

Supreme Court of Florida

REVISED OPINION

CORRECTED

No. 72,261

No. 72,312

THE FLORIDA BAR

RE: RULES OF PRACTICE AND PROCEDURE
FOR TRAFFIC COURTS

[August 25, 1988]

PER CURIAM.

The Traffic Court Rules Committee of The Florida Bar (rules committee) has petitioned this Court to approve its quadrennial report of proposed changes to the Florida Rules of Practice and Procedure for Traffic Courts (Traffic Court Rules). Pursuant to Florida Rule of Judicial Administration 2.130, the proposed amendments were submitted to The Board of Governors of The Florida Bar for review. The board unanimously recommended approval. Pursuant to rule 6.040, the proposed amendments were also submitted to The Traffic Court Review Committee (review committee) of this Court. The review committee opposed the proposed changes to rules 6.010, 6.040, 6.156, 6.183, and 6.185. At oral argument, the rules committee withdrew its proposed changes to rules 6.010 and 6.040. Pursuant to rules 6.040 and 6.156(d), the review committee also has petitioned this Court to approve its quadrennial report of proposed changes.

In its report, the rules committee proposes that rule 6.156 be amended to provide that various groups be represented on

the review committee in accordance with strict guidelines (e.g., "[f]orty percent (40%) of the Committee shall be County Court Judges"). We decline to approve this change. The amendment would create unnecessarily rigid restrictions that could exclude well-qualified candidates from serving on the committee. In its report, the review committee proposes that rule 6.100 be amended to include a provision giving chief circuit judges authority to prescribe by administrative order a procedure for handling citizen complaints. We decline to approve this change. According to the review committee's own observation, "the number of citizen complaints has been extremely low." Such a change is unnecessary at this point.

Of those changes proposed by the rules committee, we hereby approve the proposed amendments to rules 6.090, 6.110, 6.140, 6.160, 6.165, 6.180, 6.183, 6.185, 6.290, 6.455, and 6.540. Of those changes proposed by the review committee, we hereby approve the proposed amendments to rules 6.115, 6.340, 6.575, and 6.600. We further approve the review committee's request that the forms contained in the appendices to rule 6.115 be deleted due to their frequent need for modification. We hereby order these forms deleted.

Appended is the text of the amended portions of the rules. The amended rules become effective January 1, 1989. The committees' comments (reason for change) are included for explanation and guidance only and are not adopted as an official part of the rules.

It is so ordered.

EHRlich, C.J., and OVERTON, McDONALD, SHAW, BARKETT, GRIMES and KOGAN, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED. THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE RULES.

Rule 6.090. Direct and Indirect Criminal Contempt

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

1988 Amendment:

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~~ Substance Abuse Education Courses

(a) In those areas where ~~relation to~~ 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~~ substance abuse education course, the chief judge of the circuit shall issue an administrative order designating the schools to which attendance is required. No ~~DWI Counter Attack School~~ 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.

(b) [No change.]

(c) [No change.]

(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.

1988 Amendment:

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

Subsection (d) is new and was designed to allow compliance with Section 316.193(5), Florida Statutes, 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. Section 316.193(5) requires only that the substance abuse course be "specified by the court."

Rule 6.115. ~~DWI School~~ DUI Program Coordination Trust Fund

(1) Each ~~DWI-school~~ DUI Program approved by the ~~DWI-Schools Coordinator~~ DUI Programs Director is required to remit monthly the assessments collected pursuant to Section 25.387, Florida Statutes, to the ~~DWI-School Coordinator~~ DUI Programs Director of the Supreme Court on a form provided by the Supreme Court.

(2) Each certified ~~DWI-Schools~~ DUI Program shall cause records and accounts to be kept in accordance with procedures prescribed by the Supreme Court. Such records and accounts will be subject to audit by the designated representative of the Supreme Court.

(3) Each ~~DWI-School~~ DUI Program shall collect the trust fund in accordance with the plan attached hereto.

Pursuant to Section 25.387, Florida Statutes, the Supreme Court hereby adopts the following plan for the implementation of the ~~DWI Schools~~ DUI Programs Coordination Trust Fund.

(1) ~~Effective July 1, 1981, all DWI-Schools~~ All DUI Programs in the state of Florida shall assess six dollars against every individual enrolling in a ~~DWI~~ DUI course at the time of the enrollment, including those who transfer to or from a ~~school~~ program in another state. Federal military employees, their dependents and retired military personnel who attend a federal military ~~DWI-School~~ DUI program shall be subject to the assessment. In addition, effective October 1, 1986, second and third offenders evaluated for eligibility for restricted licenses pursuant to section 322.271(2)(b), Florida Statutes, shall be assessed six dollars upon enrollment in the program and upon each subsequent anniversary date of such enrollment for the duration of the restricted license period.

(2) In no case shall the assessment be waived.

(3) Each ~~school~~ program shall remit on a monthly basis the assessment collected. The monthly remittance shall be forwarded at such time so as to be received by the Supreme Court by the seventh working day of the next month. The remittance shall be in the form of a check or money order payable to the State of Florida and be sent with a form entitled "~~DWI-Schools~~ "DUI Programs Coordination Trust Fund-Remittance of \$6.00 Additional Assessment." ~~See Appendix~~ A. This form shall be subject to the approval of the DUI Program Trust Fund Commission.

(4) Each ~~DWI-School~~ DUI Program shall cause records and accounts to be kept which show the collection of each assessment and which will be subject to audit by the Supreme Court. The records of the assessments shall be in a form specified by the Supreme Court. ~~See Appendix B-~~ This form shall be subject to the approval of the DUI Program Trust Fund Commission.

(5) Each ~~school~~ program shall be responsible for all costs, if any, incurred through compliance with the requirements of the fund.

(6) Each ~~DWI-School~~ DUI Program may request an increase in the fee charged for enrollment in the ~~DWI~~ DUI course to cover the assessment. The ~~DWI Schools Coordinator's~~ DUI Programs Coordination Office shall determine whether a change in the fee is appropriate.

(7) Monies collected by the fund shall be used by the ~~DWI Schools Coordinator's~~ DUI Programs Coordination Office to pay for staff salaries, travel and other expenses related to the functioning of the office. The fund will also be used to pay for programs in which the ~~coordinators~~ Director's office engages, including but not limited to, interstate reciprocity, training, certification, monitoring and technical assistance. The Supreme Court may assess the fund for reasonable costs for the administration of the fund.

(8) The ~~DWI Schools Coordinator~~ DUI Program Trust Fund Commission shall be the administrator of the fund.

1988 Amendment:

The offense of driving while intoxicated was abolished by statute, thereby making references to DWI Schools inappropriate; title of position coordinating such program has similarly been changed.

The forms (Appendix A and B) have been removed from the rules since their possibly frequent need for amendments does not seem to be of sufficient importance to invoke the amendatory rule process of the Court. Under the proposed amendment any changes could be made by the Court-appointed Trust Fund Commission.

The function of administering the trust fund is also placed with the Trust Fund Commission.

Rule 6.140. Conduct of Trial

All trials and hearings shall be held in open court and shall be conducted in an orderly manner according to 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~~ place suitable for the purpose; such facilities shall be subject to inspection and approval of the Review Committee.

1988 Amendment:

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.

Rule 6.160. Practice as in Criminal Rules

Except as hereinafter provided, ~~trial under the Rules of Criminal Procedure shall govern 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.

1988 Amendment:

The purpose of the change 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

(a) [No change]

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

1988 Amendment:

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.

Rule 6.180. Sentencing Repeat Offenders In DUI Cases

A defendant alleged to have a prior conviction within the meaning of Section 316.193, Florida Statutes, 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.

1988 Amendment:

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

Rule 6.183. Peremptory Challenges

In every jury trial in which a defendant is charged with a violation of Section 316.193, Florida Statutes, each party shall have three peremptory challenges, but the trial court, in the interest of justice, may in its discretion permit additional challenges.

1988 Amendment:

This rule was initially drafted to allow six 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 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 arises.

Rule 6.185. Implied Consent Hearings

(a) PROCEDURES. In all hearings arising under Section 322.261, Florida Statutes, the following procedure shall be followed:

(1) A hearing shall be scheduled within 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 Section 322.261(3)(a), Florida Statutes.

(b) LIMITED DISCOVERY FOR IMPLIED CONSENT HEARINGS. In all hearings arising under Section 322.261, Florida Statutes, 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 his attorney no less than two 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.

1988 Amendment:

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. Withholding Adjudication Prohibited; When

~~(a)~~ Pursuant to the provisions of Section 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, any chemical substance set forth in Section 877.111, Florida Statutes, 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 Chapters 316 and 322, Florida Statutes, whose chemical results show a blood alcohol content by weight of .20 percent or more.

1988 Amendment:

Paragraph (b) 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.

Rule 6.340. Rule on Admission That Traffic Infraction Was
Committed; Affidavit of Defense

(a) If any person admits that a traffic infraction was committed, the official shall set the civil penalty and enter judgment accordingly and for this purpose may hear evidence on the nature of the case and after the hearing may refuse to accept the admission in his discretion.

(b) No admission shall be received by the court other than by appearance of the offender or the offender's attorney in open court or as herein provided in these rules or by statutory law. The acceptance by a court of a signed admission or waiver of trial, contrary to the provisions of these rules or statutory law is forbidden.

(c) Any person charged with the commission of a traffic infraction who is not a resident of or domiciled in the county where the alleged infraction took place may, ~~at the discretion of the clerk or traffic violations bureau,~~ file a written statement setting forth facts justifying the filing of an affidavit of defense or file an affidavit of defense directly if practicable upon posting a reasonable bond set by the official.

Any person charged with the commission of a traffic infraction who is a resident of or domiciled in the county where the alleged infraction took place, if unable to appear because of an extended illness or extended absence from the county, may, ~~at the direction of the clerk or traffic violations bureau,~~ file a written statement setting forth facts justifying the filing of an affidavit of defense or file an affidavit of defense directly if practicable upon posting a reasonable bond set by the official.

If a written statement of facts is filed and in the opinion of the official, it affirmatively appears from these facts that the interests of justice will best be served by allowing the alleged offender to file an affidavit of defense, such affidavit, upon the posting of a reasonable cash appearance bond set by the official, may be filed with the clerk of the court or the traffic violations bureau.

Any such affidavit shall be sworn to before a notary public, deputy clerk or clerk. Upon acceptance of an affidavit by an official it shall be accepted as an appearance. Such affidavits ~~may~~ shall be accepted where a mandatory hearing is required to either deny or admit the commission of the infraction or as an appearance denying the commission of the infraction where no mandatory hearing is required. Such affidavit shall be considered in evidence by the official presiding at the time when such case is scheduled for hearing and the case may be adjudicated upon evidence offered in support of the complaint and such affidavit.

1988 Amendment:

In order to provide for uniform application of the affidavit of defense procedure throughout the state, the proposed amendment would require the clerk to accept such affidavits (under the appropriate circumstances) rather than placing the question of acceptance within the discretion of the clerk.

Rule 6.455. Amendments

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

1988 Amendment:

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

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

(b)-(c) [No change]

1988 Amendment:

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

Rule 6.575. Retention of Case Files

For the purpose of record retention pursuant to the General Records Schedule D-T 1, case files with an outstanding or unsatisfied D-6 shall be considered disposed of ~~five~~ seven years after the submission of the D-6 by the clerk to the Department of Highway Safety and Motor Vehicles. If the clerk disposes of a file, the Department shall be notified.

1988 Amendment:

In light of recent statutory change providing for the six year (rather than four) renewal of drivers licenses, a corresponding change in records retention was deemed appropriate.

Rule 6.600. Failure to Appear or Pay Civil Penalty; Reinstatement of Driver License

(a) In any case where no mandatory hearing is required and the person has signed and accepted a citation but fails to pay the civil penalty or appear, notice of such failure shall be sent to the department within 5 days after failure to comply in order to comply with the requirements of Section 318.15(1), Florida Statutes.

(b) If the ~~person~~ alleged offender appears after the notice has been sent out but before the department has suspended the driver license, the civil penalty may be paid without a hearing or the ~~person~~ alleged offender may agree to attend a hearing. The department shall be notified immediately on a form to be supplied by the department.

(c) If the ~~person~~ alleged offender appears after the driver license has been suspended, ~~the alleged offender~~ he may pay the civil penalty, elect to attend a driver improvement school, or request a hearing. Any request for a hearing shall be made within a reasonable period of time after the commission of the alleged offense. ~~without a hearing and may be required to agree to attend a driver school or may agree to attend a hearing.~~ If an election to attend a hearing is ~~made~~ granted and it is determined that the infraction was committed, the offender ~~is~~ shall be subject to the penalty provisions of Section 318.14(5), Florida Statutes. The person shall be given a form supplied by the department, certified by the official, to be taken to the nearest driver license examining station in order to have the driving privilege reinstated.

1988 Amendment:

It was thought that an alleged offender who fails to appear until after his driver license has been suspended (which could be years later) should not be allowed to elect a hearing in those cases where the state has been prejudiced by the passage of time.

Two Consolidated Original Proceedings - Florida Rules of Practice
and Procedure for Traffic Courts

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Petitioners