

Supreme Court of Florida

THURSDAY, MARCH 29, 1990

CORRECTED ORDER

IN RE: FLORIDA RULES OF PRACTICE **
AND PROCEDURE FOR TRAFFIC COURTS-- **
CIVIL TRAFFIC INFRACTION HEARING **
OFFICER PILOT PROGRAM **

CASE NO. 74,567

The opinion dated December 21, 1989 is withdrawn and
the opinion dated March 29, 1990 is substituted in lieu thereof.

A True Copy

JB

TEST:

cc: Hon. Karl B. Grube
Hon. Stephen N. Zack
Hon. James Fox Miller
John F. Harkness, Jr., Esquire
Richard E. Cox, Esquire

Sid J. White
Clerk Supreme Court.

Supreme Court of Florida

No. 74,567

IN RE: FLORIDA RULES OF PRACTICE AND PROCEDURE
FOR TRAFFIC COURTS--CIVIL TRAFFIC INFRACTION
HEARING OFFICER PILOT PROGRAM

[March 29 , 1990]

PER CURIAM.

The Traffic Court Review Committee of this Court submitted proposed amendments to the Rules of Practice and Procedure For Traffic Courts in order to implement chapter 89-337, Laws of Florida, which calls for the creation of a pilot program of civil traffic infraction hearing officers or magistrates. The Florida Bar Traffic Court Rules Committee agreed with the proposals with the exception of amendments relating to rules 6.040, 6.080, 6.630(d)(1), and 6.630(i), which it modified.

The Florida Bar Board of Governors endorsed the proposals submitted by the Rules Committee and in addition recommended a modification to proposed rule 6.630(f), which concerns the professional qualifications for traffic magistrates. Under the Bar's proposed rule 6.630(f), magistrates must be members of The Florida Bar for a minimum of three years. The Review Committee agreed with all the Bar's additional modifications, with the exception of that relating to rule 6.630(f).

We approve the proposals submitted by the Bar, with the exception of proposed rules 6.630(i) and (f). Chapter 89-337, section 5, Laws of Florida, establishes no minimum period of membership in the Bar:

Section 5. Qualifications.--Applicants for the position of magistrate of the civil traffic court shall be members in good standing of The Florida Bar and shall have completed a 40-hour education and training program which has been approved by the Florida Supreme Court. Thereafter, magistrates shall complete an approved 10-hour continuing education program annually. (Underlining omitted.)

We conclude that the qualifications constitute a matter of substantive law within the exclusive authority of the legislature. The perceived ill to be remedied by the Bar's proposal, i.e., the use of inexperienced lawyers as magistrates, is addressed by the sound discretion of the chief judge in the appointment of magistrates. Accordingly, we approve the version of rule 6.630(f) proposed by the Review Committee, which sets no required period of Bar membership.

Chapter 89-337, section 7, Laws of Florida, further provides that traffic magistrates shall not be subject to the Code of Judicial Conduct:

Section 7. Code of ethics.--Magistrates shall be subject to The Florida Bar Code of Professional Responsibility and not the Judicial Code of Ethics except that they shall avoid practices or occupations that would be a conflict or give the appearance of impropriety. Whether full time or part time, magistrates shall be prohibited from representing clients or practicing before any other magistrate of a civil traffic court or from representing any client appealing the decision of any other magistrate. (Underlining omitted.)

We conclude, however, that traffic magistrates perform a judicial function and are subject to the Code of Judicial Conduct in the same manner as part-time judges:

COMPLIANCE WITH THE CODE OF
JUDICIAL CONDUCT

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. Part-time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

- (1) is not required to comply with Cannon 5C(2), D, E, F, and G, and Canon 6A(3);
- (2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

Fla. Bar Code of Jud. Conduct, Compliance (emphasis added). For practical reasons, we conclude that traffic magistrates are exempt from the requirements of Canon 6B and C and the first portion of provision (A)(2) of the Compliance section of the Code, noted above. We hold therefore that traffic magistrates may practice in the county courts in which they officiate but are prohibited from representing clients or practicing before any official in any county court traffic matter or from representing any client appealing any county court traffic decision. We have modified the Bar's proposed rule 6.630(i) to reflect the foregoing.

Appended is the text of the amended portions of the rules. The amended rules become effective upon filing of this opinion. The committee comments (reasons for change) are included for explanation and guidance only and are not adopted as an official part of the rules.

It is so ordered.

MCDONALD, SHAW, BARKETT, GRIMES and KOGAN, JJ., Concur
OVERTON, J., Concur in part and dissents in part with an opinion,
in which EHRLICH, C.J., Concur

I. Purpose and Construction,
and Transition

Rule G.010 Scope

PRESENT RULE

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

(b) The rules under Part JJI of these rules apply to all criminal traffic offenses not subject to the provisions of Chapter 318, Florida Statutes, whether prosecuted in the name of the state or any subdivision of it.

(c) The rules under Part IV of these rules apply only to traffic infractions governed by Chapter 318, Florida Statutes, adjudicated in a court of the state.

PROPOSED RULE

(a) These Rules govern practice and procedure in any traffic case and specifically apply to practice and procedure in County Courts, and, if applicable, to civil traffic infraction hearing officers appointed as traffic magistrates.

(b) The rules under Part III of these rules apply to all criminal traffic offenses not subject to the provisions of Chapter 318, Florida Statutes, whether prosecuted in the name of the state or any subdivision of it.

(c) The rules under Part IV of these rules apply only to traffic infractions governed by Chapter 318, Florida Statutes, adjudicated in a court of the state, whather by a county court judge or civil traffic infraction hearing officer appointed as a traffic magistrate.

REASON FOR CHANGE

The statutory authorization of civil traffic infraction hearing officers by Chapter 89-337, Laws of Florida, necessitates reference to such hearing officers (statutorily referred to interchangeably as magistrates) in the traffic court rules. Reference in the proposed rule to traffic magistrate rather than merely magistrate is designed to distinguish the former from other magistrates especially in relation to the applicability of the Code of Judicial Conduct (see section of code entitled "Compliance with the Code of Judicial Conduct"), thereby avoiding the possibility of conflict with authorizing statute.

II. General Provisions

Rule 6.040 Definitions

PRESENT RULE

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.

PROPOSED RULE

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

'Court' means any county court to which these rules apply and the judge ~~thereof~~ or ~~official~~ any civil traffic hearing officer program and the traffic magistrate thereof.

"Judge" means any judicial officer elected or appointed by the Governor 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.

REASON FOR CHANGE

In order to accommodate both the court and hearing officer program as alternative sources for the adjudication of civil infractions, the definition of court has been expanded. The term judge has been redefined to limit its reference to only county court judges and the reference to official has been expanded to include the traffic magistrate. In addition, a separate definition for traffic magistrate has been added.

PRESENT RULE

"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 318, Florida Statutes, within the jurisdiction of a court to which these rules apply.

"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 non-criminal traffic violation 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.

PROPOSED RULE

"Open Court" shall mean in a courtroom as provided or judge's or ~~official's~~ **traffic magistrate'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 318, Florida Statutes, within the jurisdiction of a court to which these rules apply.

"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*.

REASON FOR CHANGE

PRENSENT RULE

"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 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

"Infraction" means a non-criminal traffic violation 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 or traffic magistrate authorized by law to preside over a court or at a hearing adjudicating traffic infractions.

"Department" shall mean the Department of Highway Safety and 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 of equipment of or 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

PRESENT RULE

PROPOSED RULE

"Traffic magistrate" shall mean an official appointed under the civil traffic infraction hearing officer system who shall have the power to adjudicate civil traffic infractions subject to certain exceptions.

REASON FOR CHANGE

Rule 6.080 Improper Disposition of Traffic Ticket

PRESENT RULE

Any person who solicits or aids in the disposition of a traffic complaint or summons in any manner other than that authorized by the court or shall willfully violate any provision of these rules shall be proceeded against for criminal contempt (in the manner provided in these rules).

PROPOSED RULE

Any person who solicits or aids in the disposition of a traffic complaint or summons in any manner other than that authorized by the court or shall willfully violate any provision of these rules shall be proceeded against for criminal contempt (in the manner provided in these rules). However, a traffic magistrate shall not have the power to hold any person in contempt of court, but shall be permitted to file a verified motion for order of contempt before any court judge of the same county in which the alleged contempt occurred. Such matter shall be handled as an indirect contempt of court pursuant to the provisions of Florida Rule of Criminal Procedure 3.840.

REASON FOR CHANGE

This rule expands the statutory mandate of Chapter 89-337, section 3(1) which deprives magistrates of the power of contempt with respect to defendants only. The rule extends the prohibition of a magistrate's direct contempt powers to cover any person. The Committee expressed concern that if the contempt prohibition were limited to only the defendant, it might be assumed that such powers existed with respect to others such as attorneys, court personnel and witnesses. This rule, also incorporates reference to the provisions of Florida Rule of Criminal Procedure 3.480 by specifying that magistrates may initiate indirect contempt proceedings by filing a verified motion for order of contempt pursuant to the Rule of Criminal Procedure.

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, 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.

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, 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 judges of the court.

REASON FOR CHANGE

This amendment was proposed to avoid possible confusion as to any authority traffic magistrates could have in relation to the operation of traffic violations bureaus.

Rule 6.130 Case Consolidation

PRESENT RULE

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

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.

However, in no case shall a traffic magistrate hear a criminal traffic case or a case involving a civil traffic infraction issued in conjunction with a criminal traffic offense.

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

The rule on case consolidation is proposed to be amended to include language from Chapter 89-337, Laws of Florida, which prohibits traffic magistrates from hearing civil infractions arising out of same facts **as** criminal traffic offenses.

IV. Traffic Infractions

Rule 6.630 Civil Traffic Infraction Hearing Officer Program; Traffic Magistrates (Transition Rule)

PRESENT RULE

PROPOSED RULE

REASON FOR CHANGE

Effective October 1, 1989,
pursuant to the authority of Article
V, Section 1, Florida Constitution,
and Chapter 89-337, Laws of Florida,
a civil traffic infractions hearing
officer program is authorized.
Pursuant to the authority of Chapter
89-337, Laws of Florida, and Article
V, Section 2, Florida Constitution,
this Court adopts the following
rules and procedure for the pilot
Civil Traffic Infraction Hearing
Officer Program designed to test the
feasibility of establishing a
statewide program:

(a) Any county in which the
civil traffic infraction caseload
for the immediately preceding
calendar year was in excess of
20,000 hearings shall be eligible to
participate in the pilot Civil
Traffic Infraction Hearing Officer
Program.

The rule attempts to incorporate relevant provisions of Chapter 89-337, Laws of Florida, with minor modifications.

PRESENT RULE

PROPOSED RULE

REASON FOR CHANGE

(b) Any county electing to participate in the program shall be subject to the supervision of this Court and shall assist in the feasibility study. The decision on whether to participate shall be made by the chief judge.

(c) The appointment of such hearing officers, to be designated "traffic magistrates," shall be made by the chief judge, after consultation with the county judges in the county affected, and be approved by the Chief Justice. Once approval has been granted by the Chief Justice, the traffic magistrates shall serve at the will of the chief judge.

(d) Traffic magistrates shall have the power to accept pleas from offenders, decide whether an alleged offender has committed an infraction, and adjudicate or withhold adjudication in the same manner as a county court judge. However, a traffic magistrate shall not:

(1) Have the power to hold any person in contempt of court, but shall be permitted to file a verified motion for order of contempt with an appropriate

The provision in subsection (c) that the traffic magistrate shall serve at the will of the chief judge is implicit in Chapter 89-337, and is believed to be a good policy since it makes irrelevant consideration of the necessity of any involvement by the Judicial Qualifications Commission.

See Committee Note concerning Rule 6.080.

PRESENT RULE

PROPOSED RULE

REASON FOR CHANGE

state trial court judge pursuant to Florida Rule of Criminal Procedure 3.840:

(2) Hear a case involving an accident resulting in injury or property damage; or

(3) Hear a criminal traffic offense case or a case involving a civil traffic infraction issued in conjunction with a criminal traffic offense.

(e) Appeals from decisions of a traffic magistrate shall be to circuit court pursuant to the relevant provisions of the Florida Rules of Appellate Procedure in the same manner as appeals from the county court, except that traffic magistrates shall not have the power to certify questions to district courts of appeal. The appellant shall be responsible for producing the record for such appeal.

(f) A traffic magistrate shall be a member in good standing of the Florida Bar.

In relation to subsection (e) on appeals, the subcommittee believes that the addition of the language on the certifications to district courts, while making an obvious point, would avoid any possible confusion. It was also the concensus that there would be no need to recommend amendments to the Florida Rules of Appellate Procedure since Rules 9.030 (b)(4)(A) and 9.030 (c)(1)(A) of those rules would appear to cover the matter adequately without further amendment.

Subsection (g) goes into less detail concerning the actual length of training (40 hours preservice/10 hours continuing) required by Chapter 89-337. A special plan for such training will be provided separately, including a recommendation for the waiver of such training for recently retired county court judges.

PRESENT RULE

PROPOSED RULE

REASON FOR CHANGE

(g) Traffic magistrates shall be required to complete training approved by the Supreme Court.

(h) Traffic magistrates may serve either full time or part time at the discretion of the chief judge.

(i) All traffic magistrates shall be subject to the Code of Judicial Conduct in the same manner as part-time judges, except that they shall be exempt from Canon 6B and C and the first portion of provision A(2) of the Compliance section of the Code, which prohibits a part-time judge from practicing in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves. Whether full time or part time, traffic magistrates shall be prohibited from representing clients or practicing before any official in any county court traffic matter or from representing any client appealing any county court traffic decision.

This rule expands the statutory prohibition of Chapter 89-337, section 7, which prohibits traffic magistrates from practicing before other civil traffic magistrates and handling traffic appeals. The Committee expressed concern that a limited prohibition extending only to practice before other magistrates might be read as condoning magistrate practice in traffic cases in front of county court judges. Given the contemplated relationship between county court judges and magistrates in education, training and professional duties, such practice would give the appearance of conflict and should be prohibited.

PRESENT RULE

PROPOSED RULE

REASON FOR CHANGE

(j) In any county electing to establish a pilot program the chief judge shall develop a plan for its implementation and shall submit the plan to the Office of the State Courts Administrator. Funds for the pilot program are to be used for hearing officer program salaries, provided that the traffic magistrates shall be paid no more than \$20 per hour, and other necessary expenses, such as training, office rental, furniture, and administrative staff salaries. Any county electing to establish a pilot program shall provide the funds necessary to operate the program.

(k) Traffic magistrates shall not wear robes.

(l) The evaluation of the pilot project shall be conducted by the Office of State Courts Administrator. All court-related personnel involved in the program shall assist in the feasibility study.

In relation to subsection (k), it was the opinion of the subcommittee that the wearing of robes might lead to confusion and interfere with the informal setting of the hearings.

OVERTON, J., concurring in part and dissenting in part.

I would require the traffic magistrates to comply with all of the Code of Judicial Conduct requirements for part-time judges, including A(2) of the Compliance section.

EHRlich, C.J., Concurr

Original Proceeding - Florida Rules of Traffic Courts

Karl B. Grube, Chairman, Traffic Court Rules Committee, Clearwater, Florida; Stephen N. Zack, President, Miami, Florida, James Fox Miller, President-elect, Hollywood, Florida, and John F. Harkness, Jr., Executive Director, Tallahassee, Florida, for The Florida Bar; and Richard E. Cox, Executive Secretary, The Traffic Court Review Committee, Tallahassee, Florida,

Petitioner