

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE
FLORIDA RULES OF TRAFFIC COURT

CASE NO.: SC15-

THREE-YEAR CYCLE REPORT OF THE
TRAFFIC COURT RULES COMMITTEE

Lee Francis Carney, Chair, Traffic Court Rules Committee (Committee), and John F. Harkness, Jr., Executive Director, The Florida Bar, file this three-year cycle report of the Traffic Court Rules Committee under Florida Rules of Judicial Administration 2.140(b). The rule amendments have been approved by the full Committee and, as required by *Rule* 2.140(b)(2), reviewed by The Florida Bar Board of Governors. The voting records of the Committee and the Board of Governors are shown on the attached List of Florida Rules of Traffic Court. (*See* Appendix A.)

The proposed amendments were published for comment in the July 15, 2014, Florida Bar *News* and posted on the Bar's website. (*See* Appendix D.) No comments were received.

The proposed rules are attached in full-page (*see* Appendix B) and two-column (*see* Appendix C) formats.

The proposed amendments and reasons for change are as follows:

**RULE 6.190. PROCEDURE ON FAILURE TO APPEAR;
WARRANT; NOTICE**

RULE 6.380. NONVERIFICATION OF PLEADINGS

Because of the adoption of e-filing under Florida Rules of Judicial Administration 2.525 (Electronic Filing), and e-service under Florida Rules of Judicial Administration 2.516 (Service of Pleadings and Documents), the Committee proposes the removal of references to outdated terms as follows:

In Florida Rules of Traffic Court 6.190, the Committee proposes, in the first sentence, removing references to "mail" and "mailing" to broaden the way in which notice may be sent to a defendant. Specifically, the Committee proposes the word "mail" be removed, and in its place use the word "send." Additionally, the Committee proposes the words "the mailing of" be removed and replaced with the words "is sent."

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As proposed, subdivision (c) would now read:

If a defendant is not a resident of this state and fails to appear or answer a traffic complaint, the clerk of the court or the court shall send notice to the defendant at the address stated in the complaint and to the department. The department shall send notice to the license issuing agency in the defendant's home state. If the defendant fails to appear or answer within 30 days after notice is sent, the court shall place the case in an inactive file or file of cases disposed of, subject to being reopened if thereafter the defendant appears or answers or a warrant is issued and served.

In Florida Rules of Traffic Court 6.380, the Committee proposes the removal of the reference to "paper," recognizing that there are other ways in which the pleadings of a defendant may be presented. Specifically, the Committee proposes the word "paper" be deleted, and in its place insert the word "document." As proposed, the rule would read:

Except when otherwise specifically provided by these rules or an applicable statute, every written pleading or other document of a defendant represented by an attorney need not be verified or accompanied by an affidavit.

The amendments to *Rules* 6.190 and 6.380 were discussed and approved by vote by the Committee in January 2014 and April 2014. (*See* Appendix E - 4.)

RULE 6.460. EVIDENCE

Amendments to Florida Rules of Traffic Court 6.460, originated from continuing technological advances. The proposed amendment to *Rule* 6.460(b) would broaden the forms of media that may be used when recording a traffic infraction hearing; however, any chosen form of media must be in a format acceptable to the clerk of court responsible for record maintenance and appeal purposes. Furthermore, this amendment requires that a certified copy of the recording be furnished to the clerk of court to alleviate any concerns regarding recording manipulation.

Specifically, the Committee proposes (1) deleting the word "Tape" from the subdivision title; (2) in the second sentence, deleting the words "the defendant" and, in its place, inserting the words "that party," and adding at the end "and shall be in a recording format acceptable to the clerk"; (3) in the third sentence deleting the words "The original," and in its place inserting the word "A," after "A recording" adding "of the proceeding that is made by a party," and deleting the

word “seal” and in its place, inserting the word “secure”; (4) in the fourth sentence, changing the introduction from “Such” to “A certified copy,” deleting the word “tape” substituting “recording,” adding the words “furnished by the clerk and,” and deleting the words “the defendant,” and replacing with “a party at that party’s expense”; and, (5) in the last sentence, deleting the word “defendant’s” and replacing with “requesting party’s.” To clarify, the proposed wording of the submission would be:

(b) Recording of Hearing. Any party to a noncriminal traffic infraction may make a recording of the hearing. The provision and operation of the recording equipment shall be the responsibility of that party unless otherwise provided by the court, and shall be in a recording format acceptable to the clerk. A recording of the proceeding that is made by a party shall be delivered immediately after the hearing to the clerk, who shall secure and file it. A certified copy of such recording shall be furnished by the clerk and transcribed for an appeal if ordered by a party at that party’s expense. Transcription shall only be by an official court reporter at the requesting party’s expense.

The Committee proposes a Committee Note that clarifies this amendment’s purpose while, encouraging parties to contact the appropriate clerk of court prior to a traffic infraction hearing to ensure that the chosen form of media is acceptable for recording purposes. The proposed Committee Note would read:

In light of continuing technological advances, this rule was amended to accommodate continuing changes in technology and the ability to use various types of equipment when recording a traffic infraction hearing. Parties are encouraged to contact the clerk of court prior to their hearing to confirm that the recording equipment they intend to use will produce a recording in a format that is acceptable to the clerk.

The amendment to *Rule 6.460* was discussed and approved by vote by the Committee in February 2011 and January 2012. (*See Appendix E - 1-E - 4.*)

**RULE 6.630. CIVIL TRAFFIC INFRACTION HEARING
OFFICER PROGRAM; TRAFFIC HEARING
OFFICERS**

Committee member, Ms. Sara Blumberg, proposed several amendments to Florida Rules of Traffic Court 6.630.

In the introductory, unnumbered paragraph, the amendment proposes the correction of a scrivener's error citing to Article V, section 2, of the Florida Constitution, replacing section 2 with section 1.

In subdivision (g), the Committee proposes, in the third sentence, removing the words "county court" in order to broaden the type of judge that can serve as an instructor. In subdivision (g)(1), the Committee proposes, in the second sentence, deleting "procedure and control," replacing with "control management. The Committee also proposes that traffic hearing officers' training of situations in which a defendant's constitutional right to remain silent may be implicated, be relocated from sentences 2 - 4, following "courtroom procedure and control," to sentences 5 - 6, following "basic traffic court law and evidence." The Committee thinks it is more appropriate to have the issue included under the umbrella of traffic court law and evidence training. To clarify, the proposed wording of the subdivision would be:

(g) Training. Traffic hearing officers must complete 40 hours of standardized training that has been approved by the supreme court. Instructors must be judges, hearing officers, and persons with expertise or knowledge with regard to specific traffic violations or traffic court. Curriculum and materials must be submitted to the Office of the State Courts Administrator. The standardized training must contain, at a minimum, all of the following:

(1) 28 hours of lecture sessions including 2.5 hours of ethics, 5 hours of courtroom control management, 11 hours of basic traffic court law and evidence (which must include handling of situations in which a defendant's constitutional right against self-incrimination may be implicated), 3 hours of clerks office/DMV training, 2 hours of participant perspective sessions/demonstrations, 3 hours of dispositions/penalties, and 1.5 hours of civil infractions/jurisdiction;

The Committee proposes the amendment of subdivision (h) to ensure that all 4 hours of annual continuing legal education for traffic hearing officers are relevant to traffic court proceedings. The rule currently requires 2 of the 4 hours of continuing legal education be on ethics or professionalism; the amendment adds "and 2 hours of civil traffic infraction related education" to the end of the second sentence. To clarify, the proposed wording of the subdivision would be:

(h) Continuing Legal Education. Traffic hearing officers must complete 4 hours of continuing legal education per year. The continuing legal education

program must be approved by the supreme court and must contain a minimum of 2 hours of ethics or professionalism, and 2 hours of civil traffic infraction related education. Curriculum materials must be submitted to the Office of the State Courts Administrator.

These amendments to *Rule* 6.630 were discussed and voted on by the Committee in January 2014 and December 2014. (See Appendix E - 4–E - 5.)

The Committee respectfully requests that the Court amend the Florida Rules of Traffic Court as outlined in the report, submitted on January 12, 2015.

/s/ Lee Francis Carney
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by e-mail, on January 12, 2015, to:

Ms. Sara Blumberg
South County Courthouse
200 W. Atlantic Avenue
Delray Beach, FL 33444
sblumberg@pbcgov.org

CERTIFICATION OF COMPLIANCE

I certify that these rules were read against *West's Florida Rules of Court – State* (2014 Revised Edition).

I certify that this report was prepared in compliance with the font requirements of *Fla. R. App. P. 9.210(a)(2)*.

/s/ Josine Rene Blackwell
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