establish an in-court identification of defendant as the cited violator. Identity shall be sufficiently established if at the hearing the state offers proof of the name of the driver as listed on a driver's license, state or government identification card, or other acceptable means of identification matching the violator to defendant.

Added Sept. 3, 2009, effective Jan. 1, 2010.

### Rule 11. Notice of Right to Counsel and Waiver

(a) If a defendant denies the allegations contained in the complaint and requests a hearing, the court shall promptly provide the defendant written notice of a hearing date. The notice of hearing date shall also state that the right to be represented by counsel at the hearing is waived unless the court and the State are notified in writing at least 10 calendar days prior to the hearing date.

(b) Absent extraordinary circumstances, failure of a defendant to timely notify the court and the State constitutes a waiver of the right to counsel at the hearing.

Added as Rule 12 Nov. 9, 1983, effective Jan. 1, 1984. Redesignated Rule 11 and amended Oct. 11, 2002, effective Dec. 1, 2002.

## CIVIL TRAFFIC

### Rule 12. Repealed

The State need not appear at the hearing or the defendant's right to be represented by counsel is waived unless, at the hearing, the defendant files a receipt of notice of the hearing and the court notifies the court to be represented by counsel.

Added as Rule 12 Nov. 9, 1983, effective Jan. 1, 1984. Redesignated Rule 12 and amended Oct. 11, 2002, effective Dec. 1, 2002.

### Rule 13. Disposition

(a) No pre-hearing conference shall be held absent extraordinary circumstances.

(b) Immediate disposition shall be made of all exhibits and witnesses. Failure to do so shall result in the court granting a request for inspection or a hearing, not so exchange.

(c) During the hearing, the court shall make by the court a complaint. The court shall create a duty of care notes.

Added as Rule 13 Nov. 9, 1983, effective Jan. 1, 1984. Redesignated Rule 13 and amended Oct. 11, 2002, effective Dec. 1, 2002.

### Rule 14. Civil

(a) Civil actions shall be conducted in the same manner as proceedings may be conducted on own motion.

(b) At the hearing, the rules governing the hearing shall be the same as the standard and the standard by a preponderance of the evidence.

Added as Rule 14 Nov. 9, 1983, effective Jan. 1, 1984. Redesignated Rule 14 and amended Oct. 11, 2002, effective Dec. 1, 2002.



**PROCEDURE**

rt may also set  
leadlines to file  
izes and num-  
ed as otherwise  
traffic and civil  
ndant is found  
the hearing, a  
e sent to the  
uns and the 14  
ommence from

endant; Depos-  
ithstanding the  
ten request at  
hearing date,  
phonically. The  
elephone num-  
a valid drivers  
eatable to the  
telephonic ap-  
deposit in an  
ssible sanction  
based on the  
otherwise per-  
appearing tele-  
ve any defense  
lish an in-court  
cited violator.  
ished if at the  
e name of the  
e, state or gov-  
her acceptable  
the violator to

0.

nsel and Waiv-

llegations con-  
a hearing, the  
endant written  
ice of hearing  
be represented  
unless the court  
ng at least 10  
ate.

stances, failure  
court and the  
it to counsel at

ve Jan. 1, 1984.  
. 11, 2002, effec-

**CIVIL TRAFFIC & CIVIL BOATING CASES****Rule 18****Rule 12. Representation by the State**

The State need not be represented by counsel at the hearing or appeal of a civil traffic complaint. Absent extraordinary circumstances, the State's right to be represented by counsel at the hearing is waived unless, at least 10 calendar days prior to the hearing date or within 10 calendar days of receipt of notice that the defendant will be represented by counsel, whichever is later, the State notifies the court and the defendant of its election to be represented by counsel.

Added as Rule 13 Nov. 9, 1983, effective Jan. 1, 1984. Redesignated Rule 12 and amended Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 13. Discovery; Officer's Notes**

(a) No pre-hearing discovery shall be permitted absent extraordinary circumstances.

(b) Immediately prior to the hearing, both parties shall produce for inspection any pre-prepared exhibits and written or recorded statements of any witness. Failure to comply with this rule may result, in the court's discretion, in the sanction of granting a recess or continuance to permit such inspection or denying admission of the evidence not so exchanged.

(c) During the hearing, upon request of the defendant, the citing officer shall produce any notes made by the officer in reference to the civil traffic complaint. This rule shall not be construed to create a duty on the officer to maintain or preserve notes.

Added as Rule 14 Nov. 9, 1983, effective Jan. 1, 1984. Redesignated Rule 13 and amended Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 14. Consolidation; Applicable Rules**

(a) Civil and criminal traffic cases based on the same conduct or otherwise related in their commission; may be consolidated at any point in the proceedings on motion of a party or on the court's own motion.

(b) 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.

Added as Rule 15 Nov. 9, 1983, effective Jan. 1, 1984. Redesignated Rule 14 and amended Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 15. Continuances**

(a) The court may, upon motion of a party or witness, or on its own motion, continue the hearing on a civil traffic case for a period not exceeding 60 days, if it appears that the interests of justice so require.

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

(c) The court shall notify the parties and witnesses in writing of the new hearing date.

Added as Rule 16 Nov. 9, 1983, effective Jan. 1, 1984. Redesignated Rule 15 and amended Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 16. Oath and Questioning of Witnesses**

(a) All testimony shall be given under oath or affirmation.

(b) The court may, on its own motion, call and examine witnesses, including the defendant in cases other than those consolidated pursuant to Rule 14 of these Rules.

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

Added as Rules 17 and 18 Nov. 9, 1983, effective Jan. 1, 1984. Redesignated Rule 16 and amended Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 17. Rules of Evidence and Burden of Proof**

(a) The Arizona Rules of Evidence shall not apply in civil traffic cases. Evidence may be admitted subject to a determination that the evidence has some probative value to a fact at issue. Nothing in this rule is to be construed as abrogating any statutory provision relating to privileged communications.

(b) The State's burden of proof shall be by a preponderance of the evidence.

Added as Rule 19 Nov. 9, 1983, effective Jan. 1, 1984. Redesignated Rule 17 and amended Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 18. Witnesses**

All witnesses for the State's case in chief shall be required to testify prior to the defendant's case. However, a witness not called to testify in the

1540

**PROCEDURE**

ent for the State,  
t such judgment  
ion, except that  
it violation judg-  
e Department of

lant is in active  
ent may be en-

ctive Jan. 1, 1984.  
ed Oct. 11, 2002,  
. 5, 2007, effective  
on an emergency  
permanent basis

**Judgment**

d cause or any  
a manifest injus-  
dgment entered

002.

ible or Not Re-

responsible, the  
State, and impose

responsible, the  
e defendant and

002.

**Appeal After Hear-  
ing**

ent and imposi-  
; the court shall  
notice of right to  
that a right to  
manner of filing  
e defendant may  
process.

s responsibility

ctive Jan. 1, 1984.  
ct. 11, 2002, effec-

**Appeal**

: Superior Court  
ment in a civil  
and these Rules.

**CIVIL TRAFFIC & CIVIL BOATING CASES****Rule 30**

(b) The posting of bond shall not be a condition of the right to appeal, but enforcement of the judgment shall not be stayed unless an appeal bond is provided in accordance with these rules.

(c) The posting of an appeal bond shall stay enforcement of the judgment. Unless the bond amount is reduced or waived by the trial court, the amount of the bond shall be the total amount of the sanction(s) assessed in the final judgment. The bond shall be paid in cash or such other manner as directed by the trial court. When the defendant has paid the entire applicable sanction prior to the filing of a notice of appeal, such payment shall constitute the bond on appeal.

Added as Rule 29 Nov. 9, 1983, effective Jan. 1, 1984. Redesignated Rule 26 and amended Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 27. Notice of Appeal; Current Address for Further Proceedings**

(a) An appeal shall commence by filing a written notice of appeal with the trial court. The notice of appeal shall identify the final order or final judgment appealed from.

(b) When the defendant is the appellant, the notice of appeal shall set forth the defendant's current mailing address and phone number. Unless the court is notified in writing of a change of address, the current address shall be valid for the sending of other notices to defendant in subsequent proceedings.

(c) When a party appeals, the trial court shall send a copy of the notice of appeal to the appellee. Added as Rule 30 Nov. 9, 1983, effective Jan. 1, 1984. Redesignated Rule 27 and amended Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 28. Time for Filing; Payment of Record or Transcript Fee to Trial Court**

(a) The notice of appeal shall be filed within 14 calendar days after the entry of the final order or final judgment appealed from.

(b) Within the 14 calendar day deadline to file the notice of appeal, the appellant shall also pay the applicable record fee to the trial court in cash or other manner allowed by the trial court. The trial court may also assess a separate fee to prepare additional requested copies of recorded proceedings.

Added as Rule 31 Nov. 9, 1983, effective Jan. 1, 1984. Redesignated Rule 28 and amended Oct. 11, 2002, effective Dec. 1, 2002. Amended Sept. 18, 2006, effective Jan. 1, 2007.

**Rule 29. Record on Appeal; Contents of Record**

(a) Appeals shall be on the record. The condition of the record shall be subject to review by the Superior Court. If the Superior Court adjudges the record insufficient or not in proper condition to adjudicate the issues, a trial de novo in the Superior Court shall be granted.

(b) The contents of the record shall consist of only the following: (i) the notice of appeal; (ii) the docket or listing of case events; (iii) the complaint; (iv) the disposition; (v) documentation or record of payment of any sanction, deposit, or bond applicable to the case; (vi) any motions or responses thereto; (vii) the record of the hearing(s); (viii) any exhibits offered in evidence at the hearing (admitted or not); and (ix) the appellate memoranda required or allowed by Rule 33. A party may attach as an exhibit to the appellate memorandum any other certified documents contained in the case file deemed relevant to the appeal.

(c) The trial court may transmit certified duplicate originals of any document in the record.

(d) If it appears to the trial court that the record is insufficient for an appeal on the record, the trial court may, on its own motion or on motion of a party, reset the matter for a new trial within 45 days from such determination. In such event, any appeal rights shall begin to run from the entry of a judgment or order following the new trial. In cases where it appears that the record is insufficient, the preference shall be for a new trial at the trial court level. Notwithstanding the foregoing, cases summarily transferred to the superior court for trial de novo or determined by the superior court to have an insufficient record may be remanded to the original trial court for a new trial or hearing in lieu of a trial de novo in the superior court. Unlike the parties in a trial de novo held in the superior court, the parties in a case remanded pursuant to this rule for a new trial in the original trial court shall have the rights of appeal as provided by statute or rule for all litigants following a trial or the entry of an appealable judgment or order.

Added as Rule 32 Nov. 9, 1983, effective Jan. 1, 1984. Redesignated Rule 29 and amended Oct. 11, 2002, effective Dec. 1, 2002. Amended Sept. 18, 2008, effective Jan. 1, 2009.

**Rule 30. Trial De Novo and Duty of Trial Court to Transfer Funds**

After a trial de novo, the Superior Court may:



**Rule 30**

(a) Adjudge the defendant responsible and impose a civil sanction as it deems proper; or

(b) Adjudge the defendant not responsible and order the trial court to return any sanction, deposit, or bond previously tendered by appellant.

(c) If, after a trial de novo, the Superior Court adjudge the defendant responsible and imposes a civil sanction, it shall notify the trial court. The trial court shall within 30 calendar days transmit to the Superior Court any sanction, deposit, or bond in the case.

Added as Rule 33 Nov. 9, 1983, effective Jan. 1, 2002. Redesignated Rule 30 and amended Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 31. Consolidated Cases**

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

Added as Rule 35 Nov. 9, 1983, effective Jan. 1, 1984. Redesignated Rule 31 and amended Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 32. Perfection of Appeal; Dismissal by Trial Court**

(a) Perfection of the appeal shall include: (1) the timely filing of a notice of appeal and payment of any record or transcript fee with the trial court; (2) the timely filing of an appellant's memorandum with the trial court; (3) the timely payment of any superior court filing fee.

(b) In the event an appeal is not fully perfected, the appeal shall be deemed abandoned and dismissed by order of the trial court with notice to the appellant.

(c) In the event an appeal is dismissed, the judgment of the trial court may be enforced as if no appeal had been taken. The trial court may take appropriate action including the application of any payment, deposit, or bond to the sanction, notice to the Department of Transportation, Department of Public Safety, or Motor Vehicle Division, or notice to the appellant to reappear upon at least 14 calendar days written notice for further proceedings, except that in civil boating violation cases notice shall not be sent to the Department of Transportation, Department of Public Safety or Motor Vehicle Division.

Added Oct. 11, 2002, effective Dec. 1, 2002. Amended Sept. 5, 2007, effective Jan. 1, 2008.

**RULES OF PROCEDURE****Rule 33. Appellate Memoranda; Dismissal for Non-filing**

(a) The appellant shall file an original and one copy of appellant's memorandum in the trial court within 60 calendar days of the deadline to file the notice of appeal. The trial court shall mail or deliver the copy of the memorandum to the appellee. For good cause, the trial court may enlarge the time to file the memorandum.

(b) If the appellant fails to file an appellate memorandum, the appeal shall be deemed abandoned and dismissed by the trial court with notice to appellant. Where the defendant is the appellant, the trial court may proceed as set forth in rule 32(c).

(c) An original and one copy of the appellee's memorandum shall be filed within 30 calendar days of transmittal of the appellant's memorandum. The trial court shall mail or deliver the copy of the memorandum to the appellant. For good cause, the trial court may enlarge the time to file the appellee's memorandum. If the appellee does not file a memorandum, the appeal shall be submitted on the appellant's memorandum and the record. The non-filing of an appellee's memorandum shall not be deemed a confession of error.

(d) Appellate memoranda shall be typed or printed on white, opaque, letter-size paper, double-spaced, and shall not exceed 15 pages, excluding exhibits. The memorandum shall set forth a factual and legal basis for appropriate judicial relief.

(e) No further memoranda shall be filed unless ordered by the Superior Court.

(f) Motions for more time shall be presented to the trial court and shall be ruled upon by a judge other than the judge that heard the matter being appealed.

Added as Rule 38 Nov. 9, 1983, effective Jan. 1, 1984. Redesignated Rule 33 and amended Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 34. Notification to Superior Court; Docketing the Appeal; Payment of the Appeal Fee; Transmission of the Record; Dismissal for Nonpayment**

(a) After the time to file any appellee memorandum has expired and the appeal is otherwise perfected, the trial court shall send the notice of appeal to the Superior Court within 30 calendar days. Upon receipt, the Superior Court shall file the notice of appeal and notify appellant regarding payment of any appeal fee.

**CIVIL TRAF**

(b) The app calendar days  
This notificatio failure to pay t and remand fo

(c) Upon pa Court shall no be transmitter calendar days

(d) If the ap rior Court sha pellant and tr further procee Added Oct. 11, 2

**Rule 35. 0**

Appeals sha requested by t Superior Cour Added as Rule Redesignated R 2002.

**Rule 36. I**

After deterr Court may:

(a) Affirm t mand for furti

(b) Affirm i mand for furti

(c) Reverse remand, if ne cluding a new

(d) If the r trial de novo i Added as Rule Redesignated R tive Dec. 1, 200

**Rule 37. 1**

The followi traffic procee

1. Defend Traffic)

2. Defend

3. Motion

4. Notice Court for Tris

5. Notice Court Appeal



**PROCEDURE**

Dismissal for  
original and one  
the trial court  
line to file the  
shall mail or  
n to the appel-  
t may enlarge

an appellate  
deemed aban-  
rt with notice  
the appellant,  
forth in rule

the appellee's  
30 calendar  
t's memoran-  
liver the copy  
it. For good  
ie time to file  
appellee does  
all be submit-  
and the rec-  
memorandum  
ror.

be typed or  
aper, double-  
es, excluding  
forth a factu-  
adicial relief.  
e filed unless

presented fo  
n by a judge  
matter being

Jan. 1, 1984.  
1, 2002, effec-

rior Court;  
ment of the  
of the Rec-  
nent

ie memoran-  
herwise per-  
notice of ap-  
alendar days.  
hall file the  
it regarding

**CIVIL TRAFFIC & CIVIL BOATING CASES****Rule 40**

(b) The appeal fee shall be payable within 30 calendar days of the notification to the appellant. This notification shall advise the appellant that failure to pay the appeal fee will result in dismissal and remand for proceedings set forth in rule 32(c).

(c) Upon payment of the appeal fee, the Superior Court shall notify the trial court. The record shall be transmitted to the Superior Court within 30 calendar days of notification.

(d) If the appeal fee is not timely paid, the Superior Court shall dismiss the appeal, notify the appellant and trial court, and remand the case for further proceedings pursuant to rule 32(c).  
Added Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 35. Oral Argument**

Appeals shall be without oral argument, unless requested by the Superior Court or allowed by the Superior Court upon motion of either party.  
Added as Rule 39 Nov. 9, 1983, effective Jan. 1, 1984.  
Redesignated Rule 35 Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 36. Disposition by the Superior Court**

After determination of an appeal, the Superior Court may:

- (a) Affirm the action of the trial court and remand for further proceedings; or
- (b) Affirm in part and reverse in part and remand for further proceedings; or
- (c) Reverse the action of the trial court and remand, if necessary, for further proceedings, including a new hearing; or

(d) If the record is deemed insufficient, order a trial de novo in the Superior Court.  
Added as Rule 40 Nov. 9, 1983, effective Jan. 1, 1984.  
Redesignated Rule 36 and amended Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 37. Forms**

The following forms are approved for use in civil traffic proceedings:

- 1. Defendant's Notice of Right to Appeal (Civil Traffic)
- 2. Defendant's Notice of Appeal (Civil Traffic)
- 3. Motion to Waive or Reduce Bond and Order
- 4. Notice of Summary Transfer to Superior Court for Trial De Novo
- 5. Notice to Appellant Re: Payment of Superior Court Appeal Fee

6. Request for Transmittal of Record to Superior Court  
Added Oct. 11, 2002, effective Dec. 1, 2002.

**Rule 38. Photo Enforcement; Notice of Violation**

A photo enforcement case may be commenced by a Notice of Violation, which is issued prior to the filing of an Arizona Traffic Ticket and Complaint. Adopted on emergency basis effective Sept. 26, 2008. Adopted on a permanent basis Sept. 3, 2009, effective Jan. 1, 2010.

**Rule 39. Notice of Violation; Form**

(a) The Notice of Violation shall be substantially in a form approved by the Supreme Court as set forth in Appendix B of these rules.

(b) Any substantial variation from the form of the Notice of Violation must first be approved by the Supreme Court.

(c) Notice of Violation forms need not be sworn to if they contain a form of certification by the Department in substance as follows "I hereby certify that I have reasonable grounds to believe and do believe that the person named herein committed the civil violation described herein contrary to law."

(d) The Department shall promptly forward one form copy, and any subsequent changes therein, to the Supreme Court.

Adopted on emergency basis effective Sept. 26, 2008. Adopted on a permanent basis and amended Sept. 3, 2009, effective Jan. 1, 2010.

**Rule 40. Issuance and Delivery of the Notice of Violation**

The Department shall properly complete, certify and deliver the Notice of Violation as follows:

(a) Issuance of the notice of violation. The Notice of Violation may be issued by the Department.

(b) Delivery of the notice of violation; defendant copy. The Notice of Violation may be delivered by any of the following means:

- (1) Delivering a copy to the person charged with the violation.
- (2) Mailing the Notice of Violation by first class mail to the person charged with the violation at the address provided to the Arizona Department of Transportation. If an address has not been provided to the Department of Transportation, the notice may be sent to any address known to the Department of Transportation, in-

**Rule 40**

cluding the address listed on a traffic citation received by the Department of Transportation.

(3) Service of process authorized by the Rules of Civil Procedure.

Adopted on emergency basis effective Sept. 26, 2008. Adopted on a permanent basis Sept. 3, 2009, effective Jan. 1, 2010.

**Rule 41. Sufficiency of the Notice of Violation**

The Notice of Violation is legally sufficient if it contains either a written description or the statutory designation of the alleged violation.

Adopted on emergency basis effective Sept. 26, 2008. Adopted on a permanent basis Sept. 3, 2009, effective Jan. 1, 2010.

**Rule 42. Notice of Violation; Time for Delivery**

A Notice of Violation is void if its delivery is not initiated in accordance with Rule 40 of these rules within ten days of the date of violation.

Adopted on emergency basis effective Sept. 26, 2008. Adopted on a permanent basis and amended Sept. 3, 2009, effective Jan. 1, 2010.

**Rule 43. Response to Notice of Violation**

Upon receipt of a Notice of Violation the alleged violator may submit as directed by the Department a signed statement within 40 days of the date of violation that:

(a) Admits responsibility for the allegations of the Notice of Violation, agrees to tender the full amount of the civil penalty and surcharge as directed on the Notice of Violation, and agrees that this admission is final and may not be withdrawn;

(b) Denies responsibility because the alleged violator was not the driver of the vehicle at the time of the violation; or

(c) Denies responsibility for the allegations of the Notice of Violation.

Adopted on emergency basis effective Sept. 26, 2008. Adopted on a permanent basis Sept. 3, 2009, effective Jan. 1, 2010.

**Rule 44. Procedure if Violator does not Admit Responsibility**

(a) If the Department excludes the alleged violator as the driver, the Department shall notify the alleged violator.

(b) The Department may file a complaint in the court having jurisdiction of the violation within 60 days of the date of the violation and serve upon the

**RULES OF PROCEDURE****CIVIL TRAFFIC**

defendant an Arizona Traffic Ticket and Complaint as otherwise provided by law, if any of the following occur:

(1) The alleged violator denies responsibility, except if the alleged violator is excluded as the driver of the vehicle.

(2) The alleged violator fails to respond to the Notice of Violation within 40 days of the date of violation.

(3) The alleged violator admits responsibility but fails to tender the full amount of the civil penalty and surcharge as required by Rule 43 of these rules.

Adopted on emergency basis effective Sept. 26, 2008. Adopted on a permanent basis Sept. 3, 2009, effective Jan. 1, 2010.

**Rule 45. Service of Complaint; Hearing Date; Notice; Response to Complaint**

(a) Service of the complaint. Within 10 days after filing the Arizona Traffic Ticket and Complaint, the Department shall mail by first class mail to the defendant a copy of the complaint and provide the defendant the option to respond to the complaint by filing an admission or denial of responsibility with the court.

(b) The scheduled appearance date stated on the complaint shall be calendared for a date that is not less than 30 days after the Department mails the citation to the defendant.

(c) Notice of options to respond. The notice of options to respond shall:

(1) be in writing and addressed directly to the defendant,

(2) set forth the date on which the complaint and notice of option to respond were mailed,

(3) include a copy of the photograph of the violation,

(4) inform the defendant of the date after which the defendant's failure to either file a written response with the court or appear in court may result in personal service at the defendant's expense, unless good cause for the failure to respond is shown,

(5) inform the defendant that filing an admission or denial of responsibility with the court is an appearance that has the same effect as personal service,

(6) provide a prepaid means of requesting the Department to review the evidence, if the defendant denies responsibility because the defendant

was not the driver of the vehicle at the time of the violation,

(7) provide means of filing a written response to the violation.

(d) Time period for response. Within 10 days after the date of the violation, the defendant shall have the option to respond by filing an admission or denial of responsibility with the court. Filing of an admission or denial of responsibility with the court which the defendant is required to file in the court having jurisdiction of the violation.

(e) Failure to respond. Failure to respond by either filing an admission or denial of responsibility with the court or appearing in court on the scheduled appearance date, shall constitute an admission of responsibility. Civil Procedure costs shall be assessed against the defendant.

**PROCEDURE****CIVIL TRAFFIC & CIVIL BOATING CASES****Rule 46**

and Complaint  
of the follow-

responsibility,  
cluded as the

respond to the  
of the date of

responsibility  
nt of the civil  
by Rule 43 of

Sept. 26, 2008.  
2009, effective

**Hearing Date;**  
**aint**

Within 10 days  
ket and Com-  
first class mail  
plaint and pro-  
respond to the  
r denial of re-

e stated on the  
date that is not  
nent mails the

The notice of

directly to the

the complaint  
l were mailed,  
tograph of the

the date after  
o either file a  
: or appear in  
ce at the defen-  
e for the failure

iling an admis-  
ith the court is  
e effect as per-

f requesting the  
ce, if the defen-  
e the defendant

was not the driver of the vehicle at the time of  
the violation, and

(7) provide the defendant with a prepaid  
means of filing the admission or denial of re-  
sponsibility with the court.

(d) Time period. The defendant shall have 30  
days after the date the complaint and notice of  
option to respond was mailed in which to file an  
admission or denial of responsibility with the court.  
Filing of an admission or denial of responsibility  
with the court shall constitute an appearance by  
which the defendant becomes subject to the per-  
sonal jurisdiction of the court.

(e) Failure to respond. If a defendant fails to  
respond by either filing a written response with the  
court or appearing in court on the scheduled ap-  
pearance date, service may be effected in the man-  
ner prescribed by Rule 4.1(d), Arizona Rules of  
Civil Procedure, and the court shall impose the  
costs subsequently incurred in effecting personal

service on the defendant, unless good cause for the  
failure is shown.

Adopted on emergency basis effective Sept. 26, 2008.  
Adopted on a permanent basis Sept. 3, 2009, effective  
Jan. 1, 2010.

**Rule 46. Responsibilities of the Department;  
Retention of Records**

(a) Enforcement copy. The Department shall re-  
tain the enforcement copy of the Notice of Viola-  
tion in accordance with a procedure established by  
the Department.

(b) Case record. If a person admits responsibili-  
ty, the Department shall retain the record of the  
case in accordance with a procedure established by  
the Department and not transmit the record to the  
court.

Adopted on emergency basis effective Sept. 26, 2008.  
Adopted on a permanent basis Sept. 3, 2009, effective  
Jan. 1, 2010.

# CORE

## ARIZONA RULES OF COURT

### VOLUME I – STATE

### 2011

**WEST®**

A Thomson Reuters business

Mat #40822845

**RECEIVED**

DEC 07 2010

ROSS-BLAKLEY  
LAW LIBRARY



- 1 3. The certificate of service for the Motion to Dismiss states that on February 25, 2011,  
2 a copy of that document was mailed to Plaintiff Daniel Arthur Gutenkauf at 1847 E.  
3 Apache Blvd. #41, Tempe, AZ, 85281.
- 4 4. Plaintiff did not actually receive a mailed copy of the State Defendants Motion to  
5 Dismiss until over one week later, on Saturday, March 5, 2011.
- 6 5. On Monday, March 7, 2011, I went to the U.S. Post Office at the Apache Blvd. Station,  
7 one block from my home, and spoke to a postal employee named Fred, regarding the one  
8 week delay in receiving the State Defendants Motion to Dismiss document. The postal  
9 employee directed me to his supervisor to answer my inquiry.
- 10 6. I showed the Post Office supervisor the envelope containing the State Defendants Motion  
11 To Dismiss, which contained a red-metered stamp in the upper right hand corner,  
12 apparently from a metered machine at the Attorney General's Office.
- 13 7. The Post Office Supervisor indicated that although an envelope gets a meter stamp, it  
14 does not necessarily get mailed on the same day, and sometimes the envelope sits on a  
15 desk without getting mailed.
- 16 8. The Post Office Supervisor said that it is their policy to return any envelope to the sender  
17 if it is discovered that the metered date does not match the date actually mailed. He said  
18 that there are a hundred different reasons why a piece of mail would take over a week to  
19 arrive.
- 20 9. I explained to the Post Office supervisor that I had a similar previous experience with the  
21 Arizona Attorney General's office a few years ago, when the AG counsel filed a Motion  
22 for Summary Judgment, but did not mail the document to me until two weeks after the  
23 date listed on the certificate of service for that document.
- 24 10. I asked the postal supervisor if he would make out a written statement for me, but he  
25 declined, and suggested that I bring this matter of the delayed mail to the attention of the  
Court.
- 11 The 8 days late arrival of the State Defendants Motion to Dismiss has shortened the  
Plaintiff's normal time to respond to a Motion from 14 days down to 6 days, causing a  
significant disadvantage and prejudice to the Plaintiff for making his written response.
- 12 It has come to my attention that the court docket in this civil action shows that the  
Redflex Traffic Systems Defendants, through their counsel, filed a Motion to Dismiss the  
Plaintiff's complaint on March 1, 2011.
- 13 The certificate of Service on the Redflex Motion to Dismiss does not show that it mailed  
a copy of that document to Plaintiff Daniel Arthur Gutenkauf, as required under the  
Federal Rules of Civil Procedure.
- 14 As of today's date, March 10, 2011, I have not received a copy in the mail or any email  
copy of the Redflex Defendants Motion to Dismiss, nine days after that document was  
filed with the Federal Court on March 1, 2011.
- 15 On February 14, 2011, I filed an affidavit in the Federal Court in this case, which stated  
that Defendants AAA Photo Safety Inc., David and Stephanie Pickron, and Casey Arnett  
had filed a Motion to Dismiss through their counsel, J.D. Dobbins, on February 8, 2011.
- 16 The last page of the Motion to Dismiss by Defendants AAA Photo Safety Inc. states that a  
copy of the foregoing was mailed this 8<sup>th</sup> day of February, 2011, to Daniel Arthur  
Gutenkauf at 1847 E. Apache Blvd. #41, Tempe, Arizona 85281.
- 17 When I returned home on the evening of 2-11-11, I checked my mail, to see if I had  
received a copy of the Defendants' Motion to Dismiss, but that document had not



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

arrived.

18. As of today's date, Thursday, March 10, 2011, I have still not received in the mail a copy of the Motion to Dismiss that Mr. Dobbins alleged he mailed to me on February 8, 2011.

19. As shown from the above statements of fact, two sets of Defendants in this action, Redflex Traffic Systems Inc., and AAA Photo Safety Inc., have failed to mail copies of their Motions to Dismiss my Complaint, in violation of the Federal Rules of Civil Procedure, and in violation of the Rules of Professional Conduct, Rule 3.4, Unfairness to Opposing Counsel.

20. As stated above, a third Motion to Dismiss was received by me 8 days after it was allegedly mailed, according to the certificate of service by the State Defendants Goddard, Halikowski, and Vanderpool.

21. I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge and ability at this time.

*Daniel Arthur Gutenkauf*

Daniel Arthur Gutenkauf, Plaintiff pro per, affiant

Subscribed and sworn before me this 10 day of March, 2011

*Scott Goodenough*

Printed name, Notary Public

*Scott Goodenough*

Signature, Notary Public

My Commission expires on 11/19/13

