

**CHAPTER 1****CIVIL TRAFFIC PROCEDURES \*****SYNOPSIS**

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\* This chapter includes research and analysis through Volume 801 of the Southern Second Reporter. References are to the 2002 Florida Statutes and Rules of Traffic Court, unless otherwise indicated.

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**§ 1.01 Traffic Court Rules****§ 1.012 Introduction, practical tips**

This chapter is designed to provide the practitioner with an overview of the procedures of the Florida traffic court system. Herein the practitioner will find the technical requirements of the Florida Rules of Traffic Court, and references for all stages of traffic court litigation.

The nuances of practice in these courts comes only with repeated appearance before the magistrates, usually at night after regular court dockets have concluded. These rules apply in each of Florida's 67 counties. However, as procedures in traffic courts may still vary significantly from county to county, the practitioner should check in advance if he is unfamiliar with the procedure in the court where his case will be heard. The attorney who has not appeared in traffic court is well-served to attend on a night that he or she does not have a case on the docket, to observe those local customs. Of course, practitioners are encouraged to consult any local rules of court or administrative orders and to observe those customs.

The Traffic Court Rules are adapted from Florida Statute chapter 318, “Disposition of Traffic Infractions.” The practitioner is well-served to be familiar with this chapter, especially the provisions of FLA. STAT. §§ 318.14 (“Non-criminal traffic infractions; exception; procedures”), 318.15 (“Failure to comply with civil penalty or to appear; penalty”), 318.18 (“amount of civil penalties”), and 318.19 (“Infractions requiring a mandatory hearing”). Reading chapter 318 along with the Traffic Court Rules will provide the practitioner with a clear understanding of the procedure of the traffic courts.

### § 1.013 Purpose of traffic court rules

The Florida Rules of Traffic Courts govern practice and procedure in any traffic case and specifically apply to practice and procedure in county courts.<sup>1</sup> The purpose of these rules is to secure simplicity and uniformity in procedure, provide fairness in administration, and to eliminate unnecessary expense and delay.<sup>2</sup>

Criminal traffic offenses and civil traffic infractions arising out of the same incident should be tried together to avoid inconsistent results and duplication of effort.

The court must allow the offender a reasonable amount of time in which to pay the fine and costs. If payment is not made after such an extension the court may suspend the offender’s driver’s license.<sup>3</sup>

### § 1.014 Definitions

Florida Rule of Traffic Court 6.040 contains the common definitions used in the chapter and the traffic courts of Florida. Notably, the definition of “conviction” as related to traffic infractions is found in Rule 6.560, which states that “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 . . .”

FLA. STAT. § 322.01(10) defines “conviction” as a conviction of an offense relating to the operation of motor vehicles on highways which is a violation of this chapter or any other such law of this state or any other state, including an admission or determination of a noncriminal traffic infraction pursuant to s. 318.14, or a judicial disposition of an offense committed under any federal law substantially conforming to the aforesaid state statutory provisions.”

<sup>1</sup> The Florida Rules of Traffic Court also apply to any civil traffic hearing officer program. *See* FLA. R. TRAF. CT. 6.010.

<sup>2</sup> FLA. R. TRAF. CT. 6.020.

<sup>3</sup> FLA. R. T&4F. CT. 6.480.

### § 1.015 Traffic Violations Bureau

Rule 6.100 operates to create the local traffic court in each county in Florida. It mandates that each county shall establish a traffic violations bureau, and that the function of the bureau shall be to accept appearances, waivers of noncriminal hearings, admissions, payment of civil penalties for traffic infractions not requiring a mandatory hearing, and nolo contendere pleas pursuant to FLA. STAT. § 318.14(9) and (10).

The Rule further mandates that payments may be made to the bureau, and that the court shall post in the place where civil penalties are to be paid in the violations bureau the schedule of the amount of the civil penalty as provided by FLA. STAT. § 318.18. Hence, each traffic court will have a large board or sign with the penalties on it, usually hanging in the lobby area where citizens wait to be called by the deputy clerks.

### § 1.016 County courts and magistrates

The authority of county court judges to hear traffic infractions was challenged in *Nettleton v. Doughtie*,<sup>4</sup> but the supreme court held that “the County Courts of this state have jurisdiction, pursuant to FLA. STAT. § 34.01, to hear and adjudicate traffic infractions within the meaning and intent of FLA. STAT. ch. 318.” Furthermore, the court held that noncriminal infraction cases prescribed by FLA. STAT. ch. 318 are civil actions at law within the meaning of FLA. STAT. § 34.01(1). The fact that these actions are deemed actions at law does not mandate the right to a trial by jury under FLA. CONST. Art. I, § 22.

In *State v. Carr*,<sup>5</sup> a companion case decided the same day (July 17, 1979), the supreme court held that the Rules of Civil Procedure and Rules of Criminal Procedure are not applicable to proceedings involving noncriminal traffic infractions.

Because of the excessive case loads in some county courts, the Florida legislature has devised a pilot program whereby a county with an excessive case load may establish a civil traffic infraction hearing officer program.<sup>6</sup>

The civil traffic infraction hearing officers are appointed to adjudicate cases and counsel people who commit traffic infractions. They are empowered to accept pleas and to decide the guilt or innocence of any person, adult or juvenile, charged with any civil traffic infraction. They are empowered to adjudicate or withhold adjudication of guilt in the same

<sup>4</sup> *Nettleton v. Doughtie*, 373 So. 2d 667 (Fla. 1979).

<sup>5</sup> *Slate v. Carr*, 373 So. 2d 657 (Fla. 1979).

<sup>6</sup> FLA. STAT. §§ 318.30–318.38.

manner as a county judge.<sup>7</sup> They are not, however, empowered to hold a defendant in contempt of court; to hear a case involving an accident resulting in injury or death;<sup>8</sup> to hear a criminal traffic offense case; or a case involving a civil traffic infraction issued in conjunction with a criminal traffic offense.

The existence of the program does not prohibit a county judge from exercising concurrent jurisdiction with a civil traffic hearing officer.<sup>9</sup>

Also, upon the request of the defendant contained in a Notice of Appearance or a written plea, the case will be assigned to a county court judge regularly assigned to hear traffic matters.<sup>10</sup>

The hearing officers' decisions are appealable to the circuit court.

### § 1.017 Applicable charges

“Infractions” mean noncriminal traffic violations which are not punishable by incarceration and for which there is no right to a trial by jury or a right to court appointed counsel.<sup>11</sup> The following are noncriminal traffic violations:<sup>12</sup>

FLA. STAT. § 240.265	university traffic infractions;
FLA. STAT. ch. 316	the Florida Uniform Traffic Control Law, unless specified otherwise;
FLA. STAT. § 320.0605	failing to possess or exhibit a vehicle's registration;
FLA. STAT. § 320.07(3)(c)	expired vehicle registration (not over 4 months);
FLA. STAT. § 322.065	expired driver's license (not over 4 months);
FLA. STAT. § 322.15(1)	failing to possess or display a driver's license;
FLA. STAT. § 322.16(2)	driver under 17, not accompanied by driver age 21 or over, between hours of 11:00 p.m. and 6:00 a.m.;
FLA. STAT. § 322.16(3)	driver aged 17, not accompanied by driver age 21 or over between hours of 1:00-5:00 a.m.;
FLA. STAT. § 322.1615	violating restrictions for learner drivers; and

<sup>7</sup> FLA. STAT. § 318.32.

<sup>8</sup> FLA. STAT. § 318.32. Prior to July 1, 1999, hearing officers could not hear accident cases involving injury or property damage.

<sup>9</sup> FLA. STAT. § 318.32.

<sup>10</sup> FLA. STAT. § 318.32.

<sup>11</sup> FLA. R. TRAF. CT. 6.040.

<sup>12</sup> FLA. STAT. § 318.14(1). FLA. STAT. § 327.73(1) lists the noncriminal infractions of the boating laws of this state.

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FLA. STAT. § 322.19 failing to notify the Department of Highway Safety & Motor Vehicles of a change of address within 10 days.

The following statutes in FLA. STAT. ch. 316 are not “noncriminal”, but rather criminal, traffic infractions:<sup>13</sup>

FLA. STAT. §§ 316.027/316.061 leaving the scene of an accident;  
FLA. STAT. § 316.063 duty upon damaging unattended vehicle;  
FLA. STAT. § 316.067 making false accident reports;  
FLA. STAT. § 316.072(3) willfully failing to comply with a law enforcement officer or fire fighter’s order;  
FLA. STAT. § 316.192 reckless driving;  
FLA. STAT. § 316.193 driving under the influence;  
FLA. STAT. § 316.1935 fleeing a police officer;  
FLA. STAT. § 316.2045(2) obstructing traffic to solicit;  
FLA. STAT. § 316.2935(1) willfully and knowingly selling or operating a vehicle whose air pollution control equipment has been tampered with;<sup>14</sup>  
FLA. STAT. § 316.2956(3) selling or installing improper sunscreening material;  
FLA. STAT. § 316.302(4) violating federal regulations on transporting hazardous materials;  
FLA. STAT. § 316.545(1) obstructing a weight and safety officer; and  
FLA. STAT. § 316.646(4) knowingly presenting proof of insurance that is not in force.<sup>15</sup>

### § 1.018 Jurisdiction

Jurisdiction to control traffic over all state roads is vested in the Department of Transportation, and it is responsible for the placement and maintenance of traffic control devices on those roads.<sup>16</sup>

Chartered municipalities have jurisdiction to control traffic on all streets and highways located within their boundaries, except state roads.<sup>17</sup>

<sup>13</sup> See FLA. STAT. §§ 316 and 318.17.

<sup>14</sup> Although FLA. STAT. § 316.2935(5), clearly states that a violation of FLA. STAT. § 316.2935(1) constitutes a first-and second-degree misdemeanor dependent on the circumstances, the subsection is not listed in FLA. STAT. § 318.17 or 316.655.

<sup>15</sup> Although FLA. STAT. § 316.646(4) clearly states that a violation constitutes a first-degree misdemeanor, the subsection is not listed in FLA. STAT. § 316.655 or 318.17.

<sup>16</sup> FLA. STAT. § 316.006(1).

<sup>17</sup> FLA. STAT. § 316.0069(2).

They are responsible for the placement and maintenance of traffic control devices on those roads, although counties that have the charter power to provide and regulate arterial, toll, and other roads, bridges, tunnels, and related facilities within the municipal boundaries are also responsible for the placement and maintenance of their traffic control devices.<sup>18</sup>

Municipalities may also enact ordinances relating to traffic control. A city may not, however, enact an ordinance imposing criminal penalties for conduct essentially identical to that covered by FLA. STAT. chs. 316 and 318, which have been decriminalized by the state.<sup>19</sup>

Counties have the jurisdiction to control traffic on all streets and highways located within their boundaries, except for state roads and most streets and highways located within municipalities.<sup>20</sup> Counties are responsible for the placement and maintenance of traffic control devices on such roads and have jurisdiction to regulate parking on county owned or leased land located within a municipality.<sup>21</sup>

Streets and highways are defined as “the entire width between the boundary lines of every way or place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic.”<sup>22</sup>

Effective June 15, 1987, the definition of streets and highways has been broadened to include privately owned ways or places used for vehicular traffic and limited access roads controlled by a special district, whenever, by written agreement, a county or municipality exercises traffic control jurisdiction over such way or place.<sup>23</sup> The municipality or county may exercise traffic control jurisdiction over such roads within its boundaries whenever the governing body approves a written agreement with the owners or controllers of such private ways or special districts.<sup>24</sup> The agreement may provide for reimbursement for actual costs of traffic control and enforcement and for liability insurance and indemnification of the parties. It may also include such other terms as are mutually agreeable. The exercise of jurisdiction undertaken by the county or

<sup>18</sup> FLA. STAT. § 316.006(2).

<sup>19</sup> *Thomas v. State*, 614 So. 2d 468 (Fla. 1993).

<sup>20</sup> FLA. STAT. § 316.006(3). The special improvement districts within the Seminole and Miccosukee Tribal Reservations have the power to enforce criminal and noncriminal traffic offenses. *See* FLA. STAT. § 285.18(2)(b), as amended by Laws of Florida Ch. 89-58 (effective June 16, 1989).

<sup>21</sup> FLA. STAT. § 316.006(3).

<sup>22</sup> FLA. STAT. § 316.003(53)(a); *see* FLA. STAT. § 322.01 (38); *State v. Lopez*, 633 So. 2d 1150 (Fla. 5th DCA 1994) (the definition of a Street or highway set forth in FLA. STAT. § 322.01 (38) includes traffic ways and parking areas that are open for public use by vehicles even though the areas are not owned or maintained by a governmental agency).

<sup>23</sup> FLA. STAT. § 316.003(53)(b), as added by Laws of Florida Ch. 87-88.

<sup>24</sup> Counties may enter into such agreements only after consultation with the sheriff. The agreement may not take effect prior to October 1, the beginning of the county fiscal year, unless the requirement is waived in writing by the sheriff.

municipality is in addition to jurisdictional authority presently exercised by the counties or municipalities.<sup>25</sup>

## § 1.019 Enforcement

### § 1.019.1—State and county agencies

The enforcement of traffic laws falls to the law enforcement officers within the state. With several classifications of law enforcement personnel, it is sometimes confusing whether a certain officer may enforce a specific traffic law at a given location.

Traffic control officers employed by a county sheriff's department or a municipal police department have no arrest authority. They are authorized only to direct traffic or to operate a traffic control device at a fixed location upon the direction of a fully qualified law enforcement officer.<sup>26</sup>

Traffic infraction enforcement officers employed by a county sheriffs department or a municipal police department may issue traffic citations for any traffic infraction that they see being committed and that they have reasonable and probable grounds to believe constitutes a noncriminal traffic infraction. In the case of parking infractions, observing the illegally parked vehicle is sufficient.<sup>27</sup>

Section 316.640(1)(a) authorizes the highway patrol "to enforce all of the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the state wherever the public has a right to travel b4' motor vehicle."

Although it had been held by the Third<sup>28</sup> and Fourth<sup>29</sup> District Courts of Appeal that the Florida Marine Patrol did not have the authority to detain and cite drivers for noncriminal traffic offenses, the Supreme Court of Florida held that they do have the authority to detain and cite drivers for noncriminal traffic infractions.<sup>30</sup> At nearly the same time the legislature gave the Division of Law Enforcement of the Game and Fresh Water Fish Commission and the Division of Law Enforcement of the Department of Natural Resources, the authority to enforce the traffic laws

<sup>25</sup> FLA. STAT. § 316.006(2)(b), and FLA. STAT. § 316.006(3)(b).

<sup>26</sup> FLA. STAT. § 316.141(1). It is not necessary, however, that the traffic control officer's duties be performed under the immediate supervision of a law enforcement officer.

<sup>27</sup> FLA. STAT. § 316.141(2). The traffic infraction enforcement officer works under the direction of a law enforcement officer.

<sup>28</sup> State v. Parsons, 549 So. 2d 761 (Fla. 3d DCA 1989).

<sup>29</sup> See State v. Stember, 565 So. 2d 725 (Fla. 4th DCA 1990).

<sup>30</sup> State v. Parsons, 569 So. 2d 437 (Fla. 1990); see Florida Police Benevolent Ass'n v. Department of Agric. & Consumer Servs., 574 So. 2d 120 (Fla. 1991) (although road guard inspection special officers' primary duty is enforcement of the agricultural laws; the legislature has expanded this authorization to allow for the enforcement of other laws if no other law enforcement officers are available); see also State v. Paul, 579 So. 2d 303 (Fla. 4th DCA 1991).

throughout the state.<sup>31</sup> Effective June 9, 1993, law enforcement officers of the Department of Transportation were given the same authority.<sup>32</sup>

Each of the above-named agencies are prohibited from establishing traffic citation quotas.<sup>33</sup>

Both the county sheriffs and the municipal police departments<sup>34</sup> are authorized to enforce the traffic laws on all the streets and highways within their respective boundaries wherever the public has the right to travel by motor vehicle.<sup>35</sup>

### § 1.019.2—Public and private streets

Effective June 15, 1987, the definition of streets and highways has been broadened to include privately owned ways or places used for vehicular traffic and limited access roads controlled by a special district, whenever, by written agreement, a county or municipality exercises traffic control jurisdiction over such way or place.<sup>36</sup>

Thus, municipal police departments or county sheriffs offices may be required to enforce the traffic laws on any private or limited access road over which the municipality or county has jurisdiction pursuant to a written agreement.<sup>37</sup>

The preamble to Laws of Florida Ch. 87-88, enacting such measures, stated that it was needed because many private residential developments and special districts contain roads not considered to be fully accessible to the public and the attorney general has issued several opinions stating that local authorities had neither the right nor obligation nor the authority to enforce traffic laws in such private neighborhoods and special districts.

The attorney general had said:

**The provisions of this chapter [Ch. 316] are enforceable on private property where the public has a right to travel by motor vehicle thereon. Whether that right is present depends on the circumstances in a given situation.**<sup>38</sup>

<sup>31</sup> FLA. STAT. § 316.640(1)(a).

<sup>32</sup> FLA. STAT. § 316.640(1)(a).

<sup>33</sup> FLA. STAT. § 316.640(1)(a)2.

<sup>34</sup> See generally *State v. Ramer*, 501 So. 2d 52 (Fla. 4th DCA 1987), where city police officers may also be unpaid special deputy sheriffs for purposes of arrests and searches made in the county.

<sup>35</sup> FLA. STAT. § 316.640(2), (3). For a discussion of the authority of police to enforce traffic laws beyond their own boundaries, see below § 3.23, "Arrest Authority of Officers" dealing with "fresh pursuit."

<sup>36</sup> FLA. STAT. § 316.003(53)(b); see also *State v. Lopez*, 633 So. 2d 1150 (Fla. 5th DCA 1994) (the definition of a street or highway set forth in FLA. STAT. § 322.01(38) includes traffic ways and parking areas that are open for public use by vehicles even though the areas are not owned or maintained by a governmental agency; thus, traffic laws may be enforced in private parking lots open to the public).

<sup>37</sup> FLA. STAT. §§ 316.640(2)(a) and 316.640(3)(a).

<sup>38</sup> Fla. Op. Att'y Gen. (1975) 75-123.

The question frequently arises whether or not police officers have jurisdiction to issue traffic citations for accidents in shopping center parking lots. Because the public has been invited to use the parking lot, it would appear that the public has the right to travel in the parking lot, and therefore traffic laws may be enforced by the appropriate police agency.

### § 1.019.3—Multi-jurisdictional pursuit, off-duty enforcement

Police officers may also be able to follow a traffic offender out of their territorial jurisdiction and make a valid arrest.<sup>39</sup> In *Cheatem v. State*,<sup>40</sup> the police properly arrested a driver whose vehicle was not displaying a plainly visible license plate or inspection sticker, because the police's action constituted "fresh pursuit" under FLA. STAT. § 901.25(1). The statute now expressly includes the pursuit of a person who has violated FLA. STAT. ch. 316 within the term "fresh pursuit."

Effective June 25, 1990, university police officers are expressly permitted to enforce traffic laws off campus when hot pursuit originates on campus.<sup>41</sup>

Police officers may also make arrests outside their jurisdiction by using their power to make a citizen's arrest. At common law, a citizen can arrest another who, in his or her presence, commits a felony or a breach of the peace.<sup>42</sup> In *Edwards v. State*,<sup>43</sup> the Fourth District Court of Appeal held that erratic driving by a drunken driver constituted a breach of the peace. Thus, the stop by an off-duty police officer outside of his jurisdiction was a valid exercise of his power to make a citizen's arrest.

### § 1.02 Initiating prosecution of a civil traffic infraction

The defendant may receive tickets for non-criminal traffic infractions and criminal traffic violations arising out of the same incident. He may very well assume that the non-criminal infraction will be heard with the criminal traffic offense. However, this is not always the case. The two tickets may become separated at the booking facility or in the county clerk's office, and the defendant may find that his driver's license has

<sup>39</sup> FLA. STAT. § 901.25(1), FLA. STAT. § 925.252; *see also* § 3.22 "Arrest Authority of Officers."

<sup>40</sup> *Cheatem v. State*, 416 So. 2d 35 (Fla. 4th DCA 1982).

<sup>41</sup> FLA. STAT. § 316.640(I)(a).

<sup>42</sup> *See generally* Putnam v. Eaton Constr. Co., 535 So. 2d 615 (Fla. 5th DCA 1988) (a driver attempting to make a common-law citizen's arrest must not act negligently or recklessly during a high speed chase of a stolen vehicle).

<sup>43</sup> *Edwards v. State*, 462 So. 2d 581 (Fla. 4th DCA 1985).

been suspended on the non-criminal traffic infraction for his failure to request a court date.

In either case, the officer is required to provide the offender with a notification form.<sup>44</sup> This form states the procedure for disposing of the ticket prior to trial. This information is also printed on the back of the traffic citation. In Dade County, a separate instruction is given the motorist that contains the same information in English and Spanish. This notice clearly states that if you elect to pay the fine you are admitting that you committed the infraction, and points will be assessed against your driving record.

At this stage (because there is no discovery allowed nor any motions that can be made prior to trial) there is very little for the attorney to do. The most important service an attorney can provide at this time is to make sure the case is properly set for trial and that his client's driver's license has not been suspended for failure to request a court date.

Most traffic infractions do not require a mandatory hearing, and the offender can settle his case at his convenience by pleading guilty<sup>45</sup> and paying<sup>46</sup> the fine or electing to go to traffic school.<sup>47</sup>

### § 1.021 Issuance of citation

All proceedings are initiated by the filing of the uniform traffic citation.<sup>48</sup> Florida Rule of Traffic Court 6.320 allows private citizens to cite other citizens for a violation by filing an affidavit against the alleged offender and upon receipt of the affidavit, the clerk shall prepare a uniform traffic citation.

#### § 1.021.1—Facial technicalities

The citation issued must contain enough information for the driver/defendant to be reasonably informed as to the charge. A defendant has the right to know from the language of the charge against him or her what conduct on his or her part is the basis of that charge.<sup>49</sup>

<sup>44</sup> FLA. STAT. § 318.20.

<sup>45</sup> A guilty plea under this procedure is not admissible as evidence in any other proceedings. FLA. STAT. § 318.14(4). Where this procedure is utilized, even though there should have been a mandatory hearing under FLA. STAT. § 318.19, the guilty plea is still inadmissible. Under FLA. STAT. § 318.19, the guilty plea would have been admissible in a subsequent negligence suit. *Carter v. Rukab*, 437 So. 2d 761 (Fla. 1st DCA 1983).

<sup>46</sup> FLA. STAT. § 318.14(4).

<sup>47</sup> See FLA. STAT. § 318.14(9); see above "Alternatives to Court Hearing." If the driver was charged with speeding and elects to go to traffic school, he or she still has to pay the surcharges imposed for excessive speed, if applicable. See FLA. STAT. § 318.18(3); FLA. R. TRAF. CT. 6.330.

<sup>48</sup> See FLA. STAT. § 316.650; FLA. R. TRAF. P. 6.320. See generally *State v. Eubanks*, 609 So. 2d 107 (Fla. 4th DCA 1992) (discussion on admissibility of traffic ticket).

<sup>49</sup> See *Robinson v. State*, 152 So. 2d 717 (Fla. 1934).

### § 1.021.2—Amendments

The charging document may be amended at any time before the hearing, subject to the approval of the official.<sup>50</sup> The official shall grant a continuance if the amendment requires on the in the interests of justice, but no case shall be dismissed by reason of any informality or irregularity in the charging instrument.<sup>51</sup>

### § 1.022 Proof of service

A clear reading of FLA. STAT. 316.650 indicates that the citation is a substitute for the criminal notice to appear, and requires service on the defendant and a promise to appear. Therefore, a defendant not have been brought into court as required by law, there is no jurisdiction over that defendant. For example, if the citation is issued and mailed to the defendant, and there is no proof of service of that citation, then there is no jurisdiction. However, where there is no jurisdiction, but the defendant appears in court under the belief that there is jurisdiction, the defendant has submitted him-or herself to the jurisdiction of the court and the hearing may proceed.<sup>52</sup>

### § 1.023 Traffic offenses by juveniles

The court that has jurisdiction over traffic violations has original jurisdiction in the case of any minor who allegedly violated a statute or ordinance pertaining to the operation of a motor vehicle.<sup>53</sup>

Traffic infractions that do not result in a hearing are subject to the civil penalties provided in FLA. STAT. § 318.18. Traffic infractions that do result in a hearing are subject to a civil penalty not to exceed \$500.<sup>54</sup>

For any violation of FLA. STAT. § 316, the court may additionally reprimand or counsel the minor or his parents and may require that he attend a traffic school conducted by a public authority. The court may order the minor to pay a fine not exceeding the maximum fine an adult driver would have to pay. Also, the court may require the minor to participate in public service or a community work service for a minimum number of hours. A curfew not exceeding six months may also be imposed by the court on the minor.<sup>55</sup>

<sup>50</sup> FLA. R. TRAF. CT. 6.455.

<sup>51</sup> FLA. R. TRAF. CT. 6.455.

<sup>52</sup> See *Dellow v. State*, 26 Fla. Supp. 2d 149 (Fla. 11<sup>th</sup> Cir 1988), citing *Shurden v. Thomas*, 134 So. 2d 876 (Fla. 1<sup>st</sup> DCA 1961).

<sup>53</sup> FLA. STAT. § 316.635(1). Any traffic offense that constitutes a felony is under the jurisdiction of the circuit court. See § 4.02, "Arrest."

<sup>54</sup> FLA. STAT. § 318.14(5). Note that in cases involving unlawful speed in a construction zone, unlawful speed in a school zone, or an infraction involving a death, the civil penalty may be as high as \$1000.

<sup>55</sup> FLA. STAT. § 318.143(1).

The court can revoke or suspend any violator's driving privileges for any conviction of FLA. STAT. § 316 or any other law regulating motor vehicles if the court finds that such revocation or suspension is warranted by the totality of the circumstances. In determining whether revocation or suspension is warranted, the court must consider all pertinent factors, including but not limited to the extent and nature of the driver's violation, the number of persons injured or killed, and the extent of any property damage.<sup>56</sup>

Convictions of juveniles under FLA. STAT. chs. 316 and 322 are viewed by the Department of Highway Safety and Motor Vehicles in the same manner as adult violations.

### § 1.03 Resolving the case before hearing

When a person is cited for a noncriminal traffic infraction, he must sign and accept a citation indicating a promise to appear.<sup>57</sup> A willful refusal to sign and accept a citation constitutes a second-degree misdemeanor.<sup>58</sup> The citation should explain the options.<sup>59</sup>

For those infractions not requiring a mandatory hearing, if the driver pays the civil penalty<sup>60</sup> either by mail or in person within thirty days of receiving the citation,<sup>61</sup> he is deemed to have admitted the infraction and has waived his right to a hearing on the issue of whether he committed the infraction.<sup>62</sup> Such admission, however, cannot be used as evidence in any other proceeding.<sup>63</sup>

Within ten days of payment of the civil penalty, the official having jurisdiction over the infraction will certify to the Department of Highway Safety<sup>64</sup> and Motor Vehicles that the driver has admitted the infraction.

<sup>56</sup> FLA. STAT. § 316.655(2).

<sup>57</sup> FLA. STAT. § 318.14(2).

<sup>58</sup> FLA. STAT. § 318.14(3). A willful refusal to post bond was also a misdemeanor prior to Oct. 1, 1986, but the language was deleted by Laws of Florida Ch. 86-154, § 5.

<sup>59</sup> See *City of Hollywood v. Miller*, 471 So. 2d 655 (Fla. 4th DCA 1985).

<sup>60</sup> For violations of FLA. STAT. § 320.0605(1) and FLA. STAT. § 322.15(1) (failing to exhibit vehicle registration and driver's license upon demand) and FLA. STAT. § 320.07(3) and FLA. STAT. § 322.065 (expired vehicle registration and driver's license), proof of compliance in the form of a valid registration or drivers license must be submitted to the clerk of the court.

<sup>61</sup> If the violation is failing to have proof of personal injury protection security in his immediate possession, the driver has only 20 days to pay the civil penalty. FLA. STAT. § 318.14(4).

<sup>62</sup> FLA. STAT. § 318.14(4).

<sup>63</sup> FLA. STAT. § 318.14(4); see *MacNeil v. Singer*, 389 So. 2d 232 (Fla. 5th DCA 1980). Where this procedure is utilized even though there should have been a mandatory hearing under FLA. STAT. § 318.19, because of an accident with personal injuries, the guilty plea to a traffic offense is still inadmissible in a subsequent negligence suit. Under FLA. STAT. § 318.19, a guilty plea would have been admissible. See *Carter v. Rukab*, 437 So. 2d 761 (Fla. 1st DCA 1983).

<sup>64</sup> FLA. STAT. § 318.14(7).

The Department will accordingly enter the proper number of points against the driver's record.<sup>65</sup>

Effective October 1, 1985, a driver charged with a noncriminal traffic infraction<sup>66</sup> may elect to attend, in the location of his choice, a basic driver improvement course approved by the Department of Highway Safety and Motor Vehicles instead of appearing in court.<sup>67</sup> The advantage of such a course of action is that adjudication will be withheld and will not constitute a conviction, no points will be assessed against the driver's record, and the civil penalty will be reduced by eighteen percent.<sup>68</sup> The choice of driving school is not open to any individual who has previously made such an election within the preceding twelve months nor is it open to anyone who has previously made three such elections.<sup>69</sup> Effective July 1, 1991, all language assessing court costs has been<sup>70</sup> deleted.

For selected offenses, there is still another alternative to paying the civil penalty and admitting the infraction or going to court. Those individuals charged with the following infractions may plead *nolo contendere* and avoid a "conviction:"<sup>71</sup>

**FLA. STAT. § 322.03, FLA. STAT. § 322.065 or FLA. STAT. § 322.15(1)— Operating a motor vehicle without a valid operator's or chauffeur's license;**

**FLA. STAT. § 322.34(1) — Operating a motor vehicle with a license which has been suspended for failure to appear, failure to pay the civil penalty or failure to attend a driver improvement course;**

<sup>65</sup> FLA. STAT. § 318.14(8).

<sup>66</sup> The election is open to anyone charged with any noncriminal traffic infraction except FLA. STAT. § 320.0605(1), FLA. STAT. § 320.07(3)(a), FLA. STAT. § 322.065, FLA. STAT. § 322.15(1) (driver license and vehicle registration requirements), and FLA. STAT. § 322.61 or FLA. STAT. § 322.62 (commercial motor vehicle offenses). According to 91-1 00 Fla. Op. Att'y Gen. (1991), Laws of Florida Ch. 81-200, § 1, amending FLA. STAT. § 318.14(a), applies to those noncriminal traffic infractions set forth in FLA. STAT. § 318.14, as amended.

<sup>67</sup> FLA. STAT. § 318.14(9). The Department of Highway Safety and Motor Vehicles may implement driver improvement programs under FLA. STAT. § 322.51 which include motorcycle safety education programs. See FLA. STAT. § 322.52. FLA. R. TRAF. CT. 6.330 provides that the driver has 30 days after receiving the citation in which to elect driver improvement school. See also FLA. R. TRAF. CT. 6.360(b), providing that when an alleged offender elects driving school, the clerk may allow such additional time as may be reasonably necessary in order to fulfill the statutory requirements.

<sup>68</sup> FLA. STAT. § 318.14(9).

<sup>69</sup> FLA. STAT. § 318.14(9).

<sup>70</sup> FLA. STAT. § 318.14(9). The chief judge of the circuit may also authorize additional costs of \$3 for pedestrian violations, \$6 for non-moving violations, and \$10 for moving violations. See FLA. R. TRAF. CT. 6.470(b).

<sup>71</sup> FLA. STAT. § 318.14(10)(a). See FLA. R. TRAF. CT. 6.360(b), providing that when an alleged offender elects driving school, the clerk may allow such additional time as may be reasonably necessary in order to fulfill the statutory requirements.

**FLA. STAT. § 320.0605(1), FLA. STAT. § 320.07(3)—Operating a vehicle in violation of registration requirements<sup>72</sup> ; and****FLA. STAT. § 316.646 — Operating a motor vehicle without proof of insurance.**

An individual may not plead *nolo* if he has done so within the past twelve months or if he has done so three times before.<sup>73</sup>

Also, the driver will be assessed \$45 in court costs<sup>74</sup> and a five percent surcharge.<sup>75</sup>

For violations of FLA. STAT. §§ 322.03, 322.34(1), and 320.07(3)(b), the driver will be assessed an extra \$50 because these violations are misdemeanors or criminal traffic offenses.<sup>76</sup>

**§ 1.031 Plea; Affidavit of admission**

Any defendant charged with any infraction may, in lieu of a personal appearance at trial, file an affidavit of defense or an admission that the infraction was committed as provided in this rule.<sup>77</sup>

FLA. R. TRAF. CT. 6.340(d) contains a sample Affidavit of Admission form. It is essentially a plea form containing an explanation of the differences between guilty and no contest pleas, and a statement that the affiant understands that “any material misrepresentation could cause me to be prosecuted for a separate criminal law violation.” The form contains a standard notary block. It also contains an admonition that it is the responsibility of the affiant to ensure that the affidavit is in the court file before the hearing date.

**§ 1.032 Proof of compliance**

In order to plead *nolo contendere*, and have an adjudication of guilt withheld, the driver must present “proof of compliance” to the clerk of

<sup>72</sup> Note that a registration expired for less than four months is a noncriminal infraction (FLA. STAT. § 320.07(3)(a)), but that a registration expired for longer than four months constitutes a second-degree misdemeanor (FLA. STAT. § 320.07(3)(b)).

<sup>73</sup> FLA. STAT. § 318.14(10)(b).

<sup>74</sup> FLA. STAT. § 318.14(10)(b), as amended by Laws of Florida Ch. 87-108. § 1 (eff July 1, 1987), requires a \$22 assessment. Prior to that date, the assessment was \$20. FLA. STAT. § 943.25, as amended by Laws of Florida Ch. 85-250, § 6 (eff Oct. 1, 1985, required a \$2.50 assessment that increased to \$3.00 July 1, 1986. See also Laws of Florida Ch. 86-154, § 11 (eff Oct. 1, 1986). FLA. STAT. § 960.20, as amended by Laws of Florida Ch. 85-250, § 7 (eff Oct. 1, 1985), requires a \$20 assessment. The chief judge of the circuit may also authorize additional costs of \$3 for pedestrian violations, \$6 for non-moving violations, and \$10 for moving violations. See FLA. R. TRAF. CT. 6.470(b).

<sup>75</sup> FLA. STAT. § 960.25.

<sup>76</sup> See FLA. STAT. § 27.3455(1).

<sup>77</sup> FLA. R. TRAF. CT. 6.340(a).

the court or to an authorized operator of a Traffic Violations Bureau<sup>78</sup> prior to the scheduled court appearance date.<sup>79</sup> “Proof of compliance” consists of a valid, renewed, or reinstated driver’s license or registration certificate.<sup>80</sup>

### § 1.033 Failure to attend driving school, pay fine, or appear

The penalty for failing to complete driver improvement school, not appearing in court, or not paying the civil penalty is a suspension of the offender’s driving license.’<sup>81</sup>

In the event the license is suspended for failure to attend driving school, the defendant must fulfill the civil penalty of FLA. STAT. § 38.18, and may be required to again agree to attend driver school. The defendant is given a certified form by the department to present at the driver license bureau to have the driver license reinstated.<sup>82</sup>

If the suspension is for failure to appear or pay the civil penalty, the defendant may pay the civil penalty, attend a driver improvement school, or request a hearing.<sup>83</sup> The defendant is given a certified form by the department to present at the driver license bureau to have the driver license reinstated.<sup>84</sup>

## § 1.04 Civil traffic infraction hearing

Traffic infractions are brought to trial in one of two ways. The most widespread method is the two-appearance system. The officer who issues the ticket fills in an arraignment date and location at the bottom of the ticket. Each offender must then appear at the arraignment and enter his plea. If the offender pleads not guilty, his case is then set for trial, which requires a second appearance on his part.

The second method is the one-appearance system. This system requires the offender to either call or write the court to ask for a court date within ten days of receiving the ticket. This places an affirmative duty on the offender, if he wishes to contest the charge. It also tends to create confusion that leads to numerous driver’s license suspensions. If the offender does not notify the court under the assumption that he will be notified automatically, his driver’s license will be suspended.

<sup>78</sup> FLA. STAT. § 318.14(10)(a).

<sup>79</sup> FLA. STAT. § 318.14(10)(a).

<sup>80</sup> FLA. STAT. § 318.14(10)(a).

<sup>81</sup> FLA. STAT. § 318.15. *See also* FLA. R. TRAF. CT. 6.590, 6.600, 6.610, and 6.620.

<sup>82</sup> FLA. R. TRAF. CT. 6.590(c).

<sup>83</sup> FLA. R. TRAF. CT. 6.600(c).

<sup>84</sup> FLA. R. TRAF. CT. 6.600(c).

### § 1.041 Plea of not guilty; affidavit of defense

FLA. R. TRAF. CT. 6.340 provides for an Affidavit of Defense instead of a personal appearance by the alleged violator. Any person who is not a resident or domiciled where the offense took place, or is unable to appear because of illness or absence, may file an Affidavit of Defense. This rule provides for a reasonable bond to be posted. In general, if it is a nonaccident traffic infraction, the bond will be twenty-five dollars, and if it involves an accident, then the bond is usually one hundred dollars.

### § 1.042 Mandatory hearings

The following infractions require a mandatory hearing:<sup>85</sup>

- (1) Any infraction which results in an accident that causes the death of another, or
- (2) Any infraction which results in an accident that causes “serious bodily injury” of another as defined in FLA. STAT. § 316.1933(1).

It is important to note that, although a mandatory hearing is required, these are not criminal offenses but are still traffic infractions. In some jurisdictions, all accidents involving a fatality are removed from the infraction calendar and placed on the criminal traffic docket. This is usually done to place special emphasis on these cases and to review these cases for possible future criminal charges by the state attorney. If these cases had remained on the infraction calendar, no state attorney would have been present, and the state would have missed an opportunity to hear the defendant’s version of the facts.

The attorney should also explore the possibility of using an Affidavit of Defense if his client will be unavailable for the hearing. The Affidavit of Defense is available to those persons charged with a traffic infraction who are not residents of, or domiciled in the county where the alleged infraction took place or those persons who are residents of and domiciled in the county where the alleged infraction took place but are unable to appear because of an extended illness or absence from the county. Even though the alleged offender is not present, his attorney may still appear and cross-examine the officer and any other witnesses.<sup>86</sup> Florida Rules of Traffic Court specifically state that such affidavits may be accepted where a mandatory hearing is required in order to either deny or admit the commission of the infraction.<sup>87</sup>

<sup>85</sup> FLA. STAT. § 318.19.

<sup>86</sup> See FLA. R. TRAF. CT. 6.340 as amended, *eff. Jan. 1, 1989*. See appendix for form of affidavit.

<sup>87</sup> FLA. R. TRAF. CT. 6.340(c).

Any person issued a citation must sign the citation, which is his promise to appear. If the offender does not sign, there is then some question whether the motorist is under any obligation to appear in court. When you sign your name on the ticket, that is your promise to appear. If you breach this promise, your license will be suspended. However, if you never promise to appear, the question arises whether one should be penalized for not appearing or whether the court has jurisdiction over the case.

This situation can arise when the officer either forgets to have the offender sign the citation or intentionally issues the ticket without requiring the offender's signature. Some officers do this to avoid heated arguments with offenders who are under the impression that signing the ticket means they are admitting their guilt. Rather than take the time to explain that it is merely a promise to appear, and not an admission of guilt, these officers simply hand the offender the ticket without requiring the signature.

### § 1.043 Speedy trial

Every defendant charged with a noncriminal traffic infraction shall be brought to trial within 180 days of the date the defendant was served with the uniform traffic citation or other charging document.<sup>88</sup> If the trial is not commenced within 180 days, the defendant shall be entitled to dismissal of the infraction charge.<sup>89</sup>

The 180-day rule is subject to exceptions. If the trial of the defendant is not commenced within the 180-day requirement established by Rule 6.325(a), a motion for dismissal shall be granted by the court unless it is shown that the failure to hold trial was attributable to the defendant<sup>90</sup> or the defendant was unavailable for trial.<sup>91</sup>

The 180-day rule does not apply to noncriminal infractions that are part of a single episode or occurrence, which is attached to, consolidated with, or associated with a criminal traffic offense.<sup>92</sup>

### § 1.044 Discovery

Discovery in infraction cases is limited to a review, immediately before the trial, of the relevant supporting documentation regarding the electronic or mechanical speed measuring device used by the citing officer in the officer's possession at the time of trial.<sup>93</sup>

<sup>88</sup> FLA. R. TRAF. CT. 6.325(a).

<sup>89</sup> FLA. R. TRAF. CT. 6.325(a).

<sup>90</sup> FLA. R. TRAF. CT. 6.325(b)(1).

<sup>91</sup> FLA. R. TRAF. CT. 6.325(b)(2).

<sup>92</sup> FLA. R. TRAF. CT. 6.325(c).

<sup>93</sup> FLA. R. TRAF. CT. 6.445.

There does not appear to be a reciprocal discovery requirement placed on the defendant as in FLA. R. CRIM. P. 3.220. An attorney representing a defendant is not required to file a Notice of Defense<sup>94</sup> (where the unrepresented defendant is required to mention “additional papers, documents, photos, etc. . . . should be mentioned”), so there appears to be no obligation to disclose the defense evidence pre-hearing. However, the attorney should be prepared to request a continuance, if necessary, to further investigate any evidence in possession of the officer at the time of the hearing.

#### **§ 1.045 Attorney representation**

An attorney may represent a defendant in an infraction case with or without the presence of the defendant at the hearing.<sup>95</sup> The attorney is required to file a Notice of Appearance, and may (but is not required to) file a Affidavit of Defense.

#### **§ 1.046 Motions to suppress traffic stop**

There must be a valid legal reason for the traffic stop. Usually, the basis for the stop is the infraction itself: running a red light, an illegal turn, or some other driving-related act by the defendant. However, the practitioner should be critical of the stop and investigate the legality of the stop for possible suppression motions.

A “Terry Stop” or temporary investigative stop is permissible if the detention is temporary and reasonable under the circumstances and only if the law enforcement officer has a well-founded and articulable suspicion that the individual has committed, is committing, or is about to commit a crime. A mere or bare suspicion will not suffice. FLA. STAT. § 901.151 (2002); Terry v. Ohio, 88 S. Ct. 1868 (1968); Reynolds v. State, 592 So. 2d 1082 (Fla. 1992); Popple v. State, 626 So. 2d 185 (Fla. 1993); State v. Simons, 549 So. 2d 785 (Fla. 2d DCA 1989).

The Florida “Stop and Frisk Law”, FLA. STAT. § 901.151 (2002), codifies the temporary stop and detention of an individual based upon a police officer’s founded suspicion of criminal activity for the purpose of ascertaining identity and the circumstances giving rise to the suspicion. FLA. STAT. § 901.151 (2002) reads as follows:

#### **FLA. STAT. § 901.151. Stop and Frisk Law.**

**(1) This section may be known and cited as the “Florida Stop and Frisk Law.”**

<sup>94</sup> FLA. R. TRAF. CT. 6.340(c).

<sup>95</sup> FLA. R. TRAF. CT. 6.340(c).

**(2) Whenever any law enforcement officer of this state encounters any person under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state or the criminal ordinances of any municipality or county, the officer may temporarily detain such person for the purpose of ascertaining the identity of the person temporarily detained and the circumstances surrounding the person's presence abroad which led the officer to believe that the person had committed, was committing, or was about to commit a criminal offense.**

**(3) No person shall be temporarily detained under the provisions of subsection**

**(2) longer than is reasonably necessary to effect the purposes of that subsection. Such temporary detention shall not extend beyond the place where it was first effected or the immediate vicinity thereof.**

**(4) If at any time after the onset of the temporary detention authorized by subsection (2), probable cause for arrest of person shall appear, the person shall be arrested. If, after an inquiry into the circumstances which prompted the temporary detention, no probable cause for the arrest of the person shall appear, the person shall be released.**

**(5) Whenever any law enforcement officer authorized to detain temporarily any person under the provisions of subsection (2) has probable cause to believe that any person whom the officer has temporarily detained, or is about to detain temporarily, is armed with a dangerous weapon and therefore offers a threat to the safety of the officer or any other person, the officer may search such person so temporarily detained only to the extent necessary to disclose, and for the purpose of disclosing, the presence of such weapon. If such a search discloses such a weapon or any evidence of a criminal offense it may be seized.**

**(6) No evidence seized by a law enforcement officer in any search under this section shall be admissible against any person in any court of this state or political subdivision thereof unless the search which disclosed its existence was authorized by and conducted in compliance with the provisions of subsections (2)–(5).**

For a *Terry* stop to be legal, there must be founded suspicion of criminal activity. "Founded suspicion" has been defined by Florida Courts as "a suspicion that has factual foundation in the circumstances observed

by the officer, when interpreted in light of the officer's knowledge." *Martin v. State*, 658 So. 2d 1153, 1155 (Fla. 2d DCA 1995). A founded suspicion requires a "factual basis in the circumstances observed by the officer." *State v. Stevens*, 354 So. 2d 1244 (Fla. 4th DCA 1978); *McCarthy v. State*, 536 So. 2d 1196 (Fla. 4th DCA 1985); *Jordan v. State*, 544 So. 2d 1073 (Fla. 5th DCA 1989).

An officer's assessment of the circumstances in their totality "must raise a suspicion that the particular individual being stopped is engaged in wrongdoing." *Smith v. State*, 592 So. 2d 1206 (Fla. 2d DCA 1992). Traffic stops are only valid when the law enforcement officer has probable cause to believe that a traffic violation has occurred. *Whren v. United States*, 116 S.Ct. 1769 (1996); *Holland v. State*, 696 So. 2d 757 (Fla. 1997); *State v. Riley*, 638 So. 2d 507 (Fla. 1994); *Taylor v. State*, 644 So. 2d 132 (Fla. 1st DCA 1994). However, if there is no violation of a traffic statute, then there is no probable cause for the stop and the evidence should be suppressed. *Riley*, at 508; *Taylor*, at 132; *State v. Garcia*, 696 So. 2d 1352 (Fla. 5th DCA 1997).

Accordingly, the legal analysis of a traffic stop is strictly objective and asks only whether any probable cause for the stop existed.<sup>96</sup> Prior to *Whren v. United States*, 517 U.S. 806, 116 S. Ct. 1769, 135 L Ed. 2d 89(1996), the analysis of the existence of a Fourth Amendment violation turned on an objective<sup>97</sup> "reasonable officer" assessment of the officer's actions in light of the facts and circumstances confronting the officer at the time.<sup>98</sup>

<sup>96</sup> See *Morse v. State*, 730 So. 2d 352 (Fla. 2d DCA 1999) (officer's stop of vehicle was not based upon a moving violation observed by the officer but was based solely on an anonymous tip, with no corroboration of an alleged illegal activity); *Whren v. United States*, 517 U.S. 806, 116 S. Ct. 1769, 135 L Ed. 2d 89(1996); *Holland v. State*, 696 So. 2d 757 (Fla. 1997); see *Covington v. State*, 728 So. 2d 1195 (Fla. 4th DCA 1999) (officer had probable cause under municipal ordinance to make a traffic stop where he observed a vehicle stopped in the middle of the roadway with the driver's door open). In *Herrmann v. State*, 728 So. 2d 266 (Fla. 2d DCA 1999), a passenger yelling, talking, and waving his hands as he entered a vehicle did not justify stop by a police officer. He did not have a well-founded suspicion of criminal activity taking place.

<sup>97</sup> See *State v. Cardoso*, 609 So. 2d 152 (Fla. 5th DCA 1992) (because the standard governing pretextual stops is an objective one, the trial court is not required to accept an officer's statement of his intentions and conduct, but the court may determine the facts, including the credibility of witnesses); see *Hills v. State*, 629 So. 2d 152 (Fla. 1st DCA 1993) (because the police had already determined to stop a vehicle before the traffic infractions had occurred, the stop was not subjectively pretextual, but the state's attempts to justify the stop based on the traffic infractions brought into play the "objective" pretextual stop analysis—whether the reasonable officer would have made the stop based solely on the traffic infractions, absent an additional invalid purpose).

<sup>98</sup> *State v. Daniel*, 665 So. 2d 1040 (Fla. 1995); *Kehoe v. State*, 521 So. 2d 1094 (Fla. 1988), citing *United States v. Smith*, 799 F.2d 704 (11th Cir. 1986); see generally *State v. Pollard*, 625 So. 2d 968 (Fla. 2d DCA 1993) (a stop made because the police officer thought he saw a drug transaction but which was also made because the vehicle had a smashed windshield and an inoperable

*(Text continued on page 23)*

taillight was valid); Florida, Dept of Hwy. Safety & Motor Vehicles, Bur. of Driver Imp. v. Thompson, 622 So. 2d 1169 (Fla. 5th DCA 1993) (stopping a vehicle because only one headlight was operational was lawful); Robinson v. State, 617 So. 2d 412 (Fla. 2d DCA 1993) (hearing spinning tires and slamming brakes was insufficient reason for a stop because the noises could have been just as consistent with an attempt to avoid an accident as with careless driving); State v. Barrio, 619 So. 2d 389 (Fla. 1st DCA 1993); Springle v. State, 613 So. 2d 65 (Fla. 4th DCA 1993) (the stop of a driver who was exceeding the speed limit by eight m.p.h. was not pretextual, even though the police's main purpose for the stop was to search for drugs and to tape record the motorists' conversation); State v. Bass, 609 So. 2d 151 (Fla. 5th DCA 1992) (a stop was proper where the officer could not read the temporary tag); State v. Bentley, 596 So. 2d 773 (Fla. 2d DCA 1992) (a stop for an improperly displayed temporary license tag was not pretextual); Targaczewski v. State, 590 So. 2d 542 (Fla. 2d DCA 1991) (a stop for a failure to use a turn signal was pretextual where the arresting officer admitted that such a stop was not an everyday occurrence but that he had used it for DUI's before); Doctor v. State, 596 So. 2d 442 (Fla. 1992) (a stop for a cracked lens cover on a rear light was pretextual where the cracked lens cover did not actually violate the taillight statute; the malfunctioning equipment was not actually required by statute and did not pose a safety hazard); Blue v. State, 592 So. 2d 1263 (Fla. 2d DCA 1992); Joseph v. State, 588 So. 2d 1014 (Fla. 2d DCA 1991) (even though the stop for a broken taillight was not pretextual, the continued detention of the suspects at the scene until a sniff dog arrived was illegal); Lemon v. State, 580 So. 2d 292 (Fla. 2d DCA 1991) (a stop because a taillight was broken and emitting a white light was not pretextual); DeGroat v. State, 583 So. 2d 1105 (Fla. 5th DCA 1991) (it was not pretextual to stop a vehicle traveling at night without headlights); Pedro v. State, 578 So. 2d 870 (Fla. 2d DCA 1991) (because it was clear that the police officer had formed an intent to intercept the defendant's vehicle as part of a drug raid before he observed the vehicle operating with only its parking lights on, the stop was pretextual; no traffic ticket was issued); Brown v. State, 577 So. 2d 708 (Fla. 2d DCA 1991) (a stop for illegal parking was pretextual where the officers were approaching persons "on the street" who they thought were "possibly selling narcotics;" they did arrest him for illegal parking, and the officers admitted that their police cars were parked in the same manner as the defendant's vehicle, thereby giving the impression that such parking was permitted); Blackman v. State, 570 So. 2d 1074 (Fla. 1st DCA 1990) (a stop for following too closely was valid where the officer stated that he frequently stopped vehicles for such an offense and showed that he had issued five similar citations in that thirty-day period); State v. Miller, 565 So. 2d 886 (Fla. 2d DCA 1990) (a stop was proper where, after the stop for a traffic violation and while the citation was being written, the police officer received information of the driver's suspended license that gave him probable cause to arrest and to conduct a search incident to that arrest); State v. Carter, 563 So. 2d 728 (Fla. 3d DCA 1990) (a stop because of the defendant's driving, weaving from lane to lane, and tag violation was not pretextual); State v. Bonser, 563 So. 2d 161 (Fla. 2d DCA 1990) (the stop for making a right-hand turn without using a signal was not a pretext stop because it was indisputable that the driver could have received a traffic citation for what he did; the fact that the officer may have had an additional motive for stopping the car is immaterial); Whitfield v. State, 559 So. 2d 84 (Fla. 3d DCA 1990) (the stop for making a right-hand turn without using a signal was clearly a pretext for a vehicle search because the officer had already stopped the driver while a pedestrian because he matched an informant's description and then had followed him after he entered his vehicle); State v. Taylor, 557 So. 2d 941 (Fla. 2d DCA 1990) (a traffic stop was valid where a civil traffic infraction was committed in the presence of the police officers; in such circumstances, it is not always material that police may have some additional motive for detaining the suspect); State v. Russell, 557 So. 2d 666 (Fla. 2d DCA 1990) (narcotics officers who stopped a vehicle for a nonoperational tag light infraction made a valid stop because they had not been looking for a reason to stop this particular person or vehicle); C.V.H. v. State, 556 So. 2d 1235 (Fla. 5th DCA 1990) (a stop for a license plate infraction was improper because the police officer acknowledged that he could have stopped the driver at any time after he noticed the infraction but did not do so until his suspicions were aroused by a known drug suspect talking to the occupants of the car); Moreland v. State, 552 So. 2d 937 (Fla. 2d DCA 1989) (weaving and speeding rendered stop nonpretextual); State v. Renda, 553 So.

Allowing the police to make unlimited stops based upon the faintest suspicion would open the door to serious constitutional violations. It is difficult to operate a vehicle without committing some trivial violation especially one discovered after the detention.<sup>99</sup>

The Fifth District Court of Appeal had rejected the use of a “pretextual” analysis on the grounds that “such an inquiry is not only essentially irrelevant to the proper ones, which are the existence and validity of any asserted objective grounds for detention, . . . but that even phrasing the question in that subtly pejorative fashion may skew the result.<sup>100</sup>

It should also be noted that the police have no automatic right to search a vehicle stopped for a traffic violation.<sup>101</sup> They do, however, have a right to order the driver to exit the vehicle<sup>102</sup> and to make a limited search for their own safety if they observe furtive movements within the vehicle that may involve hiding a weapon.<sup>103</sup> This right to search is limited to determining if a weapon is present and is similar to the protective pat-down search authorized by *Terry v. Ohio*.<sup>104</sup>

Once a police officer has made a lawful arrest, such as for driving with a suspended license, he has the right to search the entire passenger compartment.<sup>105</sup> In *Walker v. State*,<sup>106</sup> however, possession of narcotics convictions and sentences based on a search were overturned where the defendant’s original arrest for driving with a suspended driver’s license was found to be based on erroneous information received by radio from a fellow officer.

2d 373 (Fla. 2d DCA 1989) (the stop after the defendant failed to stop for a stop sign was not pretextual because the officers’ observations had given them well-founded suspicions of criminal activity); *State v. Jackson*, 553 So. 2d 735 (Fla. 5th DCA 1989) (the cumulative impact of the circumstances perceived by the officers furnished a founded suspicion of criminal activity); *see also* *Rollins v. State*, 578 So. 2d 850 (Fla. 2d DCA 1991).

<sup>99</sup> *Kehoe v. State*, 521 So. 2d 1094, 1097 (Fla. 1988).

<sup>100</sup> *State v. Irvin*, 483 So. 2d 461, 463 n.4 (Fla. 5th DCA 1986).

<sup>101</sup> *See Dunbar v. State*, 592 So. 2d 1231 (Fla. 5th DCA 1992). *But see State v. Eubanks*, 609 So. 2d 107 (Fla. 4th DCA 1992).

<sup>102</sup> *Stanley v. State*, 559 So. 2d 460 (Fla. 4th DCA 1990). *Compare Popple v. State*, 626 So. 2d 185 (Fla. 1993) (requiring a driver to exit his vehicle changed a consensual encounter into an investigatory stop for which reasonable suspicion was required).

<sup>103</sup> *Morales v. State*, 557 So. 2d 893 (Fla. 4th DCA 1990); *see E.H. v. State*, 593 So. 2d 243 (Fla. 5th DCA 1991).

<sup>104</sup> *Terry v. Ohio*, 392 U.S. 1, 88 5. Ct. 1868, 20 L. Ed. 2d 889 (1968); *see State v. Doyle*, 615 So. 2d 871 (Fla. 4th DCA 1993) (it was proper to conduct a pat-down of a passenger in a vehicle stopped for a traffic violation where the officer, while talking to the passenger, noticed a bulge in the passenger’s pockets that he thought could be a weapon); *State v. Callaway*, 582 So. 2d 745 (Fla. 2d DCA 1991) (an officer who stopped a driver for a routine traffic violation could perform a pat-down search where the driver had on a jacket with large pockets; the driver had his hands in his pockets; it was a late hour; and the area had limited lighting).

<sup>105</sup> *State v. Thomas*, 711 So. 2d 1241 (Fla. 2d DCA 1998); *State v. Dexter*, 596 So. 2d 88 (Fla. 2d DCA 1992), *citing* *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981).

<sup>106</sup> *Walker v. State*, 606 So. 2d 1220 (Fla. 2d DCA 1992).

The United States Supreme Court has upheld a search incident to a “custodial” arrest for a traffic violation. In *United States v. Robinson*,<sup>107</sup> however, the Court specifically declined to reach the question of whether a search would be appropriate when a police officer makes a routine traffic stop, such as when the driver is issued a citation or notice to appear and is allowed to proceed.

### § 1.047 Proceedings

The trial is to be held in open court,<sup>108</sup> utilizing the same procedures as in civil and criminal cases concerning the attendance, testifying of witnesses,<sup>109</sup> the administration of oaths, the enforcement of remedies, and the protection of the rights of the parties.

FLA. R. TRAF. CT. 6.450 governs the order of the hearing. If the infraction is admitted, the judge must give the offender a chance to offer an explanation. It is also incumbent upon the judge to make an opening statement in order to explain court procedures and rights of the alleged offender. The offender may then testify, and he is subject to cross examination by the judge. If additional witnesses are offered, then the judge will determine in what order they will testify. At the conclusion of the testimony, the alleged offender or counsel shall be permitted a closing argument.

FLA. R. TRAF. CT. 6.460 states that the rules of evidence applicable in civil cases shall apply to traffic cases and shall be liberally construed.

#### § 1.047.1—Record

Any party to a noncriminal traffic infraction may make a tape recording of the hearing, the responsibility for the operation of which falls on that party.<sup>110</sup> The original recording shall be delivered immediately after the hearing to the clerk, who is to seal and file it. The tape may be transcribed by an official court reporter for an appeal if ordered by the defendant. Of course, the practitioner may order a court reporter for the hearing; the attorney should consult the Clerk of Court to determine if there is an official court reporter under contract with the circuit.

<sup>107</sup> *United States v. Robinson*, 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973); see *Gustafson v. State*, 414 So. 2d 260, 94 S. Ct. 488, 38 L. Ed. 2d 456 (1973).

<sup>108</sup> FLA. R. TRAF. CT. 6.140.

<sup>109</sup> FLA. R. TRAF. CT. 6.150(b) provides that the offender may present witness testimony by means of affidavit in regard to facts that are based on the personal knowledge and observation of the witness.

<sup>110</sup> FLA. R. TRAF. CT. 6.460(b).

### § 1.047.2—Order of hearing

The order of the hearing is outlined in FLA. R. TRAF. CT. 6.450. The exact procedure followed varies from judge to judge as well as from county to county, and it is important to make sure you know the procedure in the court in which you will be appearing. If you are unfamiliar with a particular court, arrive early and ask the clerk for assistance.

The following are practices are especially useful at the hearing:

**(1) Make sure you have filled out a Notice of Appearance prior to your case being called. Find out if the judge calls the cases in the order listed on the calendar or if he will take attorneys out of turn. Examine the calendar. See where your case falls. Determine how many cases your particular officer has. See what kind of violations your officer has given other people.**

**(2) All of these things will help you get a feel for what is going to happen. Carefully observe the officer testifying on other cases. Are all his tickets for judgment-type violations such as following too closely, or does the officer only write tickets for violations which are too flagrant to overlook?**

**(3) Remember that the judge is acting as the prosecutor, defense attorney and trier of fact. Stick to your key points without taking up an inordinate amount of time on minor points.**

**(4) Identity of the offender is essential for conviction. There must be proof that the person charged was involved in the incident.<sup>111</sup>**

**(6) The Traffic Rules provide that the traffic offender may present witness testimony by means of affidavit in regard to facts that are based on the personal knowledge and observation of the witness.<sup>112</sup> Affidavits are not admissible for the purpose of establishing character or reputation.**

### § 1.047.3—Standard of proof

The case against the defendant must be proved beyond a reasonable doubt in order for the defendant to be found guilty of the infraction.<sup>113</sup>

<sup>111</sup> See *Lee v. State*, 374 So. 2d 1094 (Fla. 4th DCA 1979); *State v. DuPont*, 399 So. 2d 438 (Fla. 5th DCA 1981).

<sup>112</sup> FLA. R. TRAF. CT. 6.150(b).

<sup>113</sup> FLA. STAT. § 318.14(6).

### § 1.047.4—Requirement of identity

In order for the defendant to be found guilty, identity that the person in court was the driver who committed the offense is essential.<sup>114</sup>

### § 1.048 Self-incrimination

Section 316.066(4) states that all accident reports shall be made without prejudice to the individual so reporting and shall be for the confidential use of the department. No such report shall be used as evidence in any trial, civil or criminal arising out of the accident.<sup>115</sup>

The question arises as to whether a motorist charged with a traffic infraction be compelled to testify against him-or herself at a traffic infraction hearing. Obviously, a defendant in a criminal case cannot be forced to testify against himself. Traffic violations were criminal matters until 1974, when the legislature decriminalized ordinary traffic infractions.<sup>116</sup>

Any doubts about whether traffic infractions were criminal violations or civil matters was resolved when the Supreme Court of Florida declared that traffic infractions are civil actions at law.<sup>117</sup> In another important traffic case decided the same day, the Supreme Court of Florida ruled that the Rules of Criminal Procedure and Civil Procedure are inapplicable in traffic infraction hearings.<sup>118</sup>

Because traffic infractions are clearly civil actions at law, it would appear that there is no right against self-incrimination in traffic infraction hearings. However, there may be other reasons why a motorist does not have to testify against himself.

Traffic infractions can be distinguished as either accident or nonaccident cases. In an accident case, the investigating officer, the other driver involved in the accident, and any independent witnesses may testify as witnesses against the offender. In non-accident cases, the police officer is usually the only witness against the defendant.

What are the rights of the alleged violator when one or more of the above witnesses fail to appear?

Section 316.066(4) states:

<sup>114</sup> See *State v. Lee*, 374 So. 2d 1094 (Fla. 4th DCA 1979); *State v. DuPont*, 399 So. 2d 438 (Fla. 5th DCA 1981).

<sup>115</sup> See below the discussion regarding FLA. STAT. § 316.066.

<sup>116</sup> See FLA. STAT. ch. 318.

<sup>117</sup> *Nettleton v. Doughtie*, 373 So. 2d 667 (Fla. 1979).

<sup>118</sup> *State v. Carr*, 373 So. 2d 657 (Fla. 1979). See also FLA. STAT. § 316.650(9), which provides that traffic citations are not admissible evidence in other trials.

## § 316.066

(4) (4) Except as specified in this subsection, each crash report made by a person involved in a crash and any statement made by such person to a law enforcement officer for the purpose of completing a crash report required by this section shall be without prejudice to the individual so reporting. No such report or statement shall be used as evidence in any trial, civil or criminal. However, subject to the applicable Rules of Evidence, a law enforcement officer at a criminal trial may testify as to any statement made to the officer by the person involved in the crash if that person's privilege against self-incrimination is not violated. The results of breath, urine, and blood tests administered as provided in s. 316.1932 or s. 316.1933 are not confidential and shall be admissible into evidence in accordance with the provisions of s. 316.1934(2). Crash reports made by persons involved in crashes shall not be used for commercial solicitation purposes; provided, however, that use of a crash report for purposes of publication in a newspaper or other news periodical or a radio or television broadcast shall not be construed as "commercial purpose."

\* \* \*

**History.**—s. 1, ch. 71-135; s. 1, ch. SO-SO; s. 6, ch. 82-155; s. 1, ch. 83-22; s. 15, ch. 86-296; s. 2, ch. 88-370; s. 2, ch. 89-271; s. 23, ch. 90-119; s. 14, ch. 91-255; s. 16, ch. 94-306; s. 9, ch. 96-350; s. 1, ch. 97-300; s. 88, ch. 99-248.

Assume an accident has taken place and the witnesses are the investigating officer, the non-ticketed driver, and a witness who was standing on the corner. At the trial, the motorist who was given the ticket is present. What happens if the police officer is present and the other two witnesses are absent? Can the judge take testimony from the police officer, introduce the accident report into evidence and then force the defendant to testify?

The accident report should not be admitted because FLA. STAT. § 316.066 precludes its admission. The officer can testify as to what he found at the scene when he arrived,<sup>119</sup> but he should not be able to testify as to who was driving which car because either the motorist was compelled to offer this information under FLA. STAT. §§ 316.062, 316.065, 316.066 and 316.070, or the officer's knowledge of these facts was gathered from hearsay statements made to him by parties not present.<sup>120</sup>

Note that the provision in FLA. STAT. § 316.066(4), permitting law enforcement officers to testify as to "any statement made to the officer

<sup>119</sup> See *Thomas v. Gottlieb*, 520 So. 2d 622 (Fla. 4th DCA 1988) (it was proper for police officer who had no independent recollection of the accident to refer to the accident report for the information that he had observed no apparent injury to the plaintiff at the accident scene).

<sup>120</sup> *State v. Inman*, 347 So. 2d 791 (Fla. 3d DCA 1977); see *Cahill v. Darn*, 519 So. 2d 56 (Fla. 4th DCA 1988); *Dinowitz v. Weinrub*, 493 So. 2d 29 (Fla. 4th DCA 1986) (it was harmful error to permit testimony by a police officer regarding point of impact and location of the accident because it was based on statements made to him for the purpose of completing the accident report).

by the person involved in the accident if that person's privilege against self-incrimination is not violated," refers to testimony given at a criminal trial.<sup>121</sup>

At this point, the state has clearly failed to sustain its burden of proof. All we know is that there were two cars involved in an accident, but not which driver was driving which car.

Can the judge turn to the defendant and force him to testify? Arguably not. Infraction hearings are civil cases; however, there is one key difference between a traffic infraction and any other civil case. If the defendant fails to appear in a civil case the plaintiff can get a default judgment against the defendant. However, before he can get a final judgment, he must be able to offer some proof to the judge to establish his right to that judgment. Other than the threat of a default judgment, the defendant is under no compulsion to appear.

However, in traffic court if the defendant fails to appear, his driver's license is suspended. So in the previous example, if the only witness for the state is the police officer, the state would be unable to prove its case and the defendant should win, just as in other civil cases in which the plaintiff failed to appear. However, if the defendant failed to appear at that point, whether or not the state could prove its case, the defendant's driver's license would be suspended. Therefore, if the defendant appears in court and there are no witnesses present to prove a *prima facie* case against him, other than the police officer, the defendant should be within his rights in refusing to testify.

In a non-accident situation, the only witness against the defendant is the police officer. If the police officer fails to appear, it would be absurd for the judge to ask the defendant what happened and then convict him on his own testimony. In any civil case, if the plaintiff fails to appear, the case is usually dismissed for lack of prosecution, and the same should be done in traffic court.

In summation, it can be said that even though the right against self-incrimination does not apply to civil cases, other commonly accepted rules of court achieve the same results.

## § 1.049 Effect of finding by magistrate

### § 1.049.1—Dismissal

If the official determines that no infraction has been committed, no costs or penalties shall be imposed and any costs or penalties that have been paid shall be returned.<sup>122</sup>

<sup>121</sup> FLA. STAT. § 316.066(4).

<sup>122</sup> FLA. STAT. § 318.14(5).

### § 1.049.2—Finding of guilt

If the commission of an infraction has been proven, the official may impose a civil penalty not to exceed \$500 (except that in cases involving unlawful speed in a school zone, involving unlawful construction zone, or involving death, the civil penalty may not exceed \$1,000), or require attendance at a driver improvement school, or both.<sup>123</sup>

### § 1.050 Failure to appear at hearing

If the offender has signed a promise to appear and then fails to do so, his driver's license is suspended but he is not convicted of the infraction.<sup>124</sup> The infraction is held in abeyance until such time as he clears his driver's license suspension by disposing of the traffic infraction.<sup>125</sup>

A driver, who had been released upon his own recognizance or upon bond by a sheriff or deputy sheriff after an arrest for a traffic violation and then fails to appear in court in answer to the summons, will be guilty of a noncriminal traffic infraction subject to a penalty of \$32<sup>126</sup> in addition to the traffic violation charge.<sup>127</sup>

If the driver has failed to appear for his scheduled appearance, his driver's license will be suspended.<sup>128</sup> If the driver appears after notice has been sent to the Department of Highway Safety and Motor Vehicles but before the Department has actually suspended the license, the driver may pay the civil penalty without a hearing or he may agree to attend a hearing.<sup>129</sup> If he is stopped for driving while his license is suspended, he is now faced with a criminal charge as opposed to a civil traffic infraction.

<sup>123</sup> FLA. STAT. § 318.14(5).

<sup>124</sup> FLA. R. TRAF. CT. 6.620.

<sup>125</sup> Under FLA. STAT. § 318.15, the license and privilege to drive may not be reinstated until the person complies with all obligations and penalties imposed on him under FLA. STAT. § 318.18, and presents to a driver's license office a certificate of compliance issued by the court. Part of the obligation imposed is an additional \$12 civil penalty for failing to comply with FLA. STAT. § 318.18(6). The driver must also pay a nonreturnable \$25 service fee imposed under FLA. STAT. § 322.29 (driver has the option of paying the \$25 service fee to the clerk of the court). The driver must also be in compliance with all FLA. STAT. ch. 322 requirements prior to reinstatement.

<sup>126</sup> FLA. STAT. § 318.18(2).

<sup>127</sup> FLA. STAT. § 30.56.

<sup>128</sup> FLA. STAT. § 318.15. *State v. Addleman*, 388 So. 2d 1230 (Fla. 1980), finding FLA. STAT. § 318.15 (concerning driver's license suspensions) constitutional: "we see no constitutional requirement that the state conduct a hearing subsequent to the failure to appear before suspending the violator's license."

Notice of the failure to appear is sent to the Department of Highway Safety and Motor Vehicles within five days. FLA. R. TRAF. CT. 6.600. See chapter 8 for a further discussion on Driver's Licenses.

<sup>129</sup> FLA. R. TRAF. CT. 6.600(b).

The driver can clear his suspension by paying the civil penalty, electing to attend a driver improvement school or requesting a hearing. Any request for a hearing must be made within a reasonable period of time after the commission of the alleged offense.<sup>130</sup> If an election to attend a hearing is granted and it is determined that the infraction was committed, the official may impose a civil penalty not to exceed \$500 or require attendance at a driver improvement school<sup>131</sup>, or both.

He must also comply with all obligations and penalties imposed<sup>132</sup> and must present a certificate of compliance<sup>133</sup> at a driver's license office. This last step is essential in order to clear the suspension from the computer records.

If the offender had asked for a contested infraction hearing and then fails to appear, the judge may nevertheless proceed with the hearing, take testimony, and impose a penalty.<sup>134</sup> In the interests of justice, however, the court may vacate the judgment upon a showing of good cause by the defender.<sup>135</sup>

## § 1.05 Disposition and sentencing; civil penalties

### § 1.051 General disposition

Any person charged with a noncriminal infraction may pay the civil penalty, elect driving school, plead *nolo* in some cases, or contest the issue of committing the infraction. If he elects to appear or is required to appear before an official, he is considered to have waived his right to the civil penalty provisions of FLA. STAT. § 318.18.<sup>136</sup> If the official determines that the commission of an infraction was proven, he may impose a civil penalty not to exceed \$500 or require attendance at a driver improvement school, or both.<sup>137</sup>

If a driver does not wish to contest the issue, he or she must pay the civil penalty to the clerk of court within thirty days of receiving the citation. It may be mailed or paid in person.<sup>138</sup>

<sup>130</sup> FLA. R. TRAF. CT. 6.600(c).

<sup>131</sup> FLA. R. TRAF. CT. 6.600(c).

<sup>132</sup> FLA. STAT. § 318.15. Part of the obligation imposed is an additional \$12 civil penalty for failing to comply. FLA. STAT. § 316.18(6). The driver must also pay the nonrefundable \$25 service fee imposed under FLA. STAT. § 322.29 (driver has the option of paying the \$25 service fee to the clerk of the court). The driver must also be in compliance with all FLA. STAT. ch. 322 requirements prior to reinstatement.

<sup>133</sup> See FLA. R. TRAF. CT. 6.600(c).

<sup>134</sup> FLA. R. TRAF. CT. 450(g).

<sup>135</sup> FLA. R. TRAF. CT. 6.450(g).

<sup>136</sup> FLA. STAT. § 318.14(5). *But see* State v. Garner, 402 So. 2d 1333 (Fla. 2d DCA 1981).

<sup>137</sup> FLA. STAT. § 318.14(5); *see* Levitz v. State, 339 So. 2d 655 (Fla. 1976).

<sup>138</sup> FLA. STAT. § 318.14(4).

Noncontested traffic infractions are subject to a minimum fine and statutorily-required court cost assessments.

### § 1.052 Penalties after hearing

Traffic cases may be disposed of in one of several ways. It is important that you know the exact ruling in your case before leaving the courtroom. If you are not sure of the ruling, ask the judge to clarify his ruling.

The judge may say things like “ok, you can go;” “there will be no fine, you’re dismissed;” “just pay five dollars court costs, then you are dismissed” or any one of several other phrases that provide you with no idea of the adjudication in that case and what information will actually be reported to Tallahassee. Did the judge find your client not guilty or did he find your client guilty and suspend the fine or did he find your client guilty and withhold adjudication?

The reverse side of the clerk’s copy of the traffic ticket gives all the possible dispositions.<sup>139</sup> They are:

- (1) Guilty;
- (2) Not guilty;
- (3) Dismissed;
- (4) *Nolle Prosequi*;
- (5) Adjudication withheld.

Coupled with the verdicts on the clerk’s copy of the ticket is a list of the possible sentences which include:

- (1) Serve time;
- (2) Sentence withheld, deferred or suspended;
- (3) Probation;
- (4) Traffic School;
- (5) Fine and/or costs.

With the range of possible verdicts and sentences, the most common findings are as follows:

- (1) Not guilty;
- (2) Guilty, fine plus costs;
- (3) Guilty, court costs but no fine;
- (4) Guilty, fine but no court costs;
- (5) Guilty, suspend entry of sentence, no fine, no costs;

<sup>139</sup> See appendix for a copy of back of clerk’s ticket.

- (6) Guilty, withhold adjudication, no fine, no costs;
- (7) Guilty, withhold adjudication, court costs;
- (8) Guilty, suspend fine and costs for traffic school; and
- (9) Guilty, withhold adjudication if offender attends traffic school.

Of all the dispositions listed above, only not guilty and adjudication withheld<sup>140</sup> findings will not appear on the defendant's driving record. All other dispositions will appear on his record.

It is also important to understand the difference between a motorist's computerized Tallahassee driving record and the information on file in the county clerk's office.

At the conclusion of the hearing, the clerk prepares a report of disposition<sup>141</sup> that is forwarded to Tallahassee. If the motorist is found guilty, an appropriate entry is made into the computer. If the motorist is found not guilty, or if adjudication is withheld, then no entry is made on the motorist's computer record. Therefore, if an insurance company writes Tallahassee and requests a motorist's driving record, no indication will appear that the motorist was given a ticket if the motorist is found not guilty, if the case is dismissed, or if adjudication was withheld.

However, if the insurance company requests a record check from the county clerk's office, the clerk is obliged to check the records and furnish a copy of each ticket on file.<sup>142</sup> This will include all tickets issued to a particular motorist regardless of the disposition.

### § 1.053 Fines

**Pedestrian infractions.** The minimum fine for pedestrian infractions<sup>143</sup> is \$15.<sup>144</sup> Any person roller skating or riding in or on a coaster, a toy vehicle, or similar device is subject to all the duties of a pedestrian.<sup>145</sup> A violation of this restriction is subject to the \$15 fine.<sup>146</sup>

**Bicycle infractions.** The minimum fine for bicycle infractions is \$15,<sup>147</sup> unless otherwise specified.<sup>148</sup> For example, it is specified that a person who rents or leases a bicycle to a rider under the age of sixteen

<sup>140</sup> If adjudication is withheld for any person charged or cited for a noncriminal traffic violation under FLA. STAT. § 318.14; it is not considered a conviction. *See* FLA. STAT. § 318.14(11).

<sup>141</sup> If adjudication is withheld for any person charged or cited for a noncriminal traffic violation under FLA. STAT. § 318.14, it is not considered a conviction. *See* FLA. STAT. § 318.14(11).

<sup>142</sup> FLA. STAT. § 28.24(25).

<sup>143</sup> FLA. STAT. § 316.130.

<sup>144</sup> FLA. STAT. § 318.18(1).

<sup>145</sup> FLA. STAT. § 316.2065(12).

<sup>146</sup> FLA. STAT. § 318.18(1).

<sup>147</sup> FLA. STAT. § 316.2065.

<sup>148</sup> FLA. STAT. § 318.18(1)(b).

knowing that the rider does not possess a bicycle helmet and who fails to provide a bicycle helmet to the rider commits a nonmoving violation.<sup>149</sup>

Other violations of FLA. STAT. ch. 316 by persons fourteen years of age or under who are operating bicycles, regardless of the noncriminal traffic infraction's classification, cost \$15 as a minimum fine, if noncontested, and are also subject to the statutory court costs.<sup>150</sup>

**Nonmoving traffic infractions.** A \$30 fine, plus statutory court costs, is assessed for the following infractions if they are noncontested:<sup>151</sup>

- All noncriminal infractions that are punishable as “nonmoving violations.”
- Tampering with air pollution control devices (FLA. STAT. § 316.2935).<sup>152</sup>
- Driving a vehicle in an unsafe condition (FLA. STAT. § 316.610).
- Failing to notify of a change of address or name (FLA. STAT. § 322.19).
- Failing to exhibit upon demand a vehicle's registration (FLA. STAT. § 320.0605) or a driver's license (FLA. STAT. § 322.15).<sup>153</sup>
- Operating a vehicle with an expired registration (FLA. STAT. § 320.07(3)). If the registration has expired more than six months previously, it is a second-degree misdemeanor upon the second offense.<sup>154</sup>
- Operating a vehicle with a driver's license that has been expired for four months or less<sup>155</sup> (FLA. STAT. § 322.065).

<sup>149</sup> FLA. STAT. § 316.2065(16).

<sup>150</sup> FLA. STAT. § 318.18(1)(c).

<sup>151</sup> FLA. STAT. § 318.18(2).

<sup>152</sup> The \$30 fine is reduced to \$5 if the motorist corrects the defect, obtains proof of the timely repair by an executed affidavit of compliance, pays \$4 to the law enforcement agency for an inspection, and presents the affidavit to the clerk of court within 30 days of receiving the citation.

<sup>153</sup> Citations for failing to have a valid driver's license (FLA. STAT. § 322.03), for failing to exhibit a driver's license upon demand, and for operating a vehicle with a driver's license that has been expired for four months or less may be dismissed by the clerk of court, subject to a \$5 dismissal fee, if the driver can show a license that was valid at the time of the arrest.

<sup>154</sup> An expired registration is also subject to delinquent fees. See FLA. STAT. §§ 318.18(2)(b), 320.07(4).

<sup>155</sup> Citations for failing to have a valid driver's license (FLA. STAT. § 322.03), for failing to exhibit a driver's license upon demand, and for operating a vehicle with a driver's license that has been expired for four months or less may be dismissed by the clerk of court, subject to a \$5 dismissal fee, if the driver can show a license that was valid at the time of the arrest.

Citations for failing to show proof of PIP insurance, a nonmoving violation, may be dismissed by the clerk of the court, subject to a \$5 dismissal fee, if the driver can show proof of insurance that was valid at the time of the arrest.<sup>156</sup>

**Moving traffic infractions.** The civil penalty for most moving violations not requiring a mandatory appearance is \$60, plus statutory court costs.<sup>157</sup> The most notable exception are speeding infractions. *See* chapter 2, “Speeding Infractions.” There are some other different penalties, however, for specified moving violations:

The penalty for failing to stop for a school bus is \$100. For a subsequent offense within five years, the driver’s license will also be suspended for a period between ninety days and six months.<sup>158</sup> Since October 1, 1997, there is a minimum civil penalty of \$200 if a motorist passes a school bus on the side that children enter and exit when the school bus displays a stop signal. A subsequent offense committed within five years requires the suspension of the driver’s license for a period between 180 days and one year.<sup>159</sup>

There is a \$25 fine for persons under sixteen who ride all-terrain vehicles without a safety helmet.<sup>160</sup>

\$100 may be assessed for a violation of the traffic control devices at railroad-highway grade crossings.<sup>161</sup>

The fine for failing to pay a highway toll is a bit confusing. Section 3 16.1001 says that it is punishable as a moving violation under FLA. STAT. ch. 318. Section 318.18(7) states that a violation of FLA. STAT. § 316.1001 is \$100, except that a person may elect to pay \$30 to the clerk of court, in which case adjudication is withheld, and no points are assessed.

### § 1.054 Court costs, fees

Court costs in addition to the stated fines may not be less than the following:<sup>162</sup>

For pedestrian infractions:	\$3
For nonmoving traffic infractions:	\$6

<sup>156</sup> FLA. STAT. § 318.18(2)(b)3.

<sup>157</sup> FLA. STAT. § 318.18(3)(a).

<sup>158</sup> FLA. STAT. § 318.18(5)(a); *see* FLA. STAT. § 316.1 72. If at hearing, the alleged offender is found to have committed the offense, the court will impose a minimum civil penalty of \$100.

<sup>159</sup> FLA. STAT. § 318.18(5)(b); *see* FLA. STAT. § 316.1 72. If at hearing, the alleged offender is found to have committed the offense, the court will impose a minimum civil penalty of \$200.

<sup>160</sup> FLA. STAT. § 318.18(10); *see* FLA. STAT. § 316.2074, FLA. STAT. § 318.18(9); *see* FLA. STAT. § 316.1575.

<sup>161</sup> FLA. STAT. § 316.18(9); *see* FLA. STAT. § 316.1575.

<sup>162</sup> FLA. STAT. § 318.118(11).

For moving traffic                      \$10  
infractions:

Additionally, there is another \$3 court cost for each infraction. There may also be an additional \$2 court cost when assessed by a municipality or county. Court costs may not exceed \$30. No other costs, fees, or surcharges may be added to the civil traffic penalties.<sup>163</sup>

FL.A. R. TRAF. CT. 6.470 provides that even if no hearing is held and the offender admits the infraction by paying the penalty or receiving a withheld adjudication pursuant to FLA. STAT. § 318.14(9) or (10), costs and surcharges as provided by law or administrative order may be imposed.

Delinquent fees. Failure to pay the civil penalties within thirty days or failure to comply with the court requirements results in an assessment of an additional \$12 civil penalty.<sup>164</sup>

#### § 1.055 Community service

If for reasons of financial hardship, a driver cannot pay the civil penalties assessed, he or she can satisfy the civil penalties by public works or community service. Each hour of service is valued at the minimum wage, unless there is a community service need for that person's trade or profession. In such case, the rate for each hour of service is the person's average standard wage.<sup>165</sup>

Where financial hardship is not an issue, it is in the court's discretion whether the offender may perform community service in lieu of the civil penalties.<sup>166</sup>

If a noncriminal traffic infraction has caused or resulted in the death of another, the person who committed the infraction may be required by the court, in addition to any other penalties assessed, to serve 120 community service hours in a trauma center or hospital that regularly receives victims of vehicle accidents, under the supervision of a registered nurse, an emergency room physician, or an emergency medical technician pursuant to a voluntary community service program operated by the trauma center or hospital.<sup>167</sup>

#### § 1.056 Driving school

Persons cited for a noncriminal traffic infraction may elect to attend a basic driver improvement course approved by the Department of

<sup>163</sup> FLA. STAT. § 318.121.

<sup>164</sup> FLA. STAT. § 318.18(8)(a).

<sup>165</sup> FLA. STAT. § 318.18(8)(b).

<sup>166</sup> FLA. STAT. § 318.18(8)(b).

<sup>167</sup> FLA. STAT. §§ 318.14(1) and 318.18(8)(c); see FLA. STAT. § 316.027(4).

Highway Safety and Motor Vehicles instead of appearing in court.<sup>168</sup> The advantage of such a course of action is that adjudication is withheld, no points are assessed against the driver's record, and the civil penalty is reduced by eighteen percent.<sup>169</sup> The choice of driving school is not open to any individual who has previously made such an election within the preceding twelve months nor is it open to anyone who has previously made five such elections.<sup>170</sup>

### § 1.057 Proof of compliance; failure to comply with disposition

For selected offenses, there is still another alternative to paying the civil penalty and admitting the infraction, or going to court to contest the infraction. Those individuals charged with the following infractions may plead *nolo contendere* and have an adjudication of guilt withheld upon presenting proof of compliance to the clerk of court or to the Traffic Violations Bureau prior to the scheduled court appearance date:<sup>171</sup>

FLA. STAT. §§ 322.03, 322.065, or 322.15(1) —operating a motor vehicle without a valid driver's license;

Operating a motor vehicle with a license that has been suspended for failure to appear, failure to pay a civil penalty, or failure to attend a driver improvement course pursuant to FLA. STAT. § 322.291;

FLA. STAT. §§ 320.0605, 320.07 —operating a vehicle in violation of registration requirements<sup>172</sup> ; and

FLA. STAT. § 316.646 —operating a motor vehicle without proof of insurance.

Proof of compliance consists of a valid, renewed, or reinstated driver's license or registration certificate or proper proof of maintenance of security as required by FLA. STAT. § 316.646.<sup>173</sup>

The choice is not available to anyone who has previously made such an election within the preceding twelve months nor is it open to anyone who has previously made three such elections.<sup>174</sup>

<sup>168</sup> FLA. STAT. § 318.14(9).

<sup>169</sup> FLA. STAT. § 318.14(9).

<sup>170</sup> FLA. STAT. § 318.14(9).

<sup>171</sup> FLA. STAT. § 318.14(10). See FLA. R. TRAF. CT. 6.360(b), providing that when driving school is elected, the clerk may allow such additional time as may be reasonably necessary in order to fulfill the statutory requirements (up to 60 days; for good cause shown, the court may grant necessary additional time).

<sup>172</sup> Note that a registration expired for less than six months is a noncriminal infraction, but that a registration expired for longer constitutes a second-degree misdemeanor.

<sup>173</sup> FLA. STAT. § 318.14(10)(b).

<sup>174</sup> FLA. STAT. § 318.14(10)(a).

Even though the fine has been waived, court costs of \$22 are still assessed, except that violations of FLA. STAT. § 316.646(1)—(3) are assessed court costs of \$7.<sup>175</sup>

Persons who fail to comply with the civil penalties within the time period specified, or who fail to attend the driver improvement school they elected will have their license and privilege to drive suspended.<sup>176</sup> Within five days of such failure, the clerk of the court will notify the Division of Driver's Licenses, DHSMV. The Department's order suspending the driver's license is effective twenty days after the date the order of suspension is mailed. If not reinstated, the suspension remains on the Department's records for seven years from the date imposed.<sup>177</sup>

If the offender appears after the notice has been sent but before the Department has suspended the driver's license, the civil penalty may be paid without a hearing or the offender may agree to attend a hearing. The Department is notified immediately.<sup>178</sup>

If the offender appears after the driver's license has been suspended, he or she may still pay the civil penalty, elect driving school, or request a hearing. Hearings must, however, be made within a reasonable time after the commission of the alleged offense. If an election to attend a hearing is granted and it is determined that the infraction was committed, the official may impose a civil penalty not to exceed \$500, except for a few specified infractions, and may require attendance at a driver improvement school, or both. The offender will 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.<sup>179</sup>

In order to have the license reinstated, the person must comply with all obligations and penalties imposed,<sup>180</sup> must present a certificate of compliance issued by the court at a driver's license office, and pay a \$25 service fee in order to clear the suspension.<sup>181</sup>

### § 1.06 Post-conviction relief

In many cases the attorney has not been contacted by his client until after the hearing has taken place. Many people are convinced they are in the right and refuse to acknowledge the possibility that they may be

<sup>175</sup> FLA. STAT. § 318.14(10)(b).

<sup>176</sup> FLA. STAT. § 318.15(1).

<sup>177</sup> FLA. STAT. § 318.15(1).

<sup>178</sup> FLA. R. TRAF. CT. 6.600(b).

<sup>179</sup> FLA. R. TRAF. CT. 6.600(c); FLA. STAT. § 318.14(5).

<sup>180</sup> The person must be in compliance with FLA. STAT. ch. 322, and with FLA. STAT. § 318.18.

<sup>181</sup> See FLA. STAT. § 318.15(2).

found guilty. Thus, they feel there is no need for an attorney. This situation is very common in traffic cases because the average citizen has very little understanding or comprehension of the traffic laws and what his rights and duties are under the law. There appears to be one universal truth regarding driving; everyone considers himself to be a good driver. No one will admit they are a poor driver no matter how terrible their record.

Whether you represented the client at the hearing or acquired the case afterwards, speed is of the essence in post conviction relief. “A motion for a new hearing or in arrest of judgment, or both, may be made within ten days, or such greater time as the official may allow, not to exceed thirty days after the finding of the official.”<sup>182</sup> If you were present at the original hearing, you may dictate the motion into the record if a court reporter is present and argue your motion then. If you were not present at the original hearing, the motion must be in writing and filed with the clerk’s office or the violations bureau.

If your client has paid the fine within thirty days of the commission of the infraction and then the changes his mind; the motion must be made within the time period allowed from the date of the fine was paid.

If the motion is granted, then the new hearing shall proceed in all respects as if no former trial had been had.<sup>183</sup>

All infractions are tried off the original citation. Your motion for a new trial will be attached to the citation. The back of the original ticket will contain, in addition to the judge’s original findings, a note that a new trial has been granted. The judge now hearing the case will be aware of this and may be influenced one way or another. If your motion for a new hearing is granted, ask the clerk to place a new backing on the ticket covering the previous notations or ask the clerk to copy the front of the ticket and attach a fresh backing to the copy in order to avoid any prejudice.

The rules also provide for the correction and reduction of any penalties.<sup>184</sup> This motion is distinguished from a motion for a new hearing in that you are not asking for a new trial but for a mitigation of the penalty imposed.

If the penalty imposed was illegal, then it can be corrected at any time. If the penalty was a legal one, it can only be corrected or reduced within sixty days of the imposition of the penalty.<sup>185</sup>

<sup>182</sup> FLA. R. TRAF. CT. 6.540, as amended eff Jan. 1, 1989. Prior to that date, the time was four days.

<sup>183</sup> FLA. R. TRAF. CT. 6.520.

<sup>184</sup> FLA. R. TRAF. CT. 6.490.

<sup>185</sup> FLA. R. TRAF. CT. 6.490.

This motion is an excellent alternative available to the practitioner when he or she receives a case after the time for a motion for new hearing has passed but prior to sixty days from the adjudication date. The most sought after reduction is to change the sentence to “adjudication withheld.” When adjudication is withheld, the infraction never appears on the computer print-out of that driver’s permanent record. Therefore, no points are assessed. The only record of the defendant having been found guilty would appear on the back of the original traffic citation. For all practical purposes, withholding adjudication is equivalent to a not guilty finding.

The last remedy is an appeal to the circuit court in accordance with the Florida Rules of Appellate Procedure.

#### § 1.061 Motion to vacate

In the interests of justice, the hearing officer or magistrate may vacate a judgment upon a showing of good cause by a defendant.<sup>186</sup> This rule applies only to situations where the hearing proceeded without the presence of the defendant,, who indicated an intent to proceed by asking for the hearing, and the defendant later indicates a willingness to have participated and shows good cause as to why he or she was not present. For example, where a motion to continue is filed before the hearing but is lost by the clerk’s office and the magistrate does not otherwise know of the continuance, there is good cause for the new hearing.<sup>187</sup> Also, an attorney coming in late for a hearing with a good reason for the tardiness, and missing the calling of the case, which proceeded without him, is good cause for a new hearing.<sup>188</sup>

#### § 1.062 Motion for new hearing

When a new hearing is granted, the new hearing shall proceed in all respects as if no former trial had been heard.<sup>189</sup> Motions for a new hearing must be made within ten days after the finding of the judge. The motion must be in writing.<sup>190</sup>

#### § 1.063 Motion to reduce penalty

The court may at any time correct an illegal penalty imposed by it.<sup>191</sup> Legal penalties may be corrected or reduced by the judge within sixty days of the imposition of the sentence.<sup>192</sup>

<sup>186</sup> FLA. R. TRAF. CT. 6.450(g).

<sup>187</sup> See *Bennardo v. City of Delray Beach*, 8 Fla. L. Weekly Supp. 425b (Fla. 15<sup>th</sup> Cir. 2001); *McGuinness v. State*, 6 Fla. Weekly Supp. 468 (Fla. 11<sup>th</sup> Cir. 1999).

<sup>188</sup> See *Davis v. State*, 8 Fla. L. Weekly Supp. 353a (Fla. 15<sup>th</sup> Cir. 2001).

<sup>189</sup> FLA. R. TRAF. CT. 6.520.

<sup>190</sup> FLA. R. TRAF. Cr. 6.540.

<sup>191</sup> FLA. R. TRAF. CT. 6.490(a).

<sup>192</sup> FLA. R. TRAF. CT. 6.490(b).

**§ 1.064 Appellate review**

Decisions of the hearing officer or magistrate are appealable to the Circuit Court in the jurisdiction.