




To: Edward Hudak

From: Manuel A. Guarch, Esq., Senior Associate Attorney, The Reyes Law Firm, P.A

Approved: Craig E. Leen, City Attorney for the City of Coral Gables 

RE: Legal Opinion Regarding Supplemental Legal Opinion relating to LB15-01
Presentation/Submission of Driver License Pursuant to §322.15, Florida Statutes (2014)

Date: September 10, 2015

Please see the attached Supplemental Legal Opinion relating to LB15-01 Presentation/Submission of Driver License Pursuant to §322.15, Florida Statutes (2014) which we discussed earlier. This Opinion has been reviewed by and approved by the City Attorney's Office. Also, as we informed you, we are preparing a proposed revised Directive concerning this matter for your review. As always, please advise if you have any questions or concerns.

SUPPLEMENTAL LEGAL OPINION

To: Edward J. Hudak, Jr.
Interim Chief of Police
City of Coral Gables Police Department

Via: Craig Leen, City Attorney
City of Coral Gables

From: Israel U. Reyes, Managing Partner
Manuel A. Guarch, Senior Associate
The Reyes Law Firm, P.A.
Police Legal Advisors

Date: September 10, 2015

Re: Supplement to Legal Opinion (LB15-01) Presentation/Submission of Driver
License Pursuant to §322.15, Florida Statutes (2014).

This Supplemental Legal Opinion is intended to provide specific guidance to officers interacting with non-compliant motorists at DUI Checkpoints as a result of some motorists utilizing the "Fair DUI" flyer method as discussed in LB15-01. This opinion supplements the legal analysis contained in LB15-01.

As discussed in LB15-01, Section 322.15(1), Florida Statutes (2014), requires that, upon demand by a police officer, a motorist must physically provide an officer with the motorist's Driver License. Merely displaying the front of the Driver License from behind a window, without granting the officer access to the license for inspection, is a violation of the statutory requirement. This interpretation concerning interactions with motorists at DUI Checkpoints is supported by the case of *Rinaldo v. State*, 787 So. 2d 208 (Fla. 4th DCA 2001). In *Rinaldo*, the District Court of Appeal held that a motorist at a DUI Checkpoint did not have a privilege to ignore police officer's request for documents or thwart officer's ability to observe defendant for alcohol impairment. The *Rinaldo* Court stated that "a driver who is lawfully stopped for a DUI checkpoint is under a legal obligation to respond to an officer's requests for certain information and documents, and the driver's refusal to respond to these requests may constitute the misdemeanor offense of obstructing or opposing an officer." *Id.*

Therefore, the following steps should be taken when an officer encounters a driver at a DUI Checkpoint who has not rolled down their window and refuses to produce their license:

- The Officer should order the individual to lower their window so that they may interact with the driver.
- If the driver refuses, the Officer will order the individual to present the Driver License in accordance with Section 322.15. The officer should inform the individual they are requesting that the driver provide them with their license by physically handing it to the Officer.
- If the driver refuses, the Officer should order the individual to lower their window so the license can be produced and inspected.
- If the individual persists in refusing to comply with the Officer's orders to produce their license and the order to lower their window, the individual should be advised that they will be arrested for obstructing the Officer in the execution of his/her duties under Section 843.02, Florida Statutes (2015), and order the individual to exit the vehicle.¹
- If the individual refuses, an Officer may take any steps necessary to effectuate the individual's arrest.²
- Officers will ensure the Complaint/Arrest Affidavit fully describes in detail the interactions with the motorist, all statements made by any involved officer and the motorist, all the facts constituting the motorists obstruction of the Officer's legal duty, and how said actions impacted the Officer's ability to perform that duty.

If a driver engages in obstructive conduct, and the Officer decides to affect an arrest, the arrest should be done in accordance with Departmental Policy. Any questions as to the application of this Supplemental Legal Opinion can be directed to the Officer's supervisor, who can contact the Police Legal Advisors and/or the City Attorney's Office.

¹ **Note:** An officer can also cite the driver for failing to present or submit the license upon demand pursuant to Section 322.15(4), Florida Statutes (2014). If the officer does so, the officer is required to imprint the driver's thumbprint on the citation pursuant to Section 322.15(2), Florida Statutes (2014). The officer can, in these circumstances, order the occupant out of the vehicle or order the driver to lower his/her window to allow the officer to take the drivers' thumbprint. As above, if the driver persists in refusing, the driver can be arrested for obstructing the Officer in the execution of his/her duties under Florida Statutes Section 843.02, Florida Statutes (2014), Resisting Officer without violence to his or her person.

² **Note:** If the individual concedes and submits the Driver License to the Officer in accordance with the Demand, the Officer should maintain possession of the Driver License while drafting and issuing the Uniform Traffic Citation for the initial traffic offense. The Officer should return the Driver License at the same time as the Officer delivers the citation. This will avoid any potential issue in this context regarding a motorist's refusal to accept the citation or directing the Officer to place the citation under the windshield wiper.

Paulk, Enga

From: Leen, Craig
Sent: Thursday, September 10, 2015 3:43 PM
To: Paulk, Enga
Cc: Ramos, Miriam; Figueroa, Yaneris
Subject: Fwd: Supplement to Legal Opinion (LB15-01) Presentation/Submission of Driver License
Attachments: ATT00001.htm; ATT00002.htm; 2010.01 - Supplement to LB15-01.pdf; ATT00003.htm

Please publish.

Sent from my iPhone

Begin forwarded message:

From: Manuel Guarch <mguarch@reyeslawfirmmpa.com>
Date: September 10, 2015 at 3:36:57 PM EDT
To: "Hudak, Edward (ehudak@coralgables.com)" <ehudak@coralgables.com>
Cc: "Ramos, Miriam (mramos@coralgables.com)" <mramos@coralgables.com>, "cleen@coralgables.com" <cleen@coralgables.com>, Israel Reyes <ireyes@reyeslawfirmmpa.com>, "Fernandez, Frank (ffernandez@coralgables.com)" <ffernandez@coralgables.com>
Subject: Supplement to Legal Opinion (LB15-01) Presentation/Submission of Driver License

Chief Hudak,

Please see the attached Supplemental Legal Opinion relating to LB15-01 Presentation/Submission of Driver License Pursuant to §322.15, Florida Statutes (2014) which we discussed earlier. This Opinion has been reviewed by and approved by the City Attorney's Office. Also, as we informed you, we are preparing a proposed revised Directive concerning this matter for your review. As always, please advise if you have any questions or concerns.

Regards,

MANUEL A. GUARCH, ESQ.
SENIOR ASSOCIATE ATTORNEY

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