

Supreme Court of Florida

No. SC09-161

IN RE: AMENDMENTS TO THE FLORIDA RULES OF TRAFFIC COURT.

[December 3, 2009]

PER CURIAM.

We have for consideration proposed rule amendments filed by the Traffic Court Rules Committee (Committee). We have jurisdiction. See art. V, § 2(a), Fla. Const; Fla. R. Jud. Admin. 2.140(b).

BACKGROUND

The Committee filed its regular-cycle report of proposed amendments to the Florida Rules of Traffic Court. The Committee proposes amendments to rules 6.115 (DUI Program Coordination Trust Fund); 6.291 (Procedures on Withheld Adjudication in Driving While License Suspended; Costs and Enlargement of Time to Comply; Record of Convictions); 6.330 (Election to Attend Traffic School); 6.445 (Discovery: Infractions Only); 6.480 (Deferred Payment of Penalty

Imposed); 6.600 (Failure to Appear or Pay Civil Penalty; Reinstatement of Driver License); and 6.630 (Civil Traffic Infraction Hearing Officer Program; Traffic Hearing Officers). The Board of Governors of The Florida Bar unanimously approved the proposed amendments.

Before filing the proposals with the Court, the Committee published the proposals for comments; no comments were received. The Court republished the proposals and two comments were filed. The Committee filed a response to the comments in which it stated that it “feels no need to respond substantively to the comments filed on the proposed rule amendments in this case.”

After initially considering the Committee’s proposals, the Court asked the Committee to file a supplemental report addressing whether any of the proposals currently before the Court require further amendments in light of recent legislation. The Committee filed a supplemental report that proposes that rule 6.115 be deleted in its entirety from the rules because the DUI Program Coordination Trust Fund was terminated on July 1, 2009. See ch. 2009-71, § 1, Laws of Fla.

AMENDMENTS

Having considered the Committee’s reports, the comments, and the Committee’s response, we amend the Rules of Traffic Court as explained below. Rule 6.115 is repealed, effective immediately. We adopt the proposed amendments to rules 6.291(a), 6.330(a), and 6.445. We adopt the proposed

amendments to rule 6.480 with a minor modification. However, we decline to adopt the proposed amendments to rules 6.600 and 6.630.

The amendment to rule 6.291(a) (Costs) corrects statutory references in the rule. The amendment to rule 6.330(a) (Attendance at School) creates a uniform time period throughout the state within which a defendant can elect to attend driver improvement school. The amendment to rule 6.445 (Discovery: Infractions Only) requires a citing law enforcement officer to identify in the citation the type of electronic or mechanical speed measuring device used and the manufacturer's serial number on the device.

We have revised the proposed amendment to rule 6.480 (Deferred Payment of Penalty Imposed) to require that upon a defendant's or the official's¹ own motion, the defendant must be afforded no less than thirty days, rather than the proposed sixty days, before he or she is required to pay any penalty imposed.

We decline to adopt the proposed amendments to rules 6.600(b) (Appearance After Notice Sent) and 6.600(c) (Reinstatement of License). The Committee's proposed amendments provide a defendant an opportunity to request a hearing. Under subdivision (c), the defendant must request a reinstatement hearing within twelve months of the alleged offense. The amendments also require

1. The rule defines "official" as "any state judge or traffic hearing officer authorized by law to preside over a court or at a hearing adjudicating traffic infractions." Fla. R. Traf. Ct. 6.040(1).

the clerk to set the case for hearing under subdivisions (b) and (c). We conclude that the Committee's proposed twelve-month period for allowing a defendant to request a reinstatement hearing is excessive. We also believe that the rule should not require the clerk to set the case for hearing as a result of a defendant's request. It is both practical and desirable for the official to exercise discretion in determining whether a defendant's request for a hearing has been made within a reasonable period and should be granted.

We also decline to adopt the proposed amendments to rule 6.630 (Civil Traffic Infraction Hearing Officer Program; Traffic Hearing Officers). The Committee proposes amendments to this rule that would give traffic hearing officers the authority to hear noncriminal boating infraction cases and would allow training on boating infractions to be included in the curriculum for traffic hearing officers. According to the Committee, the proposal includes statutory references that would cause uniform boating citations to be treated in the same manner as uniform traffic citations and conforms the rule to the current practice throughout the state. We are concerned that the proposal pertaining to boating infractions may be unnecessarily confusing to attorneys and the general public if the rules addressing both traffic and boating infractions are placed in rule 6.630. The Committee's proposed amendments also would cause rule 6.630 to exceed the recognized scope of the Rules of Traffic Court. Rule 6.010(a) (Scope;

Application) states: “These rules govern practice and procedure in any traffic case and specifically apply to practice and procedure in county courts and before civil infraction hearing officers.” Rule 6.630 is placed under Part IV (Traffic Infractions). Rule 6.010(c) (Scope; Part IV) clarifies as follows: “The rules under Part IV of these rules apply only to traffic infractions adjudicated in a court of the state, whether by a county court judge or civil traffic infraction hearing officer.” We also question whether rules relating to boating infractions should be included in the Rules of Traffic Court. Recently, we pointed out that boating offenses are not traffic offenses. See In re Standard Jury Instructions in Criminal Cases – Report No. 2008-09-8, 6 So. 3d 574, 574 (Fla. 2009) (renaming chapter 28, Traffic Offenses, of the Standard Jury Instructions “Transportation Offenses”; recognizing that chapter 28 previously was limited to vehicle-related offenses and that proposed new instructions relating to boating under the influence are not traffic offenses or vehicle-related). Therefore, we conclude that a better course to take is to refer the matter to both the Traffic Court Rules Committee and the Civil Procedure Rules Committee to consider whether a general rule pertaining to civil infraction hearing officers to preside over both traffic and boating infraction cases is warranted.

CONCLUSION

Accordingly, we amend the Florida Rules of Traffic Court as reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The committee notes are offered for explanation only and are not adopted as an official part of the rules. Other than the repeal of rule 6.115, which is effective immediately, the amendments shall become effective on January 1, 2010, at 12:01 a.m.

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, CANADY, POLSTON, LABARGA,
and PERRY, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE
EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceeding - The Traffic Court Rules Committee

Rick Silverman, Chair, Traffic Court Rules Committee, Tampa, Florida; John F. Harkness, Jr., Executive Director, and Ann Chittenden, Staff Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioner

Mila K. Schwartzreich, Fort Lauderdale, Florida, on behalf of Al Lamberti, Sheriff of Broward County; Joel Cantor, Hollywood, Florida, on behalf of Broward County Police Chief's Association; and Steven D. Rubin, Boca Raton, Florida,

Responding with Comments

APPENDIX

~~RULE 6.115. DUI PROGRAM COORDINATION TRUST FUND~~

~~(a) **Monthly Assessments.** Each DUI program approved by the DUI Programs Director is required to remit monthly the assessments collected pursuant to section 25.387, Florida Statutes, to the DUI Programs Director of the supreme court on a form provided by the supreme court.~~

~~(b) **Records and Accounts.** Each certified 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.~~

~~(c) **Collection of Trust Fund.** Each DUI program shall collect the trust fund in accordance with the plan attached hereto.~~

~~(d) **Plan for Implementation of DUI Programs Coordination Trust Fund.** Pursuant to section 25.387, Florida Statutes, the supreme court adopts the following plan for the implementation of the DUI Programs Coordination Trust Fund.~~

~~(1) All DUI programs in the State of Florida shall assess \$10 against every individual enrolling in a DUI course at the time of the enrollment, including those who transfer to or from a program in another state. Federal military employees, their dependents, and retired military personnel who attend a federal military 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 \$10 upon enrollment in the program and upon each subsequent anniversary date of such enrollment for the duration of the restricted license period. For administrative convenience, the DUI program may establish an annual remittance date for submission of the assessment fee as long as neither the DUI Trust Fund Commission collections nor the client is detrimentally affected.~~

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

~~(3) Each program shall remit on a monthly basis the assessment collected.~~

~~The remittance shall be received by the supreme court within 30 days following the last day of the month in which the assessment was collected. 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 "DUI Programs Coordination Trust Fund Remittance of \$10 Additional Assessment." This form shall be subject to the approval of the DUI Program Trust Fund Commission.~~

~~(4) Each DUI program shall cause records and accounts to be kept that show the collection of each assessment and that will be subject to audit by the supreme court. The records of the assessments shall be in a form specified by the supreme court. This form shall be subject to the approval of the DUI Program Trust Fund Commission.~~

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

~~(6) Each DUI program may request an increase in the fee charged for enrollment in the DUI course to cover the assessment. The 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 DUI Programs Coordination Office to pay for staff salaries, travel, and other expenses related to the functioning of the office. The fund also will be used to pay for programs in which the 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 DUI Program Trust Fund Commission shall be the administrator of the fund.~~

Committee Notes

~~**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 (Appendixes A and B) have been removed from the rules because 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.~~

~~**1990 Amendment.** Present wording of this rule has created considerable accounting inconvenience to Florida's DUI/Substance Abuse Schools due to the hundreds of varied anniversary dates that result from the intake of thousands of defendants applying for reinstatement of driving privileges under Florida's Multiple Offender DUI Relicensing Law. The proposed rule would provide for a more convenient and economical annual remittance date for submission of assessment fees to the DUI Trust Commission.~~

RULE 6.291. PROCEDURES ON WITHHELD ADJUDICATION IN DRIVING WHILE LICENSE SUSPENDED; COSTS AND ENLARGEMENT OF TIME TO COMPLY; RECORD OF CONVICTIONS

(a) **Costs.** When a defendant charged with a criminal offense elects to exercise the option of receiving a withheld adjudication under section 318.14(10), Florida Statutes, law enforcement education assessments under section 943.25, Florida Statutes, and victims-of-crimes compensation costs and surcharges pursuant to ~~under~~ sections ~~960.20 and 960.25~~ 938.03 and 938.04, Florida Statutes, ~~shall~~must be assessed, in addition to the court costs assessed by section 318.14(10), Florida Statutes.

(b) – (d) [No change]

Committee Notes

[No change]

RULE 6.330. ELECTION TO ATTEND TRAFFIC SCHOOL

(a) **Attendance at School.** Unless a mandatory hearing is required, or the defendant appears at a hearing before an official, a defendant may elect to attend a driver improvement school pursuant to section 318.14(9), Florida Statutes, within

30 days of receiving a citation or, if a hearing was requested, at any time before trial. Attendance at a driver improvement school shall not operate to waive the law enforcement education assessments under section 943.25, Florida Statutes. Any defendant electing to attend driver improvement school under section 318.14(9), Florida Statutes, will receive a withheld adjudication and not be assessed points.

(b) [No change]

Committee Notes

2009 Amendment. The rule change in subdivision (a) was necessary to create a uniform time period throughout the state by which a clerk must allow a defendant to elect to attend a driver improvement school.

RULE 6.445. DISCOVERY: INFRACTIONS ONLY

If an electronic or mechanical speed measuring device is used by the citing officer, the type of device and the manufacturer's serial number must be included in the body of the citation. ~~If any relevant supporting documentation regarding the electronic or mechanical speed measuring such device used by the citing officer is in said the officer's possession at the time of trial, the defendant or defendant's attorney shall be entitled to review said that documentation immediately before that trial.~~

Committee Notes

2009 Amendment. This amendment is based on the fact that currently to the committee's knowledge there are 5 different measuring devices or types: Radar, Laser, Pace Car, Vascar, and airplane with stopwatch. It is believed that identifying the type of measuring device is not unduly burdensome to the state and it is necessary in the preparation of a defense. Withholding this information until the time of trial unduly prejudices the defense. This amendment is also forward-looking in that as new measuring devices appear, they can be effectively used as long as they are disclosed.

RULE 6.480. DEFERRED PAYMENT OF PENALTY IMPOSED

(a) **Procedure.** On motion of the defendant or on the official's own motion, an official ~~may~~must allow a reasonable amount of time, no less than 30 days, before requiring the payment of any penalty imposed. If payment is not made after such extension or further extensions, such action will be considered a failure to comply for purposes of section 318.15, Florida Statutes.

(b) [No change]

Committee Notes

2009 Amendment. Too often, defendants, represented by counsel and exercising use of Traffic Court Rule 6.340 (Waiver of Appearance), will resolve a case and be forced to make payment immediately, within 5 or 10 days. This type of sanction does not allow for the defendant to be notified by counsel in a reasonable amount of time. The amendment relieves the defendant from this undue hardship.