

# Supreme Court of Florida

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No. SC19-1665

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## **IN RE: AMENDMENTS TO THE FLORIDA RULES OF TRAFFIC COURT–RULE 6.040.**

November 14, 2019

PER CURIAM.

The Court has for consideration amendments to Florida Rule of Traffic Court 6.040 (Definitions) proposed by The Florida Bar’s Traffic Court Rules Committee<sup>1</sup> and approved by the Board of Governors of The Florida Bar. The Court has jurisdiction<sup>2</sup> and adopts the amendments as proposed.

The amendments to rule 6.040 reorganize the existing subdivisions of the rule, amend the definition of “courts” in subdivision (d) of the rule, and add several additional subdivisions to the rule to provide new definitions. New subdivision (w) of the rule contains the definition of “victim” found in article I, section 16(e)

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1. *See* Fla. R. Jud. Admin. 2.140(e)(1).

2. *See* art. V, § 2(a), Fla. Const.

of the Florida Constitution. The other new subdivisions contain various statutory definitions found in section 322.01, Florida Statutes (2019), including a definition recently added by chapter 2019-167, section 8, Laws of Florida, which became effective October 1, 2019. *See* ch. 2019-167, § 156, Laws of Fla. Finally, a new committee note is added explaining the amendments.

Accordingly, the Florida Rules of Traffic Court are amended as reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The committee note is offered for explanation only and is not adopted as an official part of the rules. The amendments shall take effect immediately upon the release of this opinion. Because the amendments were not published for comment prior to their adoption, interested persons shall have seventy-five days from the date of this opinion in which to file comments with the Court.<sup>3</sup>

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3. All comments must be filed with the Court on or before January 28, 2020, with a certificate of service verifying that a copy has been served on the Committee Chair, Ira D. Karmelin, 3897 N. Haverhill Road, Suite 127, West Palm Beach, Florida 33417-8337, dui-help@comcast.net, and on the Bar Staff Liaison to the Committee, Heather Savage Telfer, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, htelfer@floridabar.org, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Committee Chair has until February 18, 2020, to file a response to any comments filed with the Court. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal) in accordance with *In re Electronic Filing in the Supreme Court of Florida via the Florida Courts E-Filing Portal*, Fla. Admin. Order No. AOSC13-7 (Feb. 18, 2013). If

It is so ordered.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, LAGOA, LUCK, and MUÑIZ, JJ., concur.

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

Original Proceeding – Florida Rules of Traffic Court

Ira D. Karmelin, Chair, Traffic Court Rules Committee, West Palm Beach, Florida;  
and Joshua E. Doyle, Executive Director, and Heather Savage Telfer, Staff  
Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioner

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filed by a nonlawyer or a lawyer not licensed to practice in Florida, the comment may be, but is not required to be, filed via the Portal. Comments filed via the Portal must be submitted in Microsoft Word 97 or higher. *See In re Electronic Filing in the Florida Supreme Court*, Fla. Admin. Order No. AOSC17-27 (May 9, 2017). Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927; no additional copies are required or will be accepted.

## APPENDIX

### RULE 6.040. DEFINITIONS

The following definitions apply:

(a) “Cancellation” means the act of declaring a driver license void and terminated.

(b) “Clerk” means clerk of the initiating court or trial court.

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

(d) “Court” means any circuit or county court to which these rules apply and the judge thereof or any civil traffic hearing officer program and the traffic hearing officer thereof.

(~~b~~e) “Charging document” means any information, uniform traffic citation, complaint affidavit, or any other manner of charging a criminal traffic offense under law.

(~~c~~e) ~~“Judge” means any judicial officer elected or appointed by the governor authorized by law to preside over a court to which these rules apply.~~

(~~d~~e) ~~“Law” includes the constitutions of the United States and the State of Florida, statutes, ordinances, judicial decisions, and these rules.~~

(~~e~~) ~~“Oath” includes affirmations.~~

(f) ~~“Clerk” means clerk of the initiating court or trial court.~~ “Criminal traffic offense” means a violation that may subject a defendant upon conviction to incarceration, within the jurisdiction of a court to which these rules apply.

(g) ~~“Open court” means in a courtroom as provided or judge’s or traffic hearing officer’s chambers of suitable judicial decorum.~~ “Department” means the Department of Highway Safety and Motor Vehicles, defined in section 20.24, Florida Statutes, or the appropriate division thereof.

(h) ~~“Prosecutor” means any attorney who represents a state, county, city, town, or village in the prosecution of a defendant for the violation of a statute or~~

ordinance. “Disqualification” means a prohibition, other than an out-of-service order, that precludes a person from driving a commercial motor vehicle.

~~(i) “Criminal traffic offense” means a violation that may subject a defendant upon conviction to incarceration, within the jurisdiction of a court to which these rules apply. “Infraction” means a noncriminal traffic violation that is not punishable by incarceration and for which there is no right to a trial by jury or a right to court-appointed counsel.~~

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

~~(k) “Infraction” means a noncriminal traffic violation that is not punishable by incarceration and for which there is no right to a trial by jury or a right to court-appointed counsel. “Judge” means any judicial officer elected or appointed by the governor authorized by law to preside over a court to which these rules apply.~~

~~(l) “Official” means any state judge or traffic hearing officer authorized by law to preside over a court or at a hearing adjudicating traffic infractions. “Law” includes the constitutions of the United States and the State of Florida, statutes, ordinances, judicial decisions, and these rules.~~

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

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

~~(o) “Infraction requiring a mandatory hearing” refers to an infraction listed in section 318.19, Florida Statutes, which requires an appearance before a designated official at the time and location of the scheduled hearing. “Official” means any state judge or traffic hearing officer authorized by law to preside over a court or at a hearing adjudicating traffic infractions.~~

(p) “Traffic hearing officer” means an official appointed under the civil traffic infraction hearing officer program who shall have the power to adjudicate civil traffic infractions subject to certain exceptions. “Open court” means in a courtroom as provided or judge’s or traffic hearing officer’s chambers of suitable judicial decorum.

(q) “Counsel” means any attorney who represents a defendant. “Out-of-service order” means a prohibition issued by an authorized local, state, or Federal Government official that precludes a person from driving a commercial motor vehicle.

(r) “Prosecutor” means any state attorney or any attorney who represents a state, state or local agency, county, city, town, or village in the prosecution of a defendant for the violation of a statute or ordinance.

(s) “Revocation” means the termination of a licensee’s privilege to drive.

(t) “Suspension” means the temporary withdrawal of a licensee’s privilege to drive a motor vehicle.

(u) “Suspension or revocation equivalent status” is a designation for a person who does not have a driver license or driving privilege but would qualify for suspension or revocation of his or her driver license or driving privilege if licensed. The department may designate a person as having suspension or revocation equivalent status in the same manner as it is authorized to suspend or revoke a driver license or driving privilege by law.

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

(w) “Victim” is any person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term “victim” includes the victim’s lawful representative, the parent or guardian of a minor, or the next of kin of a homicide victim, except upon a showing that the interest of such individual would be in actual or potential conflict with the interests of the victim.

(x) “Warrant” includes capias.

## Committee Notes

**1990 Amendment - 1996 Amendment.** [No Change]

**2019 Amendment.** The Committee amended the definitions to effectuate the amendment to article I, section 16 of the Florida Constitution and chapter 2019-167, Laws of Florida. Further amendments place the definitions in alphabetical order.