

IN THE SUPREME COURT OF FLORIDA

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

CASE NO: SC12-38

**TRAFFIC COURT RULES COMMITTEE
RESPONSE TO COMMENTS**

Jill Hampton, Chair, Traffic Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file these responses to the comments filed subsequent to the court’s publication of the three-year cycle report of the Traffic Court Rules Committee (“Committee”).

Three comments were received from Steven D. Rubin, Esquire; Judge Sharon Zeller, on behalf of the Seventeenth Judicial Circuit of Florida; and, Judge Debra Roberts, on behalf the Conference of County Court Judges of Florida.

**RULE 6.340. AFFIDAVIT OF DEFENSE OR ADMISSION AND
WAIVER OF APPEARANCE**

Because the comments voiced the same concern regarding the proposed amendment to Fla. R. Traf. Ct. 6.340, the Committee will respond to them as one. In the proposed amendment, the Committee is recommending a subdivision be added to advise pro se parties that “No accused person shall be compelled to give testimony against himself or herself.” The commenters believe it is inappropriate to include this subdivision because civil traffic offenses include no such constitutional privilege. (Roberts, page 1; Rubin, page 2; Zeller, page 1) The Committee respectfully responds that there is a distinction between civil cases and traffic cases and that the proposed amendment to Rule 6.340 is firmly rooted in existing law.

In *Levitz v. State*, 339 So. 2d 655, 658 (Fla. 1976), the court held “[i]t is undisputed that if one chooses to contest a traffic citation all constitutional due process rights are available to him.” From the outset, the court has made its position clear. The due process clause of the Florida Constitution includes the provision that “no person shall . . . be compelled in any criminal matter to be a witness against oneself.” Art. I, Section 9, Fla. Const. (1968). The decriminalization of traffic violations was a product of the legislature’s desire to provide a more expedient method of complying with the law. However, “Chapter 318, Florida Statutes, does not deprive [defendants] of ... due process rights to a

full and fair hearing.” *Johnson v. State*, 345 So. 2d 1069, 1072 (Fla. 1977). It is the position of the Committee that an accused in traffic infraction cases does, in fact, possess all due process rights through authority of the U.S. Constitution, *Levitz; Johnson*; Ch. 318, Fla. Stat. The proposed amendment to Rule 6.340 merely advises about part of those rights in the rule to ensure pro se parties are aware of it.

**RULE 6.600. FAILURE TO APPEAR OR PAY CIVIL PENALTY;
REINSTATEMENT OF DRIVER LICENSE**

Mr. Rubin also voiced a concern regarding the proposed amendment to Rule 6.600(c). The proposed amendment follows one filed in *In re: Amendments to the Florida Rules of Traffic Court*, 24 So. 2d 176 (Fla. 2009), in which the Committee requested a 1-year limitation for the filing of a request for hearing, which the court did not approve. Upon consideration of the court’s opinion, the Committee believes that a 6-month limitation, rather than one year, is not excessive and is appropriate. Mr. Rubin disagrees that the 6-month filing deadline is appropriate and asks the court to reject this proposal.

The Committee believes that the proposed amendment still authorizes an official to use discretion after the six months has elapsed. Because a defendant has 30 days to respond to a citation from its date of issuance, the six month time period is only extending the time to request a hearing by five months. The Committee is in favor of this amendment to protect the rights of the accused because jurisdictions vary in their procedure for requesting a hearing after the 30-day period has elapsed. When compared with the defendant’s right to contest a charge, the Committee believes that this amendment will be beneficial to the courts, the accused, and the public with a minimal burden placed on the state.

The Traffic Court Rules Committee respectfully requests that the Court consider the reasoning presented and amend the Florida Rules of Traffic Court as outlined in the Three-year Cycle Report.

Respectfully submitted on March ____, 2012.

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CERTIFICATION OF SERVICE

A true copy of this Traffic Court Rules Committee Response to Comments was mailed, via U.S. Mail, to the following on _____ of March, 2012.

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