

Proposed amendments to Rule 6.340 (Affidavit of Defense or Admission and Waiver of Appearance)

The Traffic Court Rules Committee proposes amendments to Rule 6.340 (Affidavit of Defense or Admission and Waiver of Appearance). This amendment eliminates the sample affidavit of defense or admission and waiver of appearance form and introduces two new forms: A sample plea of guilty/no contest with no request for hearing and a sample plea of not guilty with a request for hearing. The committee believes these new forms will be easier for pro se litigants to understand and will reduce the amount of errors when completing the forms. Pursuant to Florida Rule of General Practice and Judicial Administration 2.140, the Traffic Court Rules Committee invites comments on the proposed amendments. Interested persons have until August 31, 2023, to submit any comments, electronically, to the Chair Howard Williams and the Florida Bar Liaison Michael Hodges at rules@floridabar.org.

RULE 6.340. AFFIDAVIT OF DEFENSE OR ADMISSION AND WAIVER OF APPEARANCE

(a) Appearance in Court. At trial, any defendant charged with an infraction may, in lieu of personal appearance or appearance using communication technology, file an affidavit of defense or an admission that the infraction was committed as provided in this rule.

(b) Posting of Bond. The trial court may require a bond to be posted before the court will accept an affidavit in lieu of appearance at trial. The defendant shall be given reasonable notice if required to post a bond.

(c) Attorney Representation. If a defendant is represented by an attorney in an infraction case, said attorney may represent the defendant in the absence of the defendant at a hearing or trial without the defendant being required to file an affidavit of defense. The attorney shall file a written notice of appearance. The attorney may enter any plea, proceed to trial, present evidence other than

the defendant's statements, and examine and cross examine witnesses without the defendant being required to file an affidavit of defense. Nonetheless, a defendant represented by an attorney may file an affidavit of defense. If a represented defendant files such an affidavit, the affidavit must be signed and properly notarized, subjecting the affiant to perjury prosecution for false statements.

~~(d) Sample Affidavit of Defense or Admission and Waiver of Appearance.~~

_____* IN THE COUNTY COURT,
STATE OF FLORIDA, _____* COUNTY, FLORIDA
_____*
Plaintiff, _____*
_____* CASE NO. _____

_____*
vs. _____*
_____* CITATION NO. _____
_____*
_____*
Defendant. _____* DRIVER'S LICENSE NO. _____
_____*
_____*

~~AFFIDAVIT OF DEFENSE OR
ADMISSION AND WAIVER OF APPEARANCE~~

~~Before me personally appeared _____, who after first being placed under oath, swears or affirms as follows:~~

~~1. My name, address, and telephone number are:~~

~~Name: _____~~

~~Address: _____~~

~~_____~~

~~Telephone No.: _____~~

~~2. I am the defendant in the above-referenced case and am charged with the following violation(s): (List the charges as you understand them to be.)~~

~~_____

_____~~

[Note: This is not an admission that you violated any law.]

3. — Check **only one** as your plea:

~~_____ I hereby plead **NOT GUILTY** and file this affidavit of defense as my sworn statement herein. I understand that when I plead not guilty, I do not have to supply any further statement. I understand that by my filing this affidavit, the hearing officer or judge will have to make a decision as to whether I committed the alleged violation by the sworn testimony of the witnesses, other evidence, and my statement. I understand that I am waiving my appearance at the final hearing of this matter.~~

~~_____ I hereby plead **GUILTY** and file this affidavit as an explanation of what happened and as a statement that the hearing officer or judge can consider before pronouncing a sentence. I understand that I am not required to make any statement. I understand that the hearing officer or judge will determine the appropriate sentence and decide whether to adjudicate me guilty.~~

~~_____ I hereby plead **NO CONTEST** and file this affidavit as an explanation of what happened and as a statement that the hearing officer or judge can consider before pronouncing a sentence. By pleading no contest, I understand that I am not admitting or denying that the infraction was committed but do not contest the charges, and I understand that I may be sentenced and found guilty even though I entered a plea of no contest. I understand that I am not required to make any statement. I understand that the hearing officer or judge will determine any appropriate sentence and decide whether to adjudicate me guilty.~~

4. — Defendant's Statement: (additional papers, documents, photos, etc. can be attached but should be mentioned herein).

I understand that any material misrepresentation could cause me to be prosecuted for a separate criminal law violation.

/s/ _____
Affiant/Defendant

Sworn to (or affirmed) and subscribed before me, the undersigned authority, on _____

Personally known _____

Produced identification _____ Type of ID produced _____

/s/ _____

Notary Public, Deputy Clerk, or other authority

NAME:

Commission No.

My Commission Expires:

NOTE: It is your responsibility to make sure this affidavit is in the court file before the hearing date.

If Affiant/Defendant is under the age of 18, a parent or guardian must sign this affidavit:

Parent or Guardian

(d) Sample Plea of Guilty / No Contest and No Request For Hearing.

| | | |
|-------------------|---|----------------------------|
| STATE OF FLORIDA, | * | IN THE COUNTY COURT, |
| | * | _____ COUNTY, FLORIDA |
| Plaintiff, | * | |
| | * | CASE NO. _____ |
| vs. | * | |
| | * | CITATION NO. _____ |
| | * | |
| Defendant.* | * | DRIVER'S LICENSE NO. _____ |
| | * | |

PLEA OF GUILTY / NO CONTEST AND NO REQUEST FOR HEARING

Before me personally appeared _____, who swears and affirms as follows:

1. My name, address, and telephone number are:

Name: _____

Address: _____

Telephone No.: _____

2. I am the defendant in the above-referenced case and am charged with the following violation(s): (List the charges as you understand them.)

[Note: This is not an admission that you violated any law.]

3. **I hereby plead NO CONTEST or GUILTY and I DO NOT REQUEST A HEARING.** I understand that I may file this statement as an explanation of what happened and that the hearing officer or judge can consider this statement before pronouncing a sentence, but I am not required to make any statement. By pleading no contest, I understand that I am not admitting or denying that the infraction was committed but do not contest the charge(s), and I understand that I may be sentenced and found guilty even though I entered a plea of no contest. I understand that the hearing officer or judge will determine any appropriate sentence and decide whether to adjudicate me guilty. I am waiving my appearance at a hearing.

4. Defendant's Statement: (additional papers, documents, photos, etc. can be attached but should be mentioned here). If you choose, you may explain what happened in your own words in this section. Once you submit this statement, it will be considered by the hearing officer or judge.

5. I understand that this statement and explanation is voluntary and is not required of me. I am choosing to submit this statement without the advice of a lawyer. I understand that this form must be notarized before it is submitted and accepted by the Court. I understand that once this form is submitted, this matter will not be set for additional hearings, unless requested by the State of Florida or the Court. I understand that if I am found to have committed this violation, there have been no promises regarding which sentence I will receive.

6. I understand that any material misrepresentation could cause me to be prosecuted for a separate criminal law violation.

/s/ _____
Signature of Affiant/Defendant

Sworn to (or affirmed) and subscribed before me, the undersigned authority, on _____

Personally known _____

Produced identification _____ Type of ID produced _____

/s/ _____

Notary Public, Deputy Clerk, or other authority

NAME:

Commission No. _____

My Commission Expires: _____

NOTE: It is the Affiant/Defendant's responsibility to make sure this affidavit is provided to the clerk of court no less than 5 business days before the hearing date for this affidavit to be considered by the hearing officer or judge.

If Affiant/Defendant is under the age of 18, a parent or guardian must sign this affidavit:

Parent or Guardian

(e) Sample Plea of Not Guilty and Request For Hearing.

| | | |
|--------------------|---|----------------------------|
| STATE OF FLORIDA, | * | IN THE COUNTY COURT, |
| | * | _____ COUNTY, FLORIDA |
| <u>Plaintiff,</u> | * | |
| | * | CASE NO. _____ |
| vs. | * | |
| | * | CITATION NO. _____ |
| | * | |
| <u>Defendant.*</u> | * | DRIVER'S LICENSE NO. _____ |
| | * | |

PLEA OF NOT GUILTY AND REQUEST FOR HEARING

Before me personally appeared _____, who swears and affirms as follows:

1. My name, address, and telephone number are:

Name: _____

Address: _____

Telephone No.: _____

2. I am the defendant in the above-referenced case and am charged with the following violation(s): (List the charges as you understand them.)

[Note: This is not an admission that you violated any law.]

3. I hereby plead NOT GUILTY and I REQUEST A HEARING. I will either: (choose only one of the below options)

A. I WILL appear in person (or virtually, if available in your jurisdiction) for the hearing; OR

B. I WILL submit a sworn statement of defense and I WILL NOT appear at the requested hearing (**please complete paragraph 4 below**); OR

C. I WILL NOT submit a sworn statement of defense and I WILL NOT appear at the requested hearing.

4. Defendant's Sworn Statement of Defense:

If you selected 3.B. (above), you may explain what happened in your own words in this section and attach any additional papers, documents, photos, etc. Once you submit this statement, it will be considered by the hearing officer or judge.

I understand that by pleading not guilty, I do not have to supply any further sworn statement of defense. By filing this sworn statement of defense, I am waiving my personal appearance at the final hearing of this matter and I understand the hearing officer or judge will make a decision as to whether I committed the alleged violation by the sworn testimony of the witnesses, other evidence, and my sworn statement of defense.

5. I understand that any material misrepresentation could cause me to be prosecuted for a separate criminal law violation.

/s/ _____
Signature of Affiant/Defendant

Sworn to (or affirmed) and subscribed before me, the undersigned authority, on _____

Personally known _____
Produced identification _____ Type of ID produced _____
_____/s/_____

Notary Public, Deputy Clerk, or other authority

NAME:

Commission No.

My Commission Expires: _____

NOTE: It is the Affiant/Defendant's responsibility to make sure this affidavit is provided to the clerk of court no less than 5 business days before the hearing date for this affidavit to be considered by the hearing officer or judge.

If Affiant/Defendant is under the age of 18, a parent or guardian must sign this affidavit:

Parent or Guardian

Committee Notes

1996 Amendment. The Committee completely revised this rule to conform to the common practice of attorneys practicing in the traffic courts of Florida.

2023 Amendment. The Committee completely revised the forms to provide clarity for pro se litigants' options in resolving their civil traffic infraction(s).