

65104

IN RE:

AMENDMENTS TO  
RULES OF TRAFFIC COURT

**FILED**

SID J. WHITE

APR 2 1984

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

PETITION OF THE FLORIDA BAR  
TRAFFIC COURT RULES COMMITTEE  
SUBMITTING PROPOSED CHANGES TO  
RULES OF TRAFFIC COURT

The Traffic Court Rules Committee of The Florida Bar, pursuant to the procedures established by Rule of Judicial Administration 2.130(c), herewith submits its quadrennial report of proposed changes in the Florida Rules of Traffic Court.

During the four years after the last quadrennial report of the Traffic Court Rules Committee in 1980, the Committee has considered all proposals for rule changes which have been suggested to it by interested members of the Bar, judges, lay persons or organizations. This Petition is the result of the considered action by the Committee on those proposals which the Committee determined to be meritorious. The vote of the Committee as to each change is shown in the "Reasons" column of the report.

In accordance with Rule 2.130, the Committee's report was submitted to The Florida Bar Board of Governors; the action of the Board of Governors on each proposed rule change, with the Board vote on each, is also shown in the "Reasons" column of the report.

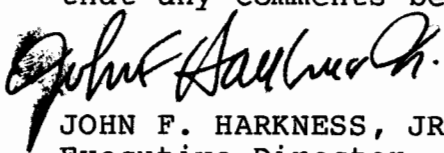
The Committee Notes are being submitted to the Court for its approval as the Committee feels such comments are helpful, however the Court should feel free to disregard or eliminate these Notes if it deems it more appropriate to do so.

REQUEST FOR ORAL ARGUMENT

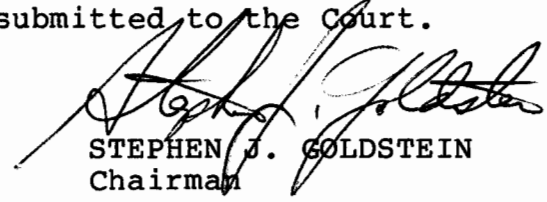
This Committee requests oral argument on the proposed rule changes at a time convenient to the Court.

NOTICE TO THE BAR

The proposed rule changes or a summary will be published in The Florida Bar News before oral argument. The notice will request that any comments be in writing and submitted to the Court.



JOHN F. HARKNESS, JR.  
Executive Director  
The Florida Bar  
The Florida Bar Center  
Tallahassee, Florida 32301-8226  
(904) 222-5286



STEPHEN J. GOLDSTEIN  
Chairman  
The Florida Bar, The Traffic  
Court Rules Committee  
2915 S.W. 27th Avenue  
Coconut Grove, Florida 33133  
(305) 444-5655

PRESENT RULE

RULE 6.460 EVIDENCE

The rules of evidence applicable in all hearings for traffic infractions shall be the same as in civil cases and shall be liberally construed by the official hearing the case. Evidence admissible shall include, but not be limited to, accident reports.

PROPOSED RULE

RULE 6.460 EVIDENCE

The rules of evidence applicable in all hearings for traffic infractions shall be the same as in civil cases except to the extent inconsistent with these rules, and shall be liberally construed by the official hearing the case. ~~Evidence admissible shall include, but not be limited to, accident reports.~~

COMMENTS

REASON FOR CHANGE:

The former rule improperly permitted the use of accident reports, and neglected to permit the introduction of an Affidavit of Defense pursuant to Rule 6.340. A change was also mandated to allow for the use of affidavits of defense witnesses, pursuant to a proposed new rule.

COMMITTEE VOTE:

<u>Approved</u>	<u>Against</u>
12	1

BOARD OF GOVERNORS VOTE:

<u>Approved</u>	<u>Against</u>
17	0

2

PRESENT RULE

RULE 6.560  
CONVICTION OF TRAFFIC INFRACTION

An admission or determination that a person has committed a traffic infraction shall constitute a conviction as that term is used in Chapter 322, Florida Statutes, and Section 943.25(4) and (8), Florida Statutes.

PROPOSED RULE

RULE 6.560  
CONVICTION OF TRAFFIC INFRACTION

An admission or determination that a person has committed a traffic infraction shall constitute a conviction as that term is used in Chapter 322, Florida Statutes, and Section 943.25(4) and (8), Florida Statutes, except when adjudication is withheld by the Court.

COMMENTS

COMMITTEE NOTE:

This revision is merely to clarify the existing procedure.

COMMITTEE VOTE:

<u>Approved</u>	<u>Against</u>
13	0

BOARD OF GOVERNORS VOTE:

<u>Approved</u>	<u>Against</u>
17	0

PRESENT RULE

PROPOSED RULE

COMMENTS

NEW RULE

USE OF AFFIDAVITS

A defendant in a non-criminal traffic infraction may offer evidence of other witnesses through the use of one or more affidavits. Said affidavits shall be considered by the Court only as to the facts therein which are based upon the personal knowledge and observation of the affiant as to relevant and material facts. However, no such affidavit shall be admissible for the purposes of establishing character or reputation. The Court after examining the affidavits, may continue or recess the hearing to give the defendant an opportunity to bring in the affiant as a witness if the affidavit is insufficient or unreliable.

COMMITTEE NOTE:

This rule is new and is meant to apply only to non-criminal traffic infractions rather than criminal traffic offenses. The Committee felt that in many cases it was difficult if not impossible for a Defendant to get witnesses to appear for him/her on a traffic ticket, and that this problem is eased by this rule. Of course, the Court still must review the affidavits to determine if they are reliable on their face -- and, if not, the Court may accept the affidavit only to that part it deems reliable, it may reject the affidavit, or it may continue or recess the hearing to allow the Defendant to bring the witnesses to Court. A reciprocal rule for affidavits from State witnesses was rejected on confrontation grounds.

COMMITTEE VOTE:

<u>Approved</u>	<u>Against</u>
11	2

BOARD OF GOVERNORS VOTE:

<u>Approved</u>	<u>Against</u>
17	0

PRESENT RULE

PROPOSED RULE

COMMENTS

NEW RULE

USE OF TAPE RECORDING

COMMITTEE NOTE:

Any party to a non-criminal traffic infraction may make a tape recording of the hearing. The provision and operation of the recording equipment shall be the responsibility of the defendant unless otherwise provided by the Court. The original recording shall immediately be delivered to the Clerk at the end of the hearing, and the Clerk shall seal it and file same. Such tape shall be transcribed for an appeal if ordered by the Defendant. Transcription shall only be by an official court reporter at the Defendant's expense.

The Committee felt that the non-criminal nature of a traffic infraction justified a simple and inexpensive method to establish a record if an appeal is taken by a Defendant in a non-criminal traffic infraction, especially as no attorney is involved in many of these cases. Of course, if the tape recording is bad or faulty such that the record is inadequate for the appellate court to determine reversible error -- the appellant bears the burden of this failure, even if no fault of his own -- and this may result in affirmance according to established case law and the Florida Rules of Appellate Procedure. The Court may provide for its own equipment and procedure pursuant to Florida Rules of Judicial Administration 2.070

COMMITTEE VOTE:

<u>Approved</u>	<u>Against</u>
13	0

BOARD OF GOVERNORS VOTE:

<u>Approved</u>	<u>Against</u>
17	0

h

✓