

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

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FILED

SID J. WHITE

SEP 23 1985

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

PETITION FOR AMENDMENT TO FLORIDA RULES
OF PRACTICE AND PROCEDURE FOR TRAFFIC COURTS

The Traffic Court Review Committee and the Committee to Implement the 1985 Traffic Court Procedure Changes respectfully show unto the Court:

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

2. Pursuant to the authority of Administrative Order dated June 25, 1985, entitled In re: Committee to Implement the 1985 Traffic Court Procedure Changes, the Chief Justice established a Committee to examine the possibility of changes in traffic court procedure necessitated by the enactment of Chapter 85-250, Laws of Florida.

3. The Committee to Implement met on two occasions, to wit, July 26 and August 30, 1985, to consider the necessity of, among other things, changes in the Florida Rules of Practice and Procedure for Traffic Courts. The attached rules are submitted as a result of these deliberations.

4. The rules as proposed by the Committee were presented to the Traffic Court Rules Committee of the Florida Bar on September 5 for the purpose of soliciting further input. No specific suggestions for changes have been submitted by that Committee.

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

6. The Traffic Court Review Committee at its meeting on September 20, 1985, endorsed the attached proposals.

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

8. This petition is filed at the direction of the Committee to Implement the 1985 Traffic Court Procedure Changes and the Traffic Court Review Committee.

WHEREFORE, the Committee to Implement the 1985 Traffic Court Procedure Changes and the Traffic Court Review Committee respectfully petition the 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

THE COMMITTEE TO IMPLEMENT THE 1985
TRAFFIC COURT PROCEDURE CHANGES

BY: Richard E Cox

Richard E. Cox

Staff Counsel

Rule 6.100 Traffic Violations Bureau

PRESENT RULE

(a) A traffic violations bureau shall be established in each county court by administrative order of the chief judge of the circuit in which the county court is located. The function of the bureau shall be to accept appearances, waivers of non-criminal hearings, admissions and payment of civil penalties for traffic infractions not requiring a mandatory hearing. Where any person's sentence for a criminal traffic offense or penalty for a traffic infraction requiring a mandatory hearing or a traffic infraction where the person elects to appear before an official includes the payment of a fine or civil penalty, payment may be made before the bureau. The bureau may also accept appearances, waivers of hearings, admissions and payment of civil penalties as provided in section 318.18, Florida Statutes, in traffic infraction cases where the driver originally elected, but was not required, to appear before an official prior to the date of the hearing. The bureau shall act under the direction and control of the court.

PROPOSED RULE

(a) A traffic violations bureau shall be established in each county court by administrative order of the chief judge of the circuit in which the county court is located. The function of the bureau shall be to accept appearances, waivers of non-criminal hearings, admissions, ~~and~~ payment of civil penalties for traffic infractions not requiring a mandatory hearing, and nolo contendere pleas pursuant to the authority of section 318.14(9) and (10), Florida Statutes. Where any person's sentence for a criminal traffic offense or penalty for a traffic infraction requiring a mandatory hearing or a traffic infraction where the person elects to appear before an official includes the payment of a fine or civil penalty, payment may be made before the bureau. The bureau may also accept appearances, waivers of hearings, admissions and payment of civil penalties as provided in section 318.18, Florida Statutes, in traffic infraction cases where the driver originally elected, but was not required, to appear before an official prior to the date of the hearing. The bureau shall act under the direction and control of the court.

REASON FOR CHANGE

Chapter 85-250, Laws of Florida, creates two new subsections in section 318.14, which establish alternative procedures for the disposition of infractions and selected driver license and motor vehicle registration criminal offenses. This amendment references that statutory change and authorizes the clerk to take the appropriate actions.

Rule 6.110 Driver Improvement, Student Traffic Safety
Council and DWI Counter Attack Schools

PRESENT RULE

(a) In those areas where traffic law violators are ordered or are allowed to elect to attend a driver improvement school or student traffic safety council school, or are sentenced to a DWI Counter Attack School, the chief judge of the circuit shall issue an administrative order designating the schools to which attendance is required. No DWI Counter Attack School shall be approved by the chief judges until approval is first granted by the DWI Schools Coordinator or the Traffic Court Review Committee.

PROPOSED RULE

(a) In relation to traffic law violators ~~In those areas where traffic law violators are~~ ordered or are allowed to elect to attend a driver improvement school or student traffic safety council school, or are sentenced to a DWI Counter Attack School, the chief judge of the circuit shall issue an administrative order designating the schools to which attendance is required. No DWI Counter Attack School shall be approved by the chief judges until approval is first granted by the DWI Schools Coordinator or the Traffic Court Review Committee.

REASON FOR CHANGE

Chapter 85-250 allows all alleged offenders in the state the option to attend school in lieu of payment of the civil penalty. This amendment reflects the statewide application of the option.

Rule 6.291 Withheld Adjudication; Misdemeanors; Costs and Assessments

PRESENT RULE

PROPOSED RULE

REASON FOR CHANGE

[New]

(a) When a defendant elects to exercise the option of receiving a withheld adjudication under the provisions of section 318.14(10), Florida Statutes, law enforcement education assessments under section 943.25(4) and (8), Florida Statutes, and victims of crimes compensation costs and surcharges pursuant to sections 960.20 and 960.25, Florida Statutes, shall be assessed, in addition to the court costs assessed by section 318.14(10). However, costs pursuant to the authority of section 27.453, Florida Statutes, for the Local Government Criminal Justice Trust Fund, shall not be assessed.

(b) In addition to any other allowable costs, additional court costs of up to five dollars may, if authorized by administrative order of the chief judge of the circuit, be assessed.

This new rule would describe the allowable costs in relation to those persons utilizing the provisions of section 318.14(10), which was created by Chapter 85-250, Laws of Florida. Allowable costs, as provided in the bill, include law enforcement education and victims of crimes assessments. Specifically not allowed is the fifty dollar cost under section 27.453 created by Chapter 85-213, Laws of Florida.

Rule 6.292 Enlargement of Time

PRESENT RULE

[New]

PROPOSED RULE

(a) When a defendant elects to exercise the option of receiving a withheld adjudication pursuant to the provisions of section 318.14(10), Florida Statutes, the clerk may allow the defendant such additional time as may be reasonably necessary to fulfill the statutory requirements.

REASON FOR CHANGE

Under the provisions of Chapter 85-250, a person charged with most driver license and motor vehicle registration offenses can obtain a withheld adjudication by presenting proof of a subsequently-obtained valid drivers license or motor vehicle registration. This provision gives the clerk the authority to extend the time period for compliance with the requirements beyond the statutory ten days.

Rule 6.293 Conviction of Selected Misdemeanors

PRESENT RULE

[New]

PROPOSED RULE

Elections under section 318.14(10), Florida Statutes, where adjudication is withheld, shall not constitute convictions as that term is used in Chapter 322, Florida Statutes.

REASON FOR CHANGE

Pursuant to the provisions of Chapter 85-250, various driver license and motor vehicle registration misdemeanors are eligible for withheld adjudications. This new rule would indicate that statutory withheld adjudications are not convictions for purpose of driver license action.

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. Attendance at a driver improvement school shall not operate to waive the surcharges for excessive speed imposed by section 318.18(3), 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.

(b) An offender who is sentenced to or elects to attend a driver improvement school shall have the right to attend such school in the county of his residence, if his county has an approved driver improvement school. If his residence county does not have an approved driver improvement school, the offender shall have the right to attend an approved driver improvement school in the county closest to his county of residence that has an approved school.

PROPOSED RULE

(a) Unless a mandatory hearing is required, or the alleged offender appears at a hearing before an official, an alleged offender may elect to attend a driver improvement school pursuant to the provisions of section 318.14(9), Florida Statutes, within ten days of receiving the citation. Attendance at a driver improvement school in this manner shall not operate to waive the surcharges for excessive speed imposed by section 318.18(3), Florida Statutes, or the law enforcement education assessments under section 943.25(4) and (8), Florida Statutes. Any alleged offender electing to attend driver improvement school under section 318.14(9) will receive a withheld adjudication and not be assessed points. [Substantial Rewording]

(b) An offender who is sentenced to or elects to attend a driver improvement school shall have the right to attend such school in the county of his residence, if his county has an approved driver improvement school. If his residence county does not have an approved driver improvement school, the offender shall have the right to attend an approved driver improvement school in the county closest to his county of residence that has an approved school.

REASON FOR CHANGE

Pursuant to the provisions of Chapter 85-250, a new system for electing to attend driver improvement school is established. In order to avoid confusion, the present option procedure (which has significantly less benefits for the offender) has been abolished and the new procedure substituted.

Rule 6.360 Enlargement of Time

PRESENT RULE

When by these rules or by a notice given thereunder or by order of an official an act is required or allowed to be done at or within a specified time, the official for good cause shown may, at any time, in his discretion (1) order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done when the failure to act was the result of excusable neglect; but it may not, except as provided by statute or elsewhere in these rules, extend the time for making a motion for a new hearing, or for taking an appeal.

PROPOSED RULE

(a) When by these rules or by a notice given thereunder or by order of an official an act is required, or allowed to be done at or within a specified time, the official for good cause shown may, at any time, in his discretion (1) order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done when the failure to act was the result of excusable neglect; but it may not, except as provided by statute or elsewhere in these rules, extend the time for making a motion for a new hearing, or for taking an appeal.

(b) When an alleged offender elects to exercise the option of receiving a withheld adjudication pursuant to the provisions of section 318.14(9), Florida Statutes, the clerk may allow the offender such additional time as may be reasonably necessary to fulfill the statutory requirements.

REASON FOR CHANGE

In relation to persons electing to attend driver improvement school under section 318.14(9), it was thought necessary to allow the clerk of court the authority to extend the possibly restrictive statutory time periods in order to allow sufficient time for the exercise of statutory options.

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 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 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, courts costs up to 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~~ receiving a withheld adjudication pursuant to the provisions of section 318.14(9), Florida Statutes, the following costs may, if authorized by administrative order of the Chief Judge of the Circuit, be deducted from, ~~or, in the case of section 318.14(9) elections, be added to,~~ the penalty or costs by the traffic violations bureau or clerk's office:

(1) Two dollars for all violations of pedestrian regulations under section 316.130 and violations of Chapter 316 by a bicyclist 14 years of age or under;

[Substantial Rewording]

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

(3) ~~Seven~~ Five dollars for all moving infractions.

REASON FOR CHANGE

Pursuant to the provisions of Chapter 85-250, law enforcement assessments are to be added to the costs required for elections under section 318.14(9). This amendment has been made to the rules, as well as a similar amendment relating to the imposition of court costs in addition to the statutory costs.

The schedule of court costs has been increased to maintain the same ratio to civil penalties (1:5) that has existed since decriminalization went into effect in 1975, in light of the civil penalty increases contained in Chapter 85-250. In addition, statutory changes in the bicycle law made by Chapter 85-309, in relation to older riders, are incorporated into the rule.

Rule 6.470 Costs Cont.

PRESENT RULE

(c) The assessments of law enforcement training established in section 943.25(4) and (8), Florida Statutes, shall be collected in addition to the civil penalty.

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) The assessments for law enforcement training established in section 943.25(4) and (8), Florida Statutes, shall be collected in addition to the civil penalty, or, in addition to the costs required under section 318.14(9), Florida Statutes.

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

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, such action will be considered a failure to comply for purposes of section 318.15, Florida Statutes.

PROPOSED RULE

(a) 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, such action will be considered a failure to comply for purposes of section 318.15, Florida Statutes.

(b) In relation to elections under the provisions of section 318.14(9), Florida Statutes, the clerk, under the authority of an administrative order, may allow a reasonable amount of time before requiring the payment of civil penalties or costs.

REASON FOR CHANGE

This would allow the clerk the opportunity to defer payment when elections are made under section 318.14(9), Florida Statutes.

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(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.

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. Elections under section 318.14(9), Florida Statutes, where adjudication is withheld, shall not constitute convictions, but shall involve the collection of assessments pursuant to section 943.25(4) and (8), Florida Statutes.

REASON FOR CHANGE

This amendment conforms the rule to the new options under Chapter 85-250 in relation to convictions for driver license purposes and the imposition of law enforcement assessments.