

IN THE
SUPREME COURT OF FLORIDA

In Re

Proposed Florida Rules of Traffic Court

PUBLIC COMMENTS AND OBJECTION TO
PROPOSED FLORIDA RULES OF TRAFFIC COURT
AND EXISTING RULES NOT INCLUDED IN THE PROPOSAL

MARY KATHERINE DAY-PETRANO, a member of the public and aggrieved individual with disabilities protected by Title II of the Americans With Disabilities Act of 1990 (“ADA”), herewith states the following public comments and objections to the Proposed Florida Rules of Traffic Court, including Rules which should be but are not included in the Proposal:

1. The Florida Rules of Traffic Court in their entirety do not appear to comply with the federal-mandates of Title II’s implementing regulation, 28 C.F.R. §35.105(a), (c). See *Chaffin v. Kansas State Fair Board*, 348 F.3d 850 (10th Cir. Oct. 28, 2003); *Tyler v. City of Manhattan*, 857 F.Supp. 800 (D. Kan. 1994) (burden of proving compliance with the ADA Self-Evaluation requirements is on the public entity), *aff’d* 118 F.3d 1400 (10th Cir. 1997); U.S. Dep’t of Justice, ADA Title II Technical Assistance Manual §II-8.200.

2. Proposed Fla. R. Traf. P. 6.100 facially violates Title II of the ADA by failing to require the ADA Notice of Rights to be posted in the traffic bureau. 28 C.F.R. §35.106, together with instructions and information concerning how to secure accommodations, modifications, and removal of transportation, mobility, and communication barriers to challenge a traffic ticket.

3. Proposed Fla. R. Traf. P. 6.580 violates Title II of the ADA by measuring and requiring passage of more than the “essential functions” of

driving a vehicle on the existing roadways in Florida, fails to provide adequate procedural safeguards to ensure individuals with disabilities receive the accommodations, modifications, and removal of transportation, mobility, and communication barriers they require, and subsection (b) impermissibly allows “perpetuation” of discrimination in violation of 28 C.F.R. §35.130(b)(1) and (3). This Proposed rule should be sent back for redrafting to remove conflict with the ADA. See *Barry v. Burdines*, 675 So.2d 587 (Fla. 1996) (The ADA preempts State laws which conflict with the ADA).

3. The Proposed Rules omit other existing Florida Rules of Traffic Procedure which do not comply with Title II of the ADA and the Proposed rules should be rejected in their entirety, reassessed, ADA Self-Evaluated, and the following considerations should be included in any Proposed Rules this Supreme Court considers, including the following:

A. Fla. R. Traf. P. 6.010 fails to contain adequate procedural safeguards to protect the rights of the disabled in Florida’s traffic courts, including failure to provide the federally mandated ADA Notice of Rights and the opportunity to request and secure accommodations, modifications, and removal of transportation, mobility, and communication barriers. The rule does not specifically state that compliance with the ADA is required. This rule should be sent back with the Proposed rules for redrafting.

B. Fla. R. Traf. P. 6.080 facially violates the ADA’s federal-mandate that grievance complaints be “resolved,” which may include remedial disposition of a traffic ticket to redress unlawful discrimination, by threatening contempt against the resolver of such a federally prescribed grievance. In that the rule facially violates the ADA it is in conflict under *Barry v. Burdines*, supra, and should be repealed. 42 U.S.C. §12201(b).

C. Fla. R. Traf. P. 6.150 fails to contain adequate procedural safeguards to protect the rights of the disabled in Florida’s traffic courts, including provision of accommodations, modifications, and removal of transportation, mobility, and communication barriers necessary to secure the subpoenas to compel attendance of witnesses. This rule should be sent back with the Proposed rules for redrafting.

D. Fla. R. Traf. P. 6.320 facially violates the ADA and Fla. R. Jud. Admin. 2.065 by failing to require the traffic citation to be provided in

alternative formats, including large print, with the federally-mandated ADA Notice of Rights conspicuously contained on the face of the charging document. 28 C.F.R. §35.104. This Proposed rule should be sent back for redrafting to remove conflict with the ADA. See *Barry v. Burdines*, 675 So.2d 587.

E. Fla. R. Traf. P. 6.450 facially violates Title II of the ADA by omitting from the Order of the hearing, at the outset that the ADA Notice of Rights be read in open court and any individual with a disability requiring the provision of accommodations, modifications, and removal of transportation, mobility, and communication barriers in open court first receive a detailed written approval or denial of the same with specific findings and the right of review, before the traffic hearing begins and proceeds. 28 C.F.R. §35.150(a). The rule further violates the ADA by not including for automatic dismissal of all traffic citations which, as served on an individual with a disability, fails to properly state the offense with which the person was charged or states a non-existing statutory section. This Proposed rule should be sent back for redrafting to remove conflict with the ADA. See *Barry v. Burdines*, 675 So.2d 587.

F. Fla. R. Traf. P. 6.455 facially violates the ADA for the same reasons as D and E above, and further by not requiring the amended traffic citation to be served on the individual with a disability, and not providing for automatic dismissal for noncompliance with these requirements. This Proposed rule should be sent back for redrafting to remove conflict with the ADA. See *Barry v. Burdines*, 675 So.2d 587.

G. Fla. R. Traf. P. 6.540 facially violates the ADA by not providing for the accommodations, modifications, and removal of transportation, mobility, and communication barriers required to make the motion and not containing an exception for individuals with disabilities whom require extra-time modifications. 42 U.S.C. §12131(2); 28 C.F.R. §35.130(b)(7). This Proposed rule should be sent back for redrafting to remove conflict with the ADA. See *Barry v. Burdines*, 675 So.2d 587.

H. Fla. R. Traf. P. 6.560 facially violates the ADA by not providing that for there to be a “conviction” of an individual with a disability, the specific findings of the ADA’s “direct threat” test must be contained on the face of the judgment or order of the traffic court. This

Proposed rule should be sent back for redrafting to remove conflict with the ADA. See *Barry v. Burdines*, 675 So.2d 587.

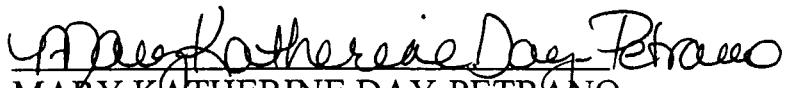
I. Fla. R. Traf. P. 6.570 facially violates the ADA by impermissibly “perpetuating” discrimination or exclusion occurring in the traffic court public entity into the Florida Department of Highway Safety and Motor Vehicles in violation of 28 C.F.R. §35.130(b)(1), (3). This Proposed rule should be sent back for redrafting to remove conflict with the ADA. See *Barry v. Burdines*, 675 So.2d 587.

J. Fla. R. Traf. P. 6.590 facially violates the ADA by imposing penalties and driver’s license suspension in cases where the driver school fails to comply with the ADA’s federal-mandate to provide accommodations, modifications, and removal of transportation, mobility, and communication barriers to complete the driver school. In this case the Title III driver’s schools fail to meet Title II federal-mandates. This Proposed rule should be sent back for redrafting to remove conflict with the ADA. See *Barry v. Burdines*, 675 So.2d 587.

4. If this Supreme Court deems it necessary for the undersigned to provide documentation of her qualification under the ADA, or desires her to address the Court at oral argument, undersigned respectfully requests the Court make such a request.

WHEREFORE, the undersigned requests this Supreme Court consider her above public comments and objections to the Proposed Florida Rules of Traffic Procedure, reject the current version of the Proposed Rules, and Order the Florida Bar Rules Committee to resubmit a new version of the Proposed Florida Rules of Traffic Procedure which comply in all aspects with Titles II and III of the ADA, and for such other and further relief as deemed just and proper.

Dated: March 31, 2004


MARY KATHERINE DAY-PETRANO
P.O. Box 3704
Clearwater, FL 33767
(727) 492-9943

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished by United States Mail, postage prepaid, this 31ST day of March, 2004 to the parties as addressed below, and the original filed with the Court.

Brian Lee Tannebaum, Esq.
150 W. Flagler Street
Miami, FL 33130

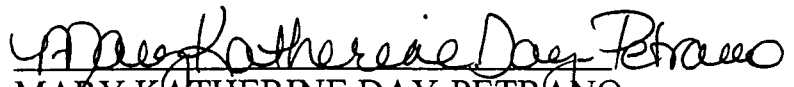
John Harkness
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300



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Dated: March 31, 2004


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COPY

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FILED
THOMAS D. MALL
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CLERK SUPREME COURT
BY *Dy*

March 31, 2004

Clerk of the Court
Supreme Court of Florida
500 South Duval Street
Tallahassee, FL 32399-1927

Dear Clerk:

I spoke with you on the telephone today, and per your instructions, I am enclosing my Public Comments and Objections to the Proposed Florida Rules of Traffic Court. Due to my status as a qualified individual with disabilities under Title II of the Americans With Disabilities Act of 1990 by the Committee of Bar Examiners of the State Bar of California whom passed the July 1997 California Bar Examination with the provision of certain special accommodations, and presently lacking access to the same, I am unable to format my Comments and Objections in a different manner or provide the diskette required for filing. As such I am requesting waiver of the same.

Should the Clerk require documentation I took and passed the July 1997 California Bar Examination as a qualified individual with disabilities with certain special accommodations and modifications, I can provide the same.

I sincerely hope you will file my Comments and Objections to bring Florida's Rules of Traffic Court into modern compliance with the Americans With Disabilities Act on behalf of every individual with a disability whom has become entangled in them in efforts to access Florida's State Traffic Courts.

Respectfully,

Mary Katherine Day-Petrano
Mary Katherine Day-Petrano