



STATE OF FLORIDA
ELEVENTH JUDICIAL CIRCUIT
COUNTY COURT OF DADE COUNTY

FILED

SID J. WHITE

JAN 28 1994

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

#81685
047

LOREE SCHWARTZ FEILER
COUNTY JUDGE

METROPOLITAN JUSTICE BUILDING
1351 N.W. 12th STREET
MIAMI, FLORIDA 33125

January 26, 1994

Chief Justice Rosemary Barkett
Supreme Court of Florida
Supreme Court Building
500 South Duval Street
Tallahassee, Florida 32399-1925

Re: Proposed Change to Judicial Code Relating to Traffic Magistrate.

Dear Justice Barkett,

As a member and immediate past chair of the Florida Bar Traffic Court Rules Committee I am writing regarding a perceived conflict in the proposed change to the Judicial Code and Traffic Court Rules relating to traffic magistrates. Having just received a copy of the proposed change I apologize for my tardy filing of these comments and hope the Court will consider same.

History: As a member, past chair and active participant in the writing of the rules relating to magistrates, I was present during all meetings when this issue was vigorously debated and voted upon.

In June, 1992, at the last meeting at which I presided as chair, we had an open meeting, having invited traffic magistrates from all counties that expressed problems (i.e. Broward and Palm Beach Counties). At this meeting all opinions and concerns were aired. The particular problem appears to be a traffic magistrate's inability to appear in criminal traffic court as an attorney because of their position as a traffic magistrate.

Committee Position: We have received, reviewed and considered all correspondence copied to us that has been sent to you on this issue. This includes Chief Dale Ross' correspondence as well as correspondence from other judges and traffic magistrates. The

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committee has consistently to date voted to maintain the rule as is or not to address any changes as pertains to this issue, thereby leaving the rule as is. Because of the many conflicts inherent in being a traffic magistrate and participating in criminal traffic court the committee felt this was appropriate. Specifically, the county judge handles all contempt proceedings for magistrates; the county judge has concurrent jurisdiction: county judges work closely with the magistrates and many other reasons.

Effect of the Rule: The proposed rule will cause a conflict with Florida Rules of Traffic Court 6.630(i) and permit traffic magistrates to do just what the committee intended it not to do when it proposed the rule and the Supreme Court adopted the rule. The adoption of the proposed change to the judicial code will cause great conflict within the courts and within the counties.

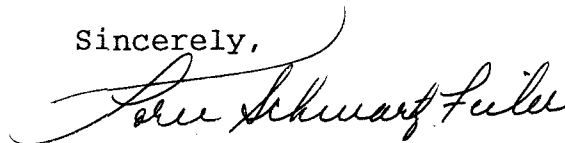
Conflict: The adoption of the proposed change to the Judicial Code will cause great conflict within the courts and within the counties in their practice and use of traffic magistrates.

Conclusion: Acceptance of this rule will cause conflict with the Florida Rules of Traffic Court. Some counties may interpret this to mean traffic magistrates can practice in criminal traffic court and some will not permit it. There will be a serious conflict in authority and application.

I might suggest that the prohibition of the traffic magistrate to practice in any county traffic court be amended to apply only to any county traffic court within the county the traffic magistrate presides. However, this can be addressed at the Traffic Court Rules Committee meeting.

I hope that my comments prove helpful.

Sincerely,



LOREE SCHWARTZ FEILER
County Court Judge

cc: Justice Ben F. Overton
Justice Parker Lee McDonald
Justice Leander J. Shaw, Jr.
Justice Stephen H. Grimer
Justice Gerald Hogan
Justice Major B. Harding