

OA 6. 2-88

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER:

**FILED**  
72,261

SD J. WHITE

MAY 20 1988

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

RESPONSE OF TRAFFIC COURT REVIEW  
COMMITTEE TO ~~PETITION~~ COURT

By

Deputy Clerk

The Traffic Court Review Committee opposes, in part, the petition filed herein and states:

1. The Traffic Court Review Committee is given the responsibility to study and consider the application and administration of the Traffic Court Rules on the traffic courts of the state. Rule 6.040, Florida Rules of Practice and Procedure for Traffic Courts.

2. The Traffic Court Review Committee on April 26, 1988, submitted a Petition for Amendment to Florida Rules of Practice and Procedure for Traffic Courts. This petition, which has been filed as Case Number 72,312 (and consolidated with Case Number 72,261), incorporated numerous of the proposals of the Florida Bar petition with either no changes or minor changes. However, after examining various of the other Bar proposals in detail, the Traffic Court Review Committee was of the opinion that it could not endorse them in either whole or part. See paragraph 3 of "Appendix A" (Minutes of April 20 meeting). The following is a summary of the reasons for the Committee's opposition to the Florida Bar proposals in relation to Rule 6.010 (Scope), Rule 6.040 (Definitions), Rule 6.156 (Review Committee), Rule 6.183

(Peremptory Challenges), and Rule 6.185 (Implied Consent Hearings).

3. The Committee would make two basic comments about the Bar proposal to amend Rule 6.010, which establishes the scope of the rules. First, the proposed reference to specific chapters of traffic law rather than the existing general reference to "any traffic case" would probably not only fail to accomplish its intended purpose, but could create other problems. The enunciated purpose of the amendment as expressed in the Reason for Change column is to "[clear] up any ambiguity". When this Court adopted the traffic court rules, see In Re Transition Rule 20, 306 So.2d 489 (Fla. 1974), Rule 6.010 (which at that time included jurisdiction over municipal courts and circuit courts in relation to juvenile offenders) limited the coverage of the rules to "any traffic case." Since that time, the Committee is unaware of any specific problems resulting from any inherent ambiguity of this phrase. As a matter of fact, the Committee submitted as part of its 1984 quadrennial petition to this Court, and the Court adopted as part of its opinion in In re Florida Rules of Practice and Procedure for Traffic Courts, 458 So.2d 1112 (Fla. 1984), amendments to Rule 6.040 (Definitions) having essentially the opposite effect. Therein, the Court amended the definitions of "criminal traffic offense" and "infraction" to delete references to specific statutory sections in order to avoid the necessity of continuously having to amend the rule in the future as a result of statutory changes. The Committee believes an analogous situation exists in relation to the present proposed

amendment to the fourteen year old language in Rule 6.010, to wit, that any subsequent renumbering of the statutory chapters dealing with traffic would necessitate a rule amendment.

4. The second area of comment in relation to Rule 6.010 is less philosophical and more practical. The amendment refers in part to "any non-felony traffic case as well as all misdemeanor prosecutions . . . under Chapters 316, 318, 320, and 322, Florida Statutes." The Committee would note that this language may be alternately too broad and too narrow. Section 775.08(2), Florida Statutes, which defines misdemeanor, states in relevant part that the "term 'misdemeanor' shall not mean a conviction for any violation of any provision of Chapter 316 or any municipal or county ordinance." This appears to conflict on its face with the proposal, at least in relation to that chapter. On the other hand, it should be noted that the Legislature has, in seeming contradiction of its own definition of the term, specifically designated as misdemeanors violations of sections 316.193(3)(c)(1), driving under the influence resulting in property damage, 316.2956(3), installation of illegal suncreening, and 316.646(4), fraudulent presentation of proof of insurance. Other criminal offenses in this chapter, for example, reckless driving (section 316.192), fleeing and eluding a police officer (section 316.1935), are not defined as misdemeanors, but are rather subject to their own schedule of criminal penalties. In light of this confusion, the Committee believes that any specific reference to Chapter 316 could create some problems. On the other hand, reference to "all misdemeanor prosecutions" under

Chapter 320 (Motor Vehicle Licenses) and Chapter 322 (Drivers' Licenses) could create the opposite problem, that is, too many offenses may be included. The intent of the rules as they presently exist is to deal with the adjudication of traffic cases. While such terminology may not be a model of exactitude it does have a certain connotation. Black's Law Dictionary defines traffic regulations as "prescribed rules of conduct to promote the orderly and safe flow of traffic". The problem with the proposal arises in that various misdemeanors in Chapters 320 and 322 may not be the type of offenses generally viewed as traffic cases. For example, violations of sections 320.61 - 320.698, Florida Statutes, which deal with the required licensing of manufacturers, factory branches, distributors, and importers of motor vehicles, are defined as misdemeanors of the first degree in section 320.70, Florida Statutes. These are not the type of violations which one usually associates with traffic court. To a lesser degree, various violations of Chapter 322 may not be "traffic cases", for example, a violation of section 322.20, Florida Statutes, possession of unauthorized or counterfeit driver license application forms. The question is whether offenses of this nature should be subject to the jurisdiction of the traffic rules. At the very least a more detailed study of which provisions of Chapter 320 and 322 should be under the jurisdiction of these rules should be undertaken. Finally, in one other way the proposal appears to be somewhat inconsistent. While specifying those criminal offenses which are subject to the rules, no such reference is made to the civil

violations which are covered, either by specifically listing them or by general reference. One must inferentially come to the conclusion that they are non-felony traffic cases and therefore must be governed by the rules. While this proposal may thus lead to a technically correct conclusion it does not seem to "clearly include" the relevant offenses, the concern which appeared to motivate the Bar in relation to criminal offenses. While it may be somewhat ponderous to incorporate the entirety of the statutory delineation of civil infractions, to wit,

318.14 Noncriminal traffic infractions; exception; procedures.-

(1) Except as provided in ss. 318.17, 320.07(3)(b), and 322.03(5)(b), any person cited for a violation of chapter 316, S. 320.0605(1), S. 320.07(3)(a), S. 322.03(1), S. 322.15, s. 322.19 or S. 240.265 shall be deemed to be charged with a noncriminal infraction and shall be cited for such an infraction and cited to appear before an official.

some generic reference to civil infractions may be appropriate, if for no reason other than to recognize the main category of offenses these rules were originally adopted to govern. In summary, while the Committee appreciates the value of specificity, especially in the area of traffic where three million uniform traffic citations go through the court system annually, it is of the opinion that any attempt at specificity which either is not, or cannot be, totally accurate, will most likely be counterproductive.

5. The Committee's final objection to the Bar's proposal to amend Rule 6.010 is its reference to Implied Consent Hearings. For reasons which will be discussed in paragraph 9, the Committee believes there is no reason to include implied consent hearings in the traffic rules.

6. The Committee believes, for many of the reasons described in paragraphs 3-5, that the definition of "criminal traffic offense" in Rule 6.040, should not be changed. In addition, this definition, unlike Rule 6.010 as amended, could be interpreted to not include misdemeanors (or criminal offenses) under Chapters 316 and 318, depending on whether the word "only" as used in the proposed amendment means that only misdemeanors under Chapter 320 and 322 are considered criminal traffic offenses rather than that misdemeanors under Chapter 320 and 322 are considered criminal traffic offenses only for the purpose of the traffic rules. While it is apparent to this reader that the latter is the intent of the Bar, it may not be so clear to the average casual reader. The generation of such confusion seems to be doubly unnecessary since there is no apparent reason for the use of the word "only" under the latter reading given that there is no other context in which the term criminal traffic offense would not include at least certain misdemeanors of Chapters 320 and 322. Therefore, the word "only" serves no purpose even if the reader gives it the correct interpretation. Finally, the same argument could be made in relation to the definition of "infraction" in Rule 6.040 that was made in relation to the amendment to Rule 6.010, to wit, if it is necessary to specifically define criminal traffic offense by reference to statutory provisions, why is it less necessary to so specifically define civil infractions.

7. The Committee, while having an obvious and direct interest in the proposed amendment to Rule 6.156 (Review

Committee), makes no comment other than that, while it neither supports or opposes the amendment, it should be noted that all appointments to the Committee have been made by this Court.

8. The Committee cannot support the adoption of Rule 6.183 (Peremptory Challenges), which would allow for additional peremptory challenges under certain circumstances in driving under the influence cases. Presently, driving under the influence cases are subject to the same rules and statutory provisions as other traffic and non-traffic criminal cases, to wit, Rule 3.350, Florida Rules of Criminal Procedure, as incorporated into the traffic rules through Rule 6.160, Florida Rules of Practice and Procedure for Traffic Courts. Rule 3.350 (Peremptory Challenges) allows three peremptory challenges for misdemeanors. Section 913.08(1)(c), Florida Statutes, similarly allows three challenges for all offenses which are not felonies. All other challenges must be for cause. See Rule 3.330, Florida Rules of Criminal Procedure, and section 913.03, Florida Statutes. It is the opinion of the Committee that any additional peremptory challenges (and it is not entirely clear from the proposal that the additional challenges permitted are of a peremptory nature) are not necessary in light of the trial court's discretion to grant challenges for cause. This court may also wish to consider the practical effects of this amendment on existing rules and statutes. While the adoption of the amendment would supersede Rule 3.350 (since Rule 6.160 allows for such supersession when a conflict occurs), it would appear to conflict with section 913.08(1)(c), Florida Statutes, which under the

Florida Constitution must give way. The position of the Committee is that section 913.03(10), Florida Statutes, should take care of the problem. That subsection specifically allows the court to grant a challenge for cause in the situation where

(10) The juror has a state of mind regarding the defendant, the case, the person alleged to have been injured by the offense charged, or the person on whose complaint the prosecution was instituted that will prevent him from acting with impartiality, but the formation of an opinion or impression regarding the guilt or innocence of the defendant shall not be a sufficient ground for challenge to a juror if he declares and the court determines that he can render an impartial verdict according to the evidence[.]

If the actual reason for the amendment is the protection of the defendant (see Reason for Change column), it is not clear how that can be done by granting additional peremptories to both sides (under the rule the granting of an additional peremptory challenge to the defendant would appear to automatically vest one with the state).

9. The Committee's final comments are directed at the Bar proposal to create Rule 6.185 (Implied Consent Hearings). While the Committee does not philosophically object to an attempt to standardize the procedure for implied consent hearings, it does not agree that the existing statutory scheme is necessarily inadequate in that regard. See section 322.261, Florida Statutes. In order to appropriately assess the merits of this proposal a section by section analysis of the Bar proposal and the existing statute is in order. Section 1 states that a hearing shall be scheduled within 20 (twenty) days of the filing of the petition. Section 322.261(3) makes the same provision with the addition that the clerk shall have the responsibility of

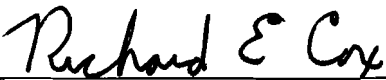


scheduling the hearing and sending notices to the state attorney and petitioner. Section 2 of the Bar proposal would allow the court to grant a continuance for good cause, which continuance shall not be the cause of petitioner's driver license suspension. Section 322.261(4) provides that if the petitioner requests a continuance to a date beyond the prescribed hearing period, the suspension shall be effective on the day immediately following the prescribed period or immediately upon receipt of notice by the court that the request for continuance has been granted, whichever is later. Section 3 of the Bar proposal states that the Florida Evidence Code shall govern implied consent hearings except that inadmissible hearsay shall be permitted to establish compliance in relation to the issue of reasonable cause to believe the driver was under the influence. Section 322.261 is silent on this issue. The final portion of the Bar proposal deals with limited discovery in implied consent cases, to wit, arrest report, probable cause affidavit, and video tape. Failure to provide such discovery in a timely manner would provide the petitioner with the right to a continuance. Section 322.261 is silent on the issue of discovery. That statute does, however, deal with various other aspects of the hearing procedure, e.g., notification of petitioners by the Department and reporting of the decision by the court. The upshot of this brief analysis is that the proposed rule would in cases supplement and in other cases possibly conflict with the statute, or, at the minimum, require some reconciliation. In any case, the position of the Committee, if such a rule is to be adopted, is that it should

comprehensively cover the implied consent procedure. Among the issues not adequately covered by proposed rule or statute (issues which have been specifically raised by judges to the Committee within the last two years) are whether the twenty day time limit for the clerk to set the hearing can be waived upon stipulation of both parties, who has the burden of proof at the hearing, what the burden of proof is, whether there is a limit to the level of hearsay (double or triple) that would be admissible, whether an automatic suspension would result if an attorney appears on behalf of the petitioner, whether a finding of lawful refusal at the implied consent hearing would preclude the introduction of such refusal at a subsequent driving under the influence trial, whether the state is collaterally stopped from relitigating implied consent issues at a DUI trial, and whether the petition is in the nature of a request for a hearing or seeks affirmative relief. Attached is Appendix B - a letter from County Court Judge Richard Lazzara raising many of these issues and a discussion of such issues prepared by the executive secretary of the Committee. Note: the Committee subsequently declined in the absence of adequate statutory guidance to answer Judge Lazzara's questions and referred the matter to the Conference of County Court Judges.


WHEREFORE, the Traffic Court Review Committee requests the Court to consider these comments in its deliberations of amendments to the traffic court rules.

Respectfully Submitted,  
TRAFFIC COURT REVIEW COMMITTEE

  
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RICHARD E. COX  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to Jon H. Gutmacher, Chairman, The Florida Bar Traffic Court Rules Committee, Building 7, 3045 North Federal Highway, Ft. Lauderdale, Florida 33306 this 20th day of May, 1988.

  
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RICHARD E. COX