

**AGENDA
TRAFFIC COURT RULES COMMITTEE
OCTOBER 18, 2018
9:00 AM–11:00 AM (E.T.)**

**COLLIER ROOM
TAMPA AIRPORT MARRIOTT
4200 GEORGE J. BEAN PARKWAY
TAMPA INTERNATIONAL AIRPORT
TAMPA, FL 33607**

**CONFERENCE CALL DIAL-IN NUMBERS:
(888) 376-5050
CODE: 5698745216#**

I. Call to Order—Anne Marie Gennusa, Chair

Welcome members and guests, identify new members and telephone attendees.

A. Circulate attendance sheet. Please do not forget to sign it before you leave for the day!

B. Approval of minutes. The minutes from the January 18, 2018, meeting are attached, beginning on page 3. All members are expected to have reviewed the minutes prior to meeting and, if possible, notify Chair Sergio Cruz, and Bar Liaison Heather Telfer of any errors or omissions. Unless there is an objection, the minutes will be approved by acclamation.

II. Chair’s Report—Anne Marie Gennusa

The 2018 Regular-cycle Report (SC18-18) was filed January 4, 2018, with the Florida Supreme Court. The Court released its opinion August 30, 2018. The opinion begins on page 6.

III. RJA Update—Carter Hillstrom, RJA Liaison

RJA is amending Rule 2.505 (Attorneys). The most recent version of RJA’s proposal begins on page 28.

IV. Old Business

Subcommittee A—Randall Richardson, Subcommittee A Chair

No report.

Subcommittee B—Aaron Delgado, Subcommittee B Chair

No report.

Subcommittee C—Angela Di Bartolomeo, Subcommittee C Chair

No report.

Subcommittee D—Rebecca Lober, Subcommittee D Chair

No report.

V. New Business

A. 18-TC-02: (Page 31.) There were questions at the end of the last meeting as to whether this Committee should work on rules addressing traffic fatalities. The Committee worked on this topic in 2014 and the materials from that review are attached.

B. 18-TC-03: (Page 41.) *State v. Grate*, No. 5D18-683 (Fla. 5th DCA July 27, 2018).

VI. Adjourn: The Winter Meetings will be January 15-19, 2019, at the Doubletree by Hilton Orlando at SeaWorld. The Annual Convention will be June 26-29, 2019, at the Boca Resort.

TRAFFIC COURT RULES COMMITTEE
MINUTES
JANUARY 18, 2018

In attendance: Sergio Cruz, Chair; Anne Marie Gennusa, Vice Chair; Peter Leo-George Tragos, Vice Chair; Alexander Charles Annunziato (phone); Garrett Michael Berman; Raquel Campos (phone); Richard M. Coln; Aaron David Delgado (phone); Angela R. Di Bartolomeo (phone); Anthony Ross Duran, Jr. (phone); Jill Marie Hampton (phone); Carter T. Hillstrom; Jordan Wesley Jacob (phone); Hon. Thomas Michael Jaworski; Ira David Karmelin (phone); Hon. Christopher Kelly; Nicholas Adam Merlin (phone); Joel L. Mumford (phone); Jennifer Fleming Printz; Casey Marie Reiter (phone); Jeffrey Newton Reynolds (phone); Doricia Miller Rivas (phone); Hon. Debra Roberts; Jose Dario Vazquez (phone); Rebecca Elizabeth Lober, Clerk Representative.

Guests: Hon. Susan Bedinghaus, Pinellas County; Paul Jeske, Hillsborough County

Not in attendance: David Hershel Margolis (excused); Travis Drew Eden Mydock; Randall Harvey Richardson; Hon. Louis Howard Schiff; and Alexander Milligan Sharp IV

Chair's Report: The Traffic Court Rules Committee filed its 2018 Regular-Cycle Report with the Court on January 4, 2018. The Court will publish the amendments for comments in the February 1, 2018, edition of *The Florida Bar News*. The comment period ends March 1, 2018. The Committee's response to comment is due March 22, 2018.

Minutes: Aaron Delgado moved to approve the minutes from the June and November meetings. Judge Kelly seconded the motion and the minutes by acclamation. (Note: the June minutes should reflect Joel Mumford's attendance.)

RJA Update: Conflict between section 90.202, Florida Statutes, and Florida Rule of Judicial Administration 2.265. RJA will be voting on amendments to Rule 2.265 to delete subdivision (d) to avoid conflict with section 90.202, Florida Statutes.

Old Business: There was no old business to discuss as everything the Committee has been working on is contained in the Cycle Report filed with the Court.

New Business:

A. (17-TC-02) Sergio Cruz raised a concern that in some jurisdictions judges and hearing officers rule on traffic motions while in others only judges hear motions because they interpret the rules to mean only judges can. Some jurisdictions allow motions to be heard in chambers without the need for a hearing while others interpret the rules in a way that motions require a court record in order to be legally sufficient and thereby take precious judicial time away from judges by scheduling hearings on all traffic motions.

- Judge Kelly asked how this could be addressed through the rules?
- How is this addressed when there is no one on the other side of the hearing?
- Judges already have discretion to rule without holding a hearing. There may be other reasons the judge wants to see the defendant.
- Aaron Delgado asked if we wanted to create rules within the Florida Rules of Traffic Court to address motion practice, or just in this situation? How should this be addressed when the Rules of Criminal Procedure apply when the Rules of Traffic Court do not.
- Chair Cruz is seeking clarification as to what the procedure should be.

NOTE: technical difficulties with the phone line occurred throughout the meeting.

- Carter Hillstrom noted that a one size fix won't work.
- The issue was tabled to seek input from the Traffic Court Rules Committee of the Conference of County Court Judges.

B. (18-TC-01) Heather Telfer noted that Rules 6.590, 6.600, 6.610, and 6.620 refer to a form, supplied by the department, to notify the department that the penalties and costs were paid. Is the Committee satisfied with the language submitted to the Court? Committee members seemed content with what was filed with the Court and do not see the need for further amendment at this time.

C. (Parental Leave.) A new rule encouraging judges to allow continuance for parental leave of the lead attorney in a case was filed. Send your thoughts on this proposal to Krys Godwin, Department Director, kgodwin@floridabar.org. *P.S.* the Court dismissed the case without adopting the amendment on January 18, 2018. However, RJA is still thinking about the issue, so send your thoughts to RJA's liaison, Krys Godwin.

Adjournment: Meeting was adjourned at 10:20 a.m.

Upcoming Meetings: The Annual Convention will be June 13-16, 2018, at the Hilton Orlando Bonnet Creek. The Fall Meetings will be October 17-19, 2018, at the Tampa Airport Marriott.

Supreme Court of Florida

No. SC18-18

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

August 30, 2018

PER CURIAM.

We have for consideration the regular-cycle report of proposed amendments to the Florida Rules of Traffic Court filed by The Florida Bar's Traffic Court Rules Committee (Committee). *See* Fla. R. Jud. Admin. 2.140(b)(4). We have jurisdiction. *See* art. V, § 2(a), Fla. Const. We adopt the majority of the amendments as proposed by the Committee, including the deletion of rule 6.580 (Completion of Driver School; Conditions) as outdated. However, as discussed herein, we decline to adopt most of the Committee's proposed amendments to rule 6.140 (Conduct of Trial), and adopt the proposed amendments to rule 6.200(b) (Pleas and Affidavits of Defense; Written Pleas of Guilty or Nolo Contendere) with modifications.

BACKGROUND

The Committee proposes amendments to Florida Rules of Traffic Court 6.010 (Scope); 6.020 (Purpose and Construction); 6.080 (Improper Disposition of Traffic Ticket); 6.090 (Direct and Indirect Criminal Contempt); 6.140 (Conduct of Trial); 6.180 (Sentencing Repeat Offenders); 6.190 (Procedure on Failure to Appear; Warrant; Notice); 6.200 (Pleas and Affidavits of Defense); 6.320 (Complaint; Summons; Forms; Use); 6.330 (Election to Attend Traffic School); 6.360 (Enlargement of Time); 6.455 (Amendments); 6.490 (Correction and Reduction of Penalty); 6.500 (Pronouncement and Entry of Penalty; Penalizing Official); 6.510 (Determination that Infraction was not Committed; Bond Refunded); 6.520 (Effect of Granting New Hearing); 6.530 (Imposition of Penalty Before or After Motion Filed); 6.550 (Official May Grant New Hearing); 6.560 (Conviction of Traffic Infraction); 6.570 (Reporting Action Requiring Suspension of Driver License); 6.575 (Retention of Case Files); 6.580 (Completion of Driver School; Conditions); 6.590 (Failure to Complete Driver School; Reinstatement of Driver License); 6.600 (Failure to Appear or Pay Civil Penalty; Reinstatement of Driver License); 6.610 (Failure to Fulfill Penalty Imposed After a Hearing; Reinstatement of Driver License); 6.620 (Failure to Appear for Mandatory Hearing; Reinstatement of Driver License); and 6.630 (Civil Traffic Infraction Hearing Officer Program; Traffic Hearing Officers).

Consistent with Florida Rule of Judicial Administration 2.140(b)(2), the Committee published the proposals for comment before filing them with the Court. The Committee received comments, made responsive amendments to its proposals, and republished the proposals for comment. The proposals were approved unanimously by the Board of Governors of The Florida Bar and by a majority of the Committee. The Court also published the proposals for comment and received two comments. One comment was from Civil Traffic Hearing Officers Steven D. Rubin and Sarah Blumberg opposing a number of the Committee's proposals and proposing alternative amendments to several of the rules. The other comment was from the Florida Public Defender Association (FPDA) in support of the Committee's proposed amendment to rule 6.490(b)(1) (Correction and Reduction of Penalty; Reduction of Penalty). The Committee filed a response addressing the comments and declining to make any revisions to its proposals.

AMENDMENTS

After considering the proposed amendments, the comments filed, and the Committee's response to the comments, we adopt all of the proposed amendments, except the Committee's proposed amendment to the text of rule 6.140 (Conduct of Trial). We discuss only the proposed amendments to rule 6.140, most of which we decline to adopt, rule 6.200(b) (Pleas and Affidavits of Defense; Written Pleas of

Guilty or Nolo Contendere), which we adopt as modified herein, and rule 6.330(b) (Election to Attend Traffic School).

Rule 6.140 (Conduct of Trial) provides that “[a]ll trials and hearings shall be held in open court and shall be conducted in an orderly manner according to law and applicable rules.” The rule also provides that “[a]ll proceedings for the trial of traffic cases shall be held in a place suitable for the purpose.” The Committee proposes rephrasing rule 6.140 to provide that “[w]hen necessary, traffic proceedings may be held in a place suitable for the purpose.” The Committee explains that its proposed amendment to the rule is for clarity and to allow flexibility to hold hearings outside of a courtroom when necessary. However, the rule does not currently limit traffic proceedings to a courtroom. Rather, the rule requires that traffic proceedings be held in a “place suitable for the purpose,” which may be a place other than a courtroom, when necessary. Accordingly, we find that no amendment to the text of rule 6.140 is necessary and decline to adopt that proposed amendment. However, we adopt the Committee’s proposal to rename the rule 6.140 “Committee Comments” as “Committee Notes.”

Rule 6.200(b) (Pleas and Affidavits of Defense; Written Pleas of Guilty or Nolo Contendere) provides in pertinent part that, subject to the approval of the court, written pleas of guilty or nolo contendere may be entered in criminal traffic offenses that are not designated felonies and defendants may be sentenced based

on those pleas. The Committee proposes amending the rule to remove “outdated language” and to improve clarity for the reader. We adopt amendments to rule 6.200(b) with the modifications suggested by commenters, Civil Traffic Hearing Officers Steven D. Rubin and Sarah Blumberg. As amended, the rule will clearly reflect the proper sequence of events in criminal traffic offense proceedings.

Rule 6.330(b) provides that a “defendant who is sentenced to or elects to attend a driver improvement school shall have the right to attend an approved school in the location of the defendant’s choice.” Importantly, the Committee proposes adding the following phrase to the end of the above sentence: “including the internet when the elected or court-ordered driver improvement course is provided online.” The commenters, Civil Traffic Hearing Officers Steven D. Rubin and Sarah Blumberg, expressed concern with the additional provision, explaining that it could limit the court’s sentencing discretion. We thank the commenters for their thoughtful comments; however, we defer to the Committee, which was overwhelmingly in favor of the amendments, and adopt the amendments to the rule as proposed.

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. The amendments shall become effective January 1, 2019, at 12:01 a.m.

It is so ordered.

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

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

Original Proceeding – Florida Rules of Traffic Court

Anne Marie Gennusa, Chair, St. Augustine, Florida, Sergio Cruz, Past Chair, Traffic Court Rules Committee, Orlando, Florida, Joshua E. Doyle, Executive Director, and Heather Savage Telfer, Staff Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioner

Carlos J. Martinez, Public Defender, and John Eddy Morrison, Assistant Public Defender, Eleventh Judicial Circuit, Miami, Florida; and Steven D. Rubin, Boca Raton, Florida, and Sara Blumberg, Delray Beach, Florida,

Responding with Comments

APPENDIX

RULE 6.010. SCOPE

(a) **Application.** These rules, cited as “Florida Rules of Traffic Court” and abbreviated as “Fla. R. Traf. Ct.,” shall take effect at 12:00 a.m. on January 1, 1975. These rules govern practice and procedure in any traffic case and specifically apply to practice and procedure in county courts and before civil traffic infraction hearing officers.

(b) **Part III.** The rules under Part III of these rules apply to all criminal traffic offenses, ~~whether prosecuted in the name of the state or any subdivision of it.~~

(c) [No change]

Committee Notes

[No change]

RULE 6.020. PURPOSE AND CONSTRUCTION

These rules shall be construed to secure simplicity and uniformity in procedure, fairness in administration, and the elimination of unnecessary expense and delay.

RULE 6.080. IMPROPER DISPOSITION OF TRAFFIC TICKET

Any person who solicits or aids in the disposition of a traffic complaint or summons in any manner other than that authorized by ~~the court~~law or who willfully violates any provision of these rules shall be proceeded against for criminal contempt (in the manner provided in these rules). However, a traffic hearing officer shall not have the power to hold any person in contempt of court, but shall be permitted to file a verified motion for order of contempt before any state trial court judge of the same county in which the alleged contempt occurred.

Such matter shall be handled as an indirect contempt of court pursuant to the provisions of Florida Rule of Criminal Procedure 3.840.

Committee Notes

[No change]

RULE 6.090. DIRECT AND INDIRECT CRIMINAL CONTEMPT

Direct and indirect criminal contempt shall be proceeded upon in the same manner as in the Florida Rules of Criminal Rules of Procedure.

Committee ~~Comments~~ Notes

[No change]

RULE 6.140. CONDUCT OF TRIAL

[No change]

Committee ~~Comments~~ Notes

[No change]

RULE 6.180. SENTENCING REPEAT OFFENDERS

(a) Defendant’s Rights. A defendant, alleged to have a prior conviction for a criminal traffic offense, shall have ~~at~~the right to remain silent concerning any prior conviction at the time of plea or sentence.

(b) – (c) [No change]

Committee Notes

1988 Adoption. Rule 6.180 is new and is designed to codify existing procedures in DUI cases. The rule sets forth what has become known as a “Meehan plea.” *Meehan v. State*, 397 So.₂d 1214 (Fla.₂d DCA 1981).

1992 Amendment. [No change]

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

(a)-(b) [No change]

(c) Nonresident of State; Failure to Appear or Answer Summons. 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 to the defendant, 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.

(d) [No change]

RULE 6.200. PLEAS AND AFFIDAVITS OF DEFENSE

(a) [No change]

(b) Written Pleas of Guilty or Nolo Contendere. Subject to the approval of the court, written pleas of guilty or nolo contendere may be entered in criminal traffic offenses ~~not designated felonies under the laws of the state~~, and sentence imposed thereon.

(c) [No change]

RULE 6.320. COMPLAINT; SUMMONS; FORMS; USE

All citations for traffic infractions shall be by uniform traffic citation as provided in section 316.650, Florida Statutes, or other applicable statutes or by

affidavit. If the complaint is made by affidavit a uniform traffic citation shall be prepared by the clerk and submitted to the department.

RULE 6.330. ELECTION TO ATTEND TRAFFIC SCHOOL A DRIVER IMPROVEMENT COURSE

(a) **Attendance at School A Driver Improvement Course.** Unless a mandatory hearing is required, or the defendant appears at a hearing before an official, a defendant who does not hold a commercial driver license or commercial learner permit may elect to attend a driver improvement school course 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.~~ Pursuant to this rule, any defendant electing to attend a driver improvement school course under section 318.14(9), Florida Statutes, will ~~receive a withheld~~ have adjudication withheld and not be assessed points.

(b) **Location of School Course.** A defendant who is sentenced to or elects to attend a driver improvement school course shall have the right to attend an approved school course in the location of the defendant's choice, including the internet when the elected or court-ordered driver improvement course is provided online.

Committee Notes

[No change]

RULE 6.360. ENLARGEMENT OF TIME

(a) Procedure. ~~When by these rules or by a notice given thereunder or by order of an official an act is required, or allowed to be done at or within a specified time pursuant to either a court order or these rules, the official, for good cause shown, at any time, in the official's discretion may, at any time:~~

(1) order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) [No change]

(b) [No change]

RULE 6.455. AMENDMENTS

(a) Non-Substantive Amendments. The charging document may be amended at any time by the issuing officer ~~in open court at the time of a 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 interests of justice prior to the commencement of the hearing to correct informalities or irregularities. Such amendment will be permitted after commencement of the hearing only with approval of the official.~~ No case ~~shall~~will be dismissed by reason of any informality or irregularity in the charging ~~instrument~~document.

(b) Substantive Amendments. Absent good cause shown, an amendment that may result in an increased statutory penalty may be made only by serving notice of the amendment on the defendant in conformity with the requirements of Florida Rule of Judicial Administration 2.516 and by filing a certification of service at least 5 days prior to a scheduled hearing.

(c) Continuances. The official must grant a hearing continuance when the charging document is amended and the interests of justice so require.

Committee Notes

1988 Amendment. [No change]

2018 Amendment. Examples of “informalities or irregularities” include, but are not limited to, statutory reference errors; illegibility of the charging document; or other scrivener or inadvertent errors contained within the charging document.

RULE 6.490. CORRECTION AND REDUCTION OF PENALTY

(a) [No change]

(b) **Reduction of Penalty.** An official may reduce a legal penalty:

(1) within 60 days after its imposition, or thereafter with good cause shown;

(2) within 60 days after ~~receipt by the official of a mandate issued by the appellate court upon affirmance of the judgment and/or penalty on an original appeal~~ the appellate court issues a mandate affirming the judgment and/or penalty;

(3) within 60 days after ~~receipt by the official of a certified copy of an order of the appellate court dismissing an original appeal from the judgment and/or penalty~~ the appellate court issues a mandate dismissing an appeal from the judgment and/or penalty; or

(4) [No change]

**RULE 6.500. PRONOUNCEMENT AND ENTRY OF PENALTY;
PENALIZING OFFICIAL DISPOSITION**

~~(a) — Entry of Penalty. The final~~Upon disposition of every a case without hearing, the clerk or the official shall be entered in the minutes in courts in which minutes are kept, and shall be docketed in courts which do not maintain minutesenter a notation on the docket.

~~(b) — Pronouncement of Penalty; Obligations of Penalizing Official. In those cases in which it is necessary that the penalty be~~Following any hearing of a case, the disposition shall be pronounced by an official other than the official who presided at the hearing, or accepted an admission, the penalizing official shall not impose a penalty without first becoming acquainted with what transpired at the hearing or the facts concerning the admission and the infractionin open court and issued in writing, and shall also be docketed.

**RULE 6.510. DETERMINATION THAT INFRACTION WAS NOT
COMMITTED; BOND REFUNDED**

~~When it is determined~~If an official determines that athe defendant did not commit an alleged traffic infraction and a bond has been posted, the ~~money or~~ bond shall be ~~refunded~~released to the defendant, pursuant to law.

RULE 6.520. EFFECT OF GRANTING NEW HEARING

~~When~~If a new hearing is granted, the ~~new hearing~~case shall proceed in all respects as if no former ~~trial~~hearing had been ~~had~~held.

**RULE 6.530. IMPOSITION OF PENALTY BEFORE OR AFTER
MOTION FILED**

The official ~~has the discretion to~~may impose the civil penalty either before or after the filing of a motion for new hearing or arrest of judgment.

RULE 6.550. OFFICIAL MAY GRANT NEW HEARING

When, ~~following~~after a hearing, ~~a determination has been made that the~~ official determines the traffic infraction was committed, the official may grant a new hearing on a motion of the defendant, or on the official's own motion,~~may grant a new hearing.~~

RULE 6.560. CONVICTION OF TRAFFIC INFRACTION

~~An admission or determination that a defendant has committed a traffic infraction shall constitute a conviction as that term is used in chapter 322, Florida Statutes, and section 943.25, Florida Statutes, unless adjudication is withheld by an official in those cases in which withholding of adjudication is not otherwise prohibited by statute or rule of procedure. Elections under section 318.14(9) or (10), Florida Statutes, when adjudication is withheld, shall not constitute convictions, but shall involve the collections of assessments pursuant to section 943.25, Florida Statutes.~~ A defendant's admission or an official's determination that the defendant committed a traffic infraction constitutes a "conviction" as that term is used in chapters 318 and 322, Florida Statutes, and section 943.25, Florida Statutes, unless the official withheld adjudication as permitted by law. Elections under section 318.14(9) or (10), Florida Statutes, when adjudication is withheld, do not constitute convictions, but require collection of assessments under section 943.25, Florida Statutes.

RULE 6.570. REPORTING ACTION REQUIRING SUSPENSION OF DRIVER LICENSE

~~Any noncompliance with the provisions of chapter 318, Florida Statutes, resulting in the suspension of a driver license shall be reported to the department within 5 days after an offender's failure to comply on a form to be supplied by the department. Any noncompliance may be determined without the necessity of holding a hearing. The clerk shall report to the department a defendant's failure to comply as required by section 318.15 or 322.245, Florida Statutes. Unless required by law, a hearing is not necessary to determine noncompliance.~~

RULE 6.575. RETENTION OF CASE FILES

~~For the purpose of record retention pursuant to the General Records Schedule D-T 1, case files with an outstanding or unsatisfied D-6 shall be considered disposed of 7 years after the submission of the D-6 by the clerk to the department. If the clerk disposes of a file, the department shall be notified. Case files shall be retained as required by Florida Rule of Judicial Administration 2.430.~~

Committee Notes

[No change]

~~RULE 6.580. COMPLETION OF DRIVER SCHOOL; CONDITIONS~~

~~(a) — Approval by Chief Judge. All driver schools selected by the chief judge of the circuit shall establish the conditions for the successful completion of the driver course. The conditions shall be submitted in writing for approval of the chief judge.~~

~~(b) — Failure to Meet Conditions; Reporting. Any failure to meet the conditions for successful completion of the course shall be reported to the official having jurisdiction of the case or the clerk or traffic violations bureau if designated by the official of the school.~~

**RULE 6.590. FAILURE TO COMPLETE DRIVER SCHOOLIMPROVEMENT COURSE;
REINSTATEMENT OF DRIVER LICENSE**

(a) **Notice of Failure to Complete Driver Improvement Course.** ~~In any case in which~~ If a defendant elects to attend a driver schoolimprovement course but fails to appear for or timely complete the course, the clerk must send a notice of the failure to complete the course shall be sent to the department within 510 days after the failure to comply, in order to comply with the requirements ofas required by section 318.15(1), Florida Statutes.

(b) **Appearance After Notice Sent.** If the defendant appears before the clerk after the failure notice has beenwas sent but before the department has suspendedsuspends the driver license, the clerk shall so notify the department shall be notified on a form to be supplied by the department immediately after the defendant satisfies the civil penalty as provided inrequired by section 318.18318.15(1)(b), Florida Statutes, has been fulfilled. The clerk shall refer the case to the official who shall adjudicate the defendant guilty of the infraction as required by section 318.15(1)(b), Florida Statutes.

(c) **Reinstatement of License.** If the defendant appears before the clerk after the department suspends the driver license has been suspended, the defendant must fulfill the, the clerk shall refer the case to the official who shall adjudicate the defendant guilty of the infraction, and shall assess all applicable civil penalties as required bypenalty as provided in section 318.18318.15(1)(b), Florida Statutes, and. The official may be required to agree againrequire the defendant to attend a driver schoolimprovement course. The defendant shall be given a form supplied by the department, certified by the official, to be taken to the nearest driver license examining station to have the driving privilege reinstated. The clerk shall give notice that the defendant is in compliance upon satisfaction of the penalties, and shall indicate that the defendant's driving privileges are eligible for reinstatement.

Committee Note

2018 Amendment. Section 318.15(1)(b), Florida Statutes, requires adjudication of guilt for a defendant who elects a driver improvement course and fails to attend the course within the time required by the court.

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

(a) Notice of Failure to ~~Comply~~ Appear or Pay. ~~In any case in which~~ If no mandatory hearing is required and the defendant has ~~signed and accepted a citation~~ been cited but fails to pay the civil penalty or appear, the clerk must send the department notice of such failure shall be sent to the department within 5 days after the failure to comply, in order to comply with the requirements of as required by section 318.15(1), Florida Statutes.

(b) Appearance After Notice Sent. If the defendant appears before the clerk after the notice ~~has been~~ was sent but before the department has ~~suspended~~ suspends the driver license, the defendant may pay the civil penalty may be paid without a hearing together with any additional penalty required by section 318.18(8)(a), Florida Statutes, or ~~the defendant may~~ request a hearing. If the defendant requests a hearing, the clerk ~~must~~ shall set the case for hearing upon payment of the costs specified in section 318.18(8)(a), Florida Statutes. ~~The department must be notified immediately on a form to be supplied by the department.~~

(c) Reinstatement of License. If the defendant appears before the clerk after the department suspends the driver license ~~has been suspended~~, the defendant may pay the civil penalty, ~~elect to attend a driver improvement school,~~ together with any additional penalty required by section 318.18(8)(a), Florida Statutes, or request a hearing. ~~Any request for a hearing shall~~ must be made ~~within a reasonable period of time after the commission of the alleged offense~~ as provided by section 318.15(1)(c), Florida Statutes. ~~If an election to attend~~ the official grants the defendant's request for a hearing is granted and it is determined determines that the defendant committed the infraction ~~was committed~~, the defendant shall be subject to the penalty provisions of section 318.14(5), Florida Statutes. ~~The defendant shall~~

~~be given a form supplied by the department, certified by the official, to be taken to the nearest driver license examining station to have the driving privilege reinstated.~~

Committee Notes

[No change]

RULE 6.610. FAILURE TO FULFILL SATISFY PENALTY IMPOSED AFTER A HEARING; REINSTATEMENT OF DRIVER LICENSE

(a) **Notice of Failure to Comply.** ~~In any case in which~~ If a hearing is held, if it is determined and the official determines that the infraction was committed, and a penalty is imposed but the penalty is not fulfilled, satisfied within the time set by the court, the clerk shall send notice of such failure ~~shall be sent to the department within 5 days after the failure to comply, in order to comply with the requirements of~~ as required by section 318.15(1), Florida Statutes.

(b) **Appearance After Notice Sent.** If the defendant appears before the clerk after notice ~~has been~~ was sent but before the department ~~has suspended~~ suspends the driver license, the clerk shall notify the department shall be notified on a form to be supplied by the department immediately after the defendant satisfies the penalty imposed has been fulfilled by the official together with additional penalties as required by sections 318.15 and 318.18, Florida Statutes.

(c) **Reinstatement of License.** If the defendant appears before the clerk after the department suspends the driver license ~~has been suspended~~, the defendant must ~~fulfill~~ satisfy the penalty and any other penalties required by sections 318.15 and 318.18, Florida Statutes. The official may require the defendant to attend a driver improvement course, if available, if it is ~~was~~ not a part of the penalty originally imposed, ~~may be required to agree to attend a driver school if available.~~ The defendant shall be given a form supplied by the department, certified by the official, to be taken to the nearest driver license examining station to have the driving privilege reinstated. The clerk shall give notice that the defendant is in

compliance upon satisfaction of the penalties, and shall indicate that the defendant's driving privileges are eligible for reinstatement.

**RULE 6.620. FAILURE TO APPEAR FOR MANDATORY HEARING;
REINSTATEMENT OF DRIVER LICENSE**

(a) Notice of Failure to Appear. ~~In any case in which a mandatory hearing is required and the~~If a defendant fails to appear, for a mandatory hearing, the clerk shall send notice of such failure to appear ~~shall be sent to the department within 5 days after the failure to comply, in order to comply with the requirements of, as required by section 318.15(1), Florida Statutes.~~

(b) Appearance After Notice Sent. ~~If the defendant appears before the clerk after notice has been~~was sent, but before the department suspends the driver license, the clerk shall be notified immediately on a form to be supplied by the department and a hearing shall be held to determine whether the infraction was committed~~schedule a hearing for the official to determine whether the defendant committed the violation. If, after the hearing, the official finds the defendant committed the violation, the defendant shall be subject to the penalty provisions of~~section 318.14(5), Florida Statutes.

(c) Reinstatement of License. ~~If the department suspended the defendant's driver license, as authorized by law and upon request, the clerk shall set the case for hearing has been suspended by the department and, if after a hearing, it is found that the infraction was committed, the official may require that driver school, if available, be attended as part of the penalty. The defendant shall be given a form supplied by the department, certified by the official, to be taken to the nearest driver license examining station to have the driving privilege reinstated~~the official finds the defendant committed the violation, the defendant shall be subject to the penalty provisions of section 318.14(5), Florida Statutes. If the defendant's driving privileges were not reinstated prior to the hearing, the clerk shall give notice that the defendant is in compliance upon satisfaction of the penalties, and shall indicate that the defendant's driving privileges are eligible for reinstatement.

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

Under the authority of sections 318.30–318.38, Florida Statutes, and article V, section 2, Florida Constitution, this court adopts the following rules and procedure for the Civil Traffic Infraction Hearing Officer Program:

(a) Eligibility of County. Pursuant to section 318.30, Florida Statutes, any county shall be eligible to participate in the Civil Traffic Infraction Hearing Officer Program. The chief judge shall make the decision on whether to participate in the program. Any county electing to participate in the program shall be subject to the supervision of the supreme court.

~~**(b) Participation.** Any county electing to participate in the program shall be subject to the supervision of the Florida Supreme Court. The decision on whether to participate shall be made by the chief judge.~~

(eb) Appointment of Traffic Hearing Officers. ~~The appointment of such chief judge shall appoint hearing officers shall be made by the chief judge, after consultation with the county judges in the county affected, and shall; all appointments must be approved by the chief justice. Once the chief justice grants approval has been granted by the chief justice, the traffic hearing officers shall serve at the will~~ pleasure of the chief judge. Traffic hearing officers may serve either full-time or part-time at the discretion of the chief judge.

(dc) Jurisdiction. Traffic hearing officers shall have the power to accept pleas from defendants, hear and rule upon motions, decide whether a defendant has committed an infraction, and adjudicate or withhold adjudication in the same manner as a county court judge. However, a traffic hearing officer shall not:

(1)-(3) [No change]

(ed) Appeals. Appeals from decisions of a traffic hearing officer shall be made to the circuit court pursuant to the relevant provisions of the Florida Rules of Appellate Procedure in the same manner as appeals from the county court, except that traffic hearing officers shall not have the power to certify questions to district

courts of appeal. The appellant shall be responsible for producing the record for such any appeal.

(fe) Membership in The Florida Bar. A traffic hearing officer shall be a member in good standing of The Florida Bar.

(gf) 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)-(5) [No change]

(hg) 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.

~~**(i) Hours.** Traffic hearing officers may serve either full time or part time at the discretion of the chief judge.~~

(jh) Code of Judicial Conduct. All traffic hearing officers shall be subject to the Code of Judicial Conduct as provided in the application section of the code.

~~**(k) Implementation of Program.** In any county electing to establish a program, the chief judge shall develop a plan for its implementation and shall submit the plan to the Office of the State Courts Administrator. Funds for the program shall be used for traffic hearing officer program salaries and other necessary expenses, such as training, office rental, furniture, and administrative staff salaries. Any county electing to establish a traffic hearing officer program shall provide the funds necessary to operate the program.~~

(~~f~~) Robes. Traffic hearing officers shall not wear robes.

(~~m~~) Concurrent Jurisdiction. A county judge may exercise concurrent jurisdiction with a traffic hearing officer.

(~~n~~) Assignment to County Judge. On written request of the defendant, within 30 days of the issuance of a uniform traffic citation, the case shall be assigned to a county judge.

Committee Notes

[No change]

Approved in concept by a vote of 38-2-0. This is back to the subcommittee for review. This version is not in true legislative format with the current rule. **[Reflects the amendments made post the approval in concept.]**

Rule 2.505. Attorneys

(a) [NO CHANGE]

(b) [NO CHANGE]

(c) [NO CHANGE]

(d) [NO CHANGE]

(e) **Appearance of Attorney.** An attorney appears for a party in an action or proceeding only by:

(1) **Signing First Pleading or Document.** Signing the first pleading or other document filed on behalf of a party.

Commented [GK1]: ACRC would recommend that "Signing" be deleted for parallel grammar purposes

(2) **Notice of Appearance.** Filing a notice of appearance on behalf of a party.

(3) **Order on Substitution of Counsel.** Rendition of a written order of the court after a motion and notice, with written consent of the client. The court may condition substitution of counsel upon payment of or grant of security for the substituted attorney's fees and expenses or upon such other terms as may be just.

(4) **Notice of Substitution of Counsel.** Filing a notice of substitution of counsel only when the substituting attorney is from the same law firm, company, or governmental agency as the replaced attorney.

(5) **Notice of Limited Appearance.** Filing a notice of limited appearance as permitted by another rule of court.

(6) **Appearance as Stand-In Counsel.** Appearing as stand-in counsel as provided by subdivision (g).

(f) Termination of Appearance of Attorney. An appearance of an attorney for a party in an action or proceeding terminates only upon:

(1) Withdrawal of Attorney. Rendition of a written order of the court after hearing upon a motion setting forth the reasons for withdrawal and the client's last known address, telephone number, and e-mail address.

(2) Substitution of Attorney. Substitution of counsel pursuant to subdivision (e)(3) or (e)(4).

(3) Termination of Proceeding. Termination of an action or proceeding and expiration of any applicable time for appeal when no appeal is taken.

(4) Termination of Limited Appearance. Filing a notice of termination of limited appearance in an action or proceeding in which an attorney has filed a notice of limited appearance as permitted by subdivision (e)(5).

(5) Termination of Hearing. Conclusion of a hearing or proceeding in which an attorney has appeared as stand-in counsel as provided by subdivision (g).

(g) Stand-In Counsel. An attorney may stand in for another attorney to cover a proceeding or hearing only by filing a notice of stand-in counsel or announcing on the record, when applicable, an appearance as stand-in counsel. A stand-in attorney from the same law firm, company, or governmental agency as the attorney of record is not required to file a notice of stand-in counsel.

Commented [GK2]: ACRC would like to share a concern that the second sentence in this subdivision may be read more broadly than is actually intended.

(gh) Law Student Participation. [RENUMBERED]

(hi) Attorney as Agent of Client. An attorney appearing in an action or proceeding as provided by subdivisions (e)(1)–(e)(6) is the agent of the client for purposes of the action, hearing, or proceeding.

(j) Attorney of Record Access to File. An attorney appearing in an action or proceeding as provided by subdivisions (e)(1)–(e)(4) is the party's attorney of record and has complete access to the court file.

Committee Note

20 Amendment. Rendition, as used in this rule, is defined in Florida Rule of Appellate Procedure 9.020.

905 Cristelle Jean Dr.
Ruskin, FL 33570
April 22, 2014

Traffic Court Rules Committee
Marynelle Hardee, Chair
201 E University Ave
Gainesville, FL 32601-5457

Dear Ms. Hardee,

On June 27, 2013 I lost my son Tyler Pangrazio in a tragic accident. Tyler was driving his motorcycle to work early that morning when a semi driver failed to yield the right of way pulling out in front of Tyler. Unfortunately, Tyler did not have time stop or avoid hitting the semi which resulted in fatal injuries. Even though the semi driver left the scene of the accident, he was not criminally charged with leaving the scene of the accident. Upon returning to the scene several hours later he told Florida Highway Patrol that he was unaware he was in an accident. Therefore, the State Attorney's Office stated they were unable to prove intent and file a charge.

Based on the homicide investigation performed by Florida Highway Patrol two traffic citations were issued to the semi driver Jose Cedeno:

Citation #009164WQL Fail Yld/Stop at Yld Int, FL Statue 316123(3)
Citation #009165WQL Unsafe Equipment 316215(1)

Due to the accident involving a fatality the driver did have to appear in person for the citations. This occurred in Hillsborough County Traffic Court in Tampa, FL. I attended each court date (Jan 23rd, Feb 6th, Mar 6th, Apr 3rd) the hearing finally occurred on April 3rd.

My observation of the hearing processes for accident cases has prompted me to contact the Traffic Court Rules Committee. Traffic hearings in which parties in both vehicles survive, each party gets to speak to give their account of the incident to the judge. However, an individual who is a fatality as result of the accident does not have a voice to represent him/her. This is very unsettling to me as I am sure it is to other families who have lost a loved one in a tragic accident. The outcome of the traffic hearing for Jose Cedeno is likely to have been different if there were:

- 1) A "voice" for Tyler to ask critical questions to the driver, FHP officers, witness and accident reconstruction expert hired by Jose Cedeno's attorney.
- 2) The 2nd witness appeared in court.

The court failed to subpoena the witnesses (2) until after the March 6th court date. Unfortunately, one of the witnesses made a mistake on the date for his appearance and failed to show up in court. In my opinion his testimony was important as it does differ from that of the witness who did appear. But more importantly if there were a representative for Tyler to question the all who spoke in regards to the accident crucial pieces of information would have been disclosed allowing the judge to make a fair decision.

The witness Ryan Carpenter stated that he saw the semi's headlights before it made the turn onto 50th St from 20th Ave. He also stated that Tyler was in a lane next to him on the three-lane road. However, it was not stated or questioned of Ryan:

- Where was Tyler positioned in relation to his vehicle when the semi pulled out making a wide turn onto 50th St?
- What type of vehicle was Ryan in?

Based on Tyler's position in relation to Ryan's (witness) vehicle and the vehicle size, Tyler may not have seen the headlights of the semi prior to it pulling out on 50th St. The back lights of the semi were not working and the reflector tape was marred. Therefore, if Tyler did not see the headlights of the semi pulling out it would be difficult for him to see the semi timely to attempt to stop. And the semi driver was not questioned during the hearing at all.

These questions were going through my mind as the hearing was taking place, yet there was not a representative to ask such questions. There was no "voice" for Tyler. Both of the citations being adjudicated as guilty for Jose Cedeno would be the only way his license would be suspended for a year. This is a semi driver with eleven traffic citations and five accidents in a nine year period. In which several of the citations are failure to yield the right of way and unsafe equipment. Additionally one of the previous accidents was of a similar nature in which he failed to yield the right of way to a moped causing severe injuries. This is a driver with a CDL operating a semi on FL roads daily, proving to be a danger to others.

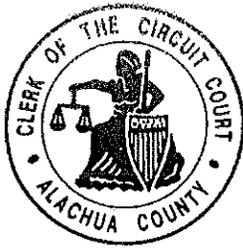
I personally feel the system has failed the fatalities of traffic accidents. And will continue to fail fatalities until there is a representative to speak on their behalf. My plea to you is to review the traffic court rules to explore the option of implementing a "voice" for those who succumb to their accident related injuries.

Thank you in advance for your time and any efforts in researching this concern.

Regards,

Pebbles M. Pangrazio

cc: Lee Francis Carney, Vice Chair
Michael James Rossi, Tampa
Dina Busciglio, Tampa
Ashley Elizabeth Taylor, Tampa



CLERK OF THE CIRCUIT & COUNTY COURT
Alachua County Courthouse - Family & Civil Justice Center
201 East University Avenue
Gainesville, Florida 32601
Telephone (352) 374-3636 • Fax 352.338.3201
J.K. Irby – Clerk
www.alachuaclerk.org

May 6, 2014

Pebbles M. Pangrazio
905 Cristelle Jean Dr.
Ruskin, FL 33570

Dear Ms. Pangrazio,

First please accept my deepest condolences for the tragic loss of your son. As a parent myself, I cannot imagine a more painful experience and I certainly understand your concerns about the civil traffic hearing process. Unfortunately, I am afraid there may be little the Traffic Court Rules Committee can do to rectify the situation.

Under Florida law, the State of Florida is the party who files civil traffic cases. The State Attorney's Office in each judicial circuit is authorized to represent the State in these cases. However, most Assistant State Attorneys who practice in county court are responsible for hundreds of criminal cases. Therefore, they rarely are able to appear in civil traffic court.

In my circuit, the law enforcement officer who issues each citation is the principal witness for the State, and is responsible for asking the State Attorney's Office to issue any witness subpoenas that are needed. This practice may vary from county to county, but it is never the court's responsibility to issue witness subpoenas. The county judge or traffic hearing officer presiding over the case often questions the witnesses, and may allow the law enforcement officer to do so, but that is not required by law.

As you observed, if witnesses are not properly subpoenaed, or neither the presiding official nor the law enforcement officer questions those who appear, the court may not receive a full account of the events and may render a decision based on an incomplete understanding of the facts. I agree that this is an unfair and unjust result.

The duties of State Attorneys, judges, traffic hearing officers and law enforcement personnel are established by law and cannot be altered by rules of procedure written by this committee. However, I will relay your concerns to the committee and incoming Chair Lee Carney at our June meeting and recommend that the committee consider whether there is anything within the scope of our authority that can be done to address these issues.

In the meantime, you also may wish to contact members of your legislative delegation and the State Attorney's Office for your judicial circuit to determine whether there are any actions they can take. I appreciate your taking the time to write to me and hope our committee or another agency can take some action to remedy the problem.

Sincerely,

Marynelle Hardee Esq.
Chair, Traffic Court Rules Committee

cc: Lee Francis Carney, Vice Chair
Josine Blackwell, Florida Bar Liaison

**TRAFFIC COURT RULES SUBCOMMITTEE – SUBPOENAING WITNESSES IN
FATALITY CASES**

SUBCOMMITTEE REPORT SEPTEMBER 2014

October 2, 2014

Lee Carney

Lee Carney, David Pius, Daniel Zuniga, Ron Herman

September 18, 2014

I. History/Background

This matter came to the attention of the Traffic Court Rule Committee (TCRC) by a letter dated April 22, 2014 sent to the TCRC by Pebbles M. Pangrazio, whose son was killed in a traffic accident. A copy of the letter is attached. The letter raised the question whether a “voice” could be given to the fatal victim of an accident and whether the outcome of the case would be different if a certain witness appeared. The past Chair sent a letter in response to Ms. Pangrazio. A copy of the letter is attached. This matter was discussed at the TCRC meeting on June 26, 2014. At that time this subcommittee was formed to address whether some rule change could be made to address the method of subpoenaing witnesses in civil traffic infractions involving a fatality.

II. Summary of the Issues:

Fatality:

Mandatory hearing

Requires Florida Traffic Crash Report

Minimum mandatory penalties upon adjudication

Type of infraction which usually requires a witness other than the citing law enforcement officer

Testimony is subject to crash report privilege which would prevent defendant’s statements from being used at a hearing

Law enforcement officer is a witness not the prosecutor

III. Factors Considered by the Subcommittee:

It is suggested that as the Court is the prosecutor and the trier of fact and trier of law that the obligation to have witnesses attend a hearing should lie with the Court. State v. Johnson, 345 So. 2d 1069 (Fla. 1977). The law enforcement officer is a witness and should not have that obligation. Florida Rules of Traffic Court 6.150 and Florida Statute 316.066 should be amended to include this language.

IV. Majority Position:

It is the function of the Court to present the case. The law enforcement officer who issued the citation is a witness to the case. Due to the serious nature of the violation and its consequences the Court should be the office that subpoenas witnesses. This would provide a uniform method of procedure when a fatality is involved. Rule 6.150 makes no distinction between fatalities and other traffic infractions.

V. Proposed Amendment:

RULE 6.150. WITNESSES

(a) Procedure.

(1) General. The procedure prescribed by law in civil and criminal cases concerning the attendance and testimony of witnesses, the administration of oaths and affirmations, and proceedings to enforce the remedies and protect the rights of the parties shall govern traffic cases as far as they are applicable unless provided otherwise by these rules or by the law. Payment of witness fees and costs of serving witnesses in civil traffic cases shall be made in the same manner as in a criminal traffic case.

(2) Civil Infractions Involving Fatality. For any civil infraction which involves a fatality, the court shall direct the clerk of court to issue a subpoena to all witnesses listed in the Florida traffic crash report.

(b) **Use of Affidavits.** A defendant in a civil infraction case may offer evidence of other witnesses through use of one or more affidavits. The affidavits shall be considered by the court only as to the facts therein that are based on the personal knowledge and observation of the affiant as to relevant material facts. However, the affidavits shall not be admissible for the purpose of establishing character or reputation.

VI. Minority Position:

A. Question whether the court is the proper agency to subpoena witnesses because the court is deciding who is to be subpoenaed and a defendant may take issue with that power. Does that take away the neutrality of the court? Is that constitutional? The State Attorney's Office may be the proper office to represent the state in a civil infraction involving a fatality.

B. No alternative proposed amendments. None provided.

VII. Time Considerations for Adopting Proposal

Report to full committee at next meeting.

VIII. Minutes of Subcommittee meeting. Attached.

LEE F. CARNEY

**ATTORNEY AT LAW
CERTIFIED CIRCUIT COURT MEDIATOR**

**P.O. BOX 366343, BONITA SPRINGS, FL 34136
(239) 860-3795 992-9170 TELEFAX
LEECARNEY418@GMAIL.COM**

January 21, 2015

Honorable Augustus Aikens - Leon County Court Judge
Honorable Robert W. Lee -- Broward County Court Judge

Re: Traffic Court Rules Committee, Subcommittee re Subpoenaing Witnesses in Fatality Cases

Dear Sirs

As the current Chairman of the Traffic Court Rules Committee for the Florida Bar and a member of the Subcommittee re Subpoenaing Witnesses in Fatality Cases I have been directed to request input from your conference concerning an amendment to Traffic Court Rule 6.150.

The proposed amendment follows this letter.

I have also attached a copy of minutes from the Subcommittee's meeting of October 2, 2014.

Procedurally this item is under consideration of the Traffic Court Rules Committee. It has not been submitted for a vote.

I respectfully request that your organization consider this matter. Your response would be appreciated. I hope I have directed this correspondence to the appropriate members of your conference. If this should be directed more appropriately to someone else in your conference please let me know.

You may contact me or the designated Bar Liaison for the committee:

Josine Blackwell
Phone: (850) 561-5852
Fax: (850) 561-9420
Email: jblackwell@flabar.org

Sincerely

/s/Lee F. Carney

(a) Procedure.

(1) General. The procedure prescribed by law in civil and criminal cases concerning the attendance and testimony of witnesses, the administration of oaths and affirmations, and proceedings to enforce the remedies and protect the rights of the parties shall govern traffic cases as far as they are applicable unless provided otherwise by these rules or by the law. Payment of witness fees and costs of serving witnesses in civil traffic cases shall be made in the same manner as in a criminal traffic case.

(2) Civil Infractions Involving Fatality. For any civil infraction which involves a fatality, the court shall direct the clerk of court to issue a subpoena to all witnesses listed in the Florida traffic crash report.

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ROBERT W. LEE
COUNTY COURT JUDGE
SEVENTEENTH JUDICIAL CIRCUIT OF
FLORIDA

BROWARD COUNTY COURTHOUSE
201 S.E. 6TH STREET
FORT LAUDERDALE, FL 33301

May 11, 2015

Lee F. Carney, Esq.
Post Office Box 366343
Bonita Springs, Florida 34136

Re: Conference of County Court Judges
Proposed Traffic Rules Amendment

Dear Mr. Carney:

In response to your letter of January 21, 2015, the Conference of County Court Judges of Florida has considered the request of The Florida Bar Traffic Court Rules Committee to offer a response to the proposal to amend Rule 6.150.

The Traffic Court Rules Committee advised us that it is considering a **new rule** as follows, and is seeking input from the Conference:

Rule 6.150(a)(2). Civil Infractions Involving Fatality. For any civil infraction which involves a fatality, the court shall direct the clerk of court to issue a subpoena to all witnesses in the Florida traffic crash report.

As requested, the issue was brought before the Conference. **The sense of the Conference is to actively oppose the rule as proposed.**

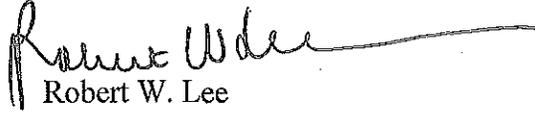
The reasons given for opposing the rule generally overlap. Some judges believe that there is currently no problem in their counties, as the Clerks currently subpoena without court direction, so the rule change would be a solution in search of a problem. The majority of judges believe that the burden should simply not be put on the Court to do this, with one judge advising that in their County, traffic crash reports are not made available to the Court or Clerk. In this instance, the judge suggested an amendment to the rule would be required to direct the investigating agency to file the traffic crash report with the Clerk. Another judge suggested that the rule might not be a problem if the Clerk received the Traffic Crash Reports and further if the rule were interpreted to permit an Administrative Order directing the Clerk to do this task.

Finally, you will note that the proposed rule addresses only fatalities. This raises this concern that the Clerks of Court may well interpret this rule to no longer require that they subpoena witnesses in cases involving property damage or personal injury.

Importantly, not a single judge spoke in favor of the rule as proposed.

Please feel free to contact me directly if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert W. Lee", with a long horizontal flourish extending to the right.

Robert W. Lee
jlee@17th.flcourts.org
954.831.5509

c: The Honorable Robert Hilliard, Conference President
The Honorable Gus Aikens, Incoming Conference President
Josine Blackwell, Bar Liaison

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

STATE OF FLORIDA,

Appellant,

v.

Case No. 5D18-683

RONALD GRATE AND CHARLES MORTON,

Appellees.

_____ /

Opinion filed July 27, 2018

Appeal from the Circuit Court
for Brevard County,
Charles J. Roberts, George T. Paulk
and Jeffrey F. Mahl, Judges.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Rebecca R. McGuigan,
Assistant Attorney General, Daytona
Beach, for Appellant.

James S. Purdy, Public Defender, and
Nancy Ryan, Assistant Public Defender,
Daytona Beach, for Appellees.

ORFINGER, J.

The State of Florida appeals the circuit court's order denying its petition for a writ of quo warranto, challenging the Office of Public Defender's authority to intervene in civil traffic infraction cases.¹ We treat this matter as a direct appeal, reverse the circuit court's order, and remand with instructions to grant the petition.

¹ The circuit court considered this matter with a three-judge panel. Judge Paulk dissented and would have granted the petition.

Ronald Grate and Charles Morton were charged in county court with driving with a revoked license as a habitual traffic offender. The Office of Public Defender was appointed to represent them. The assistant public defender assigned to the cases filed motions in county court to modify the adjudications of guilt in earlier civil traffic infraction cases in order to remove a predicate conviction necessary for habitual traffic offender sanctions. The State moved to strike each motion to modify, arguing that the Office of Public Defender had no authority to represent Grate and Morton in civil traffic infraction matters. The county court denied the State's motion to strike and modified the earlier adjudications of guilt to withheld adjudications of guilt.² The State then filed a petition for a writ of quo warranto in the circuit court, challenging the public defender's authority to intervene in civil traffic infraction matters. Quo warranto is the proper means for inquiring whether a particular individual has improperly exercised the power or right derived from the state. Whiley v. Scott, 79 So. 3d 702, 707 (Fla. 2011). The circuit court denied the State's petition, and the matter is now before us.

Before considering the merits of the arguments presented, we must first determine the nature of our review of the circuit court's decision denying the State's request for a writ of quo warranto. Review of extraordinary writ proceedings is permissible by direct appeal or by certiorari depending on the nature of the petition filed. If the petition for extraordinary relief is filed in the circuit court to review an order by a lower tribunal, the resulting order of the circuit court is reviewable in the district court of appeal by certiorari and not by appeal. See, e.g., Fla. R. App. P. 9.030(b)(2)(B) ("The certiorari jurisdiction of

² We agree with the State that the county court lacked jurisdiction to enter the subject orders. See Fla. R. Traf. Ct. 6.490.

district courts of appeal may be sought to review . . . final orders of circuit courts acting in their review capacity.”); Sutton v. State, 975 So. 2d 1073 (Fla. 2008) (holding prohibition used in circuit court to review disqualification order by county court was reviewable by certiorari); Sheley v. Fla. Parole Comm’n, 720 So. 2d 216 (Fla. 1998) (holding that mandamus used in circuit court to review decision by parole commission was reviewable by certiorari). However, when a petition for extraordinary relief initiates a new civil action in the circuit court and is not used as a method of reviewing an order of the county court or a local administrative tribunal, the final order is reviewed by appeal. See, e.g., Fla. R. App. P. 9.030(b)(1)(A) (“District courts of appeal shall review, by appeal . . . final orders of trial courts”); Fla. R. Civ. P. 1.630 (rule governing extraordinary writs); City of Miami Beach v. State ex rel. Wood, 56 So. 2d 520, 520 (Fla. 1952) (appeal from judgment entered in quo warranto proceedings); Brock v. Bd. of Cty. Comm’rs of Collier Cty., 21 So. 3d 844, 845-46 (Fla. 2d DCA 2009) (reviewing clerk’s appeal from circuit court’s granting of quo warranto). Here, because the petition was a new civil action in the circuit court and was not appellate in nature, our review is by appeal.

Turning to the merits, we consider this a matter of statutory construction subject to de novo review. Citizens Prop. Ins. Corp. v. Perdido Sun Condo. Ass’n, 164 So. 3d 663, 666 (Fla. 2015). “The starting point of statutory interpretation is the language of the statute itself.” Herrin v. City of Deltona, 121 So. 3d 1094, 1097 (Fla. 5th DCA 2013) (citing GTC, Inc. v. Edgar, 967 So. 2d 781, 785 (Fla. 2007)). “If statutory language is clear and unambiguous, ‘there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.’” Id. (quoting A. R. Douglass, Inc. v. McRaney, 137 So. 157, 159 (Fla. 1931)).

The Office of Public Defender was initially created in this state by statute, and later by an express constitutional provision, to provide indigent defendants the right of counsel guaranteed by the Sixth Amendment. Article V, section 18 of the Florida Constitution provides that the Office of Public Defender “shall perform duties prescribed by general law.” This provision grants the Legislature the authority to delineate the duties to be performed by public defenders, including the types of cases for which public defenders can be appointed. Crist v. Fla. Ass’n of Criminal Def. Lawyers, Inc., 978 So. 2d 134, 141 (Fla. 2008). Section 27.51, Florida Statutes (2018), defines the duties of the Office of Public Defender and generally provides that public defenders shall represent indigents who have been charged or arrested for a variety of criminal offenses that could result in imprisonment and in a limited number of civil proceedings that threaten their liberty interests, as well as in all indigent criminal direct appeals. See, e.g., State ex rel. Smith v. Jorandby, 498 So. 2d 948, 950 (Fla. 1986) (holding section 27.51 permits representation by public defender only in circumstances entailing prosecution by state threatening indigent’s liberty interest, including appeals). Thus, the duties of public defenders, as enumerated in section 27.51, include representation of indigent defendants only in circumstances that threaten liberty interests, which do not include civil traffic infraction proceedings. Accord § 924.051(9), Fla. Stat. (2018) (“Funds, resources, or employees of this state or its political subdivisions may not be used, directly or indirectly, in appellate or collateral proceedings unless the use is constitutionally or statutorily mandated.”).

Despite the lack of statutory authority, it is argued that the Office of Public Defender can collaterally attack its client’s prior civil traffic infraction adjudication, if, in the exercise

of its professional judgment, it concludes such representation is necessary to provide effective and complete representation. We reject that argument, as the court did in Mann v. State, 937 So. 2d 722, 726-29 (Fla. 3d DCA 2006), which concluded that while the public defender's desire to continue to assist criminal defendants, even after their convictions have become final after appeal and the public defender's statutory duty and authority has terminated, is admirable, to do so would violate Florida's statutory scheme and deny all other similarly situated defendants desirous of representation in collateral proceedings equal protection under the constitutions of the State of Florida and the United States. Though not precisely on point, we find further support for our position in the Florida Supreme Court's holding in State v. Kilgore, 976 So. 2d 1066 (Fla. 2007), that the Office of Capital Collateral Regional Counsel, an office similar to the Office of Public Defender, could not represent a capital defendant in challenging a prior non-capital conviction that the prosecution intended to use as an aggravating circumstance in the capital case. Certainly, if publicly funded counsel cannot collaterally attack a prior conviction in a death penalty case, we have no difficulty in concluding that the Office of Public Defender cannot collaterally attack a prior civil traffic infraction conviction.

For these reasons, the circuit court should have granted the State's petition for quo warranto. Accordingly, we reverse the circuit court order and remand with instructions to grant the petition.

REVERSED and REMANDED with instructions.

WALLIS and LAMBERT, JJ., concur.