

Ron,

I sent this earlier today and it was returned. I'm trying again.

Dan

From: Dan Mueller [mailto:dmueller@court.state.il.us]
Sent: Friday, May 27, 2011 9:22 AM
To: 'mcdermott@oglecounty.org'; 'lbrandenburg_529@yahoo.com'
Cc: 'Jacque Huddleston'; 'Dawn Rubio'
Subject: Ogle County e-Guilty Application Response Follow-up

Dear Clerk Ron McDermott and Le Ann Brandenburg,

I have reviewed the responses provided to us by Rock Valley College (RVC) (attached). There appears to have been some misunderstanding of our position on several of the issues or how our response was intended. In all, there were seven (7) areas to which a response from us was requested. In some of the responses, there was agreement to a recommendation and some requested additional information. Each of RVC's requests for response is provided below, along with our response and follow-up. It may be better served to have a teleconference or joint meeting to more fully explore concepts and discussion. We will make ourselves available for such a follow-up at your request.

#1 "In all places on the form where it says 16 or 17 years old, they would like it to uniformly changed to "under 18 years of age".

Response: RVC agrees with this request. Further, they suggested additional language to make the point clear. As you are aware we cannot give legal advice, however the language that we suggested regarding age comes from the Code of Corrections [730 ILCS 5/5-6-1(n)]. The additional language suggested, "at the time your traffic ticket was issued" does not appear in that statute. Instead, the language reads, "The provisions of paragraph (c) shall not apply to any person under the age of 18 who commits an offense against traffic regulations governing the movement of vehicles. . . ." It appears the General Assembly preferred the word "commits" over "at the time of your traffic ticket. . . ." From a layman's point of view, apparently, either would be sufficient, but I leave that up to your local preference.

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Aug 11 form

The passage of the GDL license statute was not the reasoning for the language regarding the under 18 years of age driver.

#2 "On page 6, they would like "the threat of the penalty of perjury" to be eliminated completely. Their legal advisors stated that it is on the ticket but should not be on the form.

Response: RVC requested additional clarification on this issue. Since we cannot give legal advice, our response is administrative, only. With the creation of Rule 529(c), at the request of the Conference of Chief Circuit Judges, the Supreme Court allows an individual to request court supervision via a mail-in request in conjunction with his/her plea of guilty. The Rule does not indicate that the request may or will result in

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a charge of perjury (a Class 3 felony) upon a false statement of prior disposition of supervision. The Conference understood that many defendants do not fully understand the imposition of supervision, or the term and what it means. Instead, the rule provides, "If the accused fails to file a certificate of successful completion on or before the termination date of the supervision order, the supervision shall be summarily revoked and conviction entered." Elevating a possible misunderstanding of the term "supervision" to a Class 3 offense was never intended to our knowledge.

Further, the Traffic Safety Program Standards (attached) adopted by the Conference of Chief Circuit Judges, effective 2/15/2008, provide that, "1. No person shall be accepted into their program by a school if he or she has been through a 529(c) program, or any other traffic safety program authorized by a Circuit Court, for an offense committed within the prior twelve (12) months." It is our understanding that the intent under the Standards is that the school should perform a check in whatever manner available to them to assure compliance, and not necessarily rely solely upon the application of a registrant.

In the attachments to the responses from RVC, it is noted that the verification by the officer attached such language, and correctly notes that it refers to just the officer. It is our understanding that the Conference included that language as it serves as a complaint to which the officer must "verify" the violation, which would be required prior to a warrant being issued. Therefore, it was incorporated into the citation for legal purposes.

#3 "they also have an issue with the statement that if you are under 21 you can't take the on line class".

Response: Our concern or comment was to the confusion that may be caused with this reference, especially for those violators outside of your service area. We agree that it is up to the local court (in this case Ogle County) to set the requirements of the program, including a requirement of using in-class or on-line training. Both are provided for in the Standards adopted by the Conference. Our concern was limited to the "plain Language" limitation to those 21 or older for on-line not being able to take an on-line class without regard to other possible programs outside of Rock Valley. This language reference to 21 year old drivers first appeared in the amended application provided in November 2010, and was not in your original form or application provided previously. If it is the court's desire to limit your program, permit violators to take the class online in other service areas, our note was that it may need to be addressed in the materials. Additionally, the Standards do not preclude a violator under 21 from taking an on-line class, nor was it specified in our email response of March 1, 2011.

☒ RVC agreed in May to make this change but AUS form doesn't have it

#4 "instead of the date of the violation, they state legally it should state from the disposition date".

Response: As also noted in the response to #1, the Administrative Office is not authorized to give legal advice. Our position is one of concern that under the program the violator's disposition is occurring prior to the entry of the court's judgment, e.g., Date of Arrest 5/1/2011, plea of guilty received and entered on 7/1/2011, with a disposition of supervision for 180 days from date of arrest (5/1/2011). This example appears to impose the disposition of supervision 60 days prior to the violator's plea of guilty, for which the violator "technically" only serves 120 days of supervision from the date of disposition, which is entered on the date of

☒ Still not fixed (in new form's plea lingo)

expiration from the date of disposition, which is entered on the date of plea. Unless the court is entering all of these judgments "nunc pro tunc," predating the disposition prior to the date of plea would appear to be inappropriate.

There also appears to be some confusion as to the imposition of disposition and the time period from which to measure eligibility. Disposition is clear – the date of plea. The measurement of eligibility is based upon concurrent reasoning of Standards and statute. The Standards restrict the imposition of supervision under Rule 529(c) to an offense committed within the prior twelve (12) months (see below). The statute limits the application of paragraph (c) of the Code of Corrections to the arrest and where the defendant has not been assigned court supervision on "2" occasions. The provision in the Standards is within the limit of the statute. The measurement of eligibility is measured from the date committed by Standard and the date "charged" in the statute. In either case, this date is known and part of the case record as the Date of Arrest and/or the Filed Date. The use of the Date of Arrest or Offense is similar to how the Secretary of State measures prior offenses. For example, you are allowed three moving violations in a year, which the SOS measures from the date of citation, regardless of disposition. The same appears to be valid here.

Supreme Court Rule 529(c), Traffic Safety Program Standard

1. No person shall be accepted into their program by a school if he or she has been through a 529(c) program, or any other traffic safety program authorized by a Circuit Court, for an offense committed within the prior twelve (12) months.

730 ILCS 5/5-6-1(k)

(k) The provisions of paragraph (c) shall not apply to a defendant charged with violating any provision of the Illinois Vehicle Code or a similar provision of a local ordinance that governs the movement of vehicles if, within the 12 months preceding the date of the defendant's arrest, the defendant has been assigned court supervision on 2 occasions for a violation that governs the movement of vehicles under the Illinois Vehicle Code or a similar provision of a local ordinance. The provisions of this paragraph (k) do not apply to a defendant charged with violating Section 11-501 of the Illinois Vehicle Code or a similar provision of a local ordinance.

#5 "they state the statute does not allow for the statement of "enclose a self addressed stamped envelope for the return of your driver's license".

Response: There are varying provisions within statute, some providing for the clerk to be provided with postage or a self-addressed stamped envelope. However, under Rule 555, provided below, the clerk shall mail to the defendant any driver's license or bond certificate deposited in lieu of bail. While the clerk may be authorized to receive cost of mailing on other matters, such as child support payments, the rule does not provide for such a "cost of mailing," however, the clerk is directed to mail the posted document to the defendant. If this is a requirement of the TSP and the violator does not provide the cost, the clerk may not return the document as required by Supreme Court Rule.

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(b) Written Plea of Guilty. In any case that can be disposed of on a written plea of guilty without a court appearance under Rule 529, the defendant may submit his written plea of guilty and pay the prescribed fines, penalties and costs to the clerk of the circuit court of the county in which the violation occurred not earlier than 10 court days after arrest, and not later than 3 court days before the date set for appearance, unless the clerk waives these time limits. If cash bail was posted, the clerk shall apply the amount necessary to pay prescribed fines, penalties and costs. If a driver's license or bond certificate was deposited, the full amount of the prescribed fines, penalties and costs must be paid to the clerk. Upon receiving payment in full, the clerk shall unless otherwise provided by law return the driver's license or bond certificate to the defendant. A written plea of guilty may be mailed to the clerk of the circuit court of the county in which the violation occurred. If the plea is accompanied by the full amount of the prescribed fines, penalties and costs, the clerk shall mail to the defendant any driver's license or bond certificate deposited in lieu of bail.

Further, Section 110-12 of the Code of Criminal Procedure, any defendant admitted to bail is required to provide in writing any change of address within 24 hours to the clerk of the court. This is an obligation of the defendant and not a convenience. Without such proper notice, the clerk should be returning the bail document to the last known address of the defendant.

#6 "remove both are non-refundable and state Traffic School fee is nonrefundable".

Response: Yes, the judgment is not considered something that is refundable under any circumstances. A judgment would have to be vacated by the court before it could be refunded to the defendant. Rule 529(c) provides that the violator is responsible for the fees. Therefore, there needs to be notice that they are "non-refundable" as is noted in the other programs provided with these responses.

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#7 "they do not believe by statute you can charge more for the on line course".

Response: There is no concern on our part regarding the charging of different fees for training by Rock Valley. The issue arose because only one fee could be accounted for in the e-Guilty Program. Because there are other fees, our suggestions were to change all fees to a single fee, have the fee collected at the college, or modify the application. Regardless of the chosen method, the violator has to have clear direction as to what fees are applicable in order to complete the process. It is our understanding that the clerk's vendor may be ready to offer some additional options to resolve this issue, as well.

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