



JUDICIAL COUNCIL OF CALIFORNIA

RULES AND PROJECTS
COMMITTEE

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RULES AND PROJECTS COMMITTEE

OPEN MEETING AGENDA

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1))

THIS MEETING IS BEING RECORDED

Date: Thursday, December 7, 2017
Time: 4:00 p.m. – 5:00 p.m.
Location: Conference Call
Public Call-In Number 1-877-820-7831/Participant Access Code: 8083408 (Listen Only)

Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

II. DISCUSSION AND POSSIBLE ACTION ITEMS

JUDICIAL COUNCIL ADMINISTRATION

Item 1

Judicial Council: Advisory Committee Memberships and Terms (amend rules 10.31, 10.42, 10.43, 10.44, and 10.60) (Action required – approval for circulation for comment)

Presenter: Susan McMullan

CRIMINAL

Item 2

Traffic and Criminal Procedure: Forms and Rule on Ability to Pay in Traffic and Other Infraction Cases (approve forms TR-320/CR-320 and TR-321/CR-321; adopt rule 4.336) (Action required – recommend for Judicial Council action)

Presenters: Tara Lundstrom, Kyanna Williams, and Kimberly DaSilva

III. ADJOURNMENT

Adjourn

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Circulate for comment (out of cycle)**

RUPRO Meeting: December 7, 2017

Title of proposal (*include amend/revise/adopt/approve + form/rule numbers*):

Judicial Council: Advisory Committee Memberships and Terms (amend rules 10.31, 10.42, 10.43, 10.44, and 10.60 of the California Rules of Court)

Committee or other entity submitting the proposal:

RUPRO (as indicated in the ITC, several of the recommended changes to the membership categories for committees have also been proposed by specific advisory committees or their chairs)

Staff contact (name, phone and e-mail): Patrick O'Donnell, (415) 865-7665, patrick.o'donnell@jud.ca.gov or Susan McMullan, (415) 865-7990, susan.mcmullan@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Approved by RUPRO: N/A

Project description from annual agenda: N/A

If requesting July 1 or out of cycle, explain:

This proposal needs to be circulated on a special cycle, to be completed by the beginning of January 2018. If the additional proposed categories of membership are to be recruited and appointed in 2018, the rules changes in membership categories need to be made before this year's nomination cycle begins. This year the nominations cycle starts earlier than in the past. The nomination cycle has customarily begun in mid-March. But in 2018, it is planned to begin in early February, precluding the consideration of the proposed amendments at the council's March 1-2 meeting. Instead, the proposal will need to be submitted for the January 12 council meeting (or be approved by Circulating Order). In sum, the final proposal basically needs to have been publicly circulated and be ready for submission to RUPRO, E&P, and the council by early January 2018. Accordingly, the special cycle should be from approximately December 8 through January 2, 2018.

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SP17-07

Title	Action Requested
Judicial Council: Advisory Committee Memberships and Terms	Review and submit comments by January 2, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rules 10.31, 10.42, 10.43, 10.44, and 10.60 of the California Rules of Court	February 1, 2018
Proposed by	Contact
Rules and Projects Committee Hon. Harry E. Hull, Chair	Patrick O'Donnell, patrick.o'donnell@jud.ca.gov, 415-865-7665

Executive Summary and Origin

The Judicial Council's Rules and Projects Committee (RUPRO) proposes amending several rules of court relating to memberships on advisory committees.¹ The amendments would amend rule 10.31, the general rule on memberships, to clarify the terms of the chairs, members, and advisory members. It would also amend the rules relating to four specific advisory committees to add new or modify existing categories of membership.

Background

Current rule 10.31 is the general rule concerning advisory committee membership and terms. Rules 10.42, 10.43, 10.44, and 10.60 specifically relate to the Criminal Law Advisory Committee, the Family and Juvenile Law Advisory Committee, the Probate and Mental Health Advisory Committee, and the Tribal Court–State Court Forum, respectively; each of these rules prescribes the categories of membership for the particular committee. Members are recruited and appointed based on the categories prescribed in the rules.

The Proposal

This proposal would amend five rules relating to the terms and membership of advisory Committees.

¹ A number of the specific proposals have been made by the advisory committees themselves, as described below.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Amendments to rule 10.31, Advisory committee membership and terms

This proposal would amend rule 10.31, the general rule on committee membership and terms, in several respects. These changes clarify provisions in the rule, address uncertainties, and formalize practices.

Subdivisions (b) on terms would be modified to state that the Chief Justice appoints advisory committee members to three-year terms unless another term is specified in the rules “or in the order appointing a member” (new text in quotation marks). For the sake of clarity, the following sentences would be added to (b): “Members may apply for reappointment but there is no presumption of reappointment. All appointments are at the sole discretion of the Chief Justice.” The final sentence in (b) providing for one-year appointments of judges who have served less than two years on the bench would be deleted; the program for one-year appointments of new judges was discontinued a number of years ago.

In subdivision (c) on chairs and vice chairs, a new sentence would be added: “Except for the Court Executives Advisory Committee, when a member’s term as chair ends, the chair’s membership on the advisory committee also ends, unless the Chief Justice orders otherwise.”

Finally, subdivision (d) on advisory members would be amended to include a sentence specifying the term of these members: “Advisory members are appointed for three-year terms unless another term is specified in the order appointing the advisory member.”

Amendments to rule 10.42, Criminal Law Advisory Committee

This proposal would amend rule 10.42, the rule establishing the Criminal Law Advisory Committee, to include as an additional category of membership on that committee, a mental health professional with experience in criminal law issues. The addition of this new membership category for a mental health professional will enable the committee to more effectively carry out its responsibilities in making recommendations to the Judicial Council for improving the administration of justice in criminal proceedings.

The committee has previously recognized the importance of mental health issues in the criminal justice system and is committed to assisting the Judicial Council in addressing those issues. A mental health professional who has experience in and knowledge of the intersection of mental health and criminal justice issues would be of great value to the committee when it performs its core objective of considering rule and form proposals to promote timely, consistent, and effective criminal case processing. A mental health professional will also assist the committee in providing relevant feedback and comments on pending legislation involving the criminal justice system when mental health issues may overlap.

An alternative would be to leave the committee’s membership categories unchanged. But this could result in no mental health professionals applying, and the committee would be deprived on the benefit of having such expertise.

Amendments to rule 10.43, Family and Juvenile Law Advisory Committee

The Family and Juvenile Law Advisory Committee proposes that rule 10.43 be amended to include, as an additional category of membership, a mental health professional with experience in family and children's issues. The addition of this new membership category for mental health professionals will enable the committee to more effectively carry out the responsibilities recently given to it to address mental health issues and to more effectively carry out its responsibilities in making recommendations to the Judicial Council for improving the administration of justice in family and juvenile proceedings.

As is the case with the Criminal Law Advisory Committee, the Family and Juvenile Law Advisory Committee has previously recognized the importance of mental health issues in family and juvenile proceedings and is committed to assisting the Judicial Council in addressing those issues. In addition, the committee received referrals from the Executive and Planning Committee and the Rules and Projects Committee to assist the Council in its ongoing effort to implement recommendations from advisory bodies that had sunsetted.

The Task Force for Criminal Justice Collaboration on Mental Health Issues was established in 2008 and the Mental Health Issues implementation Task Force was formed in 2012 to review the recommendations of the original task force and develop a plan for implementing its recommendations. The final report of the implementation task force recommended that the work on mental health be transitioned to the appropriate committees. This transition was accomplished last year by the referral of various task force recommendations to six advisory committees and by the appointment of persons with expertise in mental health to several of those committees.

As one of the committees to which referrals were made, the Family and Juvenile Law Advisory Committee has determined that being able to recruit and regularly include as a member a person knowledgeable in mental health would assist it in performing its new responsibilities. Hence, it recommends amending rule 10.43 to include the new membership category.

An alternative would be to leave the committee's membership categories unchanged. But this would probably result in no persons with expertise in mental health applying, and the committee would be deprived on the benefit of having such expertise.

Amendments to rule 10.44, Probate and Mental Health Advisory Committee

The Probate and Mental Health Advisory Committee proposes that the Judicial Council amend rule 10.44 of the California Rules of Court to add a new membership category for a lawyer working for a public-interest organization or court self-help center whose practice focuses on guardianships or conservatorships.

Rule 10.44 sets forth the charge and membership of the Judicial Council's Probate and Mental Health Advisory Committee. Subdivision (c) of this rule currently requires the committee to include at least one member from each of the following categories:

- Judicial officer with experience in probate;
- Lawyer whose primary practice involves decedents' estates, trusts, guardianships, conservatorships, or elder abuse law;
- Lawyer or examiner who works for the court on probate or mental health matters;
- Investigator who works for the court to investigate probate guardianships or conservatorships;
- Person knowledgeable in mental health or developmental disability law;
- Person knowledgeable in private management of probate matters in a fiduciary capacity; and
- County counsel, public guardian, or other similar public officer familiar with guardianship and conservatorship issues.

The committee believes that the addition of a public-interest or court self-help lawyer would better inform its deliberations and improve its effectiveness in pursuing the Judicial Council's goals. Specifically, the lawyer's perspective would augment the committee's capacity to pursue the access and fairness goals of providing equal access to guardianship and conservatorship proceedings, striving to understand and be responsive to the needs of court users, and meeting the needs of the large number of self-represented litigants participating in guardianship and conservatorship proceedings. These improvements would, in turn, demonstrate the judicial branch's commitment to fair, impartial, and independent decision-making in areas of concern to the Legislature.

The committee considered not recommending this amendment on the basis that a public-interest or court self-help lawyer could be appointed in the existing category, "lawyer whose primary practice involves decedents' estates, trusts, guardianships, conservatorships, or elder abuse law." However, the committee's experience is that public-interest or court-self-help lawyers have rarely applied for membership under that category. When they have applied, they have not been appointed. The committee believes that qualified candidates are much more likely to apply for membership to the committee if applications are solicited in a category specifically designated for persons in their position.

Amendments to rule 10.60, Tribal Court–State Court Forum

The Tribal Court–State Court Form is governed by rule 10.60. Rule 10.60 (c) establishes the membership of the Forum. Subdivision (c)(5) provides that the members must include:

As ex officio members, the Director of the California Attorney General's Office of Native American Affairs and the Governor's Tribal Advisor.

This provision has become outdated and its ex officio language is problematic. The Director of the California Attorney General's Office of Native American Affairs retired in September 2017 and the Governor's Tribal Advisor retired in October 2017. It is unclear whether either of them will be replaced. In addition, the California Department of Social Services recently created an

Office of Tribal Affairs, which is charged with serving as a hub for all tribal related work at the Department of Social Services.

The co-chairs of the forum propose that rule 10.60(c)(5) be amended to reflect the recent changes in the structure and personnel conducting tribal work on behalf of the executive branch and to permit flexibility in appointments to the forum on issues of importance to members working on issues of importance to the forum. Specifically, they recommend that subdivision (c)(5) be amended as follows:

~~As ex-officio members, the Director of the California Attorney General's Office of Native American Affairs and the Governor's Tribal Advisor. At least one, but no more than three, California executive branch officials responsible for tribal-related work.~~

This proposed revision of the membership language should overcome the limitations of the existing language and provide a positive framework for recruiting and including executive branch officials as members of the forum.

Alternatives Considered

The rules on membership and terms on advisory committees could be left unchanged. But for the reasons stated above, there are definite benefits in having additional categories of members on each of the committees described above. There are also benefits in generally clarifying the terms of the chairs, members, and advisory members.

Implementation Requirements, Costs, and Operational Impacts

The implementation requirements of most of the changes recommended in this proposal should not be significant. The recruitment of members in new categories would take place at the same time as the recruitment process for other members and should not require any substantial amount of additional work or attention. The costs of implementation will depend on whether members in new categories are added to the existing number of members or adjustments are made in the number of appointments in other categories such that the total size of committees remains at the current levels.

Request for Specific Comments

In addition to comments on the proposal as a whole, the Rules and Projects Committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

Attachments and Links

Cal. Rules of Court, rules 10.31, 10.42, 10.43, 10.44, and 10.60

Rules 10.31, 10.42, 10.43, 10.44, and 10.60 of the California Rules of Court would be amended, effective February 1, 2018, to read:

1 **Rule 10.31. Advisory committee membership and terms**

2
3 (a) * * *

4
5 (b) **Terms**

6
7 The Chief Justice appoints advisory committee members to three-year terms unless
8 another term is specified in these rules or in the order appointing a member. Terms
9 are staggered so that an approximately equal number of each committee's members
10 changes annually. Members may apply for reappointment but there is no
11 presumption of reappointment. All appointments and reappointments are at the sole
12 discretion of the Chief Justice. ~~The Chief Justice also may appoint judicial officers~~
13 ~~who have served less than two years on the bench to one year terms.~~

14
15 (c) **Chair and vice-chair**

16
17 The Chief Justice appoints an advisory committee member to be a committee chair
18 or vice-chair for a one-year term except for the chair and vice-chair of the Court
19 Executives Advisory Committee, who may be appointed to two-year terms. Except
20 for the Court Executives Advisory Committee, when a member's term as the chair
21 of an advisory committee ends, that member's term on the committee also ends,
22 unless the Chief Justice orders otherwise.

23
24 (d) **Advisory members**

25
26 On the request of the advisory committee, the Chief Justice may designate an
27 advisory member to assist an advisory committee or a subcommittee. Advisory
28 members are appointed for three-year terms unless another term is specified in the
29 order appointing the advisory member. Advisory members may participate in
30 discussions and make or second motions but cannot vote.

31
32 (e) **Termination of membership**

33
34 Committee membership terminates if a member leaves the position that qualified
35 the member for the advisory committee unless (g) applies or the Chief Justice
36 determines that the individual may complete the current term.

37
38 (f) * * *

39
40 (g) **Retired judges**

41

1 A judge’s retirement does not cause a vacancy on the committee if the judge is
2 eligible for assignment. A retired judge who is eligible for assignment may hold a
3 committee position based on his or her last judicial position.
4
5

6 **Rule 10.42. Criminal Law Advisory Committee**
7

8 (a) * * * *

9
10 (b) **Membership**
11

12 The committee must include at least one member from each of the following
13 categories:

- 14 (1) Appellate court justice;
 - 15 (2) Trial court judicial officer;
 - 16 (3) Judicial administrator;
 - 17 (4) Prosecutor;
 - 18 (5) Criminal defense lawyer; ~~and~~
 - 19 (6) Probation officer; and
 - 20 (7) Mental health professional with experience in criminal law issues.
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30 **Rule 10.43. Family and Juvenile Law Advisory Committee**
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32 (a) * * *

33
34 (b) **Membership**
35

36 The committee must include at least one member from each of the following
37 categories:

- 38 (1) Appellate court justice;
 - 39 (2) Trial court judicial officer;
 - 40 (3) Judicial administrator;
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- (4) Child custody mediator;
- (5) Lawyer whose primary practice area is family law;
- (6) Lawyer from a public or private defender’s office whose primary practice area is juvenile law;
- (7) Chief probation officer;
- (8) Child welfare director;
- (9) Court Appointed Special Advocate (CASA) director;
- (10) County counsel assigned to juvenile dependency cases;
- (11) Domestic violence prevention advocate;
- (12) District attorney assigned to juvenile delinquency cases;
- (13) Lawyer from the California Department of Child Support Services or a local child support agency; ~~and~~
- (14) Public-interest children’s rights lawyer; and
- (15) Mental health professional with experience with family and children’s issues.

Rule 10.44. Probate and Mental Health Advisory Committee

(a)–(b) * * *

(c) Membership

The committee must include at least one member from each of the following categories:

- (1) Judicial officer with experience in probate;
- (2) Lawyer whose primary practice involves decedents’ estates, trusts, guardianships, conservatorships, or elder abuse law;

- 1 (3) Lawyer or examiner who works for the court on probate or mental health
2 matters;
3
4 (4) Lawyer working for a public interest organization or a court self-help center
5 whose practice focuses on guardianships or conservatorships;
6
7 ~~(4)~~(5) Investigator who works for the court to investigate probate guardianships or
8 conservatorships;
9
10 ~~(5)~~(6) Person knowledgeable in mental health or developmental disability law;
11
12 ~~(6)~~(7) Person knowledgeable in private management of probate matters in a
13 fiduciary capacity; and
14
15 ~~(7)~~(8) County counsel, public guardian, or other similar public officer familiar with
16 guardianship and conservatorship issues.
17
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19 **Rule 10.60. Tribal Court–State Court Forum**
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21 **(a)–(b) * * ***
22

23 **(c) Membership**
24

25 The forum must include the following members:
26

- 27 (1) Tribal court judges or justices selected by tribes in California, as described in
28 (d), but no more than one tribal court judge or justice from each tribe;
29
30 (2) At least three trial court judges from counties in which a tribal court is
31 located;
32
33 (3) At least one appellate justice of the California Courts of Appeal;
34
35 (4) At least one member from each of the following committees: the Access and
36 Fairness Advisory Committee, Civil and Small Claims Advisory Committee,
37 Criminal Law Advisory Committee, Family and Juvenile Law Advisory
38 Committee, Governing Committee of the Center for Judicial Education and
39 Research, Probate and Mental Health Advisory Committee, and Traffic
40 Advisory Committee; and
41
42 (5) ~~As ex officio members, the Director of the California Attorney General's~~
43 ~~Office of Native American Affairs and the Governor's Tribal Advisor~~ At

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: December 7 , 2017

Title of proposal (*include amend/revise/adopt/approve + form/rule numbers*):
Traffic and Criminal Procedure: Ability to Pay in Traffic and Other Infraction Cases

Committee or other entity submitting the proposal:
Traffic Advisory Committee
Criminal Law Advisory Committee
Advisory Committee on Providing Access and Fairness

Staff contact (name, phone and e-mail):
Tara Lundstrom, 415-865-7995 tara.lundstrom@jud.ca.gov
Kyanna Williams, 415-865-7911 kyanna.williams@jud.ca.gov
Kimberly DaSilva, 415-865-4534 kimberly.dasilva@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 4/19/2017 (TAC), 12/15/2017 (CLAC, PAF)

Project description from annual agenda:
TAC: Rules and Forms for Access to Justice in Infraction Cases. Consider development of rules and forms to promote access to justice in all infraction cases, including recommendations of optional forms related to reminder notices, civil assessment notices, ability to pay determinations and other forms.

CLAC: Bail and Fines/Fees in NonTraffic Infraction and other Criminal Cases: Collaborate with other advisory committees to consider rule, form, or other recommendations necessary to promote access to justice in infraction cases, including recommendations related to post-conviction proceedings and ability to pay issues; and issues concerning criminal fines and fees generally.

PAF: Improving Access and Fairness for SRLs in Traffic Court: Consider ways to improve access and fairness for selfrepresented litigants in traffic court. This will include ongoing collaboration with the Traffic Advisory Committee (TAC), Criminal Law Advisory Committee (CLAC), and other relevant Judicial Council advisory bodies and staff and will be conducted through the Judicial Council's ordinary processes for policy adoption, rulemaking and legislative proposals. This work may include, but is not limited to:
Working with TAC and CLAC on ability to pay issues, including the potential development of an ability to pay form

If requesting July 1 or out of cycle, explain:
The committees requested out of cycle for several reasons. First, rule 4.335 went into effect January 1, 2017, but with implementation as soon as reasonably necessary but no later than May 1, 2017. With a later out-of-cycle circulation, the development of the form have been informed by the experience of courts in implementing the rule. Second, the development of the form has been informed by, and will inform the efforts of, the council's Price of Justice project, which launched this year.

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: January 1, 2018

Title	Agenda Item Type
Traffic and Criminal Procedure: Ability to Pay in Traffic and Other Infraction Cases	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Cal. Rules of Court, rule 4.336; approve forms TR-320/CR-320 and TR-321/CR-321	April 1, 2018
Recommended by	Date of Report
Traffic Advisory Committee	November 29, 2017
Hon. Gail Dekreon, Chair	Contact
Criminal Law Advisory Committee	Tara Lundstrom, 415-865-7995 tara.lundstrom@jud.ca.gov
Hon. Tricia A. Bigelow, Chair	Kyanna Williams, 415-865-7911 kyanna.williams@jud.ca.gov
Advisory Committee on Providing Access and Fairness	Kimberly DaSilva, 415-865-4534 kimberly.dasilva@jud.ca.gov
Hon. Kathleen E. O’Leary, Cochair	
Hon. Laurie D. Zelon, Cochair	

Executive Summary

The Traffic Advisory Committee, the Criminal Law Advisory Committee, and the Advisory Committee on Providing Access and Fairness propose two optional, plain-language Judicial Council forms—an application form and a judicial order form—to assist in implementing existing rule 4.335 of the California Rules of Court on ability-to-pay determinations in traffic and other infraction cases. They also recommend a new rule stating the forms’ intended use, their optional nature, and the confidential status of the application form.

Recommendation

The Traffic Advisory Committee, Criminal Law Advisory Committee, and Advisory Committee on Providing Access and Fairness recommend that the Judicial Council, effective April 1, 2018:

1. Adopt new rule 4.336; and
2. Approve new optional forms TR-320/CR-320 (*Can't Afford to Pay Fine: Traffic and Other Infractions*) and TR-321/CR-321 (*Can't Afford to Pay Fine: Traffic and Other Infractions (Court Order)*).

The text of the new rule and the new optional forms are attached at pages 19–24.

Previous Council Action

Over the past two years, the Judicial Council has taken steps to improve access and fairness in criminal and traffic infraction cases. The council adopted rule 4.105, effective June 8, 2015, on an urgency basis at the request of the Chief Justice to clarify that defendants are not required to post bail before challenging traffic infractions, unless an exception applies. In adopting rule 4.105, the council directed the advisory committees to consider changes to rules or forms, and to make other recommendations necessary to promote access to justice in all infraction cases, including recommendations related to post-conviction proceedings or after the defendant failed to appear or pay fines or fees.

In response to the council's directive, the Traffic Advisory Committee and the Criminal Law Advisory Committee—in consultation with the Advisory Committee on Providing Access and Fairness—developed and recommended new procedural rules for traffic and other criminal infraction cases. Relevant to this proposal, rules 4.106 and 4.335 standardized and improved court procedures and notice to infraction defendants related to civil assessments for failures to appear or pay and ability-to-pay determinations, respectively. The council adopted rules 4.106 and 4.335 effective January 1, 2017, with courts instructed to implement the rules as soon as reasonably possible but no later than May 1, 2017.

Rationale for Recommendation

This proposal would assist courts in implementing existing rule 4.335, which provides a procedure for determining an infraction defendant's ability to pay. Rule 4.335(c) contemplates a written process for adjudicating ability-to-pay requests by requiring the court to accept written requests, unless the court directs a court appearance. This proposal would also partially implement existing rule 4.106(c), which provides a procedure for vacating and reducing civil assessments imposed for failures to appear and pay.

The proposal includes (1) an optional application form, (2) an optional judicial order form, and (3) a corresponding rule. Some courts have developed local forms addressing ability to pay, and the committees recognize the value of providing courts the flexibility to use them. However, for those courts without resources to develop local forms, the committees recognize that providing an optional statewide form will promote consistency across the state as well as greater access to

the courts. These concerns are especially relevant here, because court users often have infraction cases pending in multiple jurisdictions.

The committees intentionally designed the forms using a plain-language and user-friendly format. Simple, easy-to-understand language makes the forms usable for a wide variety of court users. User testing of the forms indicated that these modifications to the standard format of Judicial Council forms will make them more understandable to the general public. Court users with limited literacy or English proficiency, who are a significant portion of the intended audience, will gain an even greater benefit.

Optional application form (form TR-320/CR-320)

Optional form *Can't Afford to Pay Fine: Traffic and Other Infractions* (form TR-320/CR-320) is an application form that court users would complete to request an ability-to-pay determination under existing rule 4.335.

Instructions. The first page of the application form explains the form's purpose in plain language to help court users assess whether it addresses their individual situation and needs. It also explains when to use the form, which types of infractions the form addresses, and how to file the form with the court.

E-mail and text notification. To facilitate communication with the court, the application form includes space for court users to provide their telephone number and e-mail address. It also includes check boxes for court users to indicate their consent to receiving text messages and e-mails from the court. The form advises court users that (1) text and data rates would apply and (2) not all courts can text or e-mail. Recognizing that only some courts have the capacity to send text and e-mail reminders, the committees wanted to avoid creating an expectation that individual courts will necessarily send such reminders.¹

Ability to pay. The application form elicits information from court users to assist the court in assessing their ability to pay. It asks court users if they receive public benefits and, if so, which type of public benefits they receive. For those court users who do not receive public benefits, the form asks them about their income and how many people that income supports. It also includes an option for court users to indicate that they have no source of income.

The application form also looks at the effect that paying the ticket would have on court users who are not public benefits recipients and have some source of income. It asks these users whether they would have enough money to pay their fine and their (1) rent or mortgage and, if not, how much they pay in rent and mortgage; (2) other basic living expenses, which, the form explains, include food, utilities, childcare, child support, transportation, medication, insurance (medical, car, house, and rental), and student loans; and (3) debt for other court cases. In

¹ The committees were also careful to ensure the check boxes would not suggest consent to electronic service under rule 2.251.

addition, the form provides space for court users to explain other problems they might experience if they were to pay the ticket. Court users whose ability to pay may not be readily assessed based on their income level alone can use this space to explain why their circumstances warrant relief.

Verification. The application form implements existing rule 4.335(c)(3), which provides that written ability-to-pay requests must include any supporting documents the defendant wishes the court to consider in adjudicating that request. To assist court users in presenting their case, the application asks them to document their income, expenses, and receipt of public benefits. It lists examples of possible types of documentation, instructs users to submit copies, not originals, and warns them that the court may destroy the copies after it has made a decision in their case. The committees determined that having court users submit copies of these important documents would be in the best interest of both the court users and the court. The form instructs applicants to retain their originals, and the court eliminates any expectation that it will return original documents.

In addition, the application form provides space for court users who lack supporting documents to explain their absence. The committees recognized that many of the intended users of this form may have insecure housing situations or face other personal challenges that decrease their likelihood of possessing and retaining financial documentation.

Subsequent requests. The application form implements existing rule 4.335(c)(6), which provides that a defendant may request a subsequent ability-to-pay determination based only on changed circumstances. Question 4 of the application form implements this provision by asking court users, “Have you told the court before that you can’t pay this fine?” The form then prompts those who respond affirmatively to provide additional information about any changes in their personal circumstances since that time.

Request for relief. The application form implements existing rule 4.335(c)(4), which recognizes that in adjudicating an ability-to-pay request, the court has the discretion to (1) provide for payment on an installment payment plan (if available); (2) allow the defendant to complete community service in lieu of paying the total fine (if available); (3) suspend most fines in whole or in part; and (4) offer an alternative disposition. Not all courts offer all options, but the application form allows the court user to request the options that fit their particular circumstances. The form warns users that their court may not offer all options and instructs them to contact the court with any questions.

The application form provides check boxes for court users to make their request for relief. It prompts those who request the payment plan option to state how much they want to pay each month and which day of the month they prefer to make a payment. It prompts those who request more time to pay to specify a deadline for paying what they owe. It instructs those who request the community service that, if community service is available at their court, it may not be available on weekends or evenings. It also provides notice that courts do not have discretion to

reduce some mandatory base fines and court fees under rule 4.335 and instructs court users to ask for other options in the event the judge cannot reduce the fine.

Civil assessments. Based on the ability-to-pay determination, the court may suspend the fine in whole or in part under existing rule 4.335(c)(4). However, rule 4.335 does not address vacating or reducing any civil assessments imposed for failures to pay or appear under existing rule 4.106(c). This proposal partially implements rule 4.106(c).

Rule 4.106(c) governs civil assessments imposed for failures to appear and pay. Subdivision (c)(5) implements the statutory mandate under Penal Code section 1214.1(b) that courts must vacate civil assessments on a showing of good cause. The advisory committee comment to subdivision (c) does not expressly identify ability to pay among the examples of good cause, although a judicial officer could find that an inability to pay amounts to good cause depending on the facts of the case.

Subdivision (c)(6) further recognizes that, even if a court user does not establish good cause, the court may still exercise its discretion under Penal Code section 1214.1(a) to reconsider (1) whether a civil assessment should be imposed, and (2) if so, the amount of the assessment. The “defendant’s financial circumstances” is listed among the factors the court may consider in the exercise of discretion. (Cal. Rules of Court, rule 4.106(c)(7)).

This proposal addresses civil assessments to the extent that the request to vacate or reduce a civil assessment under rule 4.106(c)(5) or (6) relates to the court user’s ability to pay and financial circumstances.² The application form includes a check box asking the court to vacate or reduce any civil assessments for failures to appear or pay. The check box is preselected because court users may not know whether the court had imposed a civil assessment or understand the difference between a fine and civil assessment.

Driver’s license “hold” or suspension. The application form also provides court users with notice about “holds” and suspensions on their driver’s license because of a prior failure to appear or pay.

Optional judicial order form (form TR-321/CR-321)

Optional form *Can’t Afford to Pay Fine: Traffic and Other Infractions (Court Order)* (form TR-321/CR-321) allows a judicial officer to communicate his or her order in response to the ability-to-pay request. It is formatted to be easy for judicial officers to complete and court users to understand.

The judicial order form allows the court to order the court user to appear in court and to bring specified documentation. Recognizing that courts have various means of scheduling court appearances, the judicial officer can instruct the court user to contact the court to schedule the

² The proposal does not address other bases for vacating or reducing a civil assessment under rule 4.106(c)(5) or (6).

appearance or to appear at a specified date, time, and location. It also warns court users not to miss their court date.

A judicial officer may also use the order form to grant the request and (1) reduce the total amount owed, (2) order monthly installment payments, (3) give the user more time to pay, (4) order the court user to perform community service, (5) vacate or reduce the civil assessment; or (6) provide for some combination of these options. It provides spaces for the court to communicate necessary information to the court user, such as the amount the court user still owes and payment deadlines.

Lastly, the order form allows the judicial officer to deny the request and provides check boxes to explain that decision.

Rule 4.336

The committees recommend adopting rule 4.336 to provide that the application form, the information contained on the form, and any supporting documentation (1) are confidential, (2) may be accessed only 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. The committees recommend that the form and supporting documentation be kept confidential because of the personal nature of the financial information they contain. The rule also specifies that the application form and judicial order form are optional.

Development of the forms

The overwhelming majority of litigants in traffic and other infraction cases are self-represented. The committees intended that court users be able to easily understand and complete the forms without assistance from court clerks and self-help center staff, or other professional legal assistance such as legal aid or pro bono legal assistance programs. To achieve this end, the committees developed the forms using plain language and principles of visual and user experience design, such as user testing. They also consulted with a readability and usability expert after the forms circulated for public comment.

Plain language. The committees used plain language (also known as *plain English*) on the forms. Plain language uses short, clear words and phrases and avoids technical jargon and convoluted sentence structures. Readers can readily understand it on their first reading.³

The Vehicle Code employs highly specialized legal terms to describe traffic court procedures—terms that the average layperson is unlikely to understand. The committees tried to accurately describe court procedures in infraction cases while using language understandable to the

³ The U.S. government has recognized the benefit of plain language and embraced its use to improve citizen engagement. The federal Plain Writing Act of 2010, for example, requires federal agencies to write “clear Government communication that the public can understand and use.” In addition, since 2004, the Judicial Council has used plain-language writing and formatting on many of its family law forms.

layperson. The proposed forms were written at a fifth-grade reading level.⁴ After circulating for public comment, the forms were reviewed by a plain-language expert whose suggestions for improving readability were incorporated into the form to the extent possible.

Usability. To improve usability of the forms, the committees incorporated elements and principles of visual and user experience design. For example, the forms use white space and a clean, uncluttered layout to improve readability. The form also includes icons: their selection and placement visually guide court users through the form, further enhancing user comprehension and ease of use.

The initial development of the form also included conducting several intra-agency design sessions and user testing to improve the usability of the forms. User testing identified potentially problematic areas of the form that decreased usability. Those problematic areas were then revised and subjected to additional user testing to ensure that the issues were resolved. After circulating for public comment, the forms were reviewed by a user design expert whose suggestions for further improving usability were incorporated into the form to the extent possible.

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for public comment from July 15 until August 15, 2017. Twenty-three comments were submitted in response to the invitation to comment; two agreed with the proposal, 12 agreed with the proposal if modified, and nine did not indicate their position; none disagreed. Three comments, representing 14 organizations, expressed their appreciation for the forms' ease of use. The committee's specific responses to each comment are available in the attached comments chart at pages 25–121.

Text and e-mail notifications

One comment submitted on behalf of seven organizations expressed appreciation for how the application form allows court users to consent to text and e-mail notifications. The comment explained that text and e-mail reminders “will help individuals experiencing housing instability, in particular, to comply with traffic court processes.” However, the comment recommended that the application form be modified to advise court users that text or e-mail notifications will be sent in addition to, rather than in lieu of, notifications sent by mail.

The committees considered the comment but declined to revise the form as suggested. The committees agree that any text or e-mail notifications will be in addition to mail service (or electronic service, if the court user has separately consented to electronic service under rule 2.251). However, the committees did not want to invite confusion by creating an expectation that all courtesy reminders sent by text or e-mail (e.g., installment payment reminders) would also be sent by mail.

⁴ This reading level is based on a Flesch-Kincaid readability test for grade level.

Another commenter questioned whether the consent to text and e-mail notifications on the application form was sufficient to indicate consent to electronic service. The committees did not intend for the check boxes indicating consent to text and e-mail notifications to indicate consent to electronic service under rule 2.251. Instead, the check boxes allow court users to consent to receiving only courtesy reminder texts and e-mails from a court if the court offers this option. Court users must separately consent to electronic service under rule 2.251 before a court may electronically serve that court user in lieu of mail service.

Two commenters recommended revising the application form to warn court users that not all courts can send text and e-mail notifications. One explained that otherwise court users might be “lulled into thinking they necessarily will hear all communications about their ticket in that way.” Three other commenters recommended advising court users on the application form that charges may apply. The committees agreed with both suggestions and revised the application form to advise court users that (1) only some courts can send e-mails and text messages and (2) message and data rates would apply.

Installment payments only

One commenter questioned how this proposal relates to mandatory forms TR-300 and TR-300 (online). The committees developed this proposal to serve a different purpose and implement a different statute. Forms TR-300 and TR-300 (online) implement Vehicle Code section 40510.5, which authorizes the clerk to accept the forfeiture of bail in installments, irrespective of the court user’s ability to pay. By contrast, this proposal allows a court user to request an ability-to-pay determination under Vehicle Code section 42003(c) and rule 4.335 of the California Rules of Court. It recognizes that, based on the ability-to-pay determination, a judicial officer may order that the judgment be paid in installments under Vehicle Code section 42003(a) and rule 4.335(c)(4)(A).

Two commenters recommended revising the proposal to make the installment payment option more prominent because “for many people, a payment plan is sufficient to meet their needs.” They suggested modifying the application form to allow the court user to request a payment plan without providing information about their ability to pay.

The committees declined to pursue the suggestion because this proposal implements rule 4.335, which recognizes that judicial officers may order various types of relief based on their assessment of the court user’s ability to pay. Installment plans are but one of the options available to a judicial officer in exercising discretion. (See Cal. Rules of Court, rule 4.335(c)(4).) This suggestion would modify the form to address an unintended audience: those court users who are able to pay but want the benefit of paying in installments. If the committees were to incorporate this recommendation into the proposal, judicial officers would be unable to make an informed decision about the court user’s ability to pay because they would lack information relevant to the court user’s finances. Mandatory forms TR-300 and TR-310 currently address

these court users by implementing Vehicle Code sections 40510.5 and 42007, respectively, which allow court users to pay in installments regardless of their ability to pay.

Traffic infractions only

One commenter recommended that the proposal be revised to address ability to pay only for traffic infractions, suggesting that addressing both traffic and nontraffic infractions might be confusing for court users because of the proposal's focus on traffic offenses.

The committees declined to pursue this recommendation because this proposal implements rule 4.335, which applies to all infractions, not just traffic infractions. The committees are unaware of any reason for conducting a different inquiry into the user's financial circumstances depending on the nature of the infraction violation. The application form's instructions to court users clarify that the form applies to both traffic and nontraffic infractions. The form does not otherwise focus on the nature of the violation, but instead on the court user's financial circumstances.

Civil assessments

Although the circulated forms did not address civil assessments, the invitation to comment specifically requested comment on whether form TR-320/CR-320 should be revised to allow court users to request that their civil assessments be vacated or reduced. Twelve commenters responded to the invitation. Six commenters asked the committees to revise the proposal to allow court users to request that the civil assessments be vacated or reduced under rule 4.106(c)(5) and (6). Another six commenters preferred that the proposal address only ability to pay under rule 4.335. Because the rationales offered by the commenters were multipronged and overlapped with those of other commenters, the rationales below are generalized.

The following rationales were offered in support of revising the proposal to include civil assessments:

- It would be more efficient for courts because they would otherwise have to expend more court time and resources to process separate applications and hold additional hearings.
- Court users who cannot afford the fine likely also cannot afford the civil assessment. Often the amount of the civil assessment is more than what they owe for the infraction violation.
- Court users frequently do not understand the difference between a fine and a civil assessment or know whether a court has imposed both in their case.
- It would simplify the process and make it more user friendly for self-represented court users who do not understand technical jargon.
- Financially distressed individuals and their families would be more likely to receive appropriate relief.
- Inability to pay and failures to appear are often connected because the stresses and challenges of poverty make it difficult for the poor to appear in court. In addition, rule 4.106(c)(7) recognizes that a court may exercise discretion and consider a court user's financial circumstances in deciding whether to vacate or reduce a civil assessment.

- The benefits of streamlining and simplifying the process by allowing a court user to address all fines and assessments imposed in his or her case would outweigh the cost of including two slightly different inquiries on the same form.
- Any timing concerns are inapposite. If the period for vacating a civil assessment for good cause had lapsed, the court could deny the request or vacate or reduce the civil assessment in the exercise of discretion. Superior courts could still develop separate local court forms for civil assessments imposed before adjudication of the infraction violation.

The following rationales were offered against revising the proposal to include civil assessments:

- Different standards apply to requests made under rules 4.106(c) and 4.335.
- Requests to vacate civil assessments under rule 4.106(c)(5) are time limited.

Two commenters who opposed revising the proposal recommended using separate companion forms to address civil assessments. One of these commenters suggested that the Judicial Council develop these companion forms and that the application and judicial order forms direct court users to them.

Lastly, one commenter urged the committees to exercise care, but did not make a specific recommendation. This commenter recognized both the benefits and costs of revising the proposal to address civil assessments. On the one hand, it would be cumbersome for court users to complete two separate forms. On the other, it might be confusing to combine the requests into one form.

After careful consideration of these comments, the committees revised the proposal to address civil assessments under rule 4.106(c)(5) and (6), but only to the extent that the request to vacate or reduce a civil assessment relates to the court user's ability to pay and financial circumstances. As many commenters recognized, addressing civil assessments on the statewide ability-to-pay form benefits both the courts and court users, providing for one streamlined process for requests related to the court user's ability to pay the total amount due. The committees also determined that this addition would benefit the primary intended users of the forms without significantly decreasing the usability of the forms.

The committees noted that at least four superior courts have already adopted local forms that combine civil assessments and ability to pay, suggesting that a single process is a workable practice. The committees further recognize that many court users are concerned with the total amount that they owe for their infraction violation and may not readily understand the difference between base fines and civil assessments. A single process to address both would reduce confusion and time spent navigating the court system.

However, the committees decided against revising the form to incorporate requests to vacate or reduce civil assessments for reasons unrelated to the court user's ability to pay or financial circumstances. Incorporating all potential bases for vacating or reducing a civil assessment

would require significant modification of the form and might introduce confusion for court users. The committees determined that the net impact of these proposed changes would likely be an increase in the length and complexity of the forms, without significant benefit to the primary intended users of the forms.

The committees recognize that different standards apply to requests made under rules 4.106(c) and 4.335, but expect that reviewing one application will be less burdensome on judicial officers and that judicial officers will readily be able to apply different standards in adjudicating each request. In incorporating civil assessments into the proposal, the committees designed the judicial order form to assist judicial officers in making these separate determinations.

Lastly, the committees did not view the time limit for vacating civil assessments for good cause under rule 4.106(c)(5) as an insurmountable obstacle. Even if the request is time-barred under rule 4.106(c)(5), the judicial officer still has discretion to vacate or reduce the civil assessment under rule 4.106(c)(6).

Debt in collections

Rule 4.335 provides that “[a] defendant may request an ability-to-pay determination . . . while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.” (Cal. Rules of Court, rule 4.335(c)(2).) Two commenters requested that the form be revised to notify court users that they may use the form even if their court-ordered debt has been sent to collections. The committees agreed with the commenters and added a notice to court users on the first page of the application form.

Request for supporting documentation if available

Four commenters objected to the application form’s instruction to attach supporting documentation if available. One expressed concern that this instruction would increase the number of confidential records maintained by the courts. That commenter preferred the approach adopted by the Judicial Council’s civil fee waiver form, which asks the court user to itemize expenses but does not require supporting documentation. Alternatively, the commenter suggested that the form should ask for supporting documentation only from those who receive public benefits or are very low income; all others would be required to submit documentation only at the court’s request or at a review hearing.

Another commenter similarly recommended revising the application form to instruct users not to attach documents and to indicate if they had documents that could be provided at the court’s request. A third similarly asked the committees not to request supporting documentation in the first instance, but instead to inform court users that the court may require a hearing and request proof. The commenter explained that very low-income court users might not have access to supporting documentation because they are homeless, home insecure, or victims of domestic violence or other crimes. Others may not have access to a photocopier or may not trust that their documents would be kept confidential.

A fourth commenter expressed concern that retaining supporting documentation would be unduly burdensome for the courts. The commenter recommended revising the application form to ask court users whether they have documents that can be provided upon request and instructing them not to attach the supporting documentation to the form.

Other commenters supported the application form's request for available documentation. One comment suggested that the application take a step further and require documentary proof from all public benefits recipients. Another comment, submitted on behalf of seven organizations, also supported the committees' decision to allow those who do not have documentation to explain its absence on the application form. The comment explained that providing this flexibility for these court users was "a reasonable and compassionate acknowledgement of the broad range of circumstances and challenges that face low-income people." The comment identified several types of court users who might lack supplementary documentation, including people who are unemployed and do not receive public benefits and people with unstable housing who lack ready access to documentation.

After careful consideration, the committees decided against revising the application form to omit the request for supporting documentation. This form implements rule 4.335, which provides that ability-to-pay requests "must include any information or documentation the defendant wishes the court to consider in connection with the determination." (Cal. Rules of Court, rule 4.335(c)(3).) This proposal is intended to assist courts in implementing this rule.

This proposal is also expected to facilitate the review of ability-to-pay requests in writing without burdening either the court or the court user with the requirement of a hearing in all cases. Because the committees recognize that not all court users will have access to supporting documentation, form TR-320/CR-320 provides space for the court user to explain why documentation is unavailable.

Confidentiality of supporting documentation

Rule 4.336 designates the application form, the information it contains, and any supporting documentation as confidential. It provides that the clerk's office must maintain the form and supporting documentation in a manner that will preserve their confidentiality and that only the parties and the court may access them.

Two commenters supported designating the application form and supporting documentation as confidential. One commenter explained that the confidentiality of the application form and supporting documentation is necessary to protect the privacy, safety, and identities of court users. Another stated that it would reduce identity theft and enable public benefits recipients to keep their status private and out of the public record.

Two commenters expressed concern that the courts would incur significant costs implementing rule 4.336's confidentiality provision. One commenter recommended revising the rule to provide that only the application form be designated as confidential. The rule would still require clerks to

maintain the supporting documentation in a manner that preserves its confidentiality, but courts would be instructed not to maintain the supporting documentation as part of the case file and the parties would not be guaranteed access to the supporting documentation.

The other commenter explained that many case management systems cannot handle confidential documents and that it would be unduly burdensome to require courts to maintain confidential supplemental documents. The commenter recommended the same revisions to the rule as stated in the paragraph above.

The committees recognize that this proposal may place a significant burden on some courts. Rule 4.335 provides that a court must permit a defendant to request a determination of his or her ability to pay by written petition, unless the court directs a court appearance. (Cal. Rules of Court, rule 4.335(c)(3).) It also provides that the request “must include any information or documentation the defendant wishes the court to consider in connection with the determination.” (*Ibid.*) This proposal is intended to assist courts in implementing this rule.

The committees are cognizant of both the burdens on the courts and the sensitive nature of the inquiry into the court user’s ability to pay. If the form did not ask for information and supporting documentation related to the court user’s financial circumstances, the court would not have a basis for making the ability-to-pay determination and would likely have to hold hearings in these cases, leading to further operational costs for the courts as well as costs to and burdens on court users.

The committees declined to pursue the suggestion to specify where the court must maintain supplemental documentation. They understand that some courts may maintain this documentation as part of the case file, whereas others may store it elsewhere. Rule 4.336 specifies only that the information on the application and supporting documentation are confidential and accessible only by the parties and court. The rule allows for local flexibility by not specifying exactly where courts must maintain the supporting documentation.

Lastly, the committees also declined to omit the requirement from the rule that courts allow parties to access the supplemental documentation. Although they recognize that providing access to parties may create a burden on courts, they expect that requests for access to the supporting documentation will be infrequent.

Destruction of supporting documentation

One commenter explained that requiring courts to maintain supporting documentation would create an unnecessary burden on the court. The commenter viewed the retention of these exhibits as unnecessary under the Penal Code, which provides for the return and destruction of exhibits. This commenter recommended revising rule 4.336(b) to state that the “supporting documentation may be destroyed or returned to the offering party after the court rules on the request.”

The committees recognize that retaining the supporting documentation creates a significant burden for the courts. They declined to revise rule 4.336 because the rule addresses only the confidentiality of the application form and supporting documentation while they are in the court's possession; it does not address their destruction, which is governed by statute. However, the committees revised the application form to notify court users that the form and supporting documentation may be destroyed after the court makes a decision. This notice reflects their understanding that courts may apply the Penal Code provisions governing the destruction of exhibits to the supporting documentation.

Itemization of expenses

Several Traffic Advisory Committee members and three commenters recommended revising the application form to ask court users to itemize their expenses. One commenter thought the form should list basic necessities. Another questioned why the application form differs from the Judicial Council's form for adjudicating civil fee waivers (form FW-001), which requires court users above a certain income threshold to provide in-depth details about their expenses. The commenter stated that judicial officers would want more information about these court users' actual expenses. The commenter concluded it would be more efficient to request this information on the form to avoid holding unnecessary hearings.

A third commenter recommended revising the application form to include a separate section on the court user's assets and liabilities. Specifically, the commenter would require court users to state whether they own a home, the amount they pay in rent or house payments, and the amount of cash they have on hand or in the bank. The commenter would further require court users to list any vehicles they own, the make and year of the vehicle, their monthly payment on the vehicle, and how much they still owe on the vehicle.

Two commenters preferred the approach taken by the committees in the circulated application form, which did not request an itemized list of expenses. One comment submitted on behalf of seven organizations agreed that the form adequately provided court users with an opportunity to inform the court of their particular financial concerns, without adding an unnecessarily wordy and invasive inquiry about every expense incurred. Moreover, this comment expressed concern that an itemized list would add an unnecessary burden and raise privacy concerns for the most vulnerable court users.

Another commenter stated that the usability of the form would decrease significantly if it included a list of itemized expenses. The commenter explained that judicial officers should be able to determine ability to pay based on the court user's income and could call a hearing if they had any doubt.

After careful consideration of the comments, the committees opted not to require an itemized list of the court users' expenses on the application form. The committees designed the form to focus on the primary intended users of these forms: court users who are living in or near poverty, as

reflected by their receipt of public benefits or the fact that they have a very low income. Accordingly, the form asks questions about these indicators of inability to pay.

Nonetheless, the committees recognize that other court users may have other circumstances warranting relief. To this end, the application form provides space for a court user to explain serious problems they would have if they paid the ticket. It also encourages court users to attach copies of documentation of their income and expenses. The committees expect that in many cases, the court will be able to determine the court user's ability to pay based on the information provided on the form. However, the committees also recognize that there are some instances where the court will need additional information before determining whether the court user can afford to pay the ticket fine. For this reason, the judicial order form allows the judicial officer to request that the court user appear in court and bring any additional documentation specified by the judicial officer.

The committees decided, for several reasons, not to request the itemized expenses of those court users who have an income that exceeds a specified threshold on the application form. First, there are significant differences in how poverty is experienced in small, medium, and large counties and in rural, suburban, and urban communities. Appropriately defining a poverty income on a statewide basis is problematic for a state like California, where the poverty line varies so widely by region and county.

Second, the usability of the application form would decrease significantly if the form included an itemized list of expenses for court users whose incomes exceed a specified threshold. Adding such a list would require adding one or more pages to the form to capture court user expenses—and creating more information for each court user to read and understand. It would also make the form more difficult to navigate because each court user would have to determine whether the expense-related fields applied to them, unintentionally making the form more confusing for all court users. With a longer and more confusing form, court users would be increasingly likely to seek professional assistance to complete the form, erroneously complete the expense information when it does not apply to them, or fail to complete the expense information when it does.

The committees felt strongly that the usability of the form was a critical factor in making the forms successful for the court users and the courts. When forms are more usable, court users are more likely to complete and file them correctly and less likely to need assistance from court clerks, self-help center staff, or other professional legal service providers to do so.

Although the committees decided against requiring a detailed list of expenses from all court users, they did revise the application form to prompt those court users who indicate that they would not be able to pay their mortgage or rent if they had to pay the fine to specify how much they pay in mortgage or rent. They committees made this change because the cost of housing can be especially high in certain areas of California.

Optional forms

Lastly, three commenters recommend that the application and judicial order forms be mandatory, not optional, Judicial Council forms. One stated that mandatory forms would provide for uniformity and would ensure that courts provide access to ability-to-pay determinations. Another comment, submitted on behalf of six other organizations, expressed concern that optional forms would create disparities across jurisdictions for court users. The comment indicated that mandatory forms would provide greater consistency not only for court users, but also for courts: because courts will be required to accept the optional application form under rule 1.35, they will necessarily have to modify court operations and their case management systems to accommodate the optional form.

Another comment submitted on behalf of seven organizations supported mandatory forms. The comment further suggested that it would be more efficient for courts, and would improve access to justice for court users, if courts were required to include a copy of the application form when sending reminder notices and notices of civil assessments to court users.

The committees declined to pursue these suggestions. Since the Judicial Council adopted rule 4.335, courts have adopted local forms to implement the rule. By designating the forms as optional, this proposal will promote statewide uniformity while also allowing local courts to continue accepting the local forms that they spent time and resources developing. In addition, they decided against further burdening the courts by requiring that they send application forms with every notice.

Implementation Requirements, Costs, and Operational Impacts

Five superior courts submitted comments regarding this proposal's operational impacts on courts. One court was unable to assess whether the proposal would provide cost savings or increase the cost of operations, but indicated that it would need to develop and vet procedures and create event codes in its case management system.

Another court responded that the proposal would neither provide cost savings nor increase the cost of operations. It did not expect any difficulties implementing the proposal. To implement the proposal, the court would need to write a new procedure and create training, which would take approximately 10 hours to complete. Training sessions of approximately an hour in duration would be required for fiscal collection assistants, court processing assistants, and judicial assistants. The court would also need to create new docket codes and modify its case management system to scan and store the filing as a confidential document. The court expected further coordination with records management personnel because it does not currently create a case file for infraction proceedings and because confidential documents would need to be handled differently.

A third court indicated that courts would be unable to keep the requests confidential without significant staff time and programming costs. The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee similarly

stated that, because many case management systems cannot handle confidential documents, it would be burdensome to require courts to maintain confidential supplemental documents.

The committees were concerned about the burden that maintaining confidential documents will impose on courts. As discussed above, they sought to balance that concern with the risk to court users if their sensitive financial information were made public. The committees decided that gathering this information was critical to providing judicial officers with a basis for evaluating the court user's ability to pay without requiring a hearing. At the same time, the committees sought to provide local courts with flexibility by recognizing that they could destroy the supporting documentation shortly after issuing a decision in the case. In addition, by not specifying in rule 4.336 where the documentation had to be stored, the committees intended to recognize that courts could maintain the documentation outside of the case file, so long as it was kept confidential and accessible only by the parties and the court.

A fourth court recognized that the new procedures governing ability-to-pay determinations benefitted the public, but significantly increased costs to the courts through increased filings, processing, and judicial resources. That court explained that staff must file the petition, research the case status and outstanding balance, determine whether the court user had previously made a request, calculate the correct bail schedule depending on the date of the offense, schedule additional hearings, notify the collections agency of any changes, and monitor community service compliance. A fifth court suggested that this proposal would increase the volume of ability-to-pay requests because it would encourage court users who perceive the fine as too high to submit requests, regardless of their ability to pay.

The committees recognize that rule 4.335, which this proposal implements, resulted in increased costs for courts. By making it easier and more accessible for court users to request an ability-to-pay determination, this proposal may also increase the number of requests received by courts. The committees were sympathetic to the additional burden this increase places on courts that are already operating within limited budgets.

The committees intended for this proposal to introduce court efficiencies, which they expect will help offset the anticipated increase in filings resulting from the creation of a statewide form. First, this proposal may reduce the need for hearings and court appearances by allowing judicial officers to adjudicate ability-to-pay determinations in writing. Second, the design of the forms is intended to increase court efficiencies. The forms were designed with the goal that court users are able to easily understand and complete the forms without requiring the assistance of already overburdened court clerks, self-help center staff, or nonprofit legal professionals. Court users will likely make fewer errors in completing forms drafted in plain language and developed through user testing—resulting in fewer rejected filings. The committees further expect that these forms will reduce the time staff and judicial officers spend on ability-to-pay requests by streamlining operations for counter staff and judicial officers.

Attachments and Links

1. Cal. Rules of Court, rule 4.336, at page 19
2. Forms TR-320/CR-320 and TR-321/CR-321, at pages 20–24
3. Chart of comments, at pages 25–121

DRAFT

Rule 4.336 of the California Rules of Court is adopted, effective April 1, 2018, to read:

1 **Rule 4.336. Confidential Can't Afford to Pay Fine Forms**

2
3 **(a) Use of request and order forms**

4
5 (1) A court uses the information on *Can't Afford to Pay Fine: Traffic and Other*
6 *Infractions* (form TR-320/CR-320) to determine an infraction defendant's
7 ability to pay under rule 4.335.

8
9 (2) A court may use *Can't Afford to Pay Fine: Traffic and Other Infractions*
10 *(Court Order)* (form TR-321/CR-321) to issue an order in response to an
11 infraction defendant's request for an ability-to-pay determination under rule
12 4.335.

13
14 **(b) Confidential request form**

15
16 *Can't Afford to Pay Fine: Traffic and Other Infractions* (form TR-320/CR-320),
17 the information it contains, and any supporting documentation are confidential. The
18 clerk's office must maintain the form and supporting documentation in a manner
19 that will protect and preserve their confidentiality. Only the parties and the court
20 may access the form and supporting documentation.

21
22 **(c) Optional request and order forms**

23
24 *Can't Afford to Pay Fine: Traffic and Other Infractions* (form TR-320/CR-320) and
25 *Can't Afford to Pay Fine: Traffic and Other Infractions (Court Order)* (form
26 TR-321/CR-321) are optional forms under rule 1.35.

Clerk stamps date here when form is filed.

Using this form

- If you can't afford to pay your fine, fill out this form to ask for a lower fine, a payment plan, more time to pay, and/or community service.
- Use this form **after** the court has decided that you owe the fine. You may use this form even if your fine has been sent to collections. If you have more than one fine, use one form for each fine.
- Mail or take this form to the court listed on your ticket. If you want to file the form electronically, ask the court if it allows "e-filing."
- If you lost your ticket or have questions, contact your court at www.courts.ca.gov/find-my-court.htm.



DRAFT
*Not approved by the
Judicial Council*

Fill in court name and street address:

Superior Court of California, County of

Fill in the case number and ticket number (if you have it):

Case Number:

Ticket Number:

Types of fines

- Use this form for **traffic** fines (like speeding) or other infractions (like fishing without a license or drinking in public).
- This form is **not for parking tickets**. Read your parking ticket to find out what you can do.



Important!

- **Do not** use this form to tell the court that you didn't do anything wrong. See the instructions on your ticket and visit www.courts.ca.gov/selfhelp.htm for more information on fighting it.

1 Your information

Name: _____

Street or mailing address: _____
Street City State Zip

Telephone: _____ * OK to text you at this number? Yes No

Email (optional): _____ * OK to email you at this email? Yes No

** Some courts don't use text messages and email to contact court clients. Message and data rates would apply.*

2 What type of income do you have?

I do not get money from any source. (Skip to 3)

I get public benefits. (Check all that apply, then skip to 3)

Food stamps (CalFresh)

State Supplementary Payment (SSP)

Medi-Cal

County Relief/General Assistance

CalWORKs or Tribal TANF

In-Home Supportive Services (IHSS)

Supplemental Security Income (SSI)

Cash Assistance Program for Immigrants (CAPI)

Other need-based aid (specify): _____



I do **not** get public benefits, but I get money from other sources. (*Answer all that apply*)

a. How much money do you earn (take-home pay) or get from other sources (including income received in your family from a spouse or live-in romantic partner)?

- \$ _____ every: (*Check one*) Year 2 weeks Twice a month
 Week Month Season
 Other: _____

b. This money supports me and _____ other people.

c. If I pay the fine, I would: (*Check all that apply, if any*)

- Not have enough money to pay my rent/mortgage. I pay \$ _____ for rent/mortgage every (*Check one*): Month Week Other: _____
- Not have enough money to pay for other basic living expenses. *Basic living expenses are things like: food, utilities, childcare, child support, transportation, medication, insurance (medical, car, house, and rental), and student loans.*
- Not have enough money to pay my debt for other court cases.
- Have other problems (*please explain*):

3 Do you have anything that shows your public benefits, income, or expenses?

Things like an EBT card, paystubs, tax returns, rent or mortgage checks, or utility bills.



a. Yes, I have attached **copies** to this form.

Important! *Keep the original documents for your own records. Any copies you attach can be destroyed after the court makes a decision on your case. Cross out any social security numbers, or other private information, on the copy you give the court.*

b. No, I do not have any papers to show because:

4 Have you told the court before that you can't pay this fine?

Yes No, not that I can remember (*Skip to 5*)


What has changed in your family's life since then? (*Check all that apply, if any.*)


- Lost job or reduced hours at work.
 Started to receive public benefits.
 Suffered a serious illness or disability.
 Other: _____





5 What are you asking the court to do? (Check all that you are willing and able to do)

Lower the amount I owe on the fine. 

Payment plan: I want to pay:
\$ _____ every month on the
_____ day of the month,
until this fine is paid off. 

More time to pay: Please change my
deadline to (month/day/year):
_____ 

Community service instead of
paying the fine. I understand that
community service may not be
available on weekends or evenings. 



- Not all courts offer all of these choices.
- Contact the court listed on your ticket to find out about your choices.
- Some fines can't be reduced just because you don't have the money to pay them. You may ask for more time to pay, community service, and/or monthly payments even if the court can't reduce the fine.

Cancel or lower late charges that I have for missing a hearing or failing to pay my fine on time.

6 Other information:

List other facts (if any) about why you can't pay the fine or your choices in **5**. (You can add extra pages or attach other documents that help you explain)

7 Driver's license "hold" or suspension

Did you miss a court date or fail to pay a fine? If so, the Department of Motor Vehicles (DMV) might have suspended or put a "hold" on your driver's license. If the court clears your failure to appear or failure to pay, the court can notify the DMV. You must still contact the DMV to get your license back.


8 Read and sign below



I promise that the information above is correct. I declare under penalty of perjury, under the laws of the State of California, that all information on or attached to this form is true.

Date:

Type or print your name



Sign your name

Can't Afford to Pay Fine: Traffic and Other Infractions (Court Order)

Clerk stamps date here when form is filed.

DRAFT

Not approved by the Judicial Council

Court order: You said that you don't have enough money to pay what you owe. See below for the court's decision:

1 Need more information: The court has more questions about how much money you get and spend.

Please contact your court to set up a time to see the judicial officer.

Clerk's phone number: _____

Clerk's address: _____

Please come to court at (time): _____ on (date): _____

Go to Department: _____

Bring these things with you:

- (1) _____
(2) _____
(3) _____



Don't miss the court date!

Superior Court of California, County of

Case Number:

Ticket Number:

2 Request granted: The court decided that you don't have enough money to pay what you owe.



The amount you owe is lowered to \$ _____ . Pay the new amount of \$ _____ by (date): _____ .



You will pay what you owe in monthly payments.

Pay \$ _____ on the _____ day of every month for _____ months.

Your first payment will be on (date): _____ Your last payment will be on (date): _____ .



You can have more time to pay what you owe. Pay \$ _____ on (date): _____ .



You will do community service instead of paying what you owe.

You must do _____ hours of community service by (date): _____ .

Contact our court to learn how to set up community service.

This is a Court Order.



You have extra late charges for missing a court date or failing to pay the fine. The court decided that those charges:

Are cancelled - You do not have to pay the late charges anymore.
The late charge is forgiven under: Rule 4.106(c)(5) Rule 4.106(c)(6)

Are lowered - The court lowered the amount of the charges to \$ _____.
The extra charge is reduced under rule 4.106(c)(6).

Will stay the same - The court decided that you still have to pay the late charges because:

3 **Request denied:** The court decided that you have to pay the full cost of what you owe.

The court decided that:

You have enough money to pay what you owe.

You made a request before, but you did not show that your situation has changed since your last request.

The court can't lower the amount you owe any further. All of the money that you owe is "non-reducible". The law says that you have to pay this money, no matter what.

Pay the full cost of what you owe (\$ _____) by (date): _____.

Date: _____

Judge (or Judicial Officer)

4 **Clerk's certificate of service**

I am a clerk of the Superior Court of _____ County. I certify that I am not a party to this action.

I served a copy of this order to: _____ in the following manner:
Name of person served

Service by mail: I placed a filed copy of this order in a sealed envelope addressed to the following address:
Street or mailing address: _____
Street City State Zip

The envelope was mailed by U.S. mail, with full postage:
from _____, California, on _____
Place Date

Electronic service: I electronically sent a copy of this order:
from _____ to _____ on _____
Electronic Service Address Electronic Service Address Date

Date: _____ Clerk, by: _____

This is a Court Order.

SPR17-04

Traffic and Criminal Procedure: Forms and Rule on Ability to Pay in Traffic and Other Infraction Cases

All comments are verbatim unless indicated by an asterisk (*).

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
1.	<p>ACLU of California By: Micaela Davis</p> <p>Bay Area Legal Aid By: Kendra Amick</p> <p>East Bay Community Law Center By: Theresa Zhen</p> <p>Lawyers’ Committee for Civil Rights of the San Francisco Bay Area By: Elisa Della-Piana</p> <p>Legal Services for Prisoners with Children By: Brittany Stonesifer</p> <p>Legal Services of Northern California By: Wade Askew</p> <p>Western Center on Law and Poverty By: Antionette Dozier</p>	N/I	<p>We are advocates from seven civil rights and legal services organizations, assisting and seeking policy reforms on behalf of low-income people who cannot afford the high costs associated with California traffic tickets. For several years, members of our coalition have advocated before the courts, the legislature, and the Judicial Council to create systemic changes to traffic practices so as to better address the needs of defendants who are unable to pay court fines and fees and to avoid inflicting disproportionate and unconstitutional harms on those individuals.</p> <p>We are pleased to see that the proposed forms TR-320/CR-320 and TR-321/CR-321 and proposed Rule 4.336 incorporate many of the prior comments shared with the Judicial Council by the signatories to this letter. In particular, we commend the Traffic Advisory Committee, Criminal Law Advisory Committee, and Advisory Committee on Providing Access and Fairness (“the Committees”) for seeking to improve the process by which court users may request that the amount and manner of resolving their traffic fines be in accordance with their ability to pay. Moreover, we appreciate the importance the Committees have placed on ensuring that the forms used by traffic defendants are readable and user-friendly, which is critical to ensuring equal and meaningful access to justice.</p> <p>To further protect due process rights and provide fundamental fairness for low-income and indigent</p>	The committees appreciate this input.

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Traffic and Criminal Procedure: Forms and Rule on Ability to Pay in Traffic and Other Infraction Cases

All comments are verbatim unless indicated by an asterisk (*).

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
			<p>defendants, we offer the following comments on the proposed forms and rules:</p> <p>[See specific comments below.]</p>	
2.	Holly Browne Legal Services Project Manager Legal Aid of Sonoma County	AM	[See specific comments below.]	The committees appreciate this input.
3.	California Attorney General’s Office By: Nicklas A. Akers Senior Assistant Attorney General	A	<p>The Consumer Law Section, Public Rights Division, California Attorney General’s Office, submits the following comments in response to Invitation to Comment SP17-14 concerning ability to pay and relief from fines in traffic and other infraction cases.</p> <p>The Consumer Law Section supports the adoption of proposed form TR-320/CR-320, <i>Can’t Afford to Pay Ticket Fine: Traffic and Other Infractions</i>, proposed form TR-321/CR-321, <i>Can’t Afford to Pay Ticket Fine: Traffic and Other Infractions (Judge’s Order)</i>, and proposed Cal. Rules of Court, rule 4.336, relating to the use and confidential treatment of these forms. The proposed forms and rule will materially assist financially distressed defendants to obtain necessary and appropriate relief from fines in traffic and other infraction cases.</p> <p>The Section also encourages the Traffic and Criminal Law Advisory Committees, and the Advisory Committee on Providing Access and Fairness, to consider the following modifications to</p>	The committees appreciate this input.

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Traffic and Criminal Procedure: Forms and Rule on Ability to Pay in Traffic and Other Infraction Cases

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
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			<p>the forms in order to better assist users.</p> <p>[See specific comments below.]</p> <p>We thank the Advisory Committees for their joint efforts on this important issue, and appreciate the opportunity to comment on the proposal.</p>	
4.	Hon. Christine Copeland Commissioner Santa Clara County Superior Court	A	<p>I speak from my experience as a traffic court commissioner (and extensive familiarity with SRLs as a former long term FLF). My comments do not represent my Court.</p> <p>[See specific comments below.]</p>	The committees appreciate this input.
5.	Albert De La Isla Principal Analyst Superior Court of California, Orange County / West Justice Center	N/I	[See specific comments below.]	The committees appreciate this input.
6.	Richard Hammerbeck	AM	[The comment concerns a specific matter, rather than the merits of the proposal and, therefore, is not included here.]	No response required.
7.	Howard Herships	N/I	[See specific comments below.]	The committees appreciate this input.
8.	Legal Advocates for Children and Youth By: Julie Saffren Karen Palmer	N/I	Legal Advocates for Children & Youth (LACY) advances the legal rights of children and youth, empowering them to lead healthy and productive lives. We listen to, advise, and advocate for our clients to ensure their voices are heard and their rights are protected. We provide free and	The committees appreciate this input.

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Traffic and Criminal Procedure: Forms and Rule on Ability to Pay in Traffic and Other Infraction Cases

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
			<p>confidential legal assistance to children and youth in juvenile dependency, family law, probate guardianship, education matters and numerous other practice areas; advocacy to improve court and community systems designed to protect and promote child welfare; and workshops to educate youth, parents, caregivers and members of the community about issues impacting child welfare and legal rights.</p> <p>In light of this mission, attached please find comments from LACY staff attorneys concerning the Ability to Pay proposal at http://www.courts.ca.gov/policyadmin-invitationstocomment.htm SP17-04 Traffic and Criminal Procedure: Forms and rule on ability to pay in traffic and other infraction cases. LACY attorneys serve youth in need of this important economic relief. Our feedback is as follows:</p> <p>[See specific comments below.]</p>	
9.	Legal Aid Foundation of Los Angeles By: Tyler Sutherland Staff Attorney	N/I	<p>The Legal Aid Foundation of Los Angeles is a frontline nonprofit law firm that provides civil legal aid to low-income people in Los Angeles County. As a part of our commitment to serving low-income communities, we currently advocate for clients in traffic court proceedings. We provide these services with the aim of reducing the financial burden excessive traffic court fines and fees impose on our client’s lives and eliminating the barriers to employment created by driver’s</p>	The committees appreciate this input.

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Traffic and Criminal Procedure: Forms and Rule on Ability to Pay in Traffic and Other Infraction Cases

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
			<p>license suspensions.</p> <p>We have seen firsthand the devastating effects a burden of debt can have on someone’s life. We applaud the efforts of the Judicial Council to increase access to justice and procedural fairness within the traffic court system. Here, LAFLA provides comments as to the implementation of these forms.</p> <p>[See specific comments below.]</p>	
10.	Danielle McCurry	AM	[See specific comments below.]	The committees appreciate this input.
11.	Terry McNally Court Executive Officer Superior Court of California, Kern County	AM	[See specific comments below.]	The committees appreciate this input.
12.	Kelly McNamara Managing Attorney San Bernardino Superior Court	AM	<p>I think the form is wonderful, and would suggest only one change.</p> <p>[See specific comment below.]</p>	The committees appreciate this input.
13.	<p>Neighborhood Legal Services of Los Angeles County By: Stephanie Yu Staff Attorney</p> <p>USC Gould School of Law By: Clare Pastore</p>	N/I	<p>We are co-counsel in litigation against Los Angeles Superior Court regarding traffic court practices that disproportionately disadvantage low-income traffic court litigants in Los Angeles County. Our work on <i>Alvarado et al. v. Los Angeles Superior Court</i> has been dedicated to ensuring that the court provides an accessible and user-friendly ability-to-pay process to traffic court litigants.</p>	The committees appreciate this input.

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Traffic and Criminal Procedure: Forms and Rule on Ability to Pay in Traffic and Other Infraction Cases

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
	<p>Western Center on Law and Poverty By: Richard Rothschild</p> <p>American Civil Liberties Union of Southern California By: Devon Porter</p> <p>Schonbrun Seplow Harris & Hoffman, LLP BY: Colleen Mullen</p> <p>Rapkin & Associates, LLP By: Scott B. Rapkin</p>		<p>We welcome the Judicial Council’s proposed rule and Forms TR-320/CR-320 and TR-321/CR-321 (“proposed forms”). We are pleased that the proposed forms provide an ability-to-pay determination process that is easy to access. We commend the Judicial Council for making the forms readable and user-friendly. We believe that this will enable many more traffic court litigants to gain access to a system that has historically been very difficult to navigate. The proposed form should reduce the likelihood that failures to pay or failures to appear will result in cycles of debt or incarceration.</p> <p>[See specific comments below.]</p> <p>We appreciate the hard work the Judicial Council has done to design these new forms, which will advance the rights of low-income traffic court litigants while introducing efficiencies to the courts. We look forward to continuing to work with the Judicial Council and its Committees to improve the traffic court process.</p>	
14.	<p>Public Counsel By: Anne Richardson Directing Attorney Consumer Law Project</p>	N/I	<p>On behalf of Public Counsel, I am pleased to provide these comments in response to the Invitation to Comment: SP 17-04, regarding a Traffic and Criminal Procedure Form on Ability to Pay in Traffic and Other Infraction Cases.</p> <p>Public Counsel is the largest <i>pro bono</i> law firm in</p>	The committees appreciate this input.

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Traffic and Criminal Procedure: Forms and Rule on Ability to Pay in Traffic and Other Infraction Cases

All comments are verbatim unless indicated by an asterisk (*).

List of All Commentators, Overall Positions on the Proposal, and General Comments			
Commentator	Position	Comment	Committee Response
		<p>the nation and the Southern California affiliate of the Lawyers’ Committee for Civil Rights Under Law. Its seventy-one attorneys and fifty support staff—along with over 5,000 volunteer lawyers, law students, and legal professionals—assist more than 30,000 low-income individuals, families, and community organizations every year. Public Counsel addresses systemic poverty and civil rights issues through impact litigation, direct services, and policy advocacy. Our practice areas include veterans’ rights, children’s rights, community development, consumers’ rights, immigrants’ rights, and housing and homelessness.</p> <p>Specifically, we have a great deal of experience with individuals who cannot afford to pay traffic and other infraction fines. Our comments below reflect the combined experience of many attorneys at Public Counsel who have directly assisted clients struggling to pay court debt, including traffic and other infraction fines.</p> <p>As an initial matter, we praise the Judicial Council for having drafted the form in easy-to-read language and with a clean layout, although we do have numerous specific comments to make about how the proposed form can be altered in order for it to have its desired effect, which are set out below.</p> <p>[See specific comments below.]</p> <p>We thank the Council and the Traffic Advisory</p>	

SPR17-04**Traffic and Criminal Procedure: Forms and Rule on Ability to Pay in Traffic and Other Infraction Cases**

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
			Committee for their time in putting together this proposal. Anything that the state can do to prevent those in poverty from slipping even further behind is a much-needed corrective.	
15.	Suzanne Schleder Sr. Business System Analyst Judicial Council of California, Information Technology (JCIT)	AM	[See specific comments below.]	The committees appreciate this input.
16.	Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano, Management Analyst	AM	[See specific comments below.]	The committees appreciate this input.
17.	Superior Court of California, County of Riverside By: Susan D. Ryan Chief Deputy of Legal Services	AM	[See specific comments below.]	The committees appreciate this input.
18.	Superior Court of California, County of San Diego By: Mike Roddy Court Executive Officer	AM	[See specific comments below.]	The committees appreciate this input.
19.	Superior Court of California, County of San Francisco By: Michael Yuen Court Executive Officer	AM	[See specific comments below.]	The committees appreciate this input.

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Traffic and Criminal Procedure: Forms and Rule on Ability to Pay in Traffic and Other Infraction Cases

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
20.	Superior Court of California, County of San Mateo By: Mary Treanor Court Policy Analyst II	N/I	[See specific comments below.]	The committees appreciate this input.
21.	Superior Court of California, County of Tulare	AM	Tulare County Superior Court agrees with proposed changes as modified: [See specific comments below.]	The committees appreciate this input.
22.	Superior Court of California, County of Ventura By: Richard Cabral Director - Finance/Planning and Collections	N/I	[See specific comments below.]	The committees appreciate this input.
23.	TCPJAC/CEAC Joint Rules Subcommittee	AM	[See specific comments below.]	The committees appreciate this input.

Comments on Form TR-320/CR-320 (General Comments and Suggested Edits)				
	Commentator		Comment	Committee Response
24.	ACLU of California By: Micaela Davis Bay Area Legal Aid By: Kendra Amick		<u>I. Form TR-320/CR-320 - Application:</u> The proposed TR-320/ CR-320 is a four-page application form which would allow traffic defendants to provide information to the court about their financial circumstances	No response required.

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Traffic and Criminal Procedure: Forms and Rule on Ability to Pay in Traffic and Other Infraction Cases

All comments are verbatim unless indicated by an asterisk (*).

Comments on Form TR-320/CR-320 (General Comments and Suggested Edits)		
Commentator	Comment	Committee Response
<p>East Bay Community Law Center By: Theresa Zhen</p> <p>Lawyers' Committee for Civil Rights of the San Francisco Bay Area By: Elisa Della-Piana</p> <p>Legal Services for Prisoners with Children By: Brittany Stonesifer</p> <p>Legal Services of Northern California By: Wade Askew</p> <p>Western Center on Law and Poverty By: Antionette Dozier</p>	<p>and request that the court reduce their fines or provide another appropriate alternatives to full money payment. The form also asks for the defendant's preferred means of contact and provides some information to help defendants understand court processes.</p>	
<p>25. Legal Advocates for Children and Youth By: Julie Saffren Karen Palmer</p>	<p>6. Form TR-320 appears to assume every litigant seeking an ability to pay determination is self-represented. This is not the case. Form FW-001 handled this better, giving room on the form for information about lawyers, including if the attorney was a "legal-aid" type of attorney. Having a visible indicator that a litigant has qualified for legal aid services can immediately signal to the court that a litigant is sufficiently low-income, given that financial eligibility for legal aid services is generally 125% of federal poverty guidelines or something similar.</p>	<p>The committees decline to pursue this recommendation. Although they recognize that in certain cases this information might be helpful to courts, form TR-320/CR-320 already captures whether the court user is low income or on public benefits. In addition, the committees designed form TR-320/CR-320 to be filled out (with or without assistance) and signed under penalty of perjury by the court user. They also designed the form for the overwhelming majority of infraction defendants who are not represented by counsel. Asking for information about lawyers might invite confusion as to whether the court user or the lawyer should be sent the court order.</p>

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Traffic and Criminal Procedure: Forms and Rule on Ability to Pay in Traffic and Other Infraction Cases

All comments are verbatim unless indicated by an asterisk (*).

Comments on Form TR-320/CR-320 (General Comments and Suggested Edits)		
Commentator	Comment	Committee Response
26. Terry McNally Court Executive Officer Superior Court of California, Kern County	Reformat Form: It is recommended that the form provided for the Ability to Pay request to the court be reformatted to ensure that the court consumer’s request is the very first item required under their identifying information . As such, if the form were modified to move Section 5 to Section 2 , all the subsequent of the information would support the initial request and clearly provide the Court with what the consumer is trying to achieve. Also, if it is a second or subsequent request, that should be made known to the judicial officer at the top of the form, or at least in section 3.	The committees decline to pursue this recommendation. Moving this information to the beginning of the form may introduce efficiencies for some courts, but it would likely result in confusion for court users and require more complicated instructions. Posing these questions at the end of the form follows a court user’s natural thought process. Other criminal forms similarly include the request for relief at the end of the form (e.g., form CR-180, <i>Petition for Dismissal</i> , and form CR-183, <i>Petition for Dismissal (Military Personnel)</i>).
27. Suzanne Schleder Senior Business System Analyst Judicial Council of California, Information Technology (JCIT)	Reduce white space and extra lines on TR/CR 321 to make one page document. [...] TR/CR 320 re-format page 4 of 4... and whole form, remove extra lines and spaces. move box from page 3 to bottom of page 4 or with instructions on top of page 1 so that question 5 on page 3 does not take up 1/2 a page for 4 lines worth of text (answers).	The committees decline to pursue this suggestion, although they note that changes introduced after the public comment period have shortened the form. The form is designed to be accessible to a wide literacy range. White space is a design element that increases reader comprehension. In addition, the forms that circulated for public comment were designed to accommodate the insertion of icons to further promote accessibility for a low-literacy population and for persons whose English comprehension is limited. The committees have now added the icons to the forms.
28. Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano, Management Analyst	The proposed form appropriately addresses its purpose. The form is written in a way that allows users to understand it and easily use it. Moreover, the form allows bench officers to either obtain the information they need to	No response required.

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Traffic and Criminal Procedure: Forms and Rule on Ability to Pay in Traffic and Other Infraction Cases

All comments are verbatim unless indicated by an asterisk (*).

Comments on Form TR-320/CR-320 (General Comments and Suggested Edits)		
Commentator	Comment	Committee Response
	<p>address the purpose of the form or to obtain more information from the petitioner. [...]</p> <p>Request for Specific Comments:</p> <p>Does the proposal appropriately address the stated purpose?</p> <p>Yes</p>	No response required.
29. Superior Court of California, County of Riverside By: Susan D. Ryan Chief Deputy of Legal Services	<p><u>Response to Request for Specific Comment:</u></p> <ul style="list-style-type: none"> • Appropriately address the stated purpose? <p>Yes. Has the committee considered how these proposed forms will work with TR-300 and TR-300 forms, which are mandatory?</p>	<p>The committees considered this comment. The forms serve different purposes and implement different statutes. Form TR-300 and TR-300 (online) implement Vehicle Code section 40510.5, which authorizes the clerk to accept the forfeiture of bail in installments, irrespective of the court user’s ability to pay.</p> <p>In contrast, form TR-320/CR-320 allows a court user to request an ability-to-pay determination under Vehicle Code section 42003(c) and rule 4.335 of the California Rules of Court. It recognizes that, based on the ability-to-pay determination, a judicial officer may order that the judgment be paid in installments under Vehicle Code section 42003(a) and rule 4.335(c)(4)(A).</p>

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Traffic and Criminal Procedure: Forms and Rule on Ability to Pay in Traffic and Other Infraction Cases

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Comments on Form TR-320/CR-320 (General Comments and Suggested Edits)		
Commentator	Comment	Committee Response
<p>30. Superior Court of California, County of San Mateo By: Mary Treanor Court Policy Analyst II</p>	<p>Request for Specific Comment: The proposal appropriately addresses the stated purpose.</p> <p>While the forms are for the most part easy to understand and complete, it may be confusing that the forms are for both traffic and criminal cases. The Form TR-320/CR-320 specifically talks about “traffic” cases. Although the proposal states that the form could be used in other jurisdictions that handle infractions, the form seems to be focused entirely on traffic. The committee should consider making the form just TR-320.</p> <p>While the plain language is easy to understand, some of the language is a little too plain using words like “can’t” and “don’t” instead of “cannot” and “do not”.</p>	<p>No response required.</p> <p>The committees decline to pursue this recommendation. Form TR-320/CR-320 implements rule 4.335, which applies to all infractions, not just traffic infractions. In addition, the form’s instructions to court users clarifies that it applies to both traffic and non-traffic infractions. The form does not otherwise focus on the nature of the violation, but instead on the court user’s financial circumstances. The committees are unaware of any reason for conducting a different inquiry into the user’s financial circumstances depending on the nature of the infraction violation. Accordingly, the form appropriately encompasses all infractions.</p> <p>The committees decline to pursue this recommendation. The forms were designed to be accessible to all court users including those with low literacy rates. Although some may view contractions as too informal for court forms, the committees defer to Bryan Garner, the Editor in Chief of Black’s Law Dictionary, who has expressed approval of their use in formal legal writing. (See, e.g., Bryan A. Garner, <i>The Redbook: A Manual on Legal Style</i> (3d ed. 2002) p. 57 [“Contractions . . . have long been shunned in formal propose. But that taboo is fortunately disappearing. . . . Because</p>

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Comments on Form TR-320/CR-320 (General Comments and Suggested Edits)			
	Commentator	Comment	Committee Response
			contractions enhance readability and lighten the tone, many writers of lawbooks and articles now use them—and some of the most influential judicial stylists also use them routinely.”].)
31.	Superior Court of California, County of Ventura By: Richard Cabral Director - Finance/Planning and Collections	<ul style="list-style-type: none"> Does the proposal appropriately address the stated purpose? Yes Are the forms easy for users to understand and complete? Do you have any suggestions for improving their usability? The document is too long. We feel the questions can be condensed to 2 pages and still be easy to complete. 	<p>No response required.</p> <p>Please see the response above to comment #27.</p>
32.	Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano, Management Analyst	<p>Throughout the TR-320, any reference to “your court” should be replaced by the phrase “the court listed on the ticket,” since a person’s local court may not have jurisdiction over the citation at issue. See:</p> <p>Page 3 of 4, first and last bullets in the box. Page 4 of 4 Item 9</p>	<p>The committees agree and have incorporated the suggestion to the extent feasible. They have revised the bullets in the box on page 3 refer to “the court listed on your ticket” or “the court.” In response to other comments, the committees removed circulated item 9.</p> <p>The instructions on page 1 now include a reference to “the court listed on your ticket.” They also include a reference in the bullet immediately below to “your court,” but only with respect to those court users who have lost their tickets.</p>
33.	Superior Court of California, County of Riverside By: Susan D. Ryan Chief Deputy of Legal Services	<ul style="list-style-type: none"> Throughout form, change references from ‘judge’ to ‘judicial officer’. 	<p>The committees agree that the term “judge” does not encompass all judicial officers (e.g., commissioners) assigned to infraction cases and have replaced most references to “judge” with “court.” In addition, by referencing “judicial</p>

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Comments on Form TR-320/CR-320 (General Comments and Suggested Edits)		
Commentator	Comment	Committee Response
	<ul style="list-style-type: none"> Throughout the form, change references to ‘your court’ with ‘the court that is listed on the ticket’. Throughout form, remove grayscale shading. For courts that image documents, the grayscale could be problematic. 	<p>officer” on the signature line, form TR-321/CR-321 allows for the order to be issued by commissioners who are subordinate judicial officers.</p> <p>Please see the response above to comment #32.</p> <p>The committees agree that the use of grayscale may be problematic for courts that image documents. They have modified the forms to remove grayscale associated with any wording or instructions that would need to be legible after imaging.</p>
34. TCPJAC/CEAC Joint Rules Subcommittee	<p>1. Throughout the TR-320, any reference to “your court” should be replaced by the phrase “the court listed on the ticket,” since a person’s local court may not have jurisdiction over the citation at issue (e.g., “What if I want to fight the ticket,” on p. 1; the last bullet in the box on page 3).</p> <p>[...]</p> <p>5. Throughout the TR-320, litigants should be informed about the opportunity for payment plans, since for many people, a payment plan is sufficient to meet their needs. On page 1 of the TR-320, under “When do I use this form,” a new second bullet should read, “To ask for a payment plan. (No additional documentation needed.)” On page 2 of the TR-320, there should be a new #2: “Could you afford a payment plan? (If so, skip</p>	<p>Please see the response above to comment #32.</p> <p>The committees decline to pursue this suggestion. Form TR-320/CR-320 is intended to implement rule 4.335, which recognizes that judicial officers may order various types of relief based on their assessment of the court user’s ability to pay. Installment plans are but one of the options available to a judicial officer in the exercise of discretion. (See Cal. Rules of</p>

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Commentator	Comment	Committee Response
	to Question #X” (where X is Question 5 in the current draft form). Then, under current #5, make the first option read, “Let me make monthly payments. (No supporting documentation needed.)” with a statement beneath that reads, “I can afford to pay \$ ____ per month on the X day of each month until paid in full.”	Court, rule 4.335(c)(4). If the committees were to incorporate this recommendation into the proposal, judicial officers would not be able to make an informed decision about the court user’s ability to pay because they would lack any information relevant to the court user’s finances. Moreover, this suggestion would modify the form to address an unintended audience: those court users who are able to pay, but want the benefit of paying in installments. Mandatory forms TR-300 and TR-310 currently address these court users by implementing Vehicle Code sections 40510.5 and 42007, which allow all court users to pay in installments regardless of their ability to pay.

Comments on Form TR-320/CR-320 (Title and Caption)		
Commentator	Comment	Committee Response
35. Albert De La Isla Principal Analyst Superior Court of California, Orange County / West Justice Center	File stamp box is too small for our current file stamps.	The committees agree and have incorporated this suggestion into the forms to facilitate court use and ensure consistency with other Judicial Council forms.
36. Danielle McCurry	1. The ‘Court Name’ box in the upper right hand corner of both forms asks applicants to input the court name and address. Provided in the box is ‘Superior Court of California, County of...’ Most applicants will not know the court name per se but more likely will know the county they live in or where they received the ticket. Applicants	The committees decline to pursue this comment. The captions on form TR-320/CR-320—requesting that court users supply the court name and address—conform to the format of other plain language Judicial Council forms. Judicial Council instructions require a Notice to

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Comments on Form TR-320/CR-320 (Title and Caption)		
Commentator	Comment	Committee Response
	could instead be asked to provide the ‘county name and address’. Additionally, asking the applicant for the address could potentially be a challenge, since many courts have more than one location. Perhaps it can be specified that they include the county name and address of that county’s traffic court (many court websites include the location/address for this court type). Or, in general, the form can be specific about which court address is being requested.	Appear to contain the contact information for the court where the defendant must appear, making this information accessible to infraction defendants. (See form TR-INST, <i>Notice to Appear and Related Forms</i> , 6.260.) This information would also likely be contained on the reminder notice sent by the court. (See Cal. Rules of Court, rule 4.107.)
37. Public Counsel By: Anne Richardson Directing Attorney Consumer Law Project	<p>3) We also ask that the portion of the form on the upper right hand corner of the first page that says “Confidential” be altered to be more obvious. Many of us attorneys did not even notice that the form did say “Confidential,” so focused were we on the content of the requests, and with our eye naturally starting at the left-hand side of the page. We suggest that the phrase “CONFIDENTIAL – this document will be kept confidential by the Court and used only for purposes of determining your eligibility for fine reduction” – be centered over the entire form at the beginning and bolded. It has been our experience that clients are fearful of putting their economic details in writing because of potential repercussions in other areas of their lives, and so this will again ensure that these forms serve their function.</p> <p>4) We recommend that the box labeled “Case Number” on each page of the form be replaced to say “Ticket Number” so that an individual understands what is being requested here.</p>	<p>The committees decline to modify the ‘confidential’ stamp in the upper-right portion of the form. This formatting conforms to standard Judicial Council plain language forms.</p> <p>The committees have added “Ticket Number” as an optional field to form TR-320/CR-320’s caption, but they decline the request to remove the “Case Number” field. The box labeled “Case Number” on each page of the form is intended to facilitate court processing of the form.</p>

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Comments on Form TR-320/CR-320 (Title and Caption)			
	Commentator	Comment	Committee Response
38.	Suzanne Schleder Sr. Business System Analyst Judicial Council of California, Information Technology (JCIT)	Please include Citation Number like this: Case Number or Citation Number (or Case Number/Citation Number) Most traffic defendants only have citation number.	Please see the response above to comment #37.
39.	Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano, Management Analyst	Title. The title of the TR-320 should include, in the parentheses, the statement, “Do not use this form to take care of a parking ticket.”	The committees decline to pursue this suggestion because it would result in a lengthy title that is inconsistent with Judicial Council naming conventions. This information appears in the instruction section at the beginning of the form.
40.	Superior Court of California, County of Riverside By: Susan D. Ryan Chief Deputy of Legal Services	TR-320/CR-320 (Suggest changing the title to ‘Can’t Afford to Pay <u>the Full Amount of</u> the Ticket Fine . . .’) [...] 2. Format <ul style="list-style-type: none"> • The file stamp box needs to be larger, preferably the same size as on other Judicial Council forms. • The ‘confidential’ box should not be black; the black box obscures the wording of the clerk’s stamp. • Change ‘Case Name’ to ‘Defendant Name’. 	The committees decline to pursue the suggestion to lengthen the form’s title, because the suggested language would not provide for greater clarity or comprehension. Please see the response above to comment #35. The committees decline to pursue the suggestion to modify the ‘confidential’ stamp at the top right corner of form TR-320/CR-320. It is consistent with other Judicial Council plain language forms. The clerk’s file stamp box has been enlarged. In response to other comments, the committees have removed “Case Name” from the caption and replaced it with “Ticket Number.” As a

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Comments on Form TR-320/CR-320 (Title and Caption)		
Commentator	Comment	Committee Response
		result, this suggestion no longer applies.
41. Superior Court of California, County of San Diego By: Mike Roddy Court Executive Officer	The title of Forms TR-320/CR-320 and TR-321/CR-321 should be revised to remove contractions and to remove the referral to a “ticket fee”. It may be better to entitle them: “I Cannot Afford to Pay My Ticket.” The footers should be amended to match the titles on the forms as well. If it is changed, the references will need to be changed in Rule 4.336 as well.	Please see the response above to comment #30. The committees agree that the term “ticket fine” may be confusing and it has been changed to “fine.”
42. Superior Court of California, County of Tulare	1. The file stamp area on both forms is too small.	Please see the response above to comment #35.
43. Superior Court of California, County of Ventura By: Richard Cabral Director - Finance/Planning and Collections	Larger space needed for filed stamp.	Please see the response above to comment #35.
44. TCPJAC/CEAC Joint Rules Subcommittee	8. On the first page of the TR-320, on the top right in the boxes, insert text to make it clear that these boxes are to be filled out by court staff.	The committees decline to pursue this suggestion. Asking court users to provide this type of information conforms to other Judicial Council plain language forms.

Comments on Form TR-320/CR-320 (Instructions)		
Commentator	Comment	Committee Response
45. ACLU of California By: Micaela Davis Bay Area Legal Aid By: Kendra Amick	a. “When Do I Use This Form?” This section is a useful tool to help traffic court defendants assess their eligibility. However, we recommend explicitly informing people that if their ticket has been referred to a	The committees agree that applicants should be informed that they may request an ability-to-pay determination after their case has been sent to

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Comments on Form TR-320/CR-320 (Instructions)		
Commentator	Comment	Committee Response
<p>East Bay Community Law Center By: Theresa Zhen</p> <p>Lawyers’ Committee for Civil Rights of the San Francisco Bay Area By: Elisa Della-Piana</p> <p>Legal Services for Prisoners with Children By: Brittany Stonesifer</p> <p>Legal Services of Northern California By: Wade Askew</p> <p>Western Center on Law and Poverty By: Antionette Dozier</p>	<p>comprehensive collections program, they may still use the form.¹</p> <p>^{FN1} See Rule 4.335(c)(2) (a request may be made “at adjudication, or while the judgment remains unpaid, including <i>when a case is delinquent or has been referred to a comprehensive collection program</i>” (emphasis added)).</p> <p>Also, consistent with our comments below regarding civil assessments, we recommend modifying the first bullet in this section to instead read:</p> <ul style="list-style-type: none"> To tell the judge that you don’t have enough money to pay your ticket fine <i>or any extra late charges</i>. 	<p>collections. Rule 4.335(c)(2) expressly states that a defendant may request an ability-to-pay determination while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program. The committees have added an advisement to form TR-320/CR-320.</p> <p>The committees have revised the form to address civil assessments. They decline to pursue the suggestion to revise the instructions to reference the civil assessments. They reworded this instruction based on input from a readability expert. The committees also intended the instructions to signal only those court users requesting an ability-to-pay determination. They do not intend for the form to be used by those who are seeking solely to vacate or reduce their civil assessment. The committees view the body of form TR-320/CR-320 as sufficient to communicate to those court users requesting an ability-to-pay determination that the form will also take care of any civil assessments.</p>
<p>46. Albert De La Isla Principal Analyst Superior Court of California, Orange County/West Justice Center</p>	<p>[You can get a traffic ticket for things like speeding or running a red light.]</p> <p>There should be some reference to driving a vehicle. Something like, “You can get a traffic ticket when driving a vehicle above the speed limit or running a red light”</p>	<p>The committees decline to pursue this suggestion because traffic infractions include violations involving stationary vehicles (e.g., expired registration tags).</p>

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Commentator	Comment	Committee Response
	<p>[Infractions are tickets you get for things like littering, drinking alcohol in public, or fishing without a license]</p> <p>Same kind of comment here, “Infractions are tickets you can get that are not related to driving a vehicle, some examples are littering.</p> <p>What if I want to fight the ticket and tell the judge that I didn't do anything wrong? • Do not use this form. Visit www.courts.ca.gov/selfhelp for more information on fighting seeing a judge to tell them that you didn't do anything wrong tickets (pleading not guilty and setting your ticket for a trial).</p>	<p>The committees agree that non-traffic infractions should also be explained on the form. The current examples of non-traffic infractions adequately address that need.</p> <p>The committees have removed several references to the phrase “fight the ticket.”</p>
47. Danielle McCurry	<p>2. On page one of the TR-320/CR 320 the statement is presented, “When to Use This Form” but goes on to addresses what the form is to be used for. Perhaps that statement can be changed to “Uses For This Form” or something similar. ‘When’ may imply that there is a time frame or specific moment to present the form, but the information in that section does not address that.</p>	<p>The committees have changed the heading for these instructions to “Using this form.”</p>
48. Public Counsel By: Anne Richardson Directing Attorney Consumer Law Project	<p>6) On page 1 of 4 of the request form, at the very top of the form under “When do I use this Form?” and again on page 1 of 2 of the court order, make it clear that a court can do more than one of these options; i.e., a court could reduce the fine and also order that the reduced fine be paid in installments.</p>	<p>The committees agree. Although they have reworded the sentence, they have replaced the word “or” with “and/or” between “more time to pay” and “community service.” On form TR-320/CR-30, the sentence now reads: “If you can’t afford to pay your fine, fill out this form to ask for: a lower fine, a payment plan, more time to pay, and/or community service.” Form TR-</p>

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Comments on Form TR-320/CR-320 (Instructions)		
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		321/CR-321 was also designed to allow the court to grant multiple options by checking more than one box in the relief granted section.
49. Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano, Management Analyst	<p>Page 1 of 4. The items “What are traffic tickets?” and “What are infractions?” should be deleted.</p> <p>Under “When do I use this form?”</p> <p>Add a new second bullet to read, “To ask for a payment plan. (No additional documents are needed.)”</p> <p>Add an additional bullet that reads, “After you have filled out this form, take it or mail it to the court listed on the ticket.”</p> <p>To the boxes at the top right, insert text, “To be filled out by court staff.”</p> <p>Add additional questions before Item 1:</p> <p>Citation/ticket number _____ Name of the person on the ticket _____</p>	<p>The committees shortened and combined the explanations of traffic and other infractions, but decline to delete them entirely. User testing indicated that members of the public do not understand what infractions are and that these examples increase their understanding.</p> <p>Please see the response above to comment #34.</p> <p>The committees agree that instructions on next steps should be provided on the form. They have added information explaining that the court user may file the form by bringing it to the court, mailing it, or electronically filing it.</p> <p>Please see above response to comment #44.</p> <p>The committees agree that ‘ticket number’ should be added to form TR-320/CR-320’s caption as an optional field. However, the committees decline to pursue the suggestion to request the “name of the person on the ticket” in the body of form TR-320/CR-320. The form is designed to be filled out and signed by the</p>

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Comments on Form TR-320/CR-320 (Instructions)		
Commentator	Comment	Committee Response
		person who received the ticket; that person’s information is requested in item 1.
50. Superior Court of California, County of Riverside By: Susan D. Ryan Chief Deputy of Legal Services	<p>1. Modify the introductory language on page 1 as follows:</p> <p>When do I use this form?</p> <ul style="list-style-type: none"> To tell the judge that you don’t have enough money to pay <u>the full amount of the fine on your traffic or other infraction ticket.</u> To ask for the ticket fine to be reduced to a smaller amount. <p>Delete the paragraphs entitled: ‘What are traffic tickets?’ and ‘What are infractions?’ These unnecessarily clutter the form and have little value.</p> <p>Modify the 4th paragraph to read: “What if I want to fight the ticket and tell the judge that I didn’t do anything wrong? This may be misleading. Sometimes defendants know that they violated the law but they want to explain why they were justified in doing so to the judicial officer.</p> <p>...</p> <ul style="list-style-type: none"> Easy for users to understand and complete? <p>We appreciate the effort to draft the forms in plain language. However, added language, i.e., ‘What are traffic tickets’ unnecessarily clutters the TR-320.</p>	<p>Please see the response above to comment #40.</p> <p>The committees have revised the language to refer to “a lower fine.”</p> <p>Please see the response above to comment #49.</p> <p>The committees decline to pursue this suggestion. This information is intended to assist court users generally in determining whether this form is appropriate for their use.</p> <p>Please see the response above to comment #49.</p>
51. Superior Court of California, County of	In addition, the definition section of Form TR-320/CR-320	The committees agree and have incorporated

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Comments on Form TR-320/CR-320 (Instructions)		
Commentator	Comment	Committee Response
San Diego By: Mike Roddy Court Executive Officer	<p>should be amended related to infractions to add the word “other” as follows:</p> <p>What are <i>other</i> infractions?</p> <ul style="list-style-type: none"> • Other infractions include tickets you get for things like littering, ... <p>The way it is written in the definitions, it seems to infer that traffic tickets are not infractions, which is not accurate. This matches how it is referred to in the sub-title as well.</p>	this suggestion into the form.
52. Superior Court of California, County of San Mateo By: Mary Treanor Court Policy Analyst II	<p>Comments on Form TR-320/CR-320</p> <p>1. Instructions:</p> <p>a. Current verbiage: Read this first – then fill out the form</p> <p>b. Suggested change: Please read the information below before filling out this form. If you have more than one ticket, you must fill out a separate form for each outstanding ticket.</p> <p>2. Instructions:</p> <p>a. Current verbiage: When do I use this form?</p> <ul style="list-style-type: none"> • To tell the judge that you don’t have enough money to pay your ticket fine. • To ask for the ticket fine to be reduced to a smaller amount. You can also ask for monthly payments, more time to pay, or to do community service instead of paying the fine. 	The committees decline to pursue this suggestion because they have removed the specific language referenced in the court’s comment from form TR-320/CR-320. The instructions elsewhere notify court users that they have to fill out a separate form for each ticket.

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Comments on Form TR-320/CR-320 (Instructions)		
Commentator	Comment	Committee Response
	<p>present. If you have received a parking ticket, you will need to read your parking ticket to find out what you need to do.</p> <p>4. Instructions:</p> <p>a. Current verbiage: What are infractions?</p> <ul style="list-style-type: none"> • Infractions are tickets you get for things like littering, drinking alcohol in public, or fishing without a license. • There are many different types of infractions. <p>b. Suggested verbiage: What are infractions?</p> <ul style="list-style-type: none"> • An infraction is considered a minor offense. Most infractions are written on a Notice to Appear form known as a “ticket” or “citation” but infractions can also be filed by the prosecutor on another document known as a “complaint”. <p>5. Instructions:</p> <p>a. Current verbiage: What if I want to fight the ticket and tell the judge that I didn’t do anything wrong?</p> <ul style="list-style-type: none"> • Do not use this form. Visit www.courts.ca.gov/selfhelp for more information on fighting tickets. <p>b. Suggested change: What if I want to dispute/fight the ticket and tell the</p>	<p>The committees decline to pursue this suggestion. They have modified the instructions to shorten the explanation of traffic and other infractions.</p>

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Commentator	Comment	Committee Response
	<p>judge that I did not do anything wrong?</p> <ul style="list-style-type: none"> Do not use this form. Visit www.courts.ca.gov/selfhelp for more information on fighting tickets. 	<p>The committees decline to pursue this suggestion. In response to other comments, the committees removed this reference to “fight the ticket.”</p>
<p>53. Superior Court of California, County of Ventura By: Richard Cabral Director - Finance/Planning and Collections</p>	<p>[• To tell the judge that you don’t have enough money to pay your ticket fine.] Replace 1st bullet with “To tell the judge that you don’t have enough money to pay the balance owed at this time.”</p> <p>[• To ask for the ticket fine to be reduced to a smaller amount. You can also ask for monthly payments, more time to pay, or to do community service instead of paying the fine.] Replace 2nd bullet with “To ask for monthly payments, more time to pay, or to do community service instead of paying the fine.”</p> <p>[• To tell the judge that you don’t have enough money to pay your ticket fine.] Replace “ticket fine” with “fine” on both forms</p> <p>[• Infractions are tickets you get for things like littering, drinking alcohol in public, or fishing without a license.]</p>	<p>The committees decline to pursue this suggestion. Instead, they have revised the language in this bullet to make it more concise and consistent with the plain language format of the form.</p> <p>The committees decline to pursue this suggestion. Form TR-320/CR-320 sets forth the available types of relief a judge may order under rule 4.335, which include suspending the fine in full or part based on the court user’s ability to pay. Based on the input from a usability expert, the committees have revised this language to make it more concise and consistent with the plain language format of the form.</p> <p>Based on the input from a usability expert, the committees agree and have replaced references to “ticket fine” with “fine” on both forms.</p>

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Comments on Form TR-320/CR-320 (Instructions)		
Commentator	Comment	Committee Response
	Replace 1st bullet with “Infractions are tickets you get for things like littering, drinking alcohol in public, fishing without a license, and numerous traffic violations.”	The committees have combined and shortened the explanations for traffic and other infractions into one bullet.
54. TCPJAC/CEAC Joint Rules Subcommittee	<p>4. The TR-320 creates more confusion in its enumeration of infractions and traffic tickets than it solves; lengthening the list of exemplars does not help. It is better to simply state that we don’t handle parking tickets. The title of the TR-320 should include, in parentheses, the statement, “Do not use this form to take care of a parking ticket.” The items under “What are traffic tickets” and “What are infractions” should be deleted.</p> <p>[...]</p> <p>6. On the first page of the TR-320, under “When do I use this form,” there should be an additional bullet that reads, “After you have filled out this form, take it or mail it to the court listed on the ticket.”</p>	<p>Please see the response above to comment #48.</p> <p>Please see the response above to comment #48.</p>

Comments on Form TR-320/CR-320, Item 1 (Contact Information and Consent to E-Mails/Texts)		
Commentator	Comment	Committee Response
<p>55. ACLU of California By: Micaela Davis</p> <p>Bay Area Legal Aid By: Kendra Amick</p> <p>East Bay Community Law Center</p>	<p>Another feature of the proposed TR-320/CR-320 form that will improve access to justice is the addition of the text and email notification options. We are pleased to see these options included, as we believe they will help individuals experiencing housing instability, in particular, to comply with traffic court processes. In order to avoid missed communications, however, we recommend that the form be</p>	<p>The committees agree that any text or e-mail notifications will be in addition to other forms of mail or electronic service (if the court user has separately consented to electronic service under rule 2.251). However, they also do not want to invite confusion by creating an expectation that all courtesy reminders sent by text or e-mail</p>

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Comments on Form TR-320/CR-320, Item 1 (Contact Information and Consent to E-Mails/Texts)		
Commentator	Comment	Committee Response
<p>By: Theresa Zhen</p> <p>Lawyers' Committee for Civil Rights of the San Francisco Bay Area By: Elisa Della-Piana</p> <p>Legal Services for Prisoners with Children By: Brittany Stonesifer</p> <p>Legal Services of Northern California By: Wade Askew</p> <p>Western Center on Law and Poverty By: Antionette Dozier</p>	<p>modified to include an admonition that text or email notifications will be sent in addition to, rather than in lieu of, notifications sent by mail.</p>	<p>(e.g., installment payment reminders) would also be sent by mail.</p>
<p>56. Albert De La Isla Principal Analyst Superior Court of California, Orange County / West Justice Center</p>	<p>[Mailing address (where I get mail): _____] Phone number (where I receive calls): ___] Lines need to be bigger, specifically for the address. Should format it with Address, City, State and Zip code to ensure they fill it out correctly.</p> <p>[Is this a cell phone?] Mobile?</p> <p>It would be okay if the court also sends me texts about my case at this phone number. For a land line, we would not send text messages, so it</p>	<p>The committees agree that the address lines need to be reformatted to ensure court users can fill out the form correctly. In incorporating this suggestion into the form, the committees balanced this goal with space constraints.</p> <p>The committees decline to pursue this suggestion. Based on input from a usability expert, they have revised the form to ask for the court user's telephone number. If the court user responds that it is okay to text at that number, the court will know that it is necessarily a cellphone.</p> <p>Please see response above.</p>

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Comments on Form TR-320/CR-320, Item 1 (Contact Information and Consent to E-Mails/Texts)		
Commentator	Comment	Committee Response
	<p>should be either specific to someone checking that the number provided is a mobile phone or rephrase it to include both, something like: ‘It would be okay if the court sends me a text message to my mobile phone or call my home phone with a reminder.</p> <p>[It would be okay if the court also sends me e-mails about my case at this e-mail address.]</p> <p>Is this language sufficient to be able to communicate with the defendant for court related correspondence on this case? Specifically, a response to this request via email? We probably need something stating they agree to an electronic response via e-mail.</p>	<p>The committees decline to pursue this suggestion because they do <i>not</i> intend the checkboxes for text and e-mail reminders to indicate consent to electronic service under rule 2.251. Instead, the checkboxes are intended to allow court users to consent to receiving courtesy reminder texts and e-mails (e.g., installment payment reminders) from a court if the court offers this option.</p>
57. Legal Advocates for Children and Youth By: Julie Saffren Karen Palmer	<p>5. Enabling email notification is appropriate but the form should specify the limits of what the court can tell you about your case. As written, item 1 implies a court can communicate a lot of “information about your case” when we think the request for email is properly intended to be limited to concerns regarding the relief sought (e.g. ability to pay determination and outcome).</p>	<p>The committees decline to pursue this suggestion because they were unable to incorporate it using plain language in the space available. They are not concerned that this will result in issues for the court user. The case must already be adjudicated at the time the court user requests an ability-to-pay determination. (Cal. Rules of Court, rule 4.335(c)(2).) Unless the defendant appeals the conviction, any further communications from the court will likely relate to the ability-to-pay determination and its outcome.</p>
58. Public Counsel By: Anne Richardson Directing Attorney	<p>5) On page 1 of 4 where it requests a person’s cell phone or email address, we think it is important to add: “Note that communication with you via text or email may not</p>	<p>The committees agree and have revised form TR-320/CR-320 to indicate that only some courts can send e-mails and text messages.</p>

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Comments on Form TR-320/CR-320, Item 1 (Contact Information and Consent to E-Mails/Texts)			
	Commentator	Comment	Committee Response
	Consumer Law Project	be available in your County ” or other such message so that individuals are not lulled into thinking that they necessarily will hear all communications about their ticket in that way, since as your Commentary states, not all counties do in fact have such a service. (We also note that there is a typo on the first page; the line second from the bottom should say “It would be okay” not “it would okay.”)	Because the committees have revised this language, the correction of this typographical error is no longer necessary.
59.	Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano, Management Analyst	<p>Page 1 of 4, Item 1.</p> <p>Next to the check box about sending texts, add the word “be” “It would <u>be</u> okay...” and add “Charges may apply.”</p> <p>Add an additional question after Item 1 and before Item 2:</p> <p>Could you afford a monthly payment on a payment plan? (No supporting documentation needed.)</p> <p>___ Yes ___ No</p> <p>If so, how much could you afford to pay each month?</p> <p>I could pay \$_____ on the _____ day of each month until paid in full.</p>	<p>The committees agree and have revised the form to indicate that message and data rates may apply. They have also revised the language such that the correction to the typographical error is no longer necessary.</p> <p>Please see the response above to comment #34.</p>
60.	Superior Court of California, County of Riverside By: Susan D. Ryan Chief Deputy of Legal Services	<ul style="list-style-type: none"> Page 1, number 1 – the word ‘be’ is missing from first box. “It would <u>be</u> okay if the court also sends me e-mails about my case at this email address.” 	Please see the response above to comment #58.

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Commentator	Comment	Committee Response
	<p>[...]</p> <p>Additionally, instead of stating that a ‘mailing address’ is ‘where I get mail’ why not just request ‘Your mailing address’?</p>	The committees agree and have revised the form to ask for the court user’s “Street or Mailing Address.”
61. Superior Court of California, County of San Diego By: Mike Roddy Court Executive Officer	Finally, section one of the TR-320/CR-320 should be amended to add a statement that “Not all courts can send texts or e-mails; therefore, checking the box agreeing to e-mails or texts does not mean the court will contact you this way. Ask your court to see if they offer this service.”	Please see the response above to comment #58.
62. Superior Court of California, County of San Mateo By: Mary Treanor Court Policy Analyst II	<p>6. Page 1:</p> <p>a. Current verbiage: It would be okay if the court also sends me texts about my case at this phone number.</p> <p>b. Suggested change: This should include a disclaimer that their provider rates may apply. The application should specify that in order to receive text messages a cell phone number must be provided.</p>	Please see the response above to comment #59.
63. Superior Court of California, County of Ventura By: Richard Cabral Director - Finance/Planning and Collections	<p>[It would okay if the court also sends me texts about my case at this phone number.]</p> <p>Replace with “I agree the court may send me texts about my case.”</p> <p>[It would be okay if the court also sends me e-mails about my case at this e-mail address.]</p> <p>Replace with “I agree the court may send me e-mail about my case.”</p>	The committees decline to pursue this precise suggestion. They have revised this language based on input provided by a usability expert.

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Comments on Form TR-320/CR-320, Item 2 (Income)			
	Commentator	Comment	Committee Response
66.	Superior Court of California, County of Riverside By: Susan D. Ryan Chief Deputy of Legal Services	<p>3. Page 2</p> <ul style="list-style-type: none"> Amend paragraph 2(c) to clarify: “If I pay the <u>full amount of the ticket</u> ...” To accurately assess the court user’s ability to pay, income and basic necessities need to be listed for those that state they do not have enough income. Listing basic necessities will provide consistency, and expedite the decision without requiring the court user to provide additional information. Add that the defendant needs to explain what ‘other problems’ keep him/her from paying the ticket: ‘Have other problems (explain):’ 	<p>Please see the response above to comment #40.</p> <p>The committees decline to fully pursue this suggestion. The form lists examples of basic living expenses and provides a checkbox for the court user to indicate whether they would have enough money to pay for basic living expenses if they were to pay the ticket. The committees did add another checkbox for court users to indicate whether they would have enough money to pay their mortgage or rent. The form prompts those court users who check this box to indicate how much they pay in mortgage and rent.</p> <p>The committees agree and have added a parenthetical to the form.</p>
67.	Superior Court of California, County of San Francisco By: Michael Yuen Court Executive Officer	<p>Comment re: TR-320/CR320:</p> <p>On page 2, #2 “What type of income do you have?” We note that some people receiving public benefits may also have income from other sources. We suggest modifying the form so that receipt of public benefits and other income are not mutually exclusive to allow people to provide a full picture of their financial status.</p>	<p>The committees decline to pursue this suggestion. Receipt of public benefits as an indicator of ability to pay is consistent with the Judicial Council civil fee waiver.</p>

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Comments on Form TR-320/CR-320, Item 2 (Income)			
	Commentator	Comment	Committee Response
68.	Superior Court of California, County of Ventura By: Richard Cabral Director - Finance/Planning and Collections	[a. How much money do you earn (take-home pay) or get from other sources (including income received in your family from a husband, wife, or live-in romantic partner)?] Remove the word “romantic”.	Please see the response above to comment #65.
69.	TCPJAC/CEAC Joint Rules Subcommittee	10. Question #3, should include the phrase “or other problem”: “Do you have anything that shows your public benefits or income or expenses or other problems.”	The committees decline to pursue this suggestion. It would render the sentence less comprehensible and would, at best, be marginally useful. The committees could not readily identify other problems relevant to ability to pay that would not also relate to the court user’s income or expenses (e.g., hospital bills). That said, they have instructed court users in item 6 to attach supporting documentation. Item 6 is intended to serve as a catchall so that court users will know to present their full case, including all relevant facts and evidence, to the court.

Comments on Form TR-320/CR-320, Item 3 (Supporting Documentation)			
	Commentator	Comment	Committee Response
70.	ACLU of California By: Micaela Davis Bay Area Legal Aid By: Kendra Amick East Bay Community Law Center	b. Questions 2 and 3: Verification The proposed TR-320/CR-320, at Question 3, gives defendants the opportunity to provide copies of documentary evidence of their income and expenses, but also presents the option of instead describing the reason(s) that such documentation is unavailable. The defendant then	No response required.

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Comments on Form TR-320/CR-320, Item 3 (Supporting Documentation)		
Commentator	Comment	Committee Response
<p>By: Theresa Zhen</p> <p>Lawyers' Committee for Civil Rights of the San Francisco Bay Area By: Elisa Della-Piana</p> <p>Legal Services for Prisoners with Children By: Brittany Stonesifer</p> <p>Legal Services of Northern California By: Wade Askew</p> <p>Western Center on Law and Poverty By: Antionette Dozier</p>	<p>signs the form, swearing under penalty of perjury to the veracity of its contents.</p> <p>Providing flexibility for defendants who do not have copies of documents that show their income and expenses is a reasonable and compassionate acknowledgement of the broad range of circumstances and challenges that face low-income people. For instance, some individuals do not have employment but also are not receiving public-benefits. These individuals have may have no income at all to verify. Similarly, people without stable housing may not have ready access to documentation of their financial status. For these court users, proving a negative can be nearly impossible.</p> <p>Therefore, the verification process on the TR-320/ CR-320 could be further clarified by adding a checkbox under Question 2 (<i>what type of income do you have?</i>) saying: "I do not have any income."</p> <p>Similarly, it may be helpful for the Committees to add a short sentence to Question 3 explaining that, while attaching supportive documents is not required, doing so may result in faster processing of an ability-to-pay application.</p>	<p>The committees agree with this request. Because some applicants may not receive public benefits or have any other income, the committees have added a checkbox for court users to indicate that they do not have any income.</p> <p>The committees decline to pursue this suggestion because it may generate unnecessary concern for those court users who do not possess supporting documentation. It might also result in false expectations because court processing varies widely throughout the state.</p>
<p>71. Legal Advocates for Children and Youth By: Julie Saffren Karen Palmer</p>	<p>7. Form TR-320 asks for supporting documentation about everyone's eligibility, income and expenses to be attached to the confidential form. This could potentially put a lot more information into the confidential section of the court</p>	

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Comments on Form TR-320/CR-320, Item 3 (Supporting Documentation)		
Commentator	Comment	Committee Response
	<p>file. Form FW-001 did not ask for supporting documentation in this way. So we are not sure this is a necessary improvement.</p> <ul style="list-style-type: none"> a. It seems appropriate for a court to require proof of public assistance to be attached so that ability to pay determinations can be made instantly, without need for hearing. b. Similarly, for litigants who are near poverty guidelines, perhaps all they need to attach is proof of their very low income so those determinations can also be made without a hearing. (See item 4 above) c. For everyone else, the court can either seek documentation or set a review hearing and ask the litigant to bring documentation for in-court review. (It is assumed that the “everyone else” category is the smallest constituency that will be seeking ability to pay determinations; that will limit the amount of private financial information a court needs to receive and store). 	<p>The committees decline to revise form TR-320/CR-320 to request supporting documentation for only those on public benefits or at or near the poverty guidelines. They designed the form to facilitate adjudication of ability-to-pay requests in writing without requiring a hearing in the majority of cases.</p>
72. Terry McNally Court Executive Officer Superior Court of California, Kern County	Modify Section 3: Replace the term “EBT Card” with “Passport to Service.”	<p>The committees decline to pursue this suggestion. Statewide, the term “EBT card” is more commonly used to refer to proof of public benefits. Additionally, the list in item 3 is not exclusive. Rather, it provides examples to illustrate appropriate types of supporting documents.</p>

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Comments on Form TR-320/CR-320, Item 3 (Supporting Documentation)			
	Commentator	Comment	Committee Response
73.	Public Counsel By: Anne Richardson Directing Attorney Consumer Law Project	<p>2) We strongly urge that documentation <i>not</i> be required to be sent along with the form in the first instance. We believe that the court’s ability to seek documentation at a hearing is a sufficient check on this system so that the public will understand that they may be required to document their claims.</p> <p>The reason that we urge this is that, by definition, the California residents who most need this form are very low income. Many are either homeless or very home-insecure. They may be victims of domestic violence or other crimes. Accordingly, they may not have access to needed documents. Many will not have access to a copier and will not want to relinquish an original. And many simply will not trust that the documents will be kept confidential. We strongly suggest that in order to make this form work, individuals must not be required to send in corroborating evidence, but rather, will be informed that the court may, in its discretion, require a hearing and request proof to be brought at that time.</p>	The committees decline to pursue this suggestion. This form implements rule 4.335, which requires court users to provide any documentation they want the court to consider in relation to their ability-to-pay petition. (Cal. Rules of Court, rule 4.335(c)(2).) The rule and form are intended to facilitate the review of ability-to-pay requests in writing without burdening the court and user by requiring a hearing. Because the committees recognize that not all court users will have access to supporting documentation, form TR-320/CR-320 provides space for the court user to explain why that documentation is not available.
74.	Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano, Management Analyst	<p>Page 2 of 4, Item 3</p> <p>To title question add, “...or other problems?” to read, “Do you have anything that shows your public benefits or income or expenses or other problems?”</p> <p>Add after this question: (DO NOT ATTACH ANY SUCH DOCUMENTS TO THIS FORM.)</p> <p>First check box. Change to, “Yes, I have these documents</p>	<p>Please see the response above to comment #69.</p> <p>Please see the response above to comment #73.</p>

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Comments on Form TR-320/CR-320, Item 3 (Supporting Documentation)		
Commentator	Comment	Committee Response
	and I can provide them upon the court’s request.”	
75. Superior Court of California, County of Riverside By: Susan D. Ryan Chief Deputy of Legal Services	<ul style="list-style-type: none"> Amend paragraph 3: ‘Do you have anything that shows your public benefits, income or expenses, or <u>other problems?</u>’ 	Please see the response above to comment #69.

Comments on Form TR-320/CR-320, Item 4 (Subsequent Requests)		
Commentator	Comment	Committee Response
76. Albert De La Isla Principal Analyst Superior Court of California, Orange County / West Justice Center	[What did the court do? (<i>Check all that apply.</i>)] Should one of the options listed be that the court denied the request? Or is it expected to be placed in the Other section?	The committees decline to pursue this suggestion because they removed this question from item 4 in response to other comments.
77. Legal Advocates for Children and Youth By: Julie Saffren Karen Palmer	4. We really approve of question 4 of new form TR-320 because it shows consideration to people who have sought a reduction in the past and gives them the chance to ask the court again and explain to the court what has changed. Many litigants who need relief from crushing fines and fees have so much economic instability that one hospital stay, car accident, job loss or housing move changes everything for them. This question is an extremely useful avenue for someone in need to seek economic relief.	No response required.
78. Public Counsel By: Anne Richardson Directing Attorney Consumer Law Project	7) On page 3 of 4 of the request form, we would add a few more examples to the question “What has changed in your life or your family’s life since then?” Specifically, we would suggest that the form add: “Lost housing” and “Have more bills, debt, or other expenses.” These are some of the more common reasons that the individuals we see cannot afford to pay their fines, in addition to those mentioned on	The committees decline to pursue this suggestion. Because there may be varied reasons why a court user is unable to comply with a prior order, form TR-320/CR-320 provides space for the court user to identify other reasons not expressly listed.

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Comments on Form TR-320/CR-320, Item 4 (Subsequent Requests)		
Commentator	Comment	Committee Response
	<p>the form.</p> <p>8) Also on page 3 of 4 of the request form, we do not see the need for the left-hand column under question number 4. We question whether all of that information is necessary; whether or not the court granted or denied the request in the past, if circumstances have changed, individuals are entitled to ask for a reduction. Rule 4.335(c)(6). We think if this information is not needed, it is better not to request it in order to keep the form very simple. We also think some of our intended consumers may have a hard time answering the question, since some of them have multiple tickets that they are dealing with.</p>	<p>The committees agree and have deleted this column from item 4. This column elicited information that was not necessary for adjudicating successive ability-to-pay determinations.</p>
<p>79. Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano, Management Analyst</p>	<p>Page 3 of 4. Item 4 Add a new box under the first column question “What did the court do?” that reads, “Denied my request to reduce the amount owed.”</p>	<p>Please see the response above to comments #76 and #78.</p>
<p>80. Superior Court of California, County of Riverside By: Susan D. Ryan Chief Deputy of Legal Services</p>	<p>4. Page 3 Add a line to separate the columns.</p> <p>The screenshot shows a form question with two columns of checkboxes. The left column is titled 'What did the court do? (Check all that apply.)' and includes options: 'Reduced the amount I owed.', 'Let me pay in monthly payments.', 'Let me do community service.', and 'Other:'. The right column is titled 'What has changed in your life or your family's life since then? (Check all that apply.)' and includes options: 'Lost job or reduced hours at work.', 'Started to receive public benefits.', 'Suffered a serious illness or disability.', and 'Other:'. A vertical yellow line is drawn between the two columns to separate them.</p>	<p>Please see the response above to comments #76 and #78.</p>
<p>81. Superior Court of California, County of</p>	<p>7. Page 3, Number 4:</p>	

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Comments on Form TR-320/CR-320, Item 4 (Subsequent Requests)			
	Commentator	Comment	Committee Response
	San Mateo By: Mary Treanor Court Policy Analyst II	<p>a. Current verbiage: Have you told the court before that you can't pay this ticket fine?</p> <p>b. Suggested change: Have you previously told the court that you cannot pay the fine on this case?</p>	Please see the response above to comments #76 and #78.
82.	TCPJAC/CEAC Joint Rules Subcommittee	11. Question #4 on the TR-320: there should be a new box as the first box under the phrase "What did the court do?" that reads, "Denied my request to reduce the amount owed."	Please see the response above to comments #76 and #78.

Comments on TR-320/CR-320, Item 5 (Request for Relief)			
	Commentator	Comment	Committee Response
83.	<p>ACLU of California By: Micaela Davis</p> <p>Bay Area Legal Aid By: Kendra Amick</p> <p>East Bay Community Law Center By: Theresa Zhen</p> <p>Lawyers' Committee for Civil Rights of the San Francisco Bay Area By: Elisa Della-Piana</p> <p>Legal Services for Prisoners with Children By: Brittany Stonesifer</p> <p>Legal Services of Northern California By: Wade Askew</p>	<p>c. Questions 4 and 5: Individualized payment options</p> <p>While it is essential that courts use clear, consistent processes to evaluate ability to pay, it is also vital that payment options be individualized. The advisory comment to Rule of Court 4.335(c)(4) states that the "amount and manner of paying the total fine must be reasonable and compatible with the defendant's financial ability." By allowing people multiple ways to prove their income, to describe the impact that being required to pay the full fine would have on them, and to request a form of relief that works for them, the proposed TR-320/CR-320 form begins to address this requirement. We commend the Committees for these inclusions and offer the following suggestions for further improvement of the form.</p> <p><i>i. Option of Full Suspension of Fine</i></p>	No response required.

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Comments on TR-320/CR-320, Item 5 (Request for Relief)		
Commentator	Comment	Committee Response
Western Center on Law and Poverty By: Antionette Dozier	<p>Under the “when do I use this form?” section on page 1 of the TR-320/ CR-320, as well as in the response options to Questions 4 and 5, the form refers to fee <i>reductions</i>. However, the form never explicitly allows an applicant to request a full suspension of their fine, which is specifically contemplated in Rule 4.335(c)(4)(C). We recommend that the Committees revise the form to clarify that a defendant may request that a court suspend their fine in part <i>or</i> in whole. Therefore, we suggest modifying the language of the first checkbox response to Question 5 to instead read (edits italicized):</p> <p style="text-align: center;"><input type="checkbox"/> Reduce <i>or entirely eliminate</i> the amount I owe.</p> <p style="text-align: center;"><i>ii. Right to Individualized Payment Plans</i></p> <p>Similarly, because the “amount and manner of paying” must be affordable to a defendant, any payment plans offered by a court must set monthly payment amounts that are individualized to that defendants financial circumstances. Therefore, the form would more robustly protect the rights of defendants by modifying the wording of the second checkbox in Question 5 to instead read (edits italicized):</p> <p style="text-align: center;"><input type="checkbox"/> Let me make monthly payments <i>in an amount I can afford</i>.</p> <p style="text-align: center;"><i>iii. Waiving Fees for Community Service or Payment Plans</i></p> <p>Page 3 of the proposed TR-320/ CR-320, in asking the</p>	<p>The committees decline to pursue this suggestion. Although the court may suspend a discretionary base fine in full, it must impose certain statutorily mandated fees. The suggested revisions could create false expectations for court users.</p> <p>The committees recognize that the advisory committee comment for rule 4.335(c)(4) requires that “the amount and manner of paying the total fine must be reasonable and compatible with the defendant’s financial ability.” However, they decline to incorporate the suggested language into the form. In response to other comments, they have revised this language to ask the user to identify how much they can afford to pay and their preferred day of the month for making payments.</p> <p>No response required.</p>

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Comments on TR-320/CR-320, Item 5 (Request for Relief)		
Commentator	Comment	Committee Response
	<p>applicant what they would like the court to do, includes a warning that “every court is different” and that the applicant “might have to pay a fee for monthly payments or community service.” As stated in our previous comments, we are strongly opposed to any requirement that indigent people pay additional fees in order to access the payment flexibility that is constitutionally due to them. Payment plan and community service participation fees can be quite high – as much as \$150 or more – and are often scaled to the number of hours ordered. Strapping more debt onto defendants with limited means is harmful and counterproductive.³</p> <p>^{FN3} We are not convinced that the U.S. or California constitutions currently permit fees to be charged for community service participation. However, even if such a practice is constitutionally allowed, if SB 185 (Hertzberg) – which is currently pending before the Assembly Appropriations Committee – passes in its current form, such fees will explicitly run afoul of the California Vehicle Code.</p> <p>A direct prohibition on the use of participation fees by courts, or the agencies with which they contract, in assigning payment plans or community service would allow people with financial hardship to meaningfully participate in payment plans or community service. Similarly, we encourage the Committees to create guidelines for hourly rates and types of activities which will satisfy community service orders.</p>	<p>The committees decline to pursue these suggestions as they are outside the scope of this proposal. However, they note that the Judicial Council is looking into guidelines for rates of pay for community service through the legislative proposal process. The Traffic Advisory Committee may consider creating guidelines for the types of activities that satisfy community service requirements in the future.</p>

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Comments on TR-320/CR-320, Item 5 (Request for Relief)		
Commentator	Comment	Committee Response
	At a minimum, we recommend that the Committees modify the proposed TR-320/ CR-320 to include a checkbox that allows applicants to request that any participation fees be waived or reduced to reflect ability to pay.	
84. California Attorney General’s Office By: Nicklas A. Akers Senior Assistant Attorney General	<ul style="list-style-type: none"> • With respect to the proposed application, form TR-320/CR-320, we recommend the following. <ul style="list-style-type: none"> ○ Modifying the box at the bottom right of page three (“Every court is different Contact your court with any questions.”) by adding a link to a newly created web page that would provide information (or links to information) regarding the types of relief available in each county, and the fees or other limitations associated with each of those options. Defendants need this information in order to make informed decisions about the type or types of relief to request from the court. ○ Adding text to item 5 on page 3 (which currently instructs defendants to “<i>Check all that you are willing and able to do</i>”) explaining that defendants can express a preference among the options that they select in item 6 on page 4. 	<p>The committees agree overall with the merits of this proposal and have referred it to staff for future consideration as resources permit.</p> <p>The committees decline to pursue this suggestion because of difficulties incorporating it into the form in a logical manner. Instead, they have added space (item 6) immediately below the request for relief for the court user to provide further information to the court about their choices.</p>
85. Albert De La Isla Principal Analyst Superior Court of California, Orange County / West Justice Center	[Let me do community service instead of paying the fine.] We should add something about them stating that they are healthy enough to do the service. For example our provider requires health clearance.	The committees decline this request because court practices vary and because requiring a health clearance might create accessibility issues for some individuals.

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Comments on TR-320/CR-320, Item 5 (Request for Relief)		
Commentator	Comment	Committee Response
86. Terry McNally Court Executive Officer Superior Court of California, Kern County	<p>2> Change to Action Items: Fill in the Blank Action Items for Section 5 to expedite the processing of the request from the consumer by allowing the Court to clearly understand their request, what the defendant believes he/she has the ability to pay, and when:</p> <ul style="list-style-type: none"> • Reduce my total ticket fine to \$_____. • Give me more time to pay my total fine. I can pay my total fine by _____ (Month) _____ (Day), _____ (Year). • Let me make monthly payments of \$ _____ each month. I can make my first payment on _____ (Month), _____ (Day), _____ (Year). <p>If available at my court location, let me do community service instead of paying the fine.</p>	<p>The committees decline to pursue this suggestion. Users experience difficulties identifying a monetary figure based on their ability to pay. Additionally, the committees do not want to give court users the false expectation that they are able to choose the amount they must pay.</p> <p>The committees agree and have revised the form to state: “More time to pay: Please change my deadline to <i>(month/day/year): . . .</i>.”</p> <p>The committees agree and have revised form TR-320/CR-320 to request that the user identify how much they can afford to pay and their preferred day of the month for making payments. The committees recognize that only some courts may be able to accommodate the request.</p> <p>The committees decline to pursue this suggestion. The warning is clear that not all courts offer all options.</p>

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Comments on TR-320/CR-320, Item 5 (Request for Relief)			
	Commentator	Comment	Committee Response
87.	Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano, Management Analyst	Page 3 of 4. Item 5 Change the text in parentheses, “Check all that you are willing and able to do” to “Check all that you would like the court to consider.”	The committees decline to pursue this suggestion. The parenthetical language is intended to ensure that court users request only those options they are willing and able to satisfy.
88.	Superior Court of California, County of San Diego By: Mike Roddy Court Executive Officer	Also, it might be helpful to let defendants know there are some mandatory fines, fees, and assessments that cannot be reduced based on ability to pay (and therefore the defendant may want to ask for community service or more time instead).	The committees agree and have revised form TR-320/CR-320 to notify court users that there are some fines that cannot be reduced.
89.	Superior Court of California, County of San Mateo By: Mary Treanor Court Policy Analyst II	8. Page 3, Number 5: a. Current verbiage: What are you asking the court to do? (Check all that you are willing and able to do) <ul style="list-style-type: none"> • Reduce the amount I owe. • Let me make monthly payments. • Give me more time to pay. • Let me do community service instead of paying the fine. b. Suggested change: What are you asking the court to do? (Check all that you are willing and able to do. Keep in mind that it is not guaranteed that you will be approved to do everything that you are requesting).	The committees decline to pursue this suggestion. The instructions are clear that this is the court user’s request (i.e., what they are asking the court to do, not what the court will order). The existing warning on form TR-320/CR-320 is sufficient to notify court users that they do not have the final say in what relief, if any, is granted by the court. The committees want to avoid adding any unnecessary language to the form.

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Comments on TR-320/CR-320, Item 5 (Request for Relief)			
	Commentator	Comment	Committee Response
90.	<p>Superior Court of California, County of Ventura By: Richard Cabral Director - Finance/Planning and Collections</p>	<p>[What are you asking the court to do? (Check all that you are willing and able to do)] Remove the words “willing and” so that the sentence reads “Check all that you are able to do.”</p> <p>[Reduce the amount I owe.] Condense this section. It takes up a lot of space and makes the form longer than it needs to be. See attachment” proposed format for item 5)</p> <p>[• You may not be able to do community service on weekends or evenings.] Remove this bullet point. The next bullet point “Contact your court with any questions” covers it.</p>	<p>The committees decline to pursue this suggestion because they intended for the court user to request only relief that they would be likely to satisfy if ordered by the court. The court user should understand that they are not compelled to ask for relief that they are unlikely to satisfy.</p> <p>The committees decline to pursue this suggestion. The form is designed to be accessible to a wide literacy range. White space is a design element that increases reader comprehension. In addition, the forms circulated for public comment were designed to accommodate the insertion of icons to further promote accessibility for a low-literacy population and for persons whose English comprehension is limited. The committees have now added the icons to the forms.</p> <p>The committees decline to pursue this suggestion. It is important that court users make an informed decision in completing their request for relief. Court users may have competing responsibilities during the day and should be on notice that community service in the evening and on weekends is not an option in some counties. To ensure that court users will read the warning before selecting community service as an option, the committees have moved it out of the warning box to align with the request for community service. The warning will help</p>

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Comments on TR-320/CR-320, Item 5 (Request for Relief)		
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	<p>Proposed format for item 5 What are you asking the court to do? <i>(Check all that you are able to do)</i></p> <p> <input type="checkbox"/> Reduce the amount I owe. <input type="checkbox"/> Let me make monthly payments. <input type="checkbox"/> Let me do community service instead of <input type="checkbox"/> Give me more time to pay. </p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>Every court is different</p> <ul style="list-style-type: none"> • Your court might not offer all of these choices. Some courts do not offer monthly payments, community service, or more time to pay. • You might have to pay a fee for monthly payments or community service. • Contact your court with any questions. </div>	<p>ensure that those court users contact their court with any concerns before filing the form.</p> <p>The committees decline to pursue this suggestion. The proposed formatting would not allow for the use of icons, which have now been added to the form and are intended to facilitate comprehension for court users with lower literacy levels.</p>
91. TCPJAC/CEAC Joint Rules Subcommittee	<p>12. Question #5 on the TR-320: the parenthetical language does not make sense with the enumerated choices. Instead, it should read, “Check all that you would like the court to consider.”</p>	<p>Please see the response above to comment #87.</p>

Comments on Form TR-320/CR-320, Item 8, Circulated as Item 7 (Signature under Penalty of Perjury)		
Commentator	Comment	Committee Response
92. Albert De La Isla Principal Analyst Superior Court of California, Orange County / West Justice Center	<p>Need to provide the option of an electronic signature to allow this to be completed online and submitted to the court.</p>	<p>The committees decline to pursue this suggestion. This year, the Judicial Council undertook legislative efforts to authorize electronic signatures on electronically filed documents. That authority will go into effect on January 1, 2018. However, the council has not yet developed guidelines for electronic signatures on electronically filed documents. Nor has it decided how those guidelines might apply to the development of Judicial Council forms. Therefore, it is premature for the committees to recommend this suggestion to the council.</p>

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Comments on Form TR-320/CR-320, Circulated as Item 8 (Filing Instructions)			
	Commentator	Comment	Committee Response
93.	<p>ACLU of California By: Micaela Davis</p> <p>Bay Area Legal Aid By: Kendra Amick</p> <p>East Bay Community Law Center By: Theresa Zhen</p> <p>Lawyers’ Committee for Civil Rights of the San Francisco Bay Area By: Elisa Della-Piana</p> <p>Legal Services for Prisoners with Children By: Brittany Stonesifer</p> <p>Legal Services of Northern California By: Wade Askew</p> <p>Western Center on Law and Poverty By: Antionette Dozier</p>	<p>d. Question 8: Filing the Ability-to-Pay Application</p> <p>Number 8 on the TR-320/ CR-320 instructs the applicant to “file this form in the court listed on your ticket.” While it is helpful that the form instructs court users that the correct location to bring the form is the court in which their ticket was received, it is not clear what the term “file” is intended to mean. We suggest changing this instruction to:</p> <p><i>Mail or bring this form to the court listed on your ticket.</i></p>	<p>The committees agree and have revised the language in circulated item 8 on form TR-320/CR-320 to explain the various ways that a court user could file the form with the court. Based on the input provided by a usability expert, they have also moved this language into the instructions section on page 1 of the form.</p>

General Comments on Form TR-320/CR-320, Circulated Item 9 (Civil Assessments)			
	Commentator	Comment	Committee Response
94.	<p>ACLU of California By: Micaela Davis</p> <p>Bay Area Legal Aid By: Kendra Amick</p>	<p><i>ii. Information about Vacating Civil Assessment Fees</i></p> <p>Similarly, Question 9 does not inform defendants that if they missed their court date within the last 20 days, they may schedule an appearance and show good cause for the</p>	<p>The committees agree and have revised the proposal to address civil assessments under rule 4.106(c)(5) <i>and</i> (6) to the extent that the request</p>

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General Comments on Form TR-320/CR-320, Circulated Item 9 (Civil Assessments)		
Commentator	Comment	Committee Response
<p>East Bay Community Law Center By: Theresa Zhen</p> <p>Lawyers’ Committee for Civil Rights of the San Francisco Bay Area By: Elisa Della-Piana</p> <p>Legal Services for Prisoners with Children By: Brittany Stonesifer</p> <p>Legal Services of Northern California By: Wade Askew</p> <p>Western Center on Law and Poverty By: Antionette Dozier</p>	<p>failure to appear, and the “extra charge” will be removed.⁴ The Invitation to Comment noted that the Committees considered including requests to vacate or reduce civil assessments on the TR-320/ CR-320. The Committees cited multiple concerns with implementing Rules 4.106(c)(5) to explain their reasoning for excluding civil assessments from the TR-320/ CR-320. We address those concerns as follows:</p> <p style="padding-left: 40px;">FN4 Penal Code § 1214.1(b)(1).</p> <p>The Committees first raised a concern of timing – a request to vacate a civil assessment for good cause must be submitted within a specific time period per section 1204.1(b), and this limited window may not overlap with the timing of all ability-to-pay requests. This concern, however, does not warrant removing the ability to address a civil assessment fee on the TR-320/ CR-320, where it would be most efficient to address a defendant’s obligation to pay all fees. Inclusion of a request to vacate a civil assessment for good cause on the TR-320/ CR-320 does not prevent courts from having additional forms to address civil assessments imposed before adjudication. However, inclusion streamlines the process of addressing all fines and fees at or after adjudication. In addition, should a defendant request to vacate a civil assessment for good cause under 4.106(c)(5) after the timeline to do so has passed, the court retains the discretion to reject such a request.</p> <p>The Committees also expressed concern that the nature of the inquiry regarding an ability-to-pay request and that of a request to vacate a civil assessment for good cause differ.</p>	<p>to vacate or reduce a civil assessment relates to the court user’s financial circumstances.</p> <p>Incorporating civil assessments into the forms provides for one streamlined process for adjudicating requests related to the court user’s financial circumstances. This benefits both the court and court users by reducing the number of required court appearances.</p> <p>The committees expect that this revision will introduce efficiencies for the courts by combining two court processes for a number of court users. The committees took note that several courts have already adopted local forms that combine civil assessments and ability to pay, which indicates that a single process for both forms of relief is workable in practice.</p> <p>The committees also recognize that many court users are concerned with the total amount that they owe for their infraction violation and may not readily understand the difference between base fines and civil assessments. A single process to address both would reduce confusion and the time spent navigating the court system.</p>

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	<p>However, many of the factors creating an inability to pay are closely linked with an inability to appear. The stresses and challenges of poverty in and of themselves make it more difficult for a person to appear in court. Moreover, Rule 4.106(c)(7) states that the court may consider the defendant’s financial circumstances in deciding whether to vacate a civil assessment, in which cases the inquiry is essentially the same as an evaluation of ability to pay. In addition, the utility of both streamlining and simplifying the process by which a pro per defendant may seek to address all fines and fees implemented in their case outweighs the minor inconvenience – if any – of including two slightly different inquiries on the same form.</p> <p>While expressing reservations concerning the inclusion of Rule 4.106(c)(5) requests, the Committees articulated potential for implementing Rule 4.106(c)(6) and (7) in TR-320/ CR-320. We strongly support such an inclusion. As the Committees note in the Invitation to Comment, many low-income defendants seek relief from an inability to pay fines and fees generally, regardless of whether those fees were generated from a civil assessment or underlying infraction fine. As described in the Invitation to Comment, inclusion of Rule 4.106(c)(6) and (7) requests on TR-320/ CR-320 would benefit both the public and courts, leading to increased efficiency and less confusion.</p> <p>The Committees’ concerns about timing and confusion touch on broader issues of notice. The advisory note to Rule 4.335(b) says that notice of the right to request that the court consider one’s ability to pay may be provided in the notice of civil assessment. Not only would it be misleading to inform defendants of the potential for a fee</p>	<p>Please see the response above.</p>

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	<p>reduction relative to ability to pay on a notice of a civil assessment – for practical purposes, a “fee” – if the assessment cannot be reduced relative to ability to pay, but it would also be illogical and unfair. If a court user cannot afford to pay a fine, it’s likely that they also cannot afford to pay a \$300 civil assessment. Accordingly, as described below, we believe it would be most effective not only to allow civil assessment modifications via the TR-320/ CR-320, but also to require the inclusion of this form when sending out any notice of civil assessment.</p> <p>We recommend that Question 5 requests cover <i>all</i> fines and fees, including civil assessments, per Rule 4.106(c)(6) and (7). Further, we recommend that Question 9 of the TR-320/ CR-320 be amended to replace its current last two sentences with the following:</p> <p>On or around _____ (date), I missed my: (check all that apply)</p> <p><input type="checkbox"/> Court date <input type="checkbox"/> Payment</p> <p>I have good cause for missing it because: (check all that apply)</p> <p><input type="checkbox"/> I couldn’t afford to pay the ticket <input type="checkbox"/> I was incarcerated <input type="checkbox"/> I was experiencing homelessness <input type="checkbox"/> I was active duty in the military <input type="checkbox"/> I or my family member was sick, in the hospital, or had recently died <input type="checkbox"/> Other: _____</p> <p>I would like the court to:</p> <p><input type="checkbox"/> Remove any extra late charges <input type="checkbox"/> Reduce any extra late charges to an amount I can afford</p>	<p>The committees recognize that the reasons underlying petitions for an ability-to-pay determination and petitions to vacate or reduce civil assessments may frequently coincide. To that extent, they have revised the forms to accommodate those petitions to vacate or reduce civil assessments that are related to the court user’s financial circumstances. However, the committees decline to design the form in a way that specifically incorporates requests to vacate or reduce civil assessments for reasons unrelated to the court user’s financial circumstances. Incorporating all potential bases for vacating or reducing a civil assessment would require significant modification of the form and might introduce confusion for court users.</p>
95. Holly Browne Legal Services Project Manager Legal Aid of Sonoma County	The proposed forms should allow for requests to vacate the civil assessment for good cause under Penal Code section 1214.1(b) and rule 4.106(c)(5).	Please see the response above to comment #94.

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	<p>They should also allow for requests to vacate or reduce the civil assessment at the court’s discretion under Penal Code section 1214.1(a) and rule 4.106(c)(6).</p> <p>Often times the civil assessment is more than the original ticket amount. If they are unable to pay the original ticket amount, they are also unable to pay the civil assessment.</p>	
<p>96. California Attorney General’s Office By: Nicklas A. Akers Senior Assistant Attorney General</p>	<p>Modifying the form to include a request for relief from civil assessments. Defendants may not understand the difference between a fine and a civil assessment, or appreciate that the Court has imposed both in their case. Forcing defendants to file separate applications for relief from fines and from civil assessments increases the burden on those individuals and the courts, and makes it less likely that financially distressed defendants and their families will receive appropriate relief.</p>	<p>Please see the response above to comment #94.</p>
<p>97. Legal Advocates for Children and Youth By: Julie Saffren Karen Palmer</p>	<p>8. The form does not currently allow a person to also seek relief from a civil assessment imposed for failing to appear or failing to pay on time. We think a large percentage of users of this form are going to fall into that category, and are going to discover that even if relief is granted, they may still owe several hundred dollars to the court because of that same ticket.</p> <p>a. The form would be more user-friendly if a person could make a request for relief from the civil assessment at the same time. Maybe it could be separate section at the end of the form.</p> <p>b. The only place where this distinction is noted is in</p>	<p>Please see the response above to comment #94.</p>

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	<p>section 9, where the vague direction is given to “contact your court to find out what you can do about that extra charge.” We understand there is a different legal standard for when an assessment can be forgiven (not simply inability to pay), but since those two amounts are the result of the same ticket/infraction, it makes sense to allow people to request relief from both at the same time.</p>	
<p>98. Legal Aid Foundation of Los Angeles By: Tyler Sutherland Staff Attorney</p>	<p>The Judicial Council should develop companion forms to address civil assessments.</p> <p>As the committee has duly noted, the standards for vacating civil assessments are different than the standards for modifying the fines pursuant to an ability to pay determination. This warrants a separate form to address this different standard. As an inability to pay may warrant “good cause” to vacate a civil assessment under Rule 4.106(c), it makes sense that the separate civil assessment form be presented as a companion form to the ability to pay forms TR-320 and TR-321.</p> <p>The warning on page four of TR-320 is insufficient to advise client about the consequences of civil assessments; the warning is also hidden and is confusing. As a practical matter, it is unlikely that an individual will read thoroughly the last line of a form that they have finished completing. The warning should be moved to the first page, and should read as follows:</p> <p><i>Did you miss a court date? Did you fail to pay your ticket on time? If so, the court might be charging you</i></p>	<p>The committees decline to pursue this suggestion because the development of separate companion forms is outside the scope of the present proposal. To the extent that this proposal does not address all grounds for vacating or reducing civil assessments, the committees may consider the development of separate civil assessment forms in the future.</p> <p>The committees decline to pursue this suggestion because they have revised the proposal to address civil assessments.</p>

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	<p><i>extra money. Filling out this form will not take care of that extra charge. Go to form [xxxx] to find out your options to address this extra charge and how you can ask the court to take action.</i></p> <p>For many defendants who have received a civil assessment for a failure to pay, it is almost impossible to get their civil assessment vacated without legal assistance. Many courts will refuse to put the case back on calendar so that the client can explain their good cause as the case is “closed”. As a result, the instruction to “contact your court” is misleading and goes against the goal of providing more access to justice.</p> <p>The order should instruct people about how to fight their civil assessment if the fee remains.</p> <p>As a corollary to the comments above, the Judge’s Order should direct individuals as to how to fight a civil assessment. Page 1 of the Judge’s Order under “Request Granted” notes for an individual if a civil assessment is owed. This section of the Order should direct individuals to the civil assessment form, or at minimum indicate that there is a way to get the civil assessment vacated. Language might read as follows:</p> <p>You also still owe an additional \$___ because you missed a court date or payment. If you have good cause for missing the court date or payment, you can ask the court to vacate this additional fee. Complete form [xxx] to ask the court to take action on this fee. The court may reconsider charging this</p>	<p>Please see the response above.</p>

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	<p>fee.</p> <p>Or alternatively</p> <p>You also still owe an additional \$___ because you missed a court date or payment. If you have good cause for missing the court date or payment, you can ask the court to vacate this additional fee. Request a hearing from your court if you want to fight this fee. The court may consider waiving this fee.</p> <p>Rule 4.106(c) requires that individuals be notified of the ability to have their civil assessments vacated, and adding this language to the Judge’s Order is in line with that mandate.</p> <p>If the Judicial Council chooses to adopt our recommendations for a separate Civil Assessment form, LAFLA would be happy to participate in the creation and review of these forms.</p>	
<p>99. Public Counsel By: Anne Richardson Directing Attorney Consumer Law Project</p>	<p>1) We strongly request that the Form be amended to include civil assessments in addition to fines. We understand that this was an alternative being considered. It is our experience that the general public and our clients in particular do not understand the difference. Failure to include civil assessments would likely result in consumers believing that the entirety of their debt may be reduced, rather than just the fines, or would lead to additional requests to have their assessments reduced as well, creating more adverse consequences. The portion of both the</p>	<p>Please see the response above to comment #94.</p>

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	Commentator	Comment	Committee Response
		request form and the order dealing with the civil assessments would have to be modified accordingly.	
100	Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano, Management Analyst	<p>Page 4 of 4. Item 9 Requests to waive civil assessment should NOT be included on this form and this should be emphasized by including the following. Section 9 of the TR-320 should read, “Did you miss a court date? Did you fail to pay your ticket on time? If so, the court may be charging you extra money for failure to comply – this charge may be called a civil assessment. Filling out this form will not take care of that extra charge. Contact the court listed on the ticket to find out what you can do about that extra charge.”</p> <p>[...]</p> <p>Should the proposed forms address civil assessments?</p> <p>The forms should not address civil assessments since vacating a civil assessment is done on a different basis than determining ability to pay and incorporating both on the same form will confuse litigants. Please see suggested changes for Form TR-320, page 4 of 4, item 9 above.</p>	<p>Please see the response above to comment #98.</p> <p>Please see the response above to comment #94.</p>
101	Superior Court of California, County of Riverside By: Susan D. Ryan Chief Deputy of Legal Services	<p>Move the civil assessment warning in paragraph 9 to the first page.</p> <p>[...]</p> <ul style="list-style-type: none"> Should the proposed forms address civil assessments? 	Please see the response above to comment #98.

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	Commentator	Comment	Committee Response
		No. the civil assessment warning on page 4 is adequate, but it should be moved to the first page.	
102	Superior Court of California, County of San Francisco By: Michael Yuen Court Executive Officer	Should the proposed forms address civil assessments? Yes, the proposed form should indicate that a defendant’s financial circumstances may be considered by the court when ruling on a timely petition to vacate civil assessment. (California Rule of Court 4.106(c)(7). However, the request to vacate the civil assessment should be a separate form because that determination has a different standard of proof than the ability to pay petition, and is time limited under current law. The TR-320/CR-320 may appropriately be submitted with a petition to vacate civil assessment.	Please see the response above to comment #94.
103	Superior Court of California, County of San Mateo By: Mary Treanor Court Policy Analyst II	While it would be cumbersome to require the court user to complete two separate forms, it may be confusing to combine a request to vacate/reduce the civil assessment with the ability to pay form. More consideration should go into the best way to combine these two issues into one form, especially considering the limitations on requesting to vacate or reduce the civil assessment. 9. Page 4– Number 9: <ul style="list-style-type: none"> a. This “Note” should be removed or modified: b. Suggested change if modified: “If you missed your scheduled court date or failed to pay your fine on time, the court may have added extra charges, fees and/or assessments such as a civil assessment. 	Please see the response above to comment #94. Please see the response above to comment #98.

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Commentator	Comment	Committee Response
	Filling out this form will not take care of those additional amounts. Contact the court to find out what your options are for taking care of the extra charges.”	
104 Superior Court of California, County of Tulare	<p>2. On page 7 it states that the form could be revised to implement rule 4.106(c)(6) and (7) – Tulare County Superior Court agrees.</p> <p>[...]</p> <p>Question: Should the proposed forms address civil assessments?</p> <p>Tulare County Superior Court believes they should. If a defendant is unable to pay their fine they would also be unable to pay their civil assessment. The purpose of making these documents easily read in plain language is to simplify the process for defendants In Pro Per who do not understand technical jargon. There should be an option for the judicial officer to review and or vacate the fees for the following reasons:</p> <ol style="list-style-type: none"> 1) If a defendant is requesting a reduction they will automatically feel they are requesting it as to all fines and fees. This will result in the defendant making an additional appearance in court or filing additional information to be reviewed to reduce the civil assessments not addressed initially. This will take up additional court time and resources. 2) Proper defendants may not understand PC 	Please see the response above to comment #94.

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General Comments on Form TR-320/CR-320, Circulated Item 9 (Civil Assessments)			
	Commentator	Comment	Committee Response
		1214.1(b) and Rule 4.106(c)(5) or PC 1214.1(a) and Rule 4.106(c)(6) or the difference between the two. All that is needed on the order is place for the judicial officer to mark if the assessment is to remain, be reduced or vacated and boxes to mark under what section he/she was making the order.	
105	Superior Court of California, County of Ventura By: Richard Cabral Director - Finance/Planning and Collections	Should the proposed forms address civil assessments? No.	Please see the response above to comment #94.
106	Superior Court of California, County of Ventura By: Richard Cabral Director - Finance/Planning and Collections	[NOTE: Did you miss a court date? Did you fail to pay your ticket on time? If so, the court might be charging you extra money. Filling out this form will not take care of that extra charge. Contact your court to find out what you can do about that extra charge.] Move to page 1 as a bullet. Proposed new verbiage: Did you miss a court date or fail to pay your ticket on time? If so, the court might have charged you extra money in the form of a Civil Assessment (Penal Code 1214.1). Filling out this form will not take care of that extra charge. Contact your court for more information.	Please see the response above to comment #98.
107	TCPJAC/CEAC Joint Rules Subcommittee	2. Requests to waive civil assessment should NOT be included on this form and this fact should be made more clear. Section 9 of the TR-320 should read, “Did you miss a court date? Did you fail to pay your ticket on time? If so, the court may be charging you extra money for failure to comply – this charge may be called a civil assessment. Filling out this form will not	Please see the responses above to comments #94 and #98.

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General Comments on Form TR-320/CR-320, Circulated Item 9 (Civil Assessments)		
Commentator	Comment	Committee Response
	take care of that extra charge. Contact the court listed on the ticket to find out what you can do about that extra charge.”	

Comments on Form TR-320/CR-320 (Collections)		
Commentator	Comment	Committee Response
108 ACLU of California By: Micaela Davis Bay Area Legal Aid By: Kendra Amick East Bay Community Law Center By: Theresa Zhen Lawyers’ Committee for Civil Rights of the San Francisco Bay Area By: Elisa Della-Piana Legal Services for Prisoners with Children By: Brittany Stonesifer Legal Services of Northern California By: Wade Askew Western Center on Law and Poverty By: Antionette Dozier	<p>e. Question 9: Failure to Appear or Failure to Pay</p> <p>While the proposed TR-320/CR-320 would likely be helpful for a defendant whose court date has not yet passed, it fails to provide adequate information and options to those who have missed a payment or a court date. Indeed, only in Question 9, at the very end of the form, is any information at all provided for individuals who missed their court date or failed to pay a ticket on time.</p> <p><i>i. Instructions about Eligibility of Tickets in Collections</i></p> <p>Rule 4.335(c)(2) states that an ability-to-pay request may be submitted “at adjudication, or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.” (Emphasis added.)</p> <p>The TR-320/ CR-320 currently does not explicitly reference the eligibility of tickets that have been redirected to a collections agency. Many courts refer delinquent debt cases to comprehensive collections agencies per Penal Code section 1463.007(b)(1). The TR-320/ CR-320 would</p>	<p>The committees agree and have incorporated the suggestions into the instructions on form TR-320/CR-320. Rule 4.335(c)(2) allows infraction defendants to request ability-to-pay determinations while the judgment remains</p>

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All comments are verbatim unless indicated by an asterisk (*).

Comments on Form TR-320/CR-320 (Collections)		
Commentator	Comment	Committee Response
	<p>be improved by making reference to these collections agencies and clarifying that the rules mandate that all traffic tickets and infractions, regardless of their status in or outside of collections, are eligible for an ability-to-pay determination.</p> <p>It would be helpful, therefore, to add the following language to the end of the application form:</p> <p>You may still use this form even if your ticket has gone to collections.</p>	<p>unpaid, even if the case is delinquent and has been sent to collections.</p>
109 Legal Advocates for Children and Youth By: Julie Saffren Karen Palmer	<p>9. What if the court has sent the unpaid bill to collections? Is there a different process for seeking relief? Rule 4.335 states that “A defendant may request an ability-to-pay determination at adjudication, or while the judgment remains unpaid, <i>including when a case is delinquent or has been referred to a comprehensive collection program.</i>” This should be widely known, since it is different than with other types of other consumer debts. It is important that this available relief is clear, since courts are not consistent with the rule. For example, Sacramento’s court website says, “If your case is already with an outside collection agency, there is no option for you to return to court and discuss your case.” (See https://www.saccourt.ca.gov/traffic/faq.aspx under the question “If I failed to appear, can I still go to court?”) The instructions section of the form should make it clear users can seek relief even if their bill has gone to collections, and provide any additional instructions needed if that process is different in some way.</p>	<p>Please see the response above to comment #108.</p>

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Comments on Form TR-320/CR-320 (Itemized Expenses)			
	Commentator	Comment	Committee Response
110	<p>ACLU of California By: Micaela Davis</p> <p>Bay Area Legal Aid By: Kendra Amick</p> <p>East Bay Community Law Center By: Theresa Zhen</p> <p>Lawyers' Committee for Civil Rights of the San Francisco Bay Area By: Elisa Della-Piana</p> <p>Legal Services for Prisoners with Children By: Brittany Stonesifer</p> <p>Legal Services of Northern California By: Wade Askew</p> <p>Western Center on Law and Poverty By: Antionette Dozier</p>	<p>The Committees stated in the Invitation to Comment that they considered requesting that defendants provide an itemized list of their expenses on the form. We support the Committees' decision to exclude such a request. The form, as currently written, adequately provides court users the opportunity to inform the court of their particular financial concerns, without adding an unnecessarily wordy and invasive inquiry about every expense the individual incurs. Not only would adding a request for such itemization decrease the readability of the form, but it would also add unnecessary burdens and raise privacy concerns for some of the most vulnerable court users.</p>	<p>No response required.</p>
111	<p>Legal Advocates for Children and Youth By: Julie Saffren Karen Palmer</p>	<p>2. The forms are easy to read/easy to use but we question why this new form is so different in its formatting from the existing Judicial Council form for fee waivers FW-001. This creates two different approaches to how a court obtains information about ability to pay, particularly in how the court seeks specifics on income and expense amounts.</p>	<p>The committees decided to take a different approach from the civil fee waiver form, which is governed by statute and which serves a different purpose. User testing demonstrated that users experience difficulties accurately completing the itemized expenses on the back of the civil fee waiver form without legal assistance. The committees designed form TR-320/CR-320 to strike a balance between (1)</p>

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Comments on Form TR-320/CR-320 (Itemized Expenses)		
Commentator	Comment	Committee Response
	<p>a. New form TR-320 is 4 pages long but shares the same objective as existing form FW-001 which is only 2 pages. We do not know why a 4 page form is needed here when a 2 page form is sufficient for other court needs. It could be twice as long simply because of its generous layout and formatting (lots of white space, large font size) but also because a portion of the new form includes helpful information for the litigant (on page 1). It might be better to limit the information on TR-320 to only what the court needs to know and put the helpful information for the litigant (the how-to) somewhere else, like an INFO form or a website.</p> <p>b. Specific to much of LACY’s population, we question why the financial information sought for someone who is not on aid is so different in proposed TR-320 than it is in fee waiver form FW-</p>	<p>making it easier for court users to complete the form without legal assistance and (2) providing courts with sufficient information about the court user’s financial circumstances to adjudicate the request for an ability-to-pay determination without holding a court hearing. That said, because of the considerable cost of housing in certain regions in California, the committees have revised form TR-320/CR-320 to ask court users to state how much they pay in mortgage or rent if they indicate that paying the ticket would affect their ability to pay this expense.</p> <p>Please see the response above to comment #26.</p> <p>Please see response above.</p>

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All comments are verbatim unless indicated by an asterisk (*).

Comments on Form TR-320/CR-320 (Itemized Expenses)		
Commentator	Comment	Committee Response
	<p>001. FW-001 uses a style that is very similar to a Family Law Income and Expense declaration (FL-150). Existing form FW-001 expects some users to fill out what looks like a budget reflecting both income and expenses in a chart. Using a single page format makes it easy for a judge to review and analyze the financial information rapidly, because all the numbers are on one page. In contrast, TR-320 seeks financial information using a question and answer, linguistic format that we think will slow judges down in their review because they cannot visually scan relevant numbers from a single page. This method could also result in insufficient information being provided to the court, necessitating more hearings on the ability to pay subject.</p> <p>c. Item 2a of new TR-320 asks a dual question of how much money a defendant receives from income plus how much he/she also gets from other sources (like family or a live-in partner). Item 2 then gives only one line for these amounts to be combined and reflected on the form. Combining all income into a one line answer may be misleading and increase time needed to verify it. We think form FW-001 handles this question in a much better way (see FW-001 items 8 and 9) by giving separate references for gross monthly income (which could be provable by paystub) and household income (which is a litigant assertion made under penalty of perjury).</p>	<p>The committees recognize that form FW-001 adopted a different approach in eliciting information about income sources. They are also aware of the challenges for users in filling out this part of form FW-001. Households can vary widely in composition, and court users may not know, and should not necessarily be expected to know, the incomes of all other household members. Court users may also experience difficulties identifying who qualifies as a household member if some individuals reside at the home on a part-time or occasional basis. The committees also questioned whether the income of all household members would be a valid indicator of the court user’s ability to pay. Form</p>

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All comments are verbatim unless indicated by an asterisk (*).

Comments on Form TR-320/CR-320 (Itemized Expenses)		
Commentator	Comment	Committee Response
	<p>d. Item 2c of new TR-320 does not give the court information about a defendant’s actual expenses. It simply permits the checking of a box to say that the defendant won’t be able to afford basic living expenses. This is a big weakness of an ability to pay determination because judges will want more information about actual expenses (since they will have information about income only). It may be more efficient for the court process to have the form give the court enough information about both income and expenses so the ability to pay determination can be made without requiring a hearing. This would also make life easier for the litigants who would not need to miss work to attend an extra hearing.</p> <p>3. Proposed form TR-320 departs from FW-001 in another important way in that it does not permit someone who is not on aid but whose income is near or below poverty guidelines to have a more efficient way to complete the form. This is a big population of low income litigants. Using FW-001, such a litigant would verify their low income on page one using a table regarding income and household size and then attest to their income level on page 2 with no need to detail their expenses. We feel that method should also be an element of the proposed new</p>	<p>TR-320/CR-320 asks about the income of the court user and his or her spouse or live-in romantic partner because the committees recognize the responsibility of these individuals for the court-ordered debt.</p> <p>The committees decline to pursue this suggestion. They designed form TR-320/CR-320 to be easy to complete for all court users—including those who are low income— by not, requiring itemized expenses for any court users. However, because of the high costs of housing in certain regions in California, they have revised form TR-320/CR-320 to ask court users to state how much they pay in mortgage or rent if they indicate that paying the ticket would affect their ability to pay this expense.</p> <p>The committees decline to pursue this suggestion. Form TR-320/CR-320 is designed to facilitate the application process for all court users, including those whose income is near or below the poverty guidelines. The form requests the minimum amount of information that might be needed to adjudicate ability to pay in order to ease the burden on all court users.</p>

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All comments are verbatim unless indicated by an asterisk (*).

Comments on Form TR-320/CR-320 (Itemized Expenses)																	
Commentator	Comment	Committee Response															
	form TR-320, because for families living close to the poverty level, fines are a huge hardship.																
112 Public Counsel By: Anne Richardson Directing Attorney Consumer Law Project	10) We strongly support the proposal not to require an itemized list of expenses. We agree with the commentary that the usability of the application will decrease significantly if it included such a list. Courts will usually have the information they need to determine ability to pay when a consumer provides their income, and if they have any doubt, they can request a hearing.	The committees agree and have maintained this aspect of the forms.															
113 Superior Court of California, County of Ventura By: Richard Cabral Director - Finance/Planning and Collections	<p>[Other: _____]</p> <p>Add Proposed “Asset and liability” section. (please see attachment) or questions in regards to vehicle ownership and bank information.</p> <p>[Do you have anything that shows your public benefits or income or expenses?]</p> <p>Add “Do you own a home? __Yes __No” (use check boxes)</p> <p>Add “What is your monthly rent or house payment? \$ _____”</p> <p>Proposed Asset and Liability Section</p> <p>What do you own?</p> <table border="1"> <thead> <tr> <th>Cars, trucks, boats, RVs, etc.</th> <th>Make</th> <th>Year</th> <th>Monthly Payment</th> <th>Amount Owed</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td>\$</td> <td>\$</td> </tr> <tr> <td></td> <td></td> <td></td> <td>\$</td> <td>\$</td> </tr> </tbody> </table>	Cars, trucks, boats, RVs, etc.	Make	Year	Monthly Payment	Amount Owed				\$	\$				\$	\$	<p>Please see the response above to comment #111 regarding the suggestion to revise the form to address expenses.</p> <p>The committees have revised the form to provide space for court users to state how much they pay in rent or mortgage if they indicate that paying the ticket would affect their ability to pay this expense.</p> <p>Because the committees do not intend for court users to sell their assets, such as their home or car, in order to pay for their infraction violations, they decline to pursue the suggestion</p>
Cars, trucks, boats, RVs, etc.	Make	Year	Monthly Payment	Amount Owed													
			\$	\$													
			\$	\$													

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All comments are verbatim unless indicated by an asterisk (*).

Comments on Form TR-320/CR-320 (Itemized Expenses)															
Commentator		Comment			Committee Response										
		<table border="1"> <tr> <td></td> <td></td> <td></td> <td>\$</td> <td>\$</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>						\$	\$						<p>to add a section to the form that inquires about the court user’s assets.</p> <p>The committees decline to inquire into how much money a court user has in the bank or on hand. The amount of money available to a low-income court user may fluctuate significantly over the course of a month—depending on whether the court user has recently received a paycheck or paid that month’s expenses—and therefore may not be an accurate indicator of ability to pay. Although the committees understand that judicial officers may be concerned that some individuals with significant cash assets will inappropriately request ability-to-pay determinations, they optimized form TR-320/CR-320 for the intended users. They are confident that the form adequately addresses those court users with significant cash assets in item 2, which solicits information on the user’s ability to pay for basic living expenses.</p>
			\$	\$											
		<p>ASSETS</p> <table border="1"> <tr> <td>Cash in the bank</td> <td>Cash on Hand</td> </tr> <tr> <td>\$</td> <td>\$</td> </tr> <tr> <td></td> <td></td> </tr> </table>			Cash in the bank	Cash on Hand	\$	\$							
Cash in the bank	Cash on Hand														
\$	\$														

Comments on Form TR-320/CR-320 (Driver’s License Holds and Suspensions)			
Commentator		Comment	Committee Response
114	<p>ACLU of California By: Micaela Davis</p> <p>Bay Area Legal Aid By: Kendra Amick</p>	<p><i>iii. Driver License Holds or Suspensions for Failure to Appear or Failure to Pay</i></p> <p>The issue of whether and when a hold or suspension may be placed on a traffic court user’s license is an evolving one. The legal authority for courts to suspend licenses for</p>	<p>The committees have revised form TR-320/CR-320 to provide information to court users who have driver’s license holds and suspensions</p>

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All comments are verbatim unless indicated by an asterisk (*).

Comments on Form TR-320/CR-320 (Driver’s License Holds and Suspensions)		
Commentator	Comment	Committee Response
<p>East Bay Community Law Center By: Theresa Zhen</p> <p>Lawyers’ Committee for Civil Rights of the San Francisco Bay Area By: Elisa Della-Piana</p> <p>Legal Services for Prisoners with Children By: Brittany Stonesifer</p> <p>Legal Services of Northern California By: Wade Askew</p> <p>Western Center on Law and Poverty By: Antionette Dozier</p>	<p>failure to pay was recently modified by AB 103, and further changes to state statute or DMV policy may develop before the TR-320/ CR-320 is slated to take effect on January 1, 2018. We therefore encourage the Committees to revisit this issue prior to finalizing the language on the forms. In the meantime, we would make the following changes to the forms.</p> <p>First, it is our position that submitting this form to request a payment arrangement or community service counts as an “appearance” for the purposes of recalling a held or suspended driver’s license for a failure to appear under Vehicle Code sections 40509, 40509.5, 12807 and 13365. Therefore, we suggest adding the following checkbox to Question 9:</p> <p><input type="checkbox"/> Notify the DMV to remove my failure to appear driver’s license hold or suspension.</p> <p>Second, as of June 27, 2017, AB 103 removed the authority for traffic courts to notify the DMV of a court users failure to pay and removed the authority of the DMV to suspend a license for failure to pay. It is our position that AB 103 also removed entirely the authority for the DMV to maintain any existing license holds or suspensions for failure to pay. However, even under the statutory language that existed prior to the passage of AB 103, a hold or suspension could only be placed on a license for a failure to pay that was willful. An individual who is determined through the proposed TR-320/ CR-320 to be unable to pay a fine, therefore, did not <i>willfully</i> fail to pay. For these reasons, defendants should be permitted to request via this form that</p>	<p>because of failures to appear and pay.</p>

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All comments are verbatim unless indicated by an asterisk (*).

Comments on Form TR-320/CR-320 (Driver’s License Holds and Suspensions)		
Commentator	Comment	Committee Response
	<p>any failure to pay license holds or suspensions be lifted, by adding the following language:</p> <p><input type="checkbox"/> Notify the DMV to remove my failure to pay driver’s license hold or suspension.</p>	

Comments on Form TR-321/CR-321 (General Comments and Suggested Edits)		
Commentator	Comment	Committee Response
<p>115 ACLU of California By: Micaela Davis</p> <p>Bay Area Legal Aid By: Kendra Amick</p> <p>East Bay Community Law Center By: Theresa Zhen</p> <p>Lawyers’ Committee for Civil Rights of the San Francisco Bay Area By: Elisa Della-Piana</p> <p>Legal Services for Prisoners with Children By: Brittany Stonesifer</p> <p>Legal Services of Northern California By: Wade Askew</p> <p>Western Center on Law and Poverty By: Antionette Dozier</p>	<p><u>II. Form TR-321/CR-321 - Order:</u></p> <p>As with the TR-320/ CR-320 application form, the TR-321/ CR-321 judicial order is easy to read and user-friendly. We commend the Committees for designing a standard court order that would be both simple for court users to understand and efficient for court officers to implement.</p>	<p>No response required.</p>

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All comments are verbatim unless indicated by an asterisk (*).

Comments on Form TR-321/CR-321 (General Comments and Suggested Edits)			
	Commentator	Comment	Committee Response
116	Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano, Management Analyst	<p>Form TR-321/CR-321</p> <p>Throughout the TR-321, any reference to “your court” should be replaced by the phrase “the court listed on the ticket,” since a person’s local court may not have jurisdiction over the citation at issue.</p> <p>Under “Need more information,” First check box Under “Request granted,” last check box</p>	The committees decline to pursue this specific suggestion, but have modified the form to address the court’s concerns. Before receiving the judicial order, the court user would have already filed form TR-320/CR-320 with the court listed on the ticket. The relevant court address would also be listed in the caption on form TR-321/CR-321. To further clarify the reference, the committees have revised the form to refer to “ <i>our</i> court” instead of “ <i>your</i> court.” This change will make clear that the court user should contact the court that sent the order.
117	Superior Court of California, County of Riverside By: Susan D. Ryan Chief Deputy of Legal Services	<ul style="list-style-type: none"> • Throughout form, change references from ‘judge’ to ‘judicial officer’. • Throughout the form, change references to ‘your court’ with ‘the court that is listed on the ticket’. • Throughout form, remove grayscale shading. For courts that image documents, the grayscale could be problematic. 	<p>Please see the response above to comment #33.</p> <p>Please see the response above to comment #121.</p> <p>Please see the response above to comment #33.</p>

Comments on Form TR-321/CR-321 (Title and Caption)			
	Commentator	Comment	Committee Response

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All comments are verbatim unless indicated by an asterisk (*).

118	Albert De La Isla Principal Analyst Superior Court of California, Orange County / West Justice Center	Need a bigger file stamp box.	Please see the response above to comment #35.
119	Superior Court of California, County of Riverside By: Susan D. Ryan Chief Deputy of Legal Services	<u>TR-321/CR-321</u> (Suggest changing the title to ‘Can’t Afford to Pay the <u>Full Amount</u> of the Ticket Fine . . .’) [...] 4. Format <ul style="list-style-type: none"> • The file stamp box needs to be larger, preferably the same size as on other Judicial Council forms. • Change ‘Case Name’ to ‘Defendant Name’. 	Please see the response above to comment #40. Please see the response above to comment #35. Please see the response above to comment #37.

Comments on Form TR-321/CR-321 (Judicial Order Setting a Hearing)			
	Commentator	Comment	Committee Response
120	ACLU of California By: Micaela Davis Bay Area Legal Aid By: Kendra Amick East Bay Community Law Center By: Theresa Zhen Lawyers’ Committee for Civil Rights of the San Francisco Bay Area By: Elisa Della-Piana Legal Services for Prisoners with Children By: Brittany Stonesifer	a. Setting a hearing The TR-321/ CR-321 form provides the option for a judge (1) to set or instruct the defendant to set a hearing to provide additional financial information, (2) to grant a request for a fine reduction or alternative to payment, or (3) to deny the request entirely. The form allows a judicial officer to clearly communicate to a defendant what decision the court has made; the amount of any reduction granted, the fine balance, and due date; what kind of payment plan or community service may have been granted; and whether the defendant needs to appear in court with any additional documentation. All of this information will help traffic court users to comply with the orders related to their fines and to avoid additional consequences for non-payment.	No response required.

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Comments on Form TR-321/CR-321 (Judicial Order Setting a Hearing)			
	Commentator	Comment	Committee Response
	<p>Legal Services of Northern California By: Wade Askew</p> <p>Western Center on Law and Poverty By: Antionette Dozier</p>	<p>However, the TR-321/ CR-321 order, as currently written, fails to instruct defendants on how to request a hearing if the application related to their ability to pay was denied or they feel that the reduction, payment plan, or community service that they were granted is insufficient. Including an option for court users to make such a request would increase the likelihood that the amount and manner of paying ordered is truly something with which the defendant can comply. Therefore, we suggest adding the following language to the bottom of the TR-321/ CR-321 form:</p> <p style="padding-left: 40px;">If you disagree with any part this decision, please contact your court to set up a time to see the judge.</p>	<p>The committees decline to pursue this suggestion because it is inconsistent with other Judicial Council forms for court orders and would crowd the order form.</p>
121	<p>Kelly McNamara Managing Attorney San Bernardino Superior Court</p>	<p>On the page where it cautions the filer against missing his or her court date, I suggest eliminating or changing the verbiage in the second sentence: [Don't miss the court date! The judge might not give you the help you asked for.] As currently worded, it might give the appearance that missing the court date is the only reason the judge might decline to provide the help requested, perhaps leaving the impression with the litigant that showing up is all that is necessary to have the request granted.</p>	<p>The committees agree and have deleted the warning—"The judge might not give you the help you asked for"—from form TR-321/CR-321.</p>
122	<p>Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano, Management Analyst</p>	<p>Page 1 of 2. Eliminate the word "please" related to any judicial order. The order for hearing is not a request. In the first two check boxes under "Need more information" delete the word "please".</p>	<p>The committees decline to pursue this suggestion. The use of the word "please" is often used "with the imperative of a verb to express a polite request or order." (<i>Cambridge Dictionary, English Grammar Today.</i>) Therefore, its use is appropriate in a court order, even though the court user is required to comply</p>

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Comments on Form TR-321/CR-321 (Judicial Order Setting a Hearing)			
	Commentator	Comment	Committee Response
			if he or she intends to pursue the request for relief.
123	Superior Court of California, County of Riverside By: Susan D. Ryan Chief Deputy of Legal Services	2. Delete 'Please' from the first two sentences in the 'Need more information' box.	Please see the response above to comment #122.
124	Superior Court of California, County of Tulare	2. On the TR-321/CR-321 Can't Afford to Pay Ticket Fine: Traffic and Other Infractions (Judges Order) 1) The verbiage under "Don't miss the court date!" that states: "The judge might not give you the help you asked for". This implies that if you appear you will get the help or assistance you are requesting, which may be misleading.	The committees agree and have deleted this statement from form TR-321/CR-321.
125	Superior Court of California, County of Ventura By: Richard Cabral Director - Finance/Planning and Collections	[Judge's Order: <i>You said that you don't have enough money to pay what you owe. The judge decided:</i>] Remove the verbiage "You said that you don't have enough money to pay what you owe. The judge decided:" The defendant may be able to pay the total balance owed but in lower monthly installments. [Request granted: It looks like you don't have enough money to pay what you owe.] Remove the verbiage "It looks like you don't have enough money to pay what you owe"	The committees decline to pursue the suggestion. Form TR-320/CR-320 was written in plain language to be accessible to the widest audience possible. Since it is anticipated that some users of these forms will have lower literacy, explanatory language was intentionally added to aid their understanding of the court's order. In addition, by filing form TR-320/CR-320, the court user is informing the court that they are unable to pay what they owe in the prescribed manner or amount. The explanatory

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Traffic and Criminal Procedure: Forms and Rule on Ability to Pay in Traffic and Other Infraction Cases

All comments are verbatim unless indicated by an asterisk (*).

Comments on Form TR-321/CR-321 (Judicial Order Setting a Hearing)			
	Commentator	Comment	Committee Response
			language at the top of the form restates this request to clarify for the user what the judicial order responds to.
126	TCPJAC/CEAC Joint Rules Subcommittee	<p>13. On the TR-321, move the order for hearing (“Need more information”) to be the last option.</p> <p>Also, the order for hearing is not a request; remove the word “please” from the two checkboxes in this section.</p>	Please see the response above to comment #122.

Comments on TR-321/CR-321 (Judicial Order Granting or Denying Relief)			
	Commentator	Comment	Committee Response
127	<p>ACLU of California By: Micaela Davis</p> <p>Bay Area Legal Aid By: Kendra Amick</p> <p>East Bay Community Law Center By: Theresa Zhen</p> <p>Lawyers’ Committee for Civil Rights of the San Francisco Bay Area By: Elisa Della-Piana</p> <p>Legal Services for Prisoners with Children By: Brittany Stonesifer</p> <p>Legal Services of Northern California By: Wade Askew</p>	<p>b. Relief from All Failure to Appear or Failure to Pay Sanctions</p> <p>As described in the discussion of the TR-320/ CR-320 application above, it is important that defendants are aware of and can protect themselves against all of the potential consequences that may stem from an inability to pay a traffic fine. This includes being free from misdemeanor charges for willful failures to appear or pay and from license holds or arrest warrants for failures to appear. Therefore, proposed TR-321/ CR-321 should be revised to include the option for the judicial officer to withdraw any warrant issued under section 40515, to dismiss any misdemeanors for failures to appear or pay in this case, and to notify the DMV to lift any related license holds or suspensions.</p>	Please see the response above to comment #114.

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Comments on TR-321/CR-321 (Judicial Order Granting or Denying Relief)			
	Commentator	Comment	Committee Response
	Western Center on Law and Poverty By: Antionette Dozier		
128	California Attorney General’s Office By: Nicklas A. Akers Senior Assistant Attorney General	<ul style="list-style-type: none"> With respect to the proposed order, form TR-321/CR-321, we recommend modifying the statement “Please contact your court to set up a time to see the judge” so that it also tells defendants how to contact the court. For example, it might state “Please call (____) ____ - ____ or visit the clerk’s office to set up a time to see the judge.” This addition would provide helpful direction to unrepresented defendants. 	The committees agree and have revised form TR-321/CR-321 to incorporate this suggestion.
129	Albert De La Isla Principal Analyst Superior Court of California, Orange County / West Justice Center	<p>Judge’s Order: <i>You said that you don’t have enough money to pay what you owe. The judge <u>reviewed your documents and has: decided:</u></i></p> <ul style="list-style-type: none"> requested need more information: The judge has questions about money you get and spend. granted your request Request granted: It looks like you don’t have enough money to pay what you owe <p>[The amount you owe for your ticket is lowered to \$_____. You also still owe an additional \$_____.]</p> <p>We should try to educate them as well, adding something like “This additional amount you owe is called a Civil Assessment”.</p> <p>[Pay this new amount \$_____]</p>	<p>The committees decline to pursue this suggestion. They have revised this language in response to other comments.</p> <p>The committees decline to pursue this suggestion. They have removed this language in revising the form to incorporate civil assessments.</p> <p>The committees decline to pursue this</p>

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All comments are verbatim unless indicated by an asterisk (*).

Comments on TR-321/CR-321 (Judicial Order Granting or Denying Relief)		
Commentator	Comment	Committee Response
	<p>Should make a reference to reminders being sent to their home, e-mail address or mobile phone if they agreed. This applies to all items with due dates.</p> <p>[You will pay what you owe in monthly payments.] Need to reference the addition of a installment fee of \$35.00</p> <p>[Your first payment will be on _____. Your last payment will be on _____.] We should add a warning about failure to pay according to this payment agreement can lead to additional fines (civil assessment).</p> <p>[You can have more time to pay what you owe. Pay \$ _____ on _____.] Same here, some advisement of failure to pay denied your rRequest denied: Pay the full cost of what you owe (\$ _____) by Same comment, should be some failure to pay advisement.</p> <p>[Contact your court to learn how to set up community service.] Should make this section subject to local modification so that we can add a phone number or address for them to go to for enrollment in community service.</p>	<p>suggestion because it would unnecessarily clutter the form. The court user already indicated consent on form TR-320/CR-320 to courtesy reminder e-mails and texts.</p> <p>The committees decline to pursue this suggestion.</p> <p>The committees decline to pursue this suggestion because they were not able to easily incorporate it in a manner that would not result in confusion and crowd the order.</p> <p>Please see the response above.</p> <p>Please see the response above.</p> <p>The committees decline to pursue this suggestion. Because this form is optional, judicial officers have discretion to issue orders tailored to their local court processes.</p>

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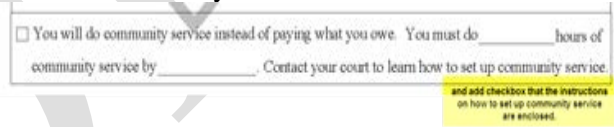
All comments are verbatim unless indicated by an asterisk (*).

Comments on TR-321/CR-321 (Judicial Order Granting or Denying Relief)		
Commentator	Comment	Committee Response
	<p><i>[Signature of Judge (or Judicial Officer)]</i> This should be subject to local modification as we list Judge or Commissioner.</p>	<p>The committees decline to pursue this suggestion. Because a commissioner is a subordinate judicial officer, the signature line would not preclude a commissioner from issuing the order.</p>
<p>130 Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano, Management Analyst</p>	<p>Page 1 of 2. Under Request Denied:</p> <p>The first check box should be more dispositive: “The court finds that you have an ability to pay your fine.”</p> <p>There should be a new second box that reads, “The court denies your request based on the totality of the circumstances related to your offense;” this language may need to be simplified, but the law allows for the option and the form must include it.</p> <p>Since a person can make multiple requests, the last check box should read: “This is not your first request on this citation. You did not show that your situation has changed since your last request.”</p>	<p>The committees agree that this sentence should be more dispositive and have revised the sentence as follows: “The court decided that you have to pay the full cost of what you owe.”</p> <p>The committees decline to pursue this suggestion. The advisory committee comment to rule 4.335(c)(4) acknowledges that the court may consider factors other than financial circumstances, such as the severity of the offense, in the exercise of discretion. This comment was intended to recognize the broad discretion of the court in adjudicating ability to pay. The court is not required to use this form and may issue an order appropriate for those cases.</p> <p>The committees recognize that applicants may file more than two requests if they show changed circumstances under rule 4.335(c)(6). They have revised form TR-321/CR-321 to state: “You made a request before, but you did not show that your situation has changed since your last request.”</p>

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Comments on TR-321/CR-321 (Judicial Order Granting or Denying Relief)		
Commentator	Comment	Committee Response
	Add a check box reading, “No additional requests will be considered for this citation.”	The committees decline to pursue this suggestion because it contradicts rule 4.335(c), which authorizes infraction defendants to request subsequent ability-to-pay determinations based on changed circumstances while the judgment remains unpaid.
131 Superior Court of California, County of Riverside By: Susan D. Ryan Chief Deputy of Legal Services	<p>1. In the Request denied section, add space for the judicial officer to include an alternative disposition (CRC 4.335(c)(3).)</p> <p>[...]</p> <p>3. In the Request granted section, change the first sentence to be consistent with the language in TR-320: The amount you owe for your ticket is <u>reduced</u> . . .’</p> <p>[...]</p> <ul style="list-style-type: none"> Page 1, under ‘Request Granted’, the community service section should have an optional check box reading that the ‘instructions on how to set up community service are enclosed.’ 	<p>The committees decline to pursue this suggestion. If a court intends to order a form of relief not requested by the court user in form TR-320/CR-320, the court may hold a hearing to ensure that the court user is able and willing to comply with that alternative disposition.</p> <p>The committees decline to pursue this suggestion. Instead, they have revised the language in form TR-320/CR-320 to be consistent with the language in form TR-321/CR-321.</p> <p>The committees decline to pursue this suggestion because it would crowd form TR-321/CR-321. They note that the absence of a checkbox would not preclude a court from including instructions on community service with the order.</p>
132 Superior Court of California, County of San Diego By: Mike Roddy	The judge’s order should also have a box to check when the request to reduce is denied because the remaining amount consists of non-reducible fines, fees, and assessments.	The committees agree and have added a checkbox in the “Request Denied” section of form TR-321/CR-321 to allow the court to

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Comments on TR-321/CR-321 (Judicial Order Granting or Denying Relief)			
	Commentator	Comment	Committee Response
	Court Executive Officer		indicate if a request is denied because the remaining amount consists of non-reducible fines, fees, and assessments.
133	Superior Court of California, County of Tulare	<p>2) In the area regarding community service it states: Contact your court to learn how to set up community service.</p> <p>Courts may set the defendant up with community service and send the appropriate information to the defendant. There should be an option to check that indicates something like: <i>“Information on the completion of your community service is attached.”</i></p>	Please see response above to comment #131.
134	<p>Superior Court of California, County of Ventura By: Richard Cabral Director - Finance/Planning and Collections</p>	<p>[Your last payment will be on _____.] Remove “Your last payment will be on _____”</p> <p>This would require the court clerk or judicial officer to calculate the last payment date which isn’t needed.</p> <p>[Contact your court to learn how to set up community service.] Add “by mm/dd/yy” after the word “court”</p> <p>[This is your second request, but you did not show that your situation has changed since your first request.] Replace with “You did not show that your situation has changed since you previous request.”</p> <p>An individual may file the form more than two times.</p>	<p>The committees decline to pursue this suggestion. They included a space for the court to indicate the last payment day to increase the court user’s understanding of his or her obligations under the court order.</p> <p>The committees decline to pursue this suggestion because they could not accommodate all requests to add instructions to form TR-321/CR-321 in the limited space available.</p> <p>Please see response above to comment #130</p>

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Comments on TR-321/CR-321 (Judicial Order Granting or Denying Relief)			
	Commentator	Comment	Committee Response
135	TCPJAC/CEAC Joint Rules Subcommittee	14. On the TR-321, under the Request Denied section, clarify the language and provide better options for judicial orders: The first box should be more dispositive: "The court finds that you have an ability to pay your fine." There should be a new second box that reads, "The court denies your request based on the totality of the circumstances related to your offense;" this language may need to be simplified, but the law allows for the option and the form must include it. The final box should read, "You have made an earlier request and you did not show that your situation has changed since your earlier request."	Please see the response to comment #130. The committees agree and have revised form TR-321/CR-321 to state: "You made a request before, but you did not show that your situation has changed since your last request."

Comments on TR-321/CR-321 (Clerk's Certificate of Mailing)			
	Commentator	Comment	Committee Response
136	Albert De La Isla Principal Analyst Superior Court of California, Orange County / West Justice Center	Need something for sending this response via the e-mail they provided and consent to electronic notification.	The committees agree that the clerk's certificate of mailing should be revised to recognize that form TR-321/CR-321 may be served electronically if the court user has separately consented to electronic service under rule 2.251. The committees caution that the consent to electronic notification on form TR-320/CR-320 indicates consent only to courtesy electronic notifications (e.g., installment payments), not to electronic service.
137	Superior Court of California, County of Riverside By: Susan D. Ryan Chief Deputy of Legal Services	<ul style="list-style-type: none"> • Certificate of Mailing should be included on TR-321/CR-321, but should include the standard verbiage for clerk certificates. 	The committees decline to pursue this suggestion because the current language closely mirrors the language in other Judicial Council plain language forms.

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Comments on TR-321/CR-321 (Clerk’s Certificate of Mailing)			
	Commentator	Comment	Committee Response
138	Superior Court of California, County of San Mateo By: Mary Treanor Court Policy Analyst II	The inclusion of a Clerk’s Certificate is acceptable.	No response required.
139	Superior Court of California, County of Ventura By: Richard Cabral Director - Finance/Planning and Collections	• Should the order form contain a clerk’s certificate of mailing? Yes Or do courts typically generate these separately? The form should include the certificate of mailing. Are traffic and infraction courts implementing, or do they intend to implement, electronic service by consent under rule 2.251? We will not be implementing at this time.	No response required.
140	Suzanne Schleder Sr. Business System Analyst Judicial Council of California, Information Technology (JCIT)	Remove Clerk’s cert of mailing (not required?)	The committees decline to pursue this suggestion because several courts submitted comments indicating that the clerk’s certificate of mailing is useful.

Comments on Rule 4.336(a) (Use of Forms)			
	Commentator	Comment	Committee Response
141	Albert De La Isla Principal Analyst Superior Court of California, Orange County / West Justice Center	[(a) Use of request and order form] Need something to support online submission and acceptance of an electronic response from the court. [(a)(1). A court uses the information on <i>Can’t Afford to Pay Ticket Fine: Traffic and Other Infractions</i> (form TR-320/CR-320) to determine an infraction defendant’s ability to pay under rule 4.335.] This may lead someone to believe that this form is mandatory. Suggest changing to a court “may” use.	The committees decline to pursue this suggestion. Rule 2.252 provides the general authority for electronic filing. No additional authority is needed in rule 4.336 to allow court users to file the form electronically. The committees decline to pursue this suggestion. The proposed rule is clear that the

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Comments on Rule 4.336(a) (Use of Forms)		
Commentator	Comment	Committee Response
		forms are optional forms. Subdivision (a) clarifies how a court should use the information on the form if a court user elects to submit the request on form TR-320/CR-320.

Comments on Rule 4.336(b) (Confidentiality)		
Commentator	Comment	Committee Response
142 ACLU of California By: Micaela Davis Bay Area Legal Aid By: Kendra Amick East Bay Community Law Center By: Theresa Zhen Lawyers' Committee for Civil Rights of the San Francisco Bay Area By: Elisa Della-Piana Legal Services for Prisoners with Children By: Brittany Stonesifer Legal Services of Northern California By: Wade Askew Western Center on Law and Poverty By: Antionette Dozier	<u>III. Proposed Rule 4.336</u> a. Confidentiality The new Rule 4.336 proposed by the Committees would require that information provided on the TR-320/ CR-320 application form and any supporting documentation be accessible only by the defendant and the court and that they be maintained by the clerk's office in a manner that protects and preserves their confidentiality. This is an important standard that will be necessary to protecting the privacy, safety, and identities of defendants and we appreciate that the Committees included it in the regulations.	No response required.

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Comments on Rule 4.336(b) (Confidentiality)			
	Commentator	Comment	Committee Response
143	Howard Hershops	<p>The above rule as implemented violates Federal Law.</p> <p>Clearly, if a traffic defendant is receiving public benefits those funds cannot be used to pay any judgment as stated in Title 42 USC Section 407.</p> <p>According to the United States Supreme Court in Bennette v. Arkansas, 485 U S 395 (1988) the Supremacy Clause prohibits California from seeking payment from those funds.</p>	The committees do not agree with Mr. Hershops' interpretation of the federal statute and case law.
144	Legal Advocates for Children and Youth By: Julie Saffren Karen Palmer	1. The proposed addition of new ROC 4.336 is a good development, as it addresses the need to make the application for relief confidential. This would reduce identity theft as well as enable individuals on public benefits to keep the fact they are on aid out of a public court file). This is similar to the way other existing Judicial Council forms that seek fee waivers for court fees (like FW-001) are confidential	No response required.
145	Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano, Management Analyst	<p>That said, some courts may not be able to keep the requests confidential without significant staff time and/or programming costs.</p> <p>Rule 4.336</p> <p>It is burdensome and unnecessary for the court to preserve supporting documentation. Change section (b) Request form is confidential as follows:</p> <p>Can't Afford to Pay Ticket Fine: Traffic and Other Infractions (form TR-320/CR- 320), the information it</p>	<p>Rule 4.335 provides that a court must permit a defendant to request a determination of their ability to pay by written petition, unless the court directs a court appearance and provides that the request "must include any information or documentation the defendant wishes the court to consider in connection with the determination." (Cal. Rules of Court, rule 4.335(c)(3).) This proposal is intended to assist courts in implementing this rule.</p> <p>The committees are cognizant of both the</p>

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Comments on Rule 4.336(b) (Confidentiality)		
Commentator	Comment	Committee Response
	<p>contains, and any supporting documentation are <u>is</u> confidential. The clerk’s office must maintain the form and supporting documentation in a manner that will protect and preserve its confidentiality. Only the parties and the court may access the form and supporting documentation. <u>The court shall not maintain any supplemental documentation as part of the case file.</u></p>	<p>burdens on the courts and the sensitive nature of the inquiry into the court user’s ability to pay. If the form did not ask for information and supporting documentation related to the court user’s financial circumstances, the court would not have a basis for making the ability-to-pay determination and would likely have to hold hearings in these cases, leading to further operational costs for the courts and costs to court users.</p> <p>The committees decline the suggestion to specify where the court must maintain supplemental documentation. They understand that some courts may maintain this documentation as part of the case file. Proposed rule 4.336 specifies only that the information on form TR-320/CR-320 and supporting documentation are confidential and accessible only by the parties and court. The rule allows for local flexibility by not specifying where courts must maintain the supporting documentation (so long as it is kept confidential and is accessible by the court and parties).</p>
<p>146 Superior Court of California, County of San Francisco By: Michael Yuen Court Executive Officer</p>	<p>The San Francisco Superior Court supports proposed Rule 4.336 if the following change is made:</p> <p>Rule 4.336(b) states that the “clerk’s office must maintain the form and supporting documentation in a manner that will protect and preserve its confidentiality.” Requiring the court to maintain voluminous supporting documentation,</p>	<p>The committees decline to revise rule 4.336 because the rule addresses only the confidentiality of form TR-320/CR-320 and supporting documentation while they are in the court’s possession; it does not address their destruction, which is governed by statute. However, the committees have revised form</p>

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Comments on Rule 4.336(b) (Confidentiality)			
Commentator	Comment	Committee Response	
	<p>which will include tax returns, public benefits verification, and employment and tax documents, will create an unnecessary burden on the court. Furthermore, retention of these exhibits is not necessary. In a criminal case, exhibits may be returned to a party after the final determination of the action (Penal Code §§ 1417, 1417.5), or destroyed after the last day to file a notice of appeal (Penal Code § 1417.1). Given that infractions are a relatively minor violation of the law, the court should not be required to retain exhibits after ruling on the Ability to Pay petition.</p> <p>Proposed Change:</p> <p>(b) Can't Afford to Pay Ticket Fine: Traffic and Other Infractions (form TR-320/CR-320), the information it contains, and any supporting documentation are confidential. The clerk's office must maintain the form and supporting documentation in a manner that will protect and preserve its confidentiality. Only the parties and the court may access the form and supporting documentation. The supporting documentation may be destroyed or returned to the offering party after the court rules on the request.</p>	<p>TR-320/CR-320 to alert court users that the form and supporting documentation can be destroyed after the court makes a decision to reflect that courts may apply the Penal Code provisions governing exhibits to the supporting documentation.</p>	
147	TCPJAC/CEAC Joint Rules Subcommittee	<p>3. The JRS engaged in significant discussion over the language in proposed rule 4.336(b) that would require the courts to retain supporting documentation and that it would be deemed confidential. Supporting documents should not be retained nor kept confidential. Many CMSs cannot handle confidential documents and it would be unduly burdensome to require courts to maintain confidential supplemental documents. The JRS, therefore, strongly recommends striking the</p>	<p>Please see the response above to comment #145.</p>

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Comments on Rule 4.336(b) (Confidentiality)		
Commentator	Comment	Committee Response
	<p>language in proposed rule 4.336(b) regarding “supporting documentation” and, instead, replacing it with the following language, “The court shall not maintain any supplemental documentation as part of the case file.” In Question 3 in the TR-320, after the sentence that begins with, “Things like an EBT card...”, the JRS strongly recommends adding the following sentence, “If the court asks you to come to a hearing, you might be required to bring documents.” The JRS also strongly recommends deleting the current text after the “Yes” checkbox that reads, “Yes, I have attached <i>copies</i> to this form. (Do not give the court your original documents.)” The JRS recommends that this line be replaced with the following language, “Yes, I have the documents and they can be provided upon the court’s request. (Do not attach the documents.)”</p>	

Comments on Rule 4.336(c) (Optional forms)		
Commentator	Comment	Committee Response
<p>148 ACLU of California By: Micaela Davis</p> <p>Bay Area Legal Aid By: Kendra Amick</p> <p>East Bay Community Law Center By: Theresa Zhen</p> <p>Lawyers’ Committee for Civil Rights of the San Francisco Bay Area By: Elisa Della-Piana</p>	<p>b. Access to Ability-to-Pay Form</p> <p>As drafted, Rule 4.336 makes the TR-320/ CR-320 and TR-321/ CR-321 forms optional under Rule 1.35. Forms that are “optional” under this rule are optional for court users, but nonetheless “must be accepted for filing by all courts.” Because all courts would be required to accept these forms anyway, we believe, as described with regard to civil assessments above, it would improve efficiency for courts and access to justice for defendants if Rule 4.336 were amended to require that all courts include a copy of the TR-320/ CR-320 when mailing mandatory reminder</p>	<p>The committees decline to pursue this suggestion. Since the Judicial Council adopted rule 4.335, courts have adopted local forms to implement the rule that are tailored to their local processes. By designating the forms as optional, this proposal would promote statewide uniformity while also allowing for variability in local court practices.</p>

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Comments on Rule 4.336(c) (Optional forms)			
	Commentator	Comment	Committee Response
	<p>Legal Services for Prisoners with Children By: Brittany Stonesifer</p> <p>Legal Services of Northern California By: Wade Askew</p> <p>Western Center on Law and Poverty By: Antionette Dozier</p>	<p>notices under Rule 4.107(a) and notices of civil assessment under Vehicle Code section 1214.1(b) and Rule 4.106(c).</p>	
149	<p>Christine Copeland Commissioner Santa Clara County Superior Court</p>	<p>2. Mandatory would be better to insure that all courts will provide access to ability to pay considerations, and to insure some uniformity re: minimum info. needed from a defendant. Proof of income or welfare (SSI, GA, TANF) should be required.</p>	<p>Please see the response to comment #148.</p> <p>The committees decline to pursue the suggestion to require proof of income or receipt of public benefits in all cases. Form TR-320/CR-320 requests the user to submit this supporting documentation if available, but also provides space for court users who are unable to submit this documentation to explain why. If the court does not have sufficient information to make a determination, the court may use form TR-321/CR-321 to schedule a hearing and request that the court user bring specified documentation.</p>
150	<p>Neighborhood Legal Services of Los Angeles County By: Stephanie Yu Staff Attorney</p> <p>USC Gould School of Law</p>	<p>Our comments are limited to whether the proposed forms should be mandatory rather than optional. Proposed Rule 4.336 states that the forms are optional. <i>See</i> Proposed Rule 4.336(c). We strongly believe these forms must be mandatory for all courts. While we appreciate that the Judicial Council wants to allow courts to create local forms</p>	<p>Please see the response to comment #148.</p>

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Comments on Rule 4.336(c) (Optional forms)		
Commentator	Comment	Committee Response
<p>By: Clare Pastore</p> <p>Western Center on Law and Poverty By: Richard Rothschild</p> <p>American Civil Liberties Union of Southern California By: Devon Porter</p> <p>Schonbrun Seplow Harris & Hoffman, LLP BY: Colleen Mullen</p> <p>Rapkin & Associates, LLP By: Scott B. Rapkin</p>	<p>and give them the flexibility to use them, we are concerned that having optional forms will create disparities in access to a fair ability-to-pay process based on which jurisdiction the traffic court litigant is in.</p> <p>For example, the current ability-to-pay form for Los Angeles County is far less readable and accessible than the Judicial Council’s proposed forms. <i>See</i> attached. Instead of using plain language and a user-friendly format, the Los Angeles County form provides one space for litigants to explain why they do not have an ability to pay. Litigants in Los Angeles will have much more difficulty explaining their financial status than litigants in a county that adopts the Judicial Council’s proposed forms. This is significant as Los Angeles County has the highest volume of traffic citations in the state. Approximately 1.8 million traffic citations are filed in Los Angeles Superior Court every year.¹ Hundreds of thousands of those traffic citations lead to failures to pay or failures to appear. Requiring all counties, including Los Angeles, to adopt the Judicial Council’s proposed forms would increase access to the courts for a significant number of low-income traffic court litigants across the state.</p> <p>^{FN1} Available at: https://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.8.15.pdf at 9.</p> <p>A mandatory statewide form would provide greater consistency not only for traffic court litigants, but for the courts as well. Rule 1.35 and proposed Rule 4.336, read</p>	

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Comments on Rule 4.336(c) (Optional forms)		
Commentator	Comment	Committee Response
	<p>together, require courts to accept filings of forms that have been approved by the Judicial Council for filing. <i>See</i> Cal. Rules of Court 1.35 (“Forms approved by the Judicial Council for optional use . . . must be accepted for filing by all courts.”). As the Judicial Council recognizes, this will likely require courts to make modifications to court operations and case management systems in order to accommodate filings with the optional form.² Thus, courts that have already adopted local forms will still be required—by the rules—to accommodate filings of the proposed forms. Rather than force courts to create two different processes for two different ability-to-pay forms, it would be much more efficient for the Judicial Council to streamline court operations by making the proposed forms mandatory and eliminating the local form option.</p> <p>^{FN2} The Judicial Council’s concern is a valid one. Los Angeles Superior Court has raised concerns to our litigation team about the operational costs that would be associated with including confidential financial information on any ability-to-pay form.</p> <p>Even if the Judicial Council does not agree that the proposed forms should be mandatory, we urge the Judicial Council to include a comment to Rule 4.336 that reminds courts that the form must be accepted and that operational costs must be incurred to accommodate the filing of these forms. We propose the following language:</p> <p>“Advisory Committee Comment, Subdivisions (a)-(c): Courts are required to accept the optional application form if submitted by a court user (Cal.</p>	<p>The committees decline the suggestion to add an advisory committee comment reminding courts that they must accept optional Judicial Council forms. Rule 1.35 already defines the use of optional forms. There is no ambiguity in the law that needs clarification on this point.</p>

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Comments on Rule 4.336(c) (Optional forms)		
Commentator	Comment	Committee Response
	Rules of Court, rule 1.35). This will likely require courts to make modifications to court operations and case management systems to ensure that they can accept and process these forms. In addition, because the optional application form and supporting documentation are confidential, courts will need to ensure that they are kept confidential. This may require a change in operations to the extent that traffic cases do not generally involve confidential filings.”	

Comments on Accessibility		
Commentator	Comment	Committee Response
151 ACLU of California By: Micaela Davis Bay Area Legal Aid By: Kendra Amick East Bay Community Law Center By: Theresa Zhen Lawyers’ Committee for Civil Rights of the San Francisco Bay Area By: Elisa Della-Piana Legal Services for Prisoners with Children By: Brittany Stonesifer Legal Services of Northern California By: Wade Askew	<p>b. Question 1: Readability and access</p> <p>Among the most useful features of the proposed form are its plain language and its easy-to-follow design. The wording in the form will allow a layperson to understand their rights and options and the simple, uncluttered orientation will help court users to focus on the information that is most important to them. The Committees should further improve accessibility by requiring each county court to translate the form into all languages spoken by at least 5% of the service population in the county, as required by the Dymally-Alatorre Bilingual Services Act.²</p> <p>^{FN2} Gov’t. Code § 7290 et seq.</p>	<p>The committees recognize the importance of increasing access to the courts for court users who do not read or understand English. Although the Dymally-Alatorre Bilingual Services Act does not apply to the judicial branch, the Judicial Council’s Language Access Planning Task Force has developed a Translation Protocol and a Translation Action Plan to assist the council in prioritizing the translation of Judicial Council forms and other materials. Depending on resources, the committees may have this form translated into other languages.</p>

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	Western Center on Law and Poverty By: Antionette Dozier		
152	Christine Copeland Commissioner Santa Clara County Superior Court	1. The forms are fine in terms of their “low lit” easy to use format.	No response necessary.
153	Legal Aid Foundation of Los Angeles By: Tyler Sutherland Staff Attorney	Whenever possible, defendants should be able to request an ability to pay determination online. In line with this goal of increased access, we believe that the ability to pay form should be available online whenever possible. For those courts that allow hearings to be scheduled and payments to be made online, the Judicial Council should require them to offer individuals the ability to request an ability-to-pay determination online. Many counties successfully implemented an online application for the Traffic Amnesty program which ended on April 3, 2017, and this could be used as a model for the ability to pay request online.	The committees decline to pursue this suggestion because it is outside the scope of the present proposal and is dependent upon the technology capabilities of local courts, which vary considerably throughout the state.
154	Public Counsel By: Anne Richardson Directing Attorney Consumer Law Project	9) We recommend that this form be translated into Spanish, at a minimum, and other languages if possible.	Please see the response above to comment #151.

Comments on Implementation and Court Operations

	Commentator	Comment	Committee Response
155	Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano, Management Analyst	Would the courts experience any difficulties implementing the proposal? Some courts may not be able to keep the requests	Please see the response above to comment #145.

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All comments are verbatim unless indicated by an asterisk (*).

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Commentator	Comment	Committee Response
	confidential without significant staff time and/or programming costs.	
156 Superior Court of California, County of Riverside By: Susan D. Ryan Chief Deputy of Legal Services	<p><u>Implementation costs</u></p> <ul style="list-style-type: none"> • Would the proposal provide cost savings? No. • Would the proposal increase the costs of operations? <p>Yes. Although the proposal states that the focus is on court users who are living in or near poverty, it is anticipated that many court users will believe that the fine is too high, not necessarily that they don't have the ability to pay the amount ordered. We anticipate that this may result in a high volume of requests to reduce the ticket fines. This would increase staff and judicial workload.</p>	The committees recognize that rule 4.335, which this proposal implements, resulted in increased costs for courts. By making it easier for court users to request an ability-to-pay determination, this proposal may also increase the number of requests received by courts. The committees are sympathetic to the additional burden this places on courts that are already operating within limited budgets.
157 Superior Court of California, County of San Francisco By: Michael Yuen Court Executive Officer	<p>Would the proposal provide cost savings?</p> <p>No. The new ability to pay determination procedures, while beneficial to the public, have significantly increased costs to the court through increased filings, processing and judicial resources. We recommend that these new procedures be recognized in the Workload Allocation Funding Methodology.</p> <p>Would the proposal increase the costs of operations?</p> <p>Yes. Since implementation of the new rules, the number of Ability to Pay Determination requests has rapidly grown.</p>	<p>Please see the response above to comment #156.</p> <p>The committees will refer this suggestion to the appropriate committee for consideration.</p> <p>Please see the response above to comment #156.</p>

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	<p>Staff must file the petition, research the case status and outstanding balance, and determine whether the defendant has previously made a request. In addition, because many delinquent payments are years old, staff must research the correct bail schedule for the date of offense. Because many defendants continue to provide insufficient supporting documentation or other information, additional court hearings must be set, which include providing notice to the defendant and clerk and judicial resources to conduct the hearing. Staff must also notify the collections agency of any changes to the outstanding fines owed or extended deadline for payment, and monitor compliance for community service.</p> <p>Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes. Because Rules 4.105, 4.106, 4.107 and 4.335 were to be implemented not later than May 1, 2017, the San Francisco Superior Court has already developed local forms for the ability to pay petitions. The local forms include the information contained in TR-320/CR-320. We agree that the TR-320/CR-320 should be approved for optional use. Mandating courts to switch from local forms will cause unnecessary workload increases.</p>	<p>No response required.</p>
<p>158 Superior Court of California, County of San Mateo By: Mary Treanor Court Policy Analyst II</p>	<p>At this point it is not possible to accurately assess whether this proposal would provide cost savings or increase the cost of operations. If text messages were to be sent, additional equipment would need to be purchased and set up. Procedures would also need to be developed and vetted</p>	<p>Please see the response above to comment #156.</p> <p>The committees recognize that not all courts are able to send text messages, but this proposal would not require that they send them. It is</p>

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Commentator	Comment	Committee Response
	<p>and event codes created in our case management system.</p> <p>Two months would not be enough time to implement these changes.</p>	<p>intended only to assist those courts that have this capability and want to send text messages.</p> <p>The committees are sensitive to the burden on courts of implementing this forms proposal. They have extended the implementation date by a month, consistent with other Judicial Council forms. Initially, the committees intended to present the proposal to the Judicial Council in mid-November for an effective date of January 1, 2018. Now that they will be presenting the proposal to the Judicial Council during its mid-January meeting, they recommend an implementation date of April 1, 2018 to provide courts with additional time to implement the proposal.</p>
<p>159 Superior Court of California, County of Ventura By: Richard Cabral Director - Finance/Planning and Collections</p>	<p>The advisory committees also seek comments from <i>courts</i> on the following cost and implementation matters:</p> <ul style="list-style-type: none"> • Would the proposal provide cost savings? No If so, please quantify. • Would the proposal increase the costs of operations? No If so, please quantify. • Would the courts experience any difficulties implementing the proposal? No • What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of 	<p>Please see the response above to comment #156.</p>

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Commentator	Comment	Committee Response
	<p>training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.</p> <p>A new procedure would need to be written and training would need to be created which will take approximately 10 hours to complete.</p> <p>This form would be in both our Traffic and Collection Departments. Training would be required for Collection Fiscal Assistants, Court Processing Assistants, and Judicial Assistants. The training for each classification would be approximately one hour. New docket codes will be created for filing the new form and to enter the judicial order. Records would need to determine how these documents would be filed since we currently do not create a case file for infractions at this time. Some of the documents such as proof of public benefits or income, which may be attached to the TR-320, might be confidential and would need to be handled differently. Our case management system will also be modified to scan and store the document as a confidential document. The hours required for this change are unknown at this time.</p> <p>If a defendant does not agree with outcome of the Judge’s Order, the court would need to determine if the defendant is able file an appeal.</p> <ul style="list-style-type: none"> • Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes 	

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Comments on Implementation and Court Operations			
	Commentator	Comment	Committee Response
		<ul style="list-style-type: none">• How well would this proposal work in courts of different sizes? Smaller courts may not have enough staff to handle the volume filings we are expecting with the new TR-320 and TR-321.	
160	TCPJAC/CEAC Joint Rules Subcommittee	15. The proposed implementation period of two months between Judicial Council approval and the effective date of January 1, 2018 should be feasible for the courts.	No response necessary.

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least one, but no more than three, California executive branch officials
responsible for tribal-related work.

The composition of the forum must have an equal or a close-to-equal number of
judges or justices from tribal courts and state courts.

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