

IN THE SUPREME COURT OF FLORIDA

CASE NO.:

IN RE: AMENDMENTS TO THE  
FLORIDA RULES OF TRAFFIC COURT

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**BIENNIAL REPORT OF THE FLORIDA BAR  
TRAFFIC COURT RULES COMMITTEE**

Joseph C. Bodiford, Chair of the Traffic Court Rules Committee, and John F. Harkness, Jr., Executive Director of The Florida Bar, file this biennial rules report with the Supreme Court of Florida under *Fla. R. Jud. Admin.* 2.130(c). This is a matter within the exclusive jurisdiction of this court under Article V, Section 2 of the Florida Constitution.

The Traffic Court Rules Committee has met on a regularly scheduled basis and through the work of the full committee, has approved and made recommendations for changes to the Florida Rules of Traffic Court as shown below. The Florida Bar Board of Governors has duly considered the Traffic Court Rules Committee's proposed rule changes and has approved them as indicated by the board vote included in this report. The report includes a presentation of each proposed rule change in the two-column format requested by the court.

The committee recommends:

1. an amendment to Rule 6.040 to add the definition of "counsel" to the other definitions of terms used in the rules;
2. an amendment to Rule 6.455 to avoid the problem of citations being amended without notice; and
3. an amendment to Rule 6.630(k) to bring the rule into conformity with the recently amended statutory law.

The amendment to Rule 6.040 to add "counsel" to the definitions was

requested by a committee member to remove any doubt as to the meaning of that term. It is in keeping with other terms defined in the rule, including “court,” “judge,” “clerk,” and “prosecutor.” The committee approved the amendment by a vote of 12-9-2. The few members who voted against the amendment thought the change was unnecessary. The Florida Bar Board of Governors unanimously approved the proposed amendment by a vote of 34-0-0.

The amendment to Rule 6.455 was suggested by a committee member to solve problems created by ex parte amendments of citations prior to hearings. The revised language would clarify that only the issuing officer may amend the citation, and would give litigants proper notice of changes to the citation and the opportunity to request a continuance if necessary. It would allow the amendment to be made without overburdening the court system with further costs and paperwork while protecting defendants’ due process rights. The committee vote on the amendment was 16-5-0. Committee members who did not approve of this revision felt that the current rule was not substantially burdensome on the courts, and that there were already procedures in place in some jurisdictions to deal with the lack of notice issue. The Florida Bar Board of Governors unanimously approved the proposed rule revision by a vote of 34-0-0.

The amendment to Rule 6.630(k) was suggested by a committee member to bring the rule into conformity with Chapter 2005-236, Laws of Florida, which on July 1, 2005, repealed the previous statutory limit set in section 318.37, Florida Statutes. A copy of the relevant portion of the session law is attached to this report as Appendix A. The Office of the State Courts Administrator also identified the newly enacted law as conflicting with the existing traffic court rule. The rule amendment will avoid any conflict between the rule and the statute. The committee unanimously approved the revision by a vote of 21-0-0, and The Florida Bar Board of Governors likewise unanimously approved the amendment by a vote of 34-0-0.

Notice of each proposed rule change was published in The Florida Bar News on October 15, 2005 (see Attachment B), and no comments were received by the Traffic Court Rules Committee Chair. The Traffic Court Rules Committee believes that the proposed rule changes are non-controversial in nature, and respectfully requests that the court adopt these proposed changes to the Florida Traffic Court Rules.

Respectfully submitted,

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**JOSEPH C. BODIFORD**  
Chair, Traffic Court Rules Committee  
806 E. Jackson St.  
Tampa, FL 33602-4149  
(813) 222-0032  
Florida Bar No. 76457

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**JOHN F. HARKNESS, JR.**  
Executive Director, The Florida Bar  
651 E. Jefferson St.  
Tallahassee, FL 32399-2300  
(850) 561-5600  
Florida Bar No. 123390

## **RULE 6.040. DEFINITIONS**

The following definitions apply:

- (a) “Court” means any county court to which these rules apply and the judge thereof or any civil traffic hearing officer program and the traffic hearing officer thereof.
- (b) “Charging document” means any information, uniform traffic citation, complaint affidavit, or any other manner of charging a criminal traffic offense under law.
- (c) “Judge” means any judicial officer elected or appointed by the governor authorized by law to preside over a court to which these rules apply.
- (d) “Law” includes the constitutions of the United States and the State of Florida, statutes, ordinances, judicial decisions, and these rules.
- (e) “Oath” includes affirmations.
- (f) “Clerk” means clerk of the initiating court or trial court.
- (g) “Open court” means in a courtroom as provided or judge’s or traffic hearing officer’s chambers of suitable judicial decorum.
- (h) “Prosecutor” means any attorney who represents a state, county, city, town, or village in the prosecution of a defendant for the violation of a statute or ordinance.
- (i) “Criminal traffic offense” means a violation that may subject a defendant upon conviction to incarceration, within the jurisdiction of a court to which these rules apply.
- (j) “Warrant” includes *capias*.
- (k) “Infraction” means a noncriminal traffic violation that is not punishable by incarceration and for which there is no right to a trial by jury or a right to court-appointed counsel.
- (l) “Official” means any state judge or traffic hearing officer authorized by law to preside over a court or at a hearing adjudicating traffic infractions.

(m) “Department” means the Department of Highway Safety and Motor Vehicles, defined in section 20.24, Florida Statutes, or the appropriate division thereof.

(n) “Officer” means any enforcement officer charged with and acting under authority to arrest or cite persons suspected or known to be violating the statutes or ordinances regulating the operation of equipment or vehicles or the regulation of traffic.

(o) “Infraction requiring a mandatory hearing” refers to an infraction listed in section 318.19, Florida Statutes, which requires an appearance before a designated official at the time and location of the scheduled hearing.

(p) “Traffic hearing officer” means an official appointed under the civil traffic infraction hearing officer program who shall have the power to adjudicate civil traffic infractions subject to certain exceptions.

(q) “Counsel” means any attorney who represents a defendant.

**RULE 6.455. AMENDMENTS**

The charging document may be amended by the issuing officer in open court at any~~the~~ ~~time before the hearing~~ 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. No case shall be dismissed by reason of any informality or irregularity in the charging instrument.

**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.

**(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.

**I Appointment of Traffic Hearing Officers.** The appointment of such hearing officers shall be made by the chief judge, after consultation with the county judges in the county affected, and shall be approved by the chief justice. Once approval has been granted by the chief justice, the traffic hearing officers shall serve at the will of the chief judge.

**(d) 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) have the power to hold any person in contempt of court, but shall be permitted to file a verified motion for order of contempt with an appropriate state trial court judge pursuant to Florida Rule of Criminal Procedure 3.840;

(2) hear a case involving an accident resulting in injury or death; or

(3) hear a criminal traffic offense case or a case involving a civil traffic infraction issued in conjunction with a criminal traffic offense.

**(e) Appeals.** Appeals from decisions of a traffic hearing officer shall be to 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 appeal.

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

**(g) Training.** Traffic hearing officers must complete 40 hours of standardized training that has been approved by the supreme court. Instructors must be county court 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 procedure and control, 11 hours of basic traffic court law and evidence, 3 hours of clerk's office/DMV training, 2 hours of participant perspective sessions/demonstrations, 3 hours of dispositions/penalties, and 1.5 hours of civil infractions/jurisdiction;

(2) 4 hours of role playing including mock opening statements, pretrial and trial sessions, and direct observation;

(3) 4 hours of observation including 2 hours of on-road observation of traffic enforcement;

(4) 4 hours of mentored participation in traffic court proceedings in the hiring county. Mentors must be county court judges or traffic hearing officers; and

(5) written training manuals for reference.

**(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. 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.

**(j) 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, ~~provided that the traffic hearing officers shall be paid no more than \$50 per hour,~~ 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.

**(l) 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 the uniform traffic citation, the case shall be assigned to a county judge.

Proposed Rule	Reasons for Change
<b>RULE 6.040. DEFINITIONS</b>	
(a) [NO CHANGE]	
(b) [NO CHANGE]	
I NO CHANGE]	
(d) [NO CHANGE]	
(e) [NO CHANGE]	
(f) [NO CHANGE]	
(g) [NO CHANGE]	
(h) [NO CHANGE]	
(i) [NO CHANGE]	
(j) [NO CHANGE]	
(k) [NO CHANGE]	
(l) [NO CHANGE]	
(m) [NO CHANGE]	

<b>Proposed Rule</b>	<b>Reasons for Change</b>
(n) [NO CHANGE]	
(o) [NO CHANGE]	
(p) [NO CHANGE]	
(q) <u>“Counsel” means any attorney who represents a defendant.</u>	To avoid any misunderstanding regarding the term “counsel.”

<b>Proposed Rule</b>	<b>Reasons for Change</b>
<p><b>RULE 6.455. AMENDMENTS</b></p> <p>The charging document may be amended <u>by the issuing officer in open court at any time before the hearing of a scheduled hearing before it commences</u>, subject to the approval of the official. The official shall grant a continuance if the amendment requires one in the interests of justice. No case shall be dismissed by reason of any informality or irregularity in the charging instrument.</p>	<p>To clarify who has the authority to amend citations and to give litigants proper notice of changes to citations.</p>

<b>Proposed Rule</b>	<b>Reasons for Change</b>
<p><b>RULE 6.630. CIVIL TRAFFIC INFRACTION HEARING OFFICER PROGRAM; TRAFFIC HEARING OFFICERS</b></p> <p>(a) Eligibility of County. [NO CHANGE]</p> <p>(b) Participation. [NO CHANGE]</p> <p>(c) Appointment of Traffic Hearing Officers. [NO CHANGE]</p> <p>(d) Jurisdiction. [NO CHANGE]</p> <p>(e) Appeals. [NO CHANGE]</p> <p>(f) Membership in The Florida Bar. [NO CHANGE]</p> <p>(g) Training. [NO CHANGE]</p> <p>(h) Continuing Legal Education. [NO CHANGE]</p> <p>(i) Hours. [NO CHANGE]</p> <p>(j) Code of Judicial Conduct. [NO CHANGE]</p>	

Proposed Rule	Reasons for Change
<p>(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, <del>provided that the traffic hearing officers shall be paid no more than \$50 per hour,</del> 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.</p>	<p>To conform the rule to 318.37, Florida Statutes.</p>
<p>(l) Robes. [NO CHANGE]</p>	
<p>(m) Concurrent Jurisdiction. [NO CHANGE]</p>	
<p>(n) Assignment to County Judge. [NO CHANGE]</p>	





## APPENDIX B