

General master/traffic hearing officer

Number: INFORMAL

Date: June 22, 2000

The Honorable Walter N. Colbath, Jr.
Chief Judge
Fifteenth Judicial Circuit
County Courthouse
205 North Dixie Highway
West Palm Beach, Florida 33401

RE: CRIMINAL LAW--FIRST APPEARANCE--JUDICIAL OFFICERS--MASTERS--TRAFFIC HEARING OFFICERS--whether general master or traffic hearing officer is a judicial officer for first appearance purposes. s. 318.32, Fla. Stat.; Art. V, s. 1, Fla. Const.; Art. X, s. 12, Fla. Const.; Rule 1.490, Fla.R.Civ.P.; Rule 3.130, Fla.R.Crim.P.; Rule 6.040, Fla. Traffic Ct.R.

Dear Judge Colbath:

This is in response to your request for assistance in determining whether a general master or traffic hearing officer is a judicial officer for purposes of a first appearance under Rule 3.130, Florida Rules of Criminal Procedure.

While this office regretfully may not interpret the Judiciary's rules in a formal opinion at this time, the following informal comments are provided for your consideration.

Rule 3.130(a), Florida Rules of Criminal Procedure, requires that every arrested person "shall be taken before a judicial officer, either in person or by electronic audiovisual device in the discretion of the court, within 24 hours of arrest." The rule further states:

"The chief judge of the circuit for each county within the circuit shall designate 1 or more judicial officers *from the circuit court, or county court*, to be available for the first appearance and proceedings." (e.s.)

Moreover, Rule 3.120, Florida Rules of Criminal Procedure, recognizes that "[e]ach state and county judge is a committing magistrate . . . [who] may commit the offender to jail, may order the defendant to appear before the proper court to answer the charge in the complaint, or may discharge the defendant from custody or from any undertaking to appear."

Article V, section 1, Florida Constitution, provides:

"The judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other courts may be established by the state, any political subdivision or any municipality. The legislature shall, by general law, divide the state into appellate court districts and judicial circuits following county lines. Commissions established by law, or administrative officers or bodies may be granted quasi-judicial power in matters connected with

the functions of their offices. *The legislature may establish by general law a civil traffic hearing officer system for the purpose of hearing civil traffic infractions.* The legislature may, by general law, authorize a military court-martial to be conducted by military judges of the Florida National Guard, with direct appeal of a decision to the District Court of Appeal, First District." (e.s.)

Rule 6.040(p), Florida Traffic Court Rules, defines "[t]raffic hearing officer" as "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." (e.s.) A traffic hearing officer's jurisdiction, therefore, would appear to be limited to civil matters and preclude acting in a criminal proceeding.[1]

The appointment of general masters is addressed in Rule 1.490, Florida Rules of Civil Procedure. The rule specifically allows the following:

"Judges of the circuit court may appoint as many general masters from among the members of the Bar in the circuit as the judges find necessary, and the general masters shall continue in office until removed by the court. The order making an appointment shall be recorded. Every person appointed as a general master shall take the oath required of officers by the Constitution and the oath shall be recorded before the master discharges any duties of that office."

There does not appear to be any provision for the appointment of masters for criminal proceedings. The rules contemplate that only civil cases may be referred to a master and then, only when the parties consent.[2] While grounds for disqualification of a judge apply to a master, nothing in the general powers and duties of a master set forth in Rule 1.490(d), Florida Rules of Civil Procedure, indicates that a master could be appointed to conduct first appearances in criminal proceedings.

Finally, Article X, section 12(f), Florida Constitution, states: "The terms 'judicial office,' 'justices' and 'judges' shall not include judges of courts established solely for the trial of violations of ordinances." [3]

I trust these informal comments will assist you in determining whether a general master or traffic hearing officer is a judicial officer for purposes of conducting a first appearance.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

[1] See s. 318.32, Fla. Stat., placing the following limitations on the jurisdiction of traffic hearing officers:

"(1) Hearing officers shall be empowered to accept pleas from and decide the guilt or innocence

of any person, adult or juvenile, charged with any civil traffic infraction and shall be empowered to adjudicate or withhold adjudication of guilt in the same manner as a county court judge under the statutes, rules, and procedures presently existing or as subsequently amended, except that hearing officers shall not:

(a) Have the power to hold a defendant in contempt of court, but shall be permitted to file a motion for order of contempt with the appropriate state trial court judge;

(b) Hear a case involving a crash resulting in injury or death; or

(c) Hear a criminal traffic offense case or a case involving a civil traffic infraction issued in conjunction with a criminal traffic offense."

[2] Rule 1.490(c), Fla.R.Civ.P.

[3] See *also* Op. Att'y Gen. Fla. 65-96 (1965) (judges of metropolitan court of Dade County do not have authority to act as committing magistrates for persons charged with violations of state criminal laws).