

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SP15-06

Title	Action Requested
Criminal and Traffic Procedure: Appearance in Court for Infractions Without Deposit of Bail	Review and submit comments by September 7, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rule 4.105 of the California Rules of Court	November 1, 2015
Proposed by	Contacts
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Executive Summary and Origin

The Criminal Law and Traffic Advisory Committees propose amending rule 4.105 of the California Rules of Court to apply the rule to non-traffic infractions and require courts to consider the totality of the circumstances of a particular case when making bail determinations before trial. The committees also propose adding an advisory committee comment to clarify the scope of the rule and explain that consideration of the totality of the circumstances includes whether an order setting bail would impose an undue hardship on the defendant. The proposed amendments were developed in response to recent Judicial Council directives to expand the application of the rule and promote access to justice in all infraction cases.

Background

Recent criticisms aimed at state infraction laws have raised concerns about procedural fairness in infraction proceedings, particularly about procedures for the deposit of bail before defendants appear for arraignment and trial. In response, the Judicial Council adopted rule 4.105, effective June 8, 2015, to require courts to allow traffic infraction defendants to appear as promised for arraignment and trial without prior deposit of bail, unless certain specified exceptions apply, and to require courts to notify defendants of the option to appear in court without deposit of bail in any instructions or other materials regarding bail provided by courts to the public.

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 These proposals are circulated for comment purposes only.

The Judicial Council also directed the appropriate advisory committees to develop recommendations to expand the application of the rule and promote access to justice in *all* infraction cases. The proposed amendments were developed by the advisory committees in response to the council's directives.¹

The Proposal

The committees propose the following amendments and advisory committee comment to rule 4.105:

- ***Non-traffic infractions:*** To promote procedural fairness for all categories of infraction cases, the committees propose expanding the application of the rule to all infractions by deleting certain references to “traffic” and the “Vehicle Code.” By removing the traffic-specific references, the express language of the rule would apply to all infraction cases.
- ***Totality of the circumstances:*** To ensure that courts consider whether the deposit of bail before trial would create undue hardships on defendants, the committees propose amending subdivision (c)(3) to require courts to consider the “totality of the circumstances” when determining whether bail is appropriate, and adding advisory committee comments to explain that the “totality of the circumstances” includes “whether compliance with the order setting bail would impose an undue hardship on the defendant.”
- ***Application of the rule:*** Although the rule is intended to apply only to cases in which the defendant has received a written notice to appear *and has appeared* by the appearance date or an approved extension of that date, concerns have been raised about whether the rule applies to postconviction proceedings or after the defendant has failed to appear or pay. To eliminate confusion about the application of the rule, the committees propose adding the following advisory committee comment: “The rule does not apply to post-conviction matters or cases in which the defendant seeks an appearance in court after a failure to appear or pay.”
- ***Bail forfeiture:*** Several statutory provisions authorize defendants to elect to post and forfeit bail in lieu of appearing in court for arraignment. As explained in the advisory committee comments, the rule is not intended to interfere with any of those statutory alternatives to arraignments. To enhance the information in the advisory committee comments, the committees propose adding examples of those alternatives as follows: “This rule is not intended to modify or contravene any statutorily authorized alternatives to appearing in court. (See, e.g., Pen. Code, §§ 853.5, 853.6; Veh. Code, §§ 40510, 40512, and 40512.5 [authorizing defendants to post and forfeit bail in lieu of appearing for arraignment].)”

¹ Notably, the committees are also considering other recommendations to promote access to justice throughout all infraction proceedings, including after conviction and after the defendant has failed to appear or pay. Any additional recommendations will circulate for public comment separately.

The proposed amendments are designed to promote procedural fairness across all categories of infraction cases, reduce confusion about the application of the rule, enhance the information in the advisory committee comments by adding examples, and ensure that courts consider the totality of the circumstances of a particular case when making bail decisions, including any hardships on the defendant.

Alternatives Considered

The committees alternatively considered expanding the rule to postconviction matters and proceedings after the defendant has failed to appear or pay. Those proceedings, however, involve procedural requirements and have other implications considerably distinct from the proceedings addressed by the current rule. Accordingly, as noted in footnote 1, the committees are separately considering recommendations to promote access to justice in those proceedings.

Implementation Requirements, Costs, and Operational Impacts

No significant costs or operational impacts are anticipated. Although the rule is designed to ensure that infraction defendants have access to courts without prior deposit of bail unless limited exceptions apply, as explained above, the rule is not intended to interfere with the various statutory alternatives to formal appearances in court. Similarly, although the proposal sets forth additional considerations for courts, the committees believe that those considerations can be accomplished without significant interference with calendar management and any increased burdens are outweighed by the resulting procedural fairness.

In addition, although the rule would require courts to notify defendants in *non*-traffic infraction cases about the option to appear in court without prior deposit of bail, because courts will have implemented those notice requirements for *traffic* infraction cases by the September 15, 2015, deadline established in subdivision (d), the committees do not anticipate significant implementation requirements.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following: Does the proposal appropriately address the stated purpose?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

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

Attachments

Text of proposed amendments to rule 4.105 of the California Rules of Court

California Rules of Court, rule 4.105, would be amended, effective November 1, 2015, to read:

1 **Rule 4.105: Appearance without deposit of bail in ~~traffic~~ infraction cases**

2
3 **(a) Application**

4
5 This rule applies to any ~~traffic~~ infraction violation of the ~~Vehicle Code~~ for which
6 the defendant has received a written notice to appear.

7
8 **(b) Appearance without deposit of bail**

9
10 Except as provided in (c), courts must allow a defendant to appear for arraignment
11 and trial without deposit of bail.

12
13 **(c) Deposit of bail**

- 14
15 (1) Courts must require the deposit of bail when the defendant elects a statutory
16 procedure that requires the deposit of bail;
17
18 (2) Courts may require the deposit of bail when the defendant does not sign a
19 written promise to appear as required by the court; ~~and~~.
20
21 (3) Courts may require a deposit of bail before trial if the court finds, based on
22 the totality of the circumstances of a particular case, that the defendant is
23 unlikely to appear as ordered without a deposit of bail and the court expressly
24 states the reasons for the finding.

25
26 **(d) Notice**

27
28 Courts must inform defendants of the option to appear in court without the deposit
29 of bail in any instructions or other materials courts provide for the public that relate
30 to bail for ~~traffic~~ infractions, including any website information, written
31 instructions, courtesy notices, and forms. ~~Courts must implement this subdivision~~
32 ~~as soon as reasonably possible but no later than September 15, 2015.~~

33
34 *Rule 4.105 amended effective November 1, 2015; adopted effective June 8, 2015.*

35
36 **Advisory Committee Comment**

37
38 **Subdivision (a).** The rule is intended to apply only to an ~~traffic~~ infraction violation of the ~~Vehicle~~
39 ~~Code~~ for which the defendant has received a written notice to appear and has appeared by the
40 appearance date or an approved extension of that date. The rule does not apply to postconviction
41 matters or cases in which the defendant seeks an appearance in court after a failure to appear or
42 pay.

43

1 **Subdivision (c)(1).** Various statutory provisions authorize traffic infraction defendants who have
2 received a written notice to appear to elect to deposit bail in lieu of appearing in court or in
3 advance of the notice to appear date. (See, e.g., Veh. Code, §§ 40510 [authorizing defendants to
4 deposit bail before the notice to appear date]; 40519(a) [authorizing defendants who have
5 received a written notice to appear to declare the intention to plead not guilty and deposit bail
6 before the notice to appear date for purposes of electing to schedule an arraignment and trial on
7 the same date or on separate dates]; 40519(b) [authorizing defendants who have received a
8 written notice to appear to deposit bail and plead not guilty in writing in lieu of appearing in
9 person]; and 40902 [authorizing trial by written declaration].)

10
11 This rule is not intended to modify or contravene any statutorily authorized alternatives to
12 appearing in court. (See, e.g., Pen. Code, §§ 853.5, 853.6; Veh. Code, §§ 40510, 40512, and
13 40512.5 [authorizing defendants to post and forfeit bail in lieu of appearing for arraignment].)
14 The purpose of this rule is to clarify that if the defendant declines to use a statutorily authorized
15 alternative, courts must allow the defendant to appear *without* prior deposit of bail as provided
16 above.

17
18 **Subdivision (c)(2).** * * *

19
20 **Subdivision (c)(3).** ~~In exercising discretion to require deposit of bail on a particular case, courts~~
21 ~~should consider~~ As used in this subdivision, the “totality of the circumstances,” includes
22 ~~including~~, among other factors, whether previous failures to pay or appear were willful or
23 involved adequate notice, and whether compliance with the order setting bail would impose an
24 undue hardship on the defendant.