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65,104

FILED
SID J. WHITE
MAY 22 1984
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

IN RE: FLORIDA RULES OF PRACTICE AND *
PROCEDURE FOR TRAFFIC COURTS *
* * * * *

RESPONSE OF THE TRAFFIC COURT REVIEW COMMITTEE TO THE
PROPOSALS OF THE FLORIDA BAR

The Traffic Court Review Committee respectfully shows unto
the Court:

1. This is a matter within the exclusive jurisdiction of
this Court pursuant to Article V, Section 2, Florida Consti-
tution.

2. Rule 6.156(d), Rules of Practice and Procedure for
Traffic Courts, provides that all matters concerning the adminis-
tration of the Traffic Court Rules shall be considered by the
Traffic Court Review Committee.

3. Rule 6.040, Rules of Practice and Procedure for Traffic
Courts, provides that the Traffic Court Review Committee shall
make recommendations to the Supreme Court for changes in the
Traffic Court Rules.

4. On December 9, 1974, this Court promulgated Transition
Rule 20, making the new Traffic Court Rules effective January 1,
1975. Since their becoming effective, the Traffic Court Review
Committee has continued to study the Traffic Court Rules and the
effect of decriminalizing certain traffic offenses. As a result
of this continuing study, the Committee recommends for approval
of this Court the changes as reflected in the attachment to this
petition.

5. The Committee, through its Traffic Rules Subcommittee,
has sent questionnaires to all chief circuit judges, county
judges, clerks of courts, state attorneys, public defenders,
driver improvement schools and the Florida Bar Association.
Numerous responses were received and each suggestion for change
were considered by the Traffic Rules Subcommittee at its meetings
on December 5, 1983 and March 22, 1984. A report recommending
changes was submitted by the subcommittee to the full Committee
at its March 22, 1984, meeting. Further changes were made at
that time by the Committee to arrive at the attached submission.

6. All additions are noted by underlining, deletions by strike through. The "Reason for Change" column provides the rationale for each suggested amendment.

7. This petition is filed by direction of the Traffic Court Review Committee.

WHEREFORE, the Traffic Court Review Committee respectfully petitions this Court for adoption of the changes set forth in the attachment to this petition.

THE TRAFFIC COURT REVIEW COMMITTEE

BY:

Richard E. Cox

Richard E. Cox

Executive Secretary

II. GENERAL PROVISIONS

Rule 6.040 Definitions

PRESENT RULE

PROPOSED RULE

REASON FOR CHANGE

The following terms shall have the meaning respectively ascribed to them:

"Court" means any county court to which these rules apply and the judge or official.

"Judge" means any judicial officer authorized by law to preside over a court to which these rules apply.

"Law" includes the constitutions of the United States, State of Florida, statutes, ordinances, judicial decisions and these rules.

"Oath" includes affirmations.

"Clerk" means clerk of the initiating court or trial court.

"Open Court" shall mean in a courtroom as provided or judge's or official's chambers of suitable judicial decorum.

"Prosecutor" means any attorney who represents a state, county, city, town or village in the prosecution of a defendant for the violation of a statute or ordinance.

"Criminal Traffic Offense" means a violation of a statute or ordinance governing traffic not subject to the provisions of Chapter

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"Criminal Traffic Offense" means a violation of a statute or ordinance governing traffic not subject to the provisions of Chapter

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Rule 6.040 (cont.)

PRESENT RULE

318, Florida Statutes, within the jurisdiction of a court to which these rules apply, including Chapter 322, Florida Statutes, sections 316.027, 316.061, 316.067, 316.072(3), 316.192, 316.193, 316.1935, 860.01, Florida Statutes and Chapter 893, Florida Statutes.

"Review Committee" means the committee appointed by the Supreme Court to study and consider the application and administration of these rules for traffic courts in Florida and which shall make recommendations to the Supreme Court for changes in said rules.

"Warrant" includes *capias*.

"Infraction" means a noncriminal violation of Chapter 316, or sections 240.265, 320.07(3), 339.30 or 340.23, Florida Statutes, except as provided in section 318.17, Florida Statutes, which is not punishable by incarceration and for which there is no right to a trial by jury or a right to court appointed counsel.

"Official" means any state judge authorized by law to preside over a court or at a hearing adjudicating traffic infractions.

"Department" shall mean the Department of Highway Safety and

PROPOSED RULE

318, Florida Statutes, within the jurisdiction of a court to which these rules apply, ~~including Chapter 322, Florida Statutes, sections 316.027, 316.061, 316.067, 316.072(3), 316.192, 316.193, 316.1935, 860.01, Florida Statutes and Chapter 893, Florida Statutes.~~

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"Department" shall mean the Department of Highway Safety and

REASON FOR CHANGE

Specific statutory references to those offenses which constitute criminal traffic offenses and civil infractions were deleted to avoid any possible future necessity of amending the rule as a result of statutory changes. Reference would have to be made to statutes to determine the substantive scope of these definitions.

Rule 6.040 (cont.)

PRESENT RULE

Motor Vehicles, defined in section 20.24, Florida Statutes, or the appropriate division thereof.

"Officer" means any enforcement officer charged with and acting under authority to arrest or cite persons suspected or known to be violating the statutes or ordinances regulating the operation or equipment of vehicles, or the regulation of traffic.

"Infraction Requiring a Mandatory Hearing" refers to an infraction listed in section 318.19, Florida Statutes, which requires an appearance before a designated official at the time and location of the scheduled hearing.

PROPOSED RULE

Motor Vehicles, defined in section 20.24, Florida Statutes, or the appropriate division thereof.

"Officer" means any enforcement officer charged with and acting under authority to arrest or cite persons suspected or known to be violating the statutes or ordinances regulating the operation or equipment of vehicles, or the regulation of traffic.

"Infraction Requiring a Mandatory Hearing" refers to an infraction listed in section 318.19, Florida Statutes, which requires an appearance before a designated official at the time and location of the scheduled hearing.

REASON FOR CHANGE

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II. GENERAL PROVISIONS

Rule 6.070 Violation of These Rules Contempt; When

PRESENT RULE

Any willful failure to apply these rules or to amend or vacate local court rules contrary to the rules, or the continued participation in practice forbidden in these rules by the official, clerk or other personnel, may be considered a contempt of the Supreme Court of Florida and punished as such.

PROPOSED RULE

[Reserved]

REASON FOR CHANGE

This provision adds nothing to the authority of the Supreme Court to punish for contempt and therefore should be deleted as surplusage.

II. GENERAL PROVISIONS

Rule 6.120 Bail Bondsmen

PRESENT RULE

Bail bondsmen shall not participate in any hearing or trial before the court in the capacity of an attorney at law or seek to represent their bond clients in a legal capacity.

PROPOSED RULE

[Reserved]

REASON FOR CHANGE

This rule is unnecessary in light of similar statutory prohibitions.

II. GENERAL PROVISIONS

Rule 6.130 Traffic Cases Tried Separately

PRESENT RULE

Rule 6.130 Traffic Cases Tried Separately

Insofar as practicable traffic cases shall be tried separately from other cases. Where a person is cited for the commission of both a criminal and a civil traffic violation or both a civil traffic infraction requiring a mandatory hearing and a civil traffic infraction not requiring a hearing the cases may be heard simultaneously if they arose out of the same set of facts.

Under any of these circumstances the civil traffic infraction shall be treated as continued for the purpose of reporting to the Department. Prior to the date of the scheduled hearing or trial, an alleged offender may dispose of any non-mandatory civil traffic infraction in the manner provided by these rules and section 318.14, Florida Statutes.

PROPOSED RULE

Rule 6.130 Case Consolidation

~~Insofar-as-practicable-traffic cases-shall-be-tried-separately-from other-cases.~~ Where a person is cited for the commission of both a criminal and a civil traffic violation or both a civil traffic infraction requiring a mandatory hearing and a civil traffic infraction not requiring a hearing the cases may be heard simultaneously if they arose out of the same set of facts.

Under any of these circumstances the civil traffic infraction shall be treated as continued for the purpose of reporting to the Department. Prior to the date of the scheduled hearing or trial, an alleged offender may dispose of any non-mandatory civil traffic infraction in the manner provided by these rules and section 318.14, Florida Statutes.

REASON FOR CHANGE

In the interest of judicial efficiency, it was thought desirable to remove language which discouraged the trying of traffic cases separately from other cases. In those situations where a nontraffic misdemeanor, e.g. disorderly intoxication, arises from the same incident, there could be a possible waste of judicial resources in requiring separate trials. It should be noted that this matter would still remain within the sound discretion of the trial court.

II. GENERAL PROVISIONS

Rule 6.150 Witnesses

PRESENT RULE

The procedure prescribed by law in civil and criminal cases concerning the attendance and testimony of witnesses, the administration of oaths and affirmations and proceedings to enforce the remedies and protect the rights of the parties shall govern traffic cases so far as they are applicable unless provided otherwise by these rules or by the law. Payment of witness fees and costs of serving witnesses in civil traffic cases shall be made in the same manner as a criminal traffic case.

PROPOSED RULE

(a) The procedure prescribed by law in civil and criminal cases concerning the attendance and testimony of witnesses, the administration of oaths and affirmations and proceedings to enforce the remedies and protect the rights of the parties shall govern traffic cases so far as they are applicable unless provided otherwise by these rules or by the law. Payment of witness fees and costs of serving witnesses in civil traffic cases shall be made in the same manner as a criminal traffic case.

(b) A defendant in a civil infraction may offer evidence of other witnesses through use of one or more affidavits. Said affidavits shall be considered by the court only as to the facts therein which are based on the personal knowledge and observation of the affiant as to relevant material facts. However, such affidavits shall not be admissible for the purpose of establishing character or reputation.

REASON FOR CHANGE

In those cases where witnesses who could provide direct evidence on the issue of the commission of an infraction are not able to attend, there should be a procedure allowing for the submission of evidence in affidavit form. This rule relates only to the admissibility of the evidence; the weight given such evidence would be a matter within the sound discretion of the trial court.

II. GENERAL PROVISIONS

Rule 6.155 Checks

PRESENT RULE

Where a fine or civil penalty is paid by a check or money order the fine or civil penalty shall not be considered fulfilled until the check or money order has been honored by the institution upon which it is drawn. The date the check or money order was written shall be considered the date of suspension.

PROPOSED RULE

REASON FOR CHANGE

The matter covered by this rule is adequately covered by statutory provision dealing with subject. It is also obvious that the date the returned check was written should be the date of the noncompliance.

III. CRIMINAL OFFENSES

Rule 6.160 Practice as in Criminal Rules

PRESENT RULE

Except as hereinafter provided, trial under this part shall be governed by the Rules of Criminal Procedure so far as they may be applicable unless they are in conflict with these rules. A person shall be considered "taken into custody" for the purpose of Rule 3.191 when he is arrested or when a traffic citation, notice to appear, summons, information or indictment is served upon him.

PROPOSED RULE

Except as hereinafter provided, trial under this part shall be governed by the Rules of Criminal Procedure so far as they may be applicable unless they are in conflict with these rules. A person shall be considered "taken into custody" for the purpose of Rule 3.191 when he is arrested or when a traffic citation, notice to appear, summons, information or indictment is served upon him in lieu of arrest.

REASON FOR CHANGE

The last four words were added to make it clear that the day the time period for speedy trial purposes begins to run is when an arrest is made or when a charging instrument is served upon the individual in lieu of arrest. In a situation where an arrest precedes the serving of a charging instrument, the date of arrest would control.

III. CRIMINAL OFFENSES

Rule 6.165 Complaint; Summons; Form; Use

PRESENT RULE

All prosecutions for criminal traffic offenses by law enforcement officers shall be by uniform traffic citation as provided for in section 316.650, Florida Statutes, or other applicable statutes, or by affidavit, information or indictment as provided for in the Florida Rules of Criminal Procedure. If prosecution is by affidavit, information, or indictment, a uniform traffic citation shall be prepared by the prosecutor and submitted to the Department of Highway Safety and Motor Vehicles.

PROPOSED RULE

(a) All prosecutions for criminal traffic offenses by law enforcement officers shall be by uniform traffic citation as provided for in section 316.650, Florida Statutes, or other applicable statutes, or by affidavit, information or indictment as provided for in the Florida Rules of Criminal Procedure. If prosecution is by affidavit, information, or indictment, a uniform traffic citation shall be prepared by the arresting officer at the direction of the prosecutor or, in the absence of the arresting officer, by the prosecutor, and submitted to the Department of Highway Safety and Motor Vehicles.

(b) The Court may allow the prosecutor to amend in open court a traffic citation alleging a criminal traffic offense to state a different traffic offense. No new traffic citation need be issued by the arresting officer. The court in its discretion may grant additional time to the defendant for the time to the defendant for the purpose of preparing his defense if the amendment has prejudiced the defendant.

REASON FOR CHANGE

The change in what is now subsection (a) is designed to allow the prosecutor to work out an arrangement whereby he is responsible for but need not personally prepare the uniform traffic citation under the prescribed circumstances.

Subsection (b) has been added to give the court the option of allowing the amendment of a citation from one criminal offense to another in open court. In such situations, it will not be necessary for a new uniform traffic citation to be issued. Notation could be made on the back of the citation as to the action taken. In a situation where a defendant is prejudiced by the amendment and can establish that fact to the satisfaction of the court, additional time can be granted for the defendant's trial preparation.

III. CRIMINAL OFFENSES

Rule 6.290 Withholding Adjudication Prohibited; When

PRESENT RULE

(a) Pursuant to the provisions of section 322.281, Florida Statutes, no court shall withhold adjudication of guilt or the imposition of sentence for the offense of driving or being in actual physical control of a motor vehicle, while having an unlawful blood alcohol level or while under the influence of alcoholic beverages, model glue, or any substance controlled by Chapter 893, Florida Statutes.

(b) The court is also prohibited from accepting a plea of guilty or nolo contendere to a lesser offense from a person charged with driving under the influence, as provided for in Chapter 316 and 322, Florida Statutes, whose chemical results show a blood alcohol content by weight of .20 percent or more.

PROPOSED RULE

(a) Pursuant to the provisions of section ~~322.281~~ 316.656, Florida Statutes, no court shall suspend, defer, or withhold adjudication of guilt or the imposition of sentence for the offense of driving or being in actual physical control of a motor vehicle, while having an unlawful blood alcohol level or while under the influence of alcoholic beverages, model glue, or any substance controlled by Chapter 893, Florida Statutes.

(b) The court is also prohibited from accepting a plea of guilty or nolo contendere to a lesser offense from a person charged with driving under the influence, as provided for in Chapter 316 and 322, Florida Statutes, whose chemical results show a blood alcohol content by weight of .20 percent or more.

REASON FOR CHANGE

Subsection (a) was amended to conform with recent changes made in statutory law to prohibit the suspending and deferring of adjudication of guilt or imposition of sentence as well as the withholding of such.

IV. TRAFFIC INFRACTIONS

Rule 6.330 Election to Attend Traffic School

PRESENT RULE

(a) Unless a mandatory hearing is required pursuant to section 318.19, Florida Statutes, or the alleged offender appears at a hearing before an official, an alleged offender may elect to attend a driver improvement school or a student traffic safety council school where such schools are available in lieu of payment of the civil penalty. The person must appear at the traffic violations bureau of the court having jurisdiction of the case to make such an election, within ten days of the date of the citation. If the person begins the driver school course, such action shall constitute an admission and a waiver of the right to a hearing. An offender may elect to attend a driver improvement school or student traffic safety council school to satisfy only one traffic infraction citation during each calendar year.

PROPOSED RULE

(a) Unless a mandatory hearing is required pursuant to section 318.19, Florida Statutes, or the alleged offender appears at a hearing before an official, an alleged offender may elect to attend a driver improvement school or a student traffic safety council school where such schools are available in lieu of payment of the civil penalty. Attendance at a driver improvement school shall not operate to waive the surcharges for excessive speed imposed by section 318.18, Florida Statutes. The person must appear at the traffic violations bureau of the court having jurisdiction of the case to make such an election, within ten days of the date of the citation. If the person begins the driver school course, such action shall constitute an admission and a waiver of the right to a hearing. ~~An offender may elect to attend a driver improvement school or student traffic safety council school to satisfy only one traffic infraction citation during each calendar year.~~

REASON FOR CHANGE

The purpose of the sentence added in the middle of subsection (a) is to clarify any confusion which may have existed as to which penalties are waived when one elects to attend driver improvement school. The language in section 318.18, Florida Statutes, precluding the surcharge from being waived by the court, would seem to call for a similar procedure in situations where driver improvement school is elected and no court appearance occurs.

The final section of subsection (a) was deleted since it has been difficult, if not impossible, to monitor and, even if it were possible to enforce, could be the subject of unequal application.

IV. TRAFFIC INFRACTIONS

Rule 6.430 Joint Hearing of Alleged Offenders and Complaints

PRESENT RULE

When two or more alleged offenders are cited with an infraction arising out of the same general facts, they may have a hearing separately or jointly. When one alleged offender is cited in the same complaint, or by separate complaints of several infractions, arising out of the same general facts, the counts or complaints may be tried separately or jointly, in the discretion of the official.

PROPOSED RULE

REASON FOR CHANGE

In light of existing law and inherent power of court, this rule was thought to be unnecessary.

IV. TRAFFIC INFRACTIONS

Rule 6.450 Order of Hearing

PRESENT RULE

(a) If it is admitted that the traffic infraction was committed, the official shall permit the offender to offer a statement concerning the commission of the infraction. The official may examine the offender and issuing officer concerning the infraction prior to making a determination as to the civil penalty to be imposed.

(b) Prior to the commencement of hearing the official shall briefly describe and explain the purposes and procedure of the hearing and the rights of the alleged offender.

(c) The issuing officer shall, after being sworn, testify and offer evidence to the facts concerning the alleged infraction. After such testimony, the official and the alleged offender or his counsel may examine such officer.

PROPOSED RULE

(a) If it is admitted that the traffic infraction was committed, the official shall permit the offender to offer a statement concerning the commission of the infraction. The official may examine the offender and issuing officer concerning the infraction prior to making a determination as to the civil penalty to be imposed.

(b) Prior to the commencement of a hearing the official shall briefly describe and explain the purposes and procedure of the hearing and the rights of the alleged offender.

(c) ~~The-issuing-officer-shall, after-being-sworn,-testify-and-offer evidence-to-the-facts-concerning-the alleged-infraction.--After-such testimony,-the-official-and-the alleged-offender-or-his-counsel-may examine-such-officer.~~

REASON FOR CHANGE

Subsection (c) is deleted in order to alleviate the necessity of a law enforcement officer's attendance at a civil infraction hearing in those situations where his testimony may not be necessary, e.g., of a hearsay nature.

Rule 6.450 (cont.)

PRESENT RULE

(d) Thereafter, the alleged offender may offer sworn testimony and evidence and after such testimony is offered shall answer questions as may be asked by the official.

(e) If the testimony of additional witnesses is to be offered, the order on which such witnesses shall testify shall be within the discretion of the official conducting the hearing. Any such witness shall be sworn and shall testify, and may then be questioned by the official, and thereafter may be questioned by the alleged offender or counsel.

(f) Upon the conclusion of such testimony and examination, the official may further examine or allow such examination as the official deems appropriate.

(g) At the conclusion of all testimony and examination, the alleged offender or counsel shall be permitted to make a statement in nature of a closing argument.

PROPOSED RULE

(c) Thereafter the alleged offender may offer sworn testimony and evidence and after such testimony is offered shall answer questions as may be asked by the official.

(d) If the testimony of additional witnesses is to be offered, the order on which such witnesses shall testify shall be within the discretion of the official conducting the hearing. Any such witness shall be sworn and shall testify, and may then be questioned by the official, and thereafter may be questioned by the alleged offender or counsel.

(e) Upon the conclusion of such testimony and examination, the official may further examine or allow such examination as the official deems appropriate.

(f) At the conclusion of all testimony and examination, the alleged offender or counsel shall be permitted to make a statement in nature of a closing argument.

REASON FOR CHANGE

PRESENT RULE

PROPOSED RULE

REASON FOR CHANGE

(g) In any case where a contested infraction hearing is held, and the offender, who has either asked for the contested hearing or has otherwise received proper notice of the hearing, fails to appear for the hearing, the official can proceed with the hearing, take testimony and, if it is determined that the infraction was committed, impose a penalty as if the offender had attended the hearing. In the interests of justice, the court may vacate the judgment upon a showing of good cause by the offender.

Renumbered subsection (g) was added to cover those situations where state is prepared to go forward with the hearing, having subpoenaed witnesses, and the alleged offender does not appear. In order to avoid cases of injustice, the court would be allowed the discretion of granting a new hearing upon a showing by the offender of a valid excuse for not showing up at the hearing.

IV. TRAFFIC INFRACTIONS

Rule 6.455 Amendments

PRESENT RULE

PROPOSED RULE

REASON FOR CHANGE

The charging instrument may be amended at any time prior to hearing, subject to the approval of the official. The official may grant a continuance if such amendment requires one in the interests of justice. No case shall be dismissed by reason of any informality or irregularity in the charging instrument.

This rule would provide the necessary flexibility the court would need to hear and adjudicate a civil infraction which may contain certain technical defects. Provision is made for a continuance in order to avoid any possible prejudice to the alleged offender.

IV. TRAFFIC INFRACTIONS

Rule 6.460 Evidence

PRESENT RULE

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

(a) 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 those rules, and shall be liberally construed by the official hearing the case. ~~Evidence-admissible-shall include-but-not-be-limited-to accident-reports.~~

(b) Any party to a noncriminal traffic infraction may take 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 who shall seal and file it. 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.

REASON FOR CHANGE

A provision has been made to insure that the rules of evidence applicable in civil infraction cases will not be inconsistent with the rules of civil procedure.

The last sentence of the existing rule [now, subsection (a)] was deleted in order to avoid any possible conflict with Section 316.066(4), Florida Statutes, which specifically states that information contained in an accident report shall not be used in any civil or criminal trial arising out of an accident.

Subsection (b) was added to upgrade the quality of appeals from civil infractions. Responsibility is placed on the alleged offender to make a tape recording, the expense for transcription of which being also placed upon the offender. This procedure would hopefully help alleviate problems previously encountered when an appeal is taken and the county court judge is essentially ordered to construct a trial record of a case concerning which he may have little memory.

IV. TRAFFIC INFRACTIONS

Rule 6.470 Costs

PRESENT RULE

(a) In those cases where a hearing is held to determine whether a traffic infraction was committed, court costs up to fifteen dollars may be assessed by the official against the offender in addition to the penalty imposed.

(b) Where no hearing is required or held and the offender admits the commission of the offense by forfeiting a bond or paying the penalty the following costs may, if authorized by administrative order of the Chief Judge of the Circuit, be deducted from the penalty by the traffic violations bureau or clerk's office:

1) One dollar for all infractions of bicycle regulations, section 316.2065, Florida Statutes, and infractions of pedestrian regulations, section 316.130, Florida Statutes;

2) Three dollars for all non-moving traffic infractions; and

3) Five dollars for all moving infractions.

PROPOSED RULE

(a) In those cases where a hearing is held to determine whether a traffic infraction was committed, court costs up to ~~fifteen~~ twenty-five dollars may be assessed by the official against the offender in addition to the penalty imposed.

(b) Where no hearing is required or held and the offender admits the commission of the offense by forfeiting a bond or paying the penalty the following costs may, if authorized by administrative order of the Chief Judge of the Circuit, be deducted from the penalty by the traffic violations bureau of clerk's office:

1) One dollar for all infractions of bicycle regulations, section 316.2065, Florida Statutes, and infractions of pedestrian regulations, section 316.130, Florida Statutes;

2) Three dollars for all non-moving traffic infractions; and

3) Five dollars for all moving infractions.

REASON FOR CHANGE

In light of the increases in expenses attendant to the prosecution of civil traffic infractions, it was thought appropriate to raise from fifteen to twenty-five dollars the maximum amount allowable, in the discretion of the court, as court costs when there is a hearing.

Rule 6.470 (cont.)

PRESENT RULE

(c) In addition to the costs provided above, those assessments for law enforcement training established in section 943.25(4) and (8), Florida Statutes, shall be collected.

Where a hearing is held the law enforcement education assessments shall be in addition to any penalty or costs assessed. Where no hearing is held and the offender admits the commission of the offense by forfeiting a bond or paying the penalty by mail or in person, the law enforcement education assessments shall be deducted from the amount of the penalty in addition to the costs provided in (b) above.

If an offender elects a driver improvement school as provided in Rule 6.330 of these Rules, the law enforcement education assessments shall be collected at the time the offender appears before the traffic violations bureau to make his or her election.

PROPOSED RULE

(c) In addition to the costs provided above, those assessments for law enforcement training established in section 943.25(4) and (8), Florida Statutes, shall be collected.

Where a hearing is held the law enforcement education assessments shall be in addition to any penalty or costs assessed. Where no hearing is held and the offender admits the commission of the offense by forfeiting a bond or paying the penalty by mail or in person, the law enforcement education assessments shall be deducted from the amount of the penalty in addition to the costs provided in (b) above.

If an offender elects a driver improvement school as provided in Rule 6.330 of these Rules, the law enforcement education assessments shall be collected at the time the offender appears before the traffic violations bureau to make his or her election.

REASON FOR CHANGE

IV. TRAFFIC INFRACTIONS

Rule 6.480 Deferred Payment of Penalty Imposed

PRESENT RULE

Upon motion of the offender or upon his own motion an official may allow a reasonable amount of time before requiring the payment of a penalty imposed. If payment is not made after such extension or extensions the failure to pay shall be reported to the department within ten days for the purpose of suspending the offenders driving license.

PROPOSED RULE

Upon motion of the offender or upon his own motion an official may allow a reasonable amount of time before requiring the payment of a penalty imposed. If payment is not made after such extension or extensions ~~the failure to pay shall be reported to the department within ten days for the purpose of suspending the offenders driving license,~~ such action will be considered a failure to comply for purposes of section 318.15, Florida Statutes.

REASON FOR CHANGE

This will bring rule into compliance with delinquency notice provisions in Chapter 318.

IV. TRAFFIC INFRACTIONS

Rule 6.540 Time For and Method of Making Motions; Procedure

PRESENT RULE

(a) A motion for new hearing or in arrest of judgment, or both, may be made within four days, or such greater time as the official may allow, not to exceed 10 days, after the finding of the official.

(b) When the offender has been found to have committed the infraction such a motion may be dictated into the record, if a court reporter is present, and may be argued immediately after the finding of the official. The official may immediately rule upon the motion.

(c) Such motion may be in writing, filed with the clerk or violations bureau; it shall state the grounds on which it is based. When the official sets a time for the hearing therefore, the clerk or bureau shall notify the counsel, if any, for the offender or, if no attorney has been retained, the offender.

PROPOSED RULE

(a) A motion for new hearing or in arrest of judgment, or both, may be made within four days, or such greater time as the official may allow, not to exceed ~~10~~ 30 days, after the finding of the official.

(b) When the offender has been found to have committed the infraction such a motion may be dictated into the record, if a court reporter is present, and may be argued immediately after the finding of the official. The official may immediately rule upon the motion.

(c) Such motion may be in writing, filed with the clerk or violations bureau; it shall state the grounds on which it is based. When the official sets a time for the hearing therefore, the clerk or bureau shall notify the counsel, if any, for the offender or, if no attorney has been retained, the offender.

REASON FOR CHANGE

Especially in situations where an individual has filed an affidavit of defense, it would seem appropriate to allow longer than the present 10 days for filing of a motion for a new hearing. Although this situation does not appear to be very common, basic due process considerations would militate in favor of allowing more time.

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IV. TRAFFIC INFRACTIONS

Rule 6.560 Conviction of Traffic Infraction

PRESENT RULE

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

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, unless adjudication is withheld by an official in those cases in which withholding of adjudication is not otherwise prohibited by statute or rule of procedure.

REASON FOR CHANGE

In light of the fact that many judges now withhold adjudication in civil infraction cases and the Department of Highway Safety and Motor Vehicles records such withheld adjudications, it was thought appropriate to place in the rules a provision which specifically removes such cases from the definition of conviction.

IV. TRAFFIC INFRACTIONS

Rule 6.570 Reporting Action Requiring Suspension of Driver License

PRESENT RULE

Any noncompliance with the provisions of Chapter 318, Florida Statutes, resulting in the suspension of a driver license shall be reported to the department within ten days of the noncompliance on a form to be supplied by the department. Any noncompliance may be determined without the necessity of holding a hearing.

PROPOSED RULE

Any noncompliance with the provisions of Chapter 318, Florida Statutes, resulting in the suspension of a driver license shall be reported to the department within ~~ten-days-of-the~~ noncompliance five days after an offender's failure to comply with the requirements of section 318.18(1), on a form to be supplied by the department. Any noncompliance may be determined without the necessity of holding a hearing.

REASON FOR CHANGE

This amendment was necessitated by a change in the procedure for handling civil infractions in cases where there is noncompliance. Under the present statutory scheme, an individual is given a delinquency notice which allows him thirty additional days to comply with the requirements of the infraction. After that time, the clerk is required to report to the department any noncompliance within five days as opposed to the previously mandated ten days.

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