

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SPR22-28

Title

Traffic: Confidentiality of Financial Information Submitted Electronically as Part of an Ability-to-Pay Determination

Action Requested

Review and submit comments by May 13, 2022

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rule 4.336

Proposed Effective Date

January 1, 2023

Proposed by

Traffic Advisory Committee
Hon. Gail Dekreon, Chair

Contact

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Executive Summary and Origin

The Traffic Advisory Committee recommends amendments to California Rules of Court, rule 4.336, to keep confidential financial information submitted electronically for ability-to-pay determinations through online options, including the Judicial Council's online tool for requesting a fine reduction called MyCitations.

Background

Courts currently can use forms to allow a litigant to request an ability-to-pay determination (the plain language form *Can't Afford to Pay Fine: Traffic and Other Infractions* (form TR-320/CR-320)). The act of appearing in court or traveling to court poses a barrier to many: it can require taking time off work, securing childcare, and/or finding transportation. Furthermore, form TR-320/CR-320 can only be used for cases that are adjudicated. To address these issues, online options have begun to be developed.

The 2018 State Budget included a pilot program to increase public access to the courts by authorizing the online adjudication of infraction violations including online ability-to-pay determinations. The Judicial Council began studying options to minimize the impact of high fines and fees on low-income court users in 2016 with a successful grant proposal to the U.S. Department of Justice under the Price of Justice Initiative. With seed funding from the grant, the Judicial Council and partner pilot courts (first in San Francisco, Santa Clara, Shasta, Tulare, and Ventura Counties) designed a process to conduct ability-to-pay determinations online. That effort included identifying online workflows, selecting a software vendor to develop a

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prototype, and testing interfaces with partner court case management systems. The resulting prototype, named MyCitations, allows users to make online requests for reductions in traffic fines and fees based on an individual's ability to pay. MyCitations also takes pleas, allowing defendants to request an ability-to-pay determination for unadjudicated cases.

Assembly Bill 143 (Stats. 2021, ch. 79) authorized statewide expansion of online ability-to-pay determinations. Currently, eight courts have adopted MyCitations including the Superior Courts of Fresno, Monterey, San Francisco, Santa Clara, Shasta, Tulare, Ventura, and Santa Cruz Counties. Several additional courts are in the planning and implementation stage but have not yet gone live with online tools.

The Proposal

Current rule 4.336 provides that optional form TR-320/CR-320, the information it contains, and any supporting documentation (1) are confidential, (2) may only be accessed by the parties and the court, and (3) must be maintained by the clerk's office in a manner that protects and preserves their confidentiality. However, current rule 4.336 does not address the confidentiality of information submitted via online options for ability-to-pay determinations. To address the new and emerging online tools used by courts for ability-to-pay determinations, the committee recommends that any financial summaries and underlying supporting documentation and information be kept confidential due to the personal nature of the financial information.

When a litigant makes an ability-to-pay request through MyCitations (or similar online tool), the litigant answers a series of questions and may provide documentation in support of the request. MyCitations creates an electronic request summary of the financial information submitted. The court retains the request summary as a record. As MyCitations expands statewide, it is recommended that the confidentiality of financial information be expanded to include electronic request summaries created via online options, consistent with existing rule 4.336. Additionally, because MyCitations is a Judicial Council program and the Judicial Council has reporting requirements, the rule allows the Judicial Council to access the financial information.

Finally, when reviewing current rule 4.336, the committee identified unnecessary language describing form TR-320/CR-320 as optional. Form TR-320/CR-320 remains an optional form, but this detail is not necessary to the rule. The committee, therefore, recommends deleting this provision.

Alternatives Considered

The committee considered not taking any action but determined it would be inconsistent to have confidentiality for the form TR-320/CR 320 without likewise having confidentiality for the same information submitted through MyCitations or other online tools.

Fiscal and Operational Impacts

Expected costs are limited to training and possible case management system updates. No other implementation requirements or operational impacts are expected.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 4.336, at page 4
2. Link A: *Can't Afford to Pay Fine: Traffic and Other Infractions* (form TR-320/CR-320), <https://www.courts.ca.gov/documents/tr320.pdf>
3. Link B: Judicial Council of Cal., *Online Traffic Adjudication and Ability-to-Pay: Annual Report* (Jan. 2021) <https://www.courts.ca.gov/documents/lr-2020-online-traffic-adjudication-ability-to-pay-ba2018.pdf>
4. Link C: Assembly Bill No. 143 (Stats. 2021, ch. 79), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB143

Rule 4.336 of the California Rules of Court would be amended, effective January 1, 2023, to read:

1 **Rule 4.336. Confidential Can't Afford to Pay Fine-Forms and Online Request**
2 **Summaries**

3
4 **(a) ~~Use of request and order forms~~ Request for a determination**

5
6 An infraction defendant may, but is not required, to use the following to ask the
7 court to determine defendant's ability to pay under rule 4.335:

8
9 (1) ~~A court uses the information on Can't Afford to Pay Fine: Traffic and Other~~
10 ~~Infractions (form TR-320/CR-320) to determine an infraction defendant's~~
11 ~~ability to pay under rule 4.335.; or~~

12
13 (2) MyCitations online program or other online tool.

14
15 **(b) Court Order**

16
17 ~~A court~~ Courts may use *Can't Afford to Pay Fine: Traffic and Other Infractions*
18 *(Court Order)* (form TR-321/CR-321) to ~~issue an order in response to an infraction~~
19 ~~defendant's~~ respond to a request for an ability-to-pay determination under rule
20 4.335.

21
22 **~~(b)(c)~~ Confidentiality request form**

23
24 The clerk's office must maintain the following items in a manner that will protect
25 and preserve their confidentiality:

26 A filed *Can't Afford to Pay Fine: Traffic and Other Infractions* (form TR-320/CR
27 320), the information it contains, any electronic request summary of financial
28 information submitted by an infraction defendant through the MyCitations online
29 program or any other online tool, and any supporting documentation provided with
30 the form or through MyCitations or any other online tool are confidential. The
31 ~~clerk's office must maintain the form and supporting documentation in a manner~~
32 ~~that will protect and preserve their confidentiality. Only the parties, and the court,~~
33 and the Judicial Council may access the form and Supporting documentation these
34 items.

35
36
37 **~~(c)~~ Optional request and order forms**

38
39 ~~*Can't Afford to Pay Fine: Traffic and Other Infractions* (form TR 320/CR~~
40 ~~320) and *Can't Afford to Pay Fine: Traffic and Other Infractions (Court*~~
41 ~~*Order)* (form TR 321/CR 321) are optional forms under rule 1.35.~~