

AS TO QUESTION 2:

The second sentence of paragraph (e), *supra*, seems equally clear. It requires the inactive cases described in the rule to be closed "in accordance with the fee schedule in effect on January 1, 1972." Thus, if an interested party, upon notice and hearing, is able to persuade the trial judge that good cause exists for the inactive proceeding to remain pending, the fees for the documents necessary to close out the estate will be those prescribed by the former county judges' fee schedule, §36.17, F. S. 1971 (revised and renumbered as §28.2401 by Ch. 72-397, Laws of Florida).

I have heretofore ruled, in AGO 072-327, that the new fee schedule adopted in 1972, §28.2401, *supra*, for probate and guardianship estates would be applicable to estates pending on October 1, 1972, the effective date of the new fee schedule. The Supreme Court's Transition Rule 14 was adopted on July 18, 1973, and presumably became effective on that date. Thus, estates that had been inactive for more than one, three, or ten years (depending upon their value) as of that date, but which were not dismissed, for good cause shown, should be closed out under the old county judges' fee schedule, §36.17, *supra*; and my former opinion in AGO 072-327 is hereby modified to the extent of any inconsistency with this provision of Transition Rule 14.

073-354—September 19, 1973

ARRESTS

ISSUANCE OF NOTICE TO APPEAR FOR MISDEMEANORS
AND VIOLATIONS OF MUNICIPAL AND COUNTY
ORDINANCES—FORMS AND PROCEDURES

To: William R. Heidtman, Palm Beach County Sheriff, West Palm Beach

Prepared by: Richard W. Prospect, Assistant Attorney General

QUESTIONS:

1. May a "Florida Uniform Traffic Citation" be issued for a nontraffic misdemeanor *not* committed in the officer's presence but which he has probable cause and supporting evidence to believe an individual committed?
2. May the above citation be issued for *any degree* of misdemeanor?
3. Does the issuing of the above citation constitute an arrest?
4. Does the terminology "officers or booking sergeants" include deputy sheriffs?
5. Is it necessary to file a formal affidavit in the event the cited person failed to appear and it became necessary to secure a warrant?

SUMMARY:

A notice to appear as provided for in Ch. 73-27, Laws of Florida, should be in a distinctive form. It may be issued in lieu of physical arrest for any degree of misdemeanor and its issuance does not constitute an arrest. A deputy sheriff may act as a booking officer. The execution of a formal affidavit is not necessary to secure a warrant for the arrest of a person failing to appear.

Although the gist of the first question is whether a Florida Uniform Traffic Citation may suffice as a notice to appear in nontraffic situations, an initial observation must be made clear. Nothing in Ch. 73-27, Laws of Florida [§§901.27-901.32, F. S.], legislation admittedly designed for practicality and convenience, authorizes nonobservance of the existing Florida law of arrest.

Section 901.15, F. S., clearly requires that in order to lawfully arrest without warrant for a misdemeanor, the misdemeanor must be committed in the presence of the officer and arrest therefor be made immediately or in fresh pursuit. Therefore, regardless of the new procedures created by the act, an officer may not lawfully arrest for a misdemeanor not committed in his presence.

As to whether a Florida Uniform Traffic Citation may be used as a notice to appear, §901.28(4), F. S., requires that the notice to appear contain the following:

901.28 Notice to appear for misdemeanors or violations of municipal or county ordinances; forms and requisites.—

* * * * *

(4) The arresting officer shall prepare in quadruplicate a written notice to appear in court, containing the name and address of the person, the offense charged, the time and place where the person shall appear in court, the name and address of the court, the name of the arresting officer, and the signature of the person. The court specified in the notice shall be the trial court having jurisdiction to try the offense charged.

While this information would indeed be reflected in a Florida Uniform Traffic Citation, I am of the opinion that its use for nontraffic offenses would create a certain degree of confusion. A better practice would, therefore, be for the chiefs of the respective law enforcement agencies to promulgate a separate form for the notice to appear as authorized and directed in §901.28(6), F. S.

Therefore, this question is answered in the negative.

In regard to question two, a notice to appear may be issued for a misdemeanor of the first or second degree as provided in §901.28(1), F. S., and, accordingly, this question is answered in the affirmative.

In regard to question three, the issuance of a notice to appear, in and by itself, does not constitute an arrest. Section 901.27, F. S., provides that the notice to appear may be issued *after* a person has been arrested. Therefore, a person would have already been legally arrested prior to the issuance of a notice to appear; the notice merely obviates the necessity of physically taking the person into custody.

Accordingly, your question is answered in the negative.

In regard to question four, the term "booking officer" as used in this act, and as complemented by its use in the Florida Rules of Criminal Procedure, means any law enforcement officer who is discharging the specific duty of booking officer. Therefore, your question is answered in the affirmative.

In regard to question five, §901.32, F. S., provides:

901.32 Issuance of warrant on failure to appear.—When a person signs a written notice to appear and fails to respond to the notice to appear, *a warrant of arrest shall be issued.* (Emphasis supplied.)

The italicized self-executing language would indicate that a formal affidavit would not be necessary in order to secure a warrant. The issuance of the warrant under the provisions of this legislation would be virtually automatic.

Accordingly, your question is answered in the negative.