

IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE

APR 15 1988

CLERK, SUPREME COURT

By _____
Deputy Clerk

IN RE:

AMENDMENTS TO THE RULES OF
PRACTICE AND PROCEDURE FOR
TRAFFIC COURTS

72,261

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

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

During the past four years, the committee has considered all proposals for rule changes that have been suggested to it. This report is the result of considered action by the committee on each proposal but includes only those proposals that the committee determined to be meritorious. The vote of the committee as to each change is shown in the "Reasons" column of the report.

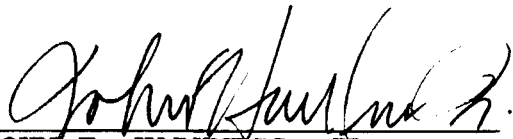
In accordance with Rule 2.130, the committee's report was submitted to The Florida Bar Board of Governors. The vote of the board on each proposed rule change is shown in the "Reasons" column of the report.

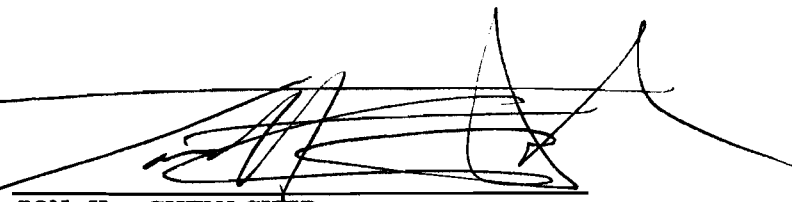
REQUEST FOR ORAL ARGUMENT

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.


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PRESENT RULE

Rule 6.010 Scope

(a) These rules govern practice and procedure in any traffic case and specifically apply to practice and procedure in County Courts.

PROPOSED RULE

Rule 6.010 Scope

These rules govern practice and procedure in any non-felony traffic case as well as all misdemeanor prosecutions and Implied Consent Hearings under Chapters 316, 318, 320, and 322, Florida Statutes, and specifically apply to practice and procedure in the County Courts.

REASON FOR CHANGE

Rule 6.010 Scope

The scope of the rules obviously should extend to all traffic related matters, and prosecutions under these Chapters are already being governed by the Florida Rules of Practice and Procedure for Traffic Courts - yet the definition does not clearly include them. This revision clears up any ambiguity as well as including Implied Consent Hearings under the new Rules.

* The Committee vote on this, and all other Rules proposals was unanimous.
The vote of the Board of Governors was also unanimous on each proposal -- 32-0

PRESENT RULE

Rule 6.040 Definitions

"Criminal Traffic Offense" means a violation of a statute or ordinance governing traffic not subject to the provisions of Chapter 318, Florida Statutes, within the jurisdiction of a court to which these rules apply.

PROPOSED RULE

Rule 6.040 Definitions

"Criminal Traffic Offense" means a violation of a statute or ordinance governing traffic not subject to the provisions of Chapter 318, Florida Statutes, within the jurisdiction of the County Court, and for the purposes of these Rules only includes misdemeanor prosecution under Chapters 320 and 322, Florida Statutes.

REASON FOR CHANGE

Rule 6.040 Definitions

The expanded definition was obviously necessary to define the current practice and combine all traffic related cases under one (1) set of Rules.

Rule 6.090 Direct and Indirect Criminal Contempt

PRESENT RULE

Direct and indirect criminal contempt shall be punished in the same manner as in the Criminal Rules of Procedure.

PROPOSED RULE

Direct and indirect criminal contempt shall be proceeded upon in the same manner as in the Criminal Rules of Procedure.

REASON FOR CHANGE

The change from the word "punished" to the words "proceeded upon" were needed to make clear that the Committee intended to follow the procedure as outlined in Rule 3.830 and Rule 3.840, Criminal Procedure Rules. Those Rules are procedural and contain no penalties.

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

PRESENT RULE

(a) In relation to traffic law violators ordered or allowed to elect to attend a driver improvement school or student traffic safety council school, or 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 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 substance abuse education course, the chief judge of the circuit shall issue an administrative order designating the schools to which attendance is required. No substance abuse education course shall be approved by the chief judges until approval is first granted by the DWI Schools coordinator or the Traffic Court Review Committee.

(d) However, an out of state resident sentenced to such may elect to complete a substantially similar program in his home state, province, or country.

REASON FOR CHANGE

The reason for the change was to bring Subsection (a) into conformity with the statutory language in F.S. 322.282 which states "substance abuse education course" rather than a "DWI Counter Attack School".

Subsection (d) is new and was designed to allow compliance with F.S. 316.193 (5), where the person did not reside in the State of Florida, and was in Florida for only a short, temporary stay, that attendance at a substance abuse course in Florida would constitute a hardship. F.S. 316.193 (5) requires only that the substance abuse course be "specified by the Court".

Rule 6.140 Conduct of Trial

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PRESENT RULE

All trials and hearings shall be held in open court and shall be conducted in an orderly manner according to the law and applicable rules. Questions pertaining to the conduct of the trial or hearing, not covered by law or these rules, shall be determined by the official. Except in emergencies, all proceedings for the trial of traffic cases shall be held in a room suitable for the purpose; such facilities shall be subject to inspection and approval of the Review Committee.

PROPOSED RULE

All trials and hearings shall be held in open court and shall be conducted in an orderly manner according to law and applicable rules. All proceedings for the trial of traffic cases shall be held in a place suitable for the purpose; such facilities shall be subject to inspection and approval of the Review Committee.

REASON FOR CHANGE

There was a major elimination in this particular Rule, as the Committee felt that all questions pertaining to the conduct of any trial or hearing were covered by case decision, law, and the Rules and that an official should not be permitted to decide on any other basis. It was also felt that the word place, should be substituted for the word room as in some emergency situations hearings had been held outside, etc.

PRESENT RULE

Rule 6.156 Review Committee

(b) All appointments shall be for three year terms or until a successor is appointed, whichever is longer.

(c) The Supreme Court shall designate one of the members to be chairman from time to time. The members of the Committee shall be selected on the basis of experience and interest in traffic adjudication, administration and safety. When practicable the members shall include representation from the following:

- (1) The Florida Bar;
- (2) County court judges;
- (3) Prosecuting attorney from the county level;
- (4) Law enforcement;
- (5) County court clerks and deputy clerks;
- (6) Administrative agencies such as the Department of Highway Safety and Motor Vehicles; and,
- (7) The general public.

PROPOSED RULE

Rule 6.156 Review Committee

(b) All appointments shall be for three (3) year terms.

(c) The Supreme court shall designate one of the members to be Chairman for a three (3) year term. Appointments and re-appointments to the Committee shall be on the basis of experience and interest in traffic adjudication, administration and safety. The members shall be appointed so that the Committee includes representation from the following:

- a. Non-judicial members of The Florida Bar.
- b. County Court Judges.
- c. State Attorneys.
- d. Law Enforcement.
- e. County Court clerks and deputy clerks.
- f. Administrative agencies such as the Department of Highway Safety and Motor Vehicles.
- g. The general public.

Forty percent (40%) of the Committee shall be County Court Judges. Thirty percent (30%) shall be non-judicial members of The Florida Bar. The remaining thirty percent (30%) shall be of the remaining areas of representation.

REASON FOR CHANGE

Rule 6.156 Review Committee

This change was proposed by Judge Gillman in the 1985-1986 Committee and met with unanimous approval. It was subsequently approved by both the 1986-1987 and 1987-1988 Committees without opposition.

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 in lieu of arrest.

PROPOSED RULE

Except as hereinafter provided, the Rules of Criminal Procedure shall govern this part. 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 purpose of the charge was to make clear that both pre-trial as well as trial, under this part, was governed by the Rules of Criminal Procedure, unless there was a conflict. The previous Rule had only applied to "trial" - and the Committee felt that pre-trial and post-trial procedures should also apply.

Rule 6.165 Complaint; Summons, Form, Use

PRESENT RULE

(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 purpose of preparing his defense if the amendment has prejudiced the defendant.

PROPOSED RULE

(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 shall grant additional time to the defendant for the purpose of preparing his defense if the amendment has prejudiced the defendant.

REASON FOR CHANGE

It was felt that Due Process required the Court to grant a continuance to the defendant as a matter of right, if the amendment prejudiced the defendant. The Committee felt that this should be mandatory and not discretionary.

PRESENT RULE

PROPOSED RULE

REASON FOR CHANGE

New Rule 6.180 Sentencing In DUI Cases

SENTENCING, REPEAT OFFENDERS: A Defendant alleged to have a prior conviction within the meaning of F.S. 316.193 shall have a right to silence concerning any prior conviction at the time of plea or sentence. If such right is invoked by the Defendant, the State shall have a reasonable time, if requested, to determine if any prior convictions exist. If the State is unable to prove any prior convictions, then the Defendant, shall be treated as if no prior convictions exist. This provision shall not prevent the Department of Motor Vehicles from suspending a Defendant's driving privilege for a longer period than the Court has entered if a prior record is discovered by the Department.

New Rule 6.180 Sentencing In DUI Cases

Rule 6.180 is new and is designed to codify existing procedures in DUI cases. Subsection (a) of the Rule sets forth what has become known as a "Meehan Plea". Meehan v. State, 397 So.2d 1214 (2 DCA, 1981).

PRESENT RULE

PROPOSED RULE

New Rule 6.183 Peremptory Challenges

In every jury trial in which a Defendant is charged with a violation of F.S. 316.193, each party shall have THREE (3) peremptory challenges, but the trial court, in the interest of justice, may in its discretion permit additional challenges.

REASON FOR CHANGE

New Rule 6.183 Peremptory Challenges

This Rule was initially drafted to allow six (6) peremptory challenges per side in all DUI trials on the basis that the penalties in a DUI were normally more severe than most third degree felonies, that the trial was as complicated as any second degree felony, and that it was also subject to extreme jury prejudice due to "media-blitz" publicity and the pressures from citizen action groups, as well as the numbers of prospective jurors who were non-drinkers and/or had religious reasons against drinking. The proposed rule met with strong opposition from the Committee as drafted, with an almost even split vote. An amendment was proposed, which is the above rule as written, which satisfied all members of the Committee, as it was recognized that the outlined problems existed, and the Committee felt that a rule was needed to affirmatively show that additional peremptories should be freely granted by the court when the need arose.

PRESENT RULE

PROPOSED RULE

New Rule 6.185 Implied Consent Hearings

PROCEDURES: In all hearings arising under F.S. 322.261, the following procedure shall be followed:

1. A hearing shall be scheduled within TWENTY (20) days of the filing of the petition with the Court.

2. The Court may grant a State or Court Continuance of any hearing on the request of either party for good cause shown. The granting of a State or Court Continuance shall not cause the suspension of a petitioner's driving privileges.

3. Proceedings under this Rule shall be governed by the provisions of the Florida Evidence Code, except that otherwise inadmissible hearsay shall be permitted to establish compliance with F.S. 322.261(3)(a), Florida Statutes.

LIMITED DISCOVERY FOR IMPLIED CONSENT HEARINGS: In all hearings arising under F.S. 322.261 a Defendant may, at the time the petition is filed, also demand in writing from the State Attorney, limited Discovery concerning the hearing. Upon such request, the State shall provide the Defendant with a copy of the arrest report or probable cause affidavit of the arresting officer, and shall make a copy of any video tape in the cause available for viewing by the petitioner and/or his attorney no less than TWO (2) business days prior to the hearing. A failure of the State to so provide limited Discovery shall require the Court to grant a Court or State Continuance of the hearing if the petitioner so moves.

REASON FOR CHANGE

New Rule 6.185 Implied Consent Hearings

Rule 6.185 is new, and was unanimously passed by the Committee as needed to define the procedures to be used in "Implied Consent" hearings. Section (A)(2) was inserted to recognize that Due Process considerations sometimes mandated continuances to be charged against the State or taken by the Court. This is already the practice followed in many courts. Section (A)(3) was changed several times before receiving unanimous approval in its presently drafted form. The Committee wanted to make clear that although hearsay exceptions are admissible under the Florida Evidence Code, that all hearsay, even hearsay that does not fall within the exceptions should be admissible to establish reasonable cause as to the Defendant being the driver, since many arrests take place at the scene of an accident where all drivers are outside of their vehicles and the officer must rely on the statements of witnesses for all details and identifications; and other stops are made by a "fellow officer" who turns it over to another officer for the final arrest.

Rule 6.290 Withhold Adjudication Prohibited; When

PRESENT RULE

(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 while under the influence, as provided for in Chapters 316 and 322, Florida Statutes, whose chemical results show a blood alcohol content by weight of .20 percent or more.

PROPOSED RULE

REASON FOR CHANGE

This paragraph was eliminated by the Committee as there is no "lesser offense" for a DUI. Moreover, the enhanced penalty, under F.S. 316.193(4) for a blood alcohol level of .20 or above, has inherently changed the entire previous meaning of the eliminated subsection. The new enhanced penalty portion of the statute creates a "lesser offense" to the "enhancement" - but not to the DUI.

OK

Rule 6.455 Amendments

PRESENT RULE

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.

PROPOSED RULE

The charging instrument may be amended at any time prior to the hearing, subject to the approval of the official. The official shall 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.

REASON FOR CHANGE

The revision deletes the word "may" and substitutes the word "shall". This brings the Rule in accord with Due Process.

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 30 days, after the finding of the official.

PROPOSED RULE

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

REASON FOR CHANGE

The Committee changed the time period to become uniform with Criminal Procedure Rule 3.590.