

IN THE SUPREME COURT OF FLORIDA

IN RE: PROPOSED AMENDMENTS TO )  
FLORIDA RULES OF )  
TRAFFIC COURT

Case No. SC09-161

**COMMENTS TO BE INCLUDED IN PROPOSED AMENDMENT  
TO FLORIDA RULES OF TRAFFIC COURT RULE 6.445**

The Traffic Court Committee has proposed amending Rule 4.445 to add an entirely new section to the rule which will impose an additional requirement upon the citing law enforcement officer.

**Proposed Rule 6.445 Citing officer to identify in the citation any speed measuring device used**

The amendment to Rule 6.445 was suggested by a committee member to ensure that a defendant who receives a citation for speeding can refer to the citation to discover the type of device used to measure the defendant's speed and the manufacturer's serial number for that device. The committee has determined that providing this information on the face of the citation rather than later at trial will avoid prejudice to the defendant and aid in the preparation of a defense. The committee considered the impact of this requirement upon the citing officer and determined that it was not unduly burdensome. This amendment allows the use of all current speed measuring devices (including Radar, Laser, Pace Car, Vascar, and airplane with stopwatch), and any new speed measuring devices to be used as long as they are disclosed on the citation. The committee unanimously approved the proposed revision by a vote of 27-0-0, and The Florida Bar Board of Governors likewise unanimously approved the rule revision by a vote of 31-0-0.

The proposed amendment does not address the remedies available to the presiding authority if a law enforcement officer fails to identify the speed measuring device on the citation. There is much disparity between rulings among Traffic Hearing Officers and County Court Judges presiding over traffic cases. If the Traffic Court Committee's intent with this amendment is to provide the defendant with additional information to aid in the preparation of a defense for trial, then a continuance of the proceeding would be the proper remedy. If the intent is to punish law enforcement for their failure to include the measuring device information with specificity, then dismissal of the citation would be the proper remedy.

In reviewing other Traffic Rules, it is clear that the main objective of the rules is to provide due process to the defendant and orderly disposition of traffic infractions on their merits. Traffic Rule 6.455, states, that the charging document may be amended by the issuing officer in open court at the time of the scheduled hearing before it commences, subject to the approval of the official. The official shall grant a continuance if the amendment requires one in the interest of justice. No case shall be dismissed by reason of any informality or irregularity in the charging instrument. Therefore in reading this rule together with the proposed Amendment to Rule 6.445, it seems the intent of the Rules Committee is to allow a disposition of the infraction on the merits and not a dismissal of the citation for a technical defect.

### **Conclusion**

Traffic Court Rule Committee comments provide valuable insight into the intent of the committee when amending Traffic Rules. Including comments addressing the remedy for an officer's omission of measuring device identification on the face of the citation, would clarify that the purpose of Amendment to Rule 6.445 is to provide the defendant with additional information in the preparation of a defense for trial and not to punish law

enforcement for an inadvertent omission of a particular detail.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original and nine paper copies of all comments have been sent by Federal Express for filing with the Florida Supreme Court, 500 S. Duval Street, Tallahassee, FL 32322, as well as electronically to e-file@flcourts.org and one paper copy by U.S. Mail to committee chair, Kathy A. Jimenez-Morales, Department of Highway Safety & Motor Vehicles, 2900 Apalachee Parkway, Rm A-201, Tallahassee, FL 32399-6552, as well as electronically to kathyjimenez@flhsmv.gov on this 27<sup>th</sup>-day of March, 2009.

Respectfully submitted,

AL LAMBERTI  
SHERIFF OF BROWARD COUNTY

Broward County Police Chief's  
Association

By: \_\_\_\_\_  
Mila K. Schwartzreich, Esq.  
Office of the General Counsel  
Public Safety Building  
2601 West Broward Boulevard  
Fort Lauderdale, FL 33312  
Telephone: (954) 831-8920  
Fla. Bar No. 0085634

By: \_\_\_\_\_  
Joel Cantor, Esq.  
Legal Advisor  
3250 Hollywood Blvd.  
Hollywood, Fl 33021  
Telephone : (954) 967-7490  
Fla. Bar No. 362093

**IN THE SUPREME COURT OF FLORIDA**

IN RE: AMENDMENTS TO FLORIDA RULES OF TRAFFIC COURT,  
CASE No. SC09-161

<b>RULE</b>	<b>REASON FOR CHANGE</b>
<b>6.445</b>	Amended to avoid the punitive impact of dismissing Traffic Citations that fail to depict the exact speed measuring device on the face of the citation and to provide an appropriate remedy for court disposition.