

IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY,
FLORIDA

CASE NO.: 2011-CA-10861-O
Writ No.: 11-69

PEDRO ALVAREZ,

Petitioner,

v.

STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND
MOTOR VEHICLES,

Respondent.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

The Petitioner was arrested in Seminole County, Florida for driving under the influence on May 24, 2011, and his license was suspended on that date pursuant to section 316.193, Florida Statutes (2011).¹ Petitioner requested a formal review hearing pursuant to section 322.2615, Florida Statutes (2011), and that hearing was held on June 23, 2011 and July 25, 2011 in Seminole County, Florida.²

At the formal review hearing, the Petitioner moved to set aside the suspension based upon case law from the Ninth Judicial Circuit and the Sixth Judicial Circuit, acting in their appellate capacity. The hearing officer, conducting the hearing in the Eighteenth Judicial Circuit, denied the motions to set aside the suspension and the instant review followed.³

¹ The suspension was for refusal to submit to a breath, blood or urine test after being lawfully arrested for driving under the influence.

² The hearing was continued from the June 23rd date due to the arresting officer not appearing at the hearing in response to a subpoena.

³ Pursuant to section 322.2615(13), the Petitioner has sought the instant review in Orange County, Florida, which is the county in which the Petitioner resides.

“The duty of the circuit court on a certiorari review of an administrative agency is limited to three components: whether procedural due process was followed; whether there was a departure from the essential requirements of law; and whether the administrative findings and judgment were supported by competent substantial evidence.” Department of Highway Safety and Motor Vehicles v. Satter, 643 So. 2d 692, 695 (Fla. 5th DCA 1994).

Based upon the limitations set forth in Satter, this Court is compelled to deny the Petitioner’s petition as the formal review hearing was held in the Eighteenth Judicial Circuit, and therefore, the decisions of the Ninth Judicial Circuit in its appellate capacity were not binding on the hearing officer.

What is troubling for this Court, based upon the position of the Respondent in its responsive brief and recent decisions of the hearing officers of the Department of Highway, Safety and Motor Vehicles (“DHSMV”) within this Circuit, is that the DHSMV hearing officers appear oblivious to the fact that decisions of the Ninth Judicial Circuit Court, acting in its appellate capacity, including certiorari decisions under section 322.2615 are binding on the hearing officers within this Circuit.⁴ The only exception to this rule of law is if there is a conflicting decision by a Florida District Court of Appeal, the Florida Supreme Court, or another decision of the Ninth Judicial Circuit acting in its appellate capacity.

If a hearing officer is presented with an appellate decision of this Court and the non-attorney hearing officer does not follow that case, the hearing officer is obligated to place on the record the reason why this Circuit’s opinion is not being followed.⁵ Judge Griffin, in her

⁴ See e.g. State v. Lopez, 633 So. 2d 1150 (Fla. 5th DCA 1994); Fieselmann v. State, 537 So. 2d 603, 604 (Fla. 3d DCA 1988), *aff’d*, 566 So. 2d 768 (Fla. 1990).

⁵ “For example, by stating the cite of the Florida Supreme Court or Florida District Court opinion that controls over the Ninth Judicial Circuit Case, or by stating how the presented case is factually distinguishable. If a hearing officer merely disagrees with the Ninth Judicial Circuit opinion, the hearing officer is free to voice his or her disagreement, but the decision still must be followed and then pursuant to section 322.2615(13) law enforcement or the driver may seek review of that decision.

concurring opinion in Conahan v. Department of Highway Safety and Motor Vehicles, 619 So. 2d 988 (Fla. 5th DCA 1993), warned that “[i]f it can be shown that the citizens of Florida are not being afforded a prompt, fair, meaningful hearing by this statutory procedure, the procedure should be invalidated on due process grounds.” Id. at 990. In Department of Highway Safety and Motor Vehicles v. Stewart, 625 So. 2d 123, 124 (Fla. 5th DCA 1993), the Fifth District additionally recognized that lower courts may find that a suspendee’s rights to a prompt, fair and meaningful hearing were not respected and set aside a suspension in that case. Due to many recent decisions of hearing officers in this Circuit not following binding decision of this Circuit Court,⁶ this Court finds it necessary to put hearing officers on notice to follow this procedure when presented with binding case law from this Circuit or risk having either the entire statutory procedure under section 322.2615 or a suspendee’s license suspension invalidated on due process grounds.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 4th day of September 2012.

MURPHY and LUBET, JJ., concur.

O’KANE, J., concurs in result only.

/S/

MIKE MURPHY
Circuit Court Judge

/S/

JULIE H. O’KANE
Circuit Court Judge

/S/

MARC L. LUBET
Circuit Court Judge

⁶ Appellate courts may take judicial notice of their own records. See Hillsborough County Board of County Commissioners v. Public Employees Relations Commission, 424 So. 2d 132 (Fla. 1st DCA 1982).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order Denying Petition for Writ of Certiorari has been provided to **Kimberly A. Gibbs, Assistant General Counsel**, Department of Highway Safety and Motor Vehicles, P.O. Box 570066, Orlando, Florida 32857, and **William R. Ponall, Esq.**, Snure and Ponall, 425 West New England Avenue, Suite 200, Winter Park, Florida 32789, this 4th day of September 2012.

/S/ _____
Judicial Assistant