JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SP16-08

Title
Traffic and Criminal Procedure: Infraction Procedures Regarding Bail, Fines, Fees, and Assessments; Mandatory Courtesy Notices; and Ability to Pay Determinations

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 4.105; adopt rules 4.106, 4.107, and 4.335; and repeal Judicial Admin. Standards, standard 4.41

Proposed by
Traffic Advisory Committee
Hon. Gail Dekreon, Chair

Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

Action Requested
Review and submit comments by August 26, 2016

Proposed Effective Date
January 1, 2017

Contact
Jamie Schechter, Attorney
415-865-5327
Jamie.Schechter@jud.ca.gov

Tara Lundstrom, Attorney
415-865-7995
Tara.Lundstrom@jud.ca.gov

Executive Summary and Origin

The Traffic Advisory Committee and Criminal Law Advisory Committee propose amending rule 4.105 and adopting rules 4.106, 4.107, and 4.335 of the California Rules of Court. The proposed amendments to rule 4.105 would improve notice to defendants about the court procedures for traffic infraction cases by requiring that trial court websites include a link to the statewide self-help information posted on the California courts website. Proposed new rule 4.106 would standardize and improve court procedures and notice to defendants regarding failures to appear or failures to pay bail, court-imposed fines, fees, and assessments for infraction offenses. Proposed new rule 4.107, would convert standard 4.41 of the California Standards of Judicial Administration into a standing rule of court, requiring that trial courts send "courtesy notices" to traffic defendants before an initial appearance, and would specify information that must be provided to defendants in those notices. Judicial Administration Standard 4.41 would be repealed. Lastly, proposed new rule 4.335 would standardize and improve court procedures and notice to infraction defendants related to ability-to-pay determinations.

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 These proposals are circulated for comment purposes only.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 advisory committees developed the proposed amended rule and new rules in response to Judicial Council directives to consider recommendations to promote access to justice in all infraction cases. The proposal to amend rule 4.105 and to adopt rule 4.106 circulated for public comment this spring. The committees recommend recirculating the proposal with changes to proposed rule 4.106 and with the two new accompanying proposed rules in light of the public comments received, communications to the Judicial Council from various advocacy groups and other entities expressing continued concerns about court practices resulting in the suspension of driver's licenses for failure to pay fines and fees, and other related developments.

Background

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 and after defendants fail to appear or pay bail, fines, fees, and assessments. The Judicial Council adopted rule 4.105, effective June 8, 2015, on an urgency basis on the request of the Chief Justice to address concerns regarding requiring defendants to post bail before challenging traffic infractions. In adopting rule 4.105, the council directed the appropriate advisory committees to consider changes to rules, forms, or any other recommendations necessary to promote access to justice in all infraction cases, including recommendations related to postconviction proceedings or after the defendant has previously failed to appear or pay fines or fees.

Prior Circulation

The Traffic Advisory Committee and the Criminal Law Advisory Committee previously circulated this proposal for public comment on an expedited basis from March 21 to May 6, 2016. The proposal, as previously circulated, would have standardized and improved the imposition of bail, fines, fees, and assessments when a defendant failed to appear or pay in an infraction case. Based on the public comments received and other developments as discussed, the committees have revised the rules proposal, with input from the Advisory Committee on Providing Access and Fairness, and are recirculating the revised proposal for public comment on an expedited schedule. The proposed amendments to rule 4.105 are unchanged from the proposal previously circulated. Proposed rule 4.106 has been revised and expanded, and two new rules are being proposed.

In revising this rule proposal, the committees considered comments received during the invitation-to-comment period. Now that the proposal is revised and being recirculated, the committees invite parties who submitted comments during the initial circulation to resubmit such comments they deem appropriate to the proposal as revised, as well as any new comments. Resubmission of previously-submitted comments will ensure that the comments are presented again to the committees for consideration.

The Proposal

The rules proposal is designed to promote procedural fairness for infraction cases, enhance guidance for defendants and courts, and clarify procedures regarding ability-to-pay

determinations, while minimizing the need for court appearances by providing for review by written petition.

Amended rule 4.105

Rule 4.105 prohibits courts from requiring infraction defendants to deposit bail in order to secure a court appearance at either arraignment or trial unless a specified exception applies. Under the rule, courts may require infraction defendants to deposit bail before a first appearance only in the following circumstances: (1) the defendant elects a statutory procedure (such as trial by written declaration) that requires the deposit of bail; (2) the defendant at arraignment refuses to sign a written promise to appear for future court proceedings; or (3) the court determines that the particular defendant is unlikely to appear as ordered without a deposit of bail and states its reasons for that finding.

To promote procedural fairness for infraction cases, the committees propose amending rule 4.105(d) to better facilitate its notice provisions. The amended rule would require that local trial court's websites include a link to the statewide traffic self-help information posted on the California courts website at: *www.courts.ca.gov/selfhelp-traffic.htm*. In addition to information on appearance at court for arraignment and trial, the self-help information includes guidance on other subjects such as traffic violator school, payment plans, community service, correctable violations, trial by written declaration, consequences for failure to appear or pay, and information about requesting ability-to-pay determinations.

Proposed rule 4.106

As part of the committees' continued examination of court procedures for infraction cases and efforts to improve access to justice in infraction cases as directed by the council, the committees propose new rule 4.106 to standardize and improve the imposition of bail, fines, fees and assessments when a defendant has failed to appear or pay in infraction cases.

The proposed rule would provide the following:

- When a court notifies a defendant that a civil assessment will be imposed for failure to appear or pay under Penal Code section 1214.1(b), the notice must inform the defendant of his or her right to petition that the civil assessment be vacated for good cause and must include information about the process for vacating the assessment.
- When a court imposes a civil assessment for failure to appear or pay, the defendant may request -- without paying any bail, fines, penalties, fees, or assessments -- that the court vacate the civil assessment because the defendant had good cause for failing to appear or pay. Even absent a showing of good cause, the court may consider other factors in determining whether to impose a civil assessment and, if so, the amount of the civil assessment.

- When a court refers unpaid bail to a comprehensive collection program as delinquent debt, the defendant may request to schedule a hearing for adjudication of the underlying charge(s) without payment of the bail amount.
- When a defendant fails to pay under an installment plan, the defendant may request modification of the judgment.
- When a court has entered a judgment in a trial by written declaration held in absentia, the defendant may request a trial de novo.
- When a defendant has failed to pay a fine or installment of bail, a court must provide the defendant with notice and an opportunity to be heard on ability to pay before notifying the Department of Motor Vehicles (DMV).[1]

Additionally, an advisory committee comment for proposed rule 4.106 provides guidance for implementing the rule by including examples of circumstances that may establish good cause for failure to appear or pay when a defendant requests that a court vacate a civil assessment. Another advisory committee comment clarifies that before notifying the DMV that the defendant has failed to pay, the court must provide the defendant with notice regarding the right to request an ability-to-pay determination and with information on how to request that determination. It also clarifies that a hearing is not required unless requested by the defendant or directed by the court.

Proposed rule 4.107

Proposed rule 4.107 would make "courtesy notices" mandatory. A courtesy notice is sent to a defendant after he or she receives a traffic ticket to provide the defendant with information about how to resolve the citation. The Judicial Council's recommendations for courtesy notices are currently detailed in standard 4.41 of the California Standards of Judicial Administration. Although courtesy notices are currently optional, most courts already provide some form of courtesy notice.

This new rule would provide that courtesy notices are mandatory and must contain the following information:

- The appearance date and location, whether an appearance is mandatory or optional, the total bail amount and payment options, the statutory notice required under Vehicle Code section 42007 regarding traffic school, and the court's contact information;
- Warnings about the potential consequences for failure to appear and failure to pay; and

[1] The Legislature is currently considering Senate Bill 881, which may amend or repeal statutory provisions related to these rules, including Vehicle Code sections 40509, 40509.5, and 13365. These provisions authorize a court to notify the DMV that a defendant has failed to appear or pay and require the DMV to suspend a drivers' license based on that notification. If SB 881 is enacted into law, these proposed rules as currently drafted may need to be revised before they are presented to the council with a recommendation that they be adopted.

- The right to request an ability-to-pay determination and the availability of community service and installment payment plans.

Proposed rule 4.335

Vehicle Code section 42003, governing payment of fines and costs for Vehicle Code violations, provides that, upon request of a defendant, the court must consider the defendant's ability to pay. This proposed rule would standardize and improve procedures for ability-to-pay determinations for all infraction cases. This rule would provide the following:

- Courts must provide defendants notice of the right to request an ability-to-pay determination and make instructions available on how to request that determination;
- A defendant may request an ability-to-pay determination at or after adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to collections;
- The court must permit the defendant to make the request in writing, unless the court directs an appearance;
- The court may delegate the initial determination of the defendant's ability to pay to a clerk or other county revenue collections agency using specified factors;
- A defendant has the right to a review by a judicial officer if requested in writing within 20 calendar days of the sending of the notice of the decision;
- Based on the ability-to-pay determination, the court may exercise its discretion to provide for payment on an installment plan, allow the defendant to complete community service, suspend the fine in whole or in part, or offer an alternative disposition;
- The defendant may request an ability-to-pay determination at any time before the final payment date or completion date;
- If a defendant has already had an ability-to-pay determination, a defendant may only request a subsequent ability to pay determination based on changed circumstances;
- The court may deny the defendant's request for an ability-to-pay determination if the court determines that an unreasonable amount of time has passed or the defendant has made an unreasonable number of requests.

An advisory committee comment to the proposed rule clarifies that the amount and manner of paying the total fine must be reasonable and compatible with the defendant's financial ability and that the court may exercise discretion even if the defendant has not demonstrated an inability to pay. The committees are considering development of optional forms to assist courts in making ability-to-pay determinations.

Alternatives Considered

The committees have considered other alternatives, including potential legislative proposals. Those proposals involve a process that must be pursued independently and have other implications that are distinct from the procedures addressed by the current rules proposal. The committees considered not expanding the proposed rules but determined that expanding the rules was necessary to promote access and fairness.

Implementation Requirements, Costs, and Operational Impacts

Courts will need to update local websites and court notices and provide training for court staff and judicial officers regarding these changes for processing infraction cases. The committees are sensitive to the concern that the rules may require a significant revision to court forms and procedures. For courts that do not currently send courtesy notices, there will be increased costs required to provide courtesy notices under proposed rule 4.107. It is also possible that with increased notice about the procedure for requesting an ability-to-pay determination, more defendants may request review of their ability to pay. The committees acknowledge the potential increased workload for court staff and judicial officers. However, the committees believe that any increased burdens are outweighed by the procedural fairness that the rules proposed will advance.

The committees are also sensitive to the impact on the courts in implementing these rules, if amended and adopted, by a January 1, 2017, effective date. In light of this concern, the committees have abbreviated the comment period with the goal of presenting the proposal to the Judicial Council during its October meeting. If adopted and amended at that time, the proposal would provide the courts with a two-month period before the changes would go into effect.

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.
- Would the proposal increase costs? 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 two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rules 4.105, 4.106, 4.107, and 4.335 at pages 8-15
2. Judicial Administration Standards, standard 4.41 at pages 15-16

Rule 4.105 of the California Rules of Court would be amended; rules 4.106, 4.107, and 4.335 would be adopted; and standard 4.41 of the Judicial Administration Standards would be repealed, effective January 1, 2017, to read:

Rule 4.105. Appearance without deposit of bail in infraction cases

(a) Application

This rule applies to any infraction for which the defendant has received a written notice to appear.

(b) Appearance without deposit of bail

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

(c) Deposit of bail

(1) Courts must require the deposit of bail when the defendant elects a statutory procedure that requires the deposit of bail.

(2) Courts may require the deposit of bail when the defendant does not sign a written promise to appear as required by the court.

(3) Courts may require a deposit of bail before trial if the court determines that the defendant is unlikely to appear as ordered without a deposit of bail and the court expressly states the reasons for the finding.

(4) In determining the amount of bail set under (2) and (3), courts must consider the totality of the circumstances.

(d) Notice

Courts must inform defendants of the option to appear in court without the deposit of bail in any instructions or other materials courts provide for the public that relate to bail for infractions, including any website information, written instructions, courtesy notices, and forms. The website for each trial court must include a link to the traffic self-help information posted at: *http://www.courts.ca.gov/selfhelp-traffic.htm*.

Rule 4.106. Failure to appear or failure to pay for a *Notice to Appear* issued for an infraction offense

(a) Application

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This rule applies to infraction offenses for which the defendant has received a written notice to appear and has failed to appear or failed to pay.

(b) Definitions

As used in this rule, "failure to appear" and "failure to pay" mean failure to appear and failure to pay as defined in section 1214.1(a).

(c) Procedure for consideration of good cause for failure to appear or pay

(1) A notice of a civil assessment under section 1214.1(b) must inform the defendant of his or her right to petition that the civil assessment be vacated for good cause and must include information about the process for vacating the assessment.

(2) When a notice of civil assessment is given, a defendant may, within 20 days of sending the notice, move by written petition to vacate the assessment by showing good cause to excuse the failure to appear or failure to pay. Alternatively, the defendant may request or the court may direct a court appearance.

(3) Courts must permit a defendant to present a showing of good cause for failure to appear or failure to pay a fine or installment of bail without requiring receipt of the payment of bail, fines, penalties, fees, or assessments.

(4) A petition to vacate an assessment does not stay the operation of any order requiring the payment of bail, fines, penalties, fees, or assessment unless specifically ordered by the court.

(5) The court must vacate the assessment upon a showing of good cause under section 1214.1(b)(1) for failure to appear or failure to pay.

(6) If the defendant does not establish good cause, the court may still exercise its discretion under section 1214.1(a) to reconsider:

(A) Whether a civil assessment should be imposed; and

(B) If so, the amount of the assessment.

In exercising its discretion, the court may consider a defendant's due diligence in appearing or paying after notice of the assessment has been given under section 1214.1(b)(1), as well as the defendant's financial circumstances, among other factors.

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(d) Procedure for unpaid bail referred to collection as delinquent debt

(1) In unadjudicated cases, when bail has not been paid and the case is referred to a comprehensive collection program as provided in section 1463.007(b)(1), a court must allow a defendant to appear for adjudication of the underlying charges without payment of the bail amount, except as provided in (d)(3) of this rule.

(2) The defendant may request an appearance date to adjudicate the underlying charges by written petition. Alternatively, the defendant may request or the court may direct a court appearance.

(3) A court may require a deposit of bail before adjudication of the underlying charges if the court finds that the defendant is unlikely to appear as ordered without a deposit of bail and the court expressly states the reasons for the finding. The court must not require payment of the civil assessment before adjudication.

(e) Procedure for failure to pay on an installment payment plan

(1) When a defendant fails to pay a fine or make a payment under an installment plan as provided in section 1205 or Vehicle Code sections 40510.5, 42003, or 42007, the court must permit the defendant to appear by written petition to modify the judgment, or the defendant may request or the court may direct a court appearance.

(2) The court must not require payment of bail, fines, penalties, fees, or assessments to consider the petition.

(3) The request to modify a judgment or order does not stay the operation of any order requiring the payment of bail, fines, penalties, fees, or assessments unless specifically ordered by the court.

(4) If the defendant requests to modify or vacate the judgement based on an inability to pay, the procedures stated in rule 4.335 apply.

(5) The court may deny the defendant's request to modify the judgment and order no further proceedings if the court determines that:

(A) An unreasonable amount of time has passed, or

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(B) The defendant has made an unreasonable number of requests to modify the judgment.

(f) Procedure after a trial by written declaration in absentia for a traffic infraction

When the court issues a judgment under Vehicle Code section 40903 and a defendant requests a trial de novo within the time permitted, courts may require the defendant to deposit bail. After the court receives the bail deposit, the court must vacate the judgment.

(g) Procedure for referring a defendant to the Department of Motor Vehicles (DMV) for license suspension for failure to pay a fine

Before a court may notify the DMV under Vehicle Code sections 40509(b) or 40509.5(b) that a defendant has failed to pay a fine or an installment of bail, the court must provide the defendant with notice of and an opportunity to be heard on the inability to pay.

Advisory Committee Comment

Subdivision (a). The rule is intended to apply only to an infraction offense for which the defendant (1) has received a written notice to appear citation and been released for a signed promise to appear, and (2) has failed to appear by the appearance date or an approved extension of that date or has failed to pay as required.

Subdivision (c)(3). Circumstances that indicate good cause may include, but are not limited to, the defendant's hospitalization, incapacitation, or incarceration; military duty required of the defendant; death or hospitalization of the defendant's dependent or immediate family member; caregiver responsibility for a sick or disabled dependent or immediate family member of the defendant; or an extraordinary reason, beyond the defendant's control, that prevented the defendant from making an appearance or payment on or before the date listed on the notice to appear.

Subdivision (d). This subdivision is not intended to allow defendants to seek readjudication of the underlying charges if the case has already been adjudicated.

Subdivision (g). Before notifying the DMV, the court must provide the defendant with notice regarding the right to request an ability-to-pay determination and with instructions on how to request that determination. A hearing is not required unless requested by the defendant or directed by the court.

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Rule 4.107. Mandatory courtesy notice—traffic procedures

(a) Mandatory courtesy notice

Each court must send a mandatory "courtesy notice" to the address shown on the *Notice to Appear* or to the defendant's last known address before the initial appearance.

(b) Minimum information in courtesy notice

In addition to information obtained from the *Notice to Appear*, the courtesy notice must contain at least the following information:

(1) An appearance date and location;

(2) Whether a court appearance is mandatory or optional;

(3) The total bail amount and payment options;

(4) The notice about traffic school required under Vehicle Code section 42007, if applicable;

(5) The potential consequences for failure to appear, including a driver's license hold or suspension, a civil assessment of up to $300, a new charge for failure to appear, a warrant of arrest, or some combination of these consequences, if applicable;

(6) The potential consequences for failure to pay a fine, including a driver's license hold or suspension, a civil assessment of up to $300, a new charge for failure to pay a fine, a warrant of arrest, or some combination of these consequences, if applicable;

(7) The right to request an ability-to-pay determination, including the availability of community service and installment payment plans; and

(8) Contact information for the court.

(c) Additional information in courtesy notice

Courts may provide additional information in the courtesy notice, as appropriate, including the following:

(1) Informal trial, trial by declaration, and telephone scheduling options; and

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(2) Correction requirements and procedures for correctable violations.

Rule 4.335. Ability-to-pay determinations for infraction offenses

(a) Application

This rule applies to any infraction offense for which the defendant has received a written *Notice to Appear*.

(b) Required notice regarding an ability-to-pay determination

Courts must provide defendants with notice of their right to request an ability-to-pay determination and make available instructions or other materials for requesting an ability-to-pay determination.

(c) Procedure for determining ability to pay

(1) The court, on request of a defendant, must consider the defendant's ability to pay.

(2) A defendant may request an ability-to-pay determination at or after adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

(3) The court must permit a defendant to make this request by written application unless the court directs a court appearance.

(4) The court may delegate to a clerk or other county revenue collections agency the initial determination of the defendant's ability to pay a court-ordered fine using the following criteria:

(A) Evidence of receipt of public benefits under one or more of the following programs:

(i) Supplemental Security Income (SSI);

(ii) State Supplementary Payment (SSP);

(iii) California Work Opportunity and Responsibility to Kids (CalWORKS);

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(iv) Federal Tribal Temporary Assistance for Needy Families (Tribal TANF);

(v) Supplemental Nutrition Assistance Program, California Food Assistance Program;

(vi) County Relief, General Relief (GR), or General Assistance (GA);

(vii) Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI);

(viii) In-Home Supportive Services (IHSS); and

(ix) Medi-Cal; and

(B) Evidence of a monthly income of 125 percent or less of the current poverty guidelines, updated periodically in the Federal Register by the U.S. Department of Health and Human Services under 42 U.S.C. § 9902(2).

(5) The defendant has the right to a review by a judicial officer of the determination made by the clerk or the collection agent, if requested in writing within 20 calendar days of the sending date of the notice of decision. The defendant must be advised of the right to seek this review.

(6) Based on the ability-to-pay determination, the court may exercise its discretion to:

(A) Provide for payment on an installment plan;

(B) Allow the defendant to complete community service in lieu of paying the total fine;

(C) Suspend the fine in whole or in part;

(D) Offer an alternative disposition.

(7) A defendant ordered to pay on an installment plan or to complete community service may request to have an ability-to-pay determination at any time before the final payment date or the completion date.

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(8) If a defendant has already had an ability-to-pay determination, a defendant may request a subsequent ability-to-pay determination only based on changed circumstances.

(9) The court may deny the defendant's request for an ability-to-pay determination, order no further proceedings, and order that the case be referred to collections if the court determines that:

(A) An unreasonable amount of time has passed; or

(B) The defendant has made an unreasonable number of requests for an ability-to-pay determination.

Advisory Committee Comment

Subdivision (c)(6). The amount and manner of paying the total fine must be reasonable and compatible with the defendant's financial ability. Even if the defendant has not demonstrated an inability to pay, the court may still exercise discretion.

~~**Standard 4.41. Courtesy notice-traffic procedures**~~

~~**(a) Mailed courtesy notice**~~

~~Each court should promptly mail a "courtesy notice" to the address shown on the Notice to Appear. The date of mailing should allow for the plea-by-mail option in infraction cases.~~

~~**(b) Minimum information in courtesy notice**~~

~~In addition to information obtained from the Notice to Appear, the courtesy notice should contain at least the following information:~~

~~(1) An appearance date, time, and location;~~

~~(2) Whether a court appearance is mandatory or optional;~~

~~(3) The total bail amount if forfeitable;~~

~~(4) The procedure required for remitting bail;~~

~~(5) The plea-by-mail option in infraction cases and the number of appearances required where trial is requested;~~

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~~(6) The consequences of failure to appear; and~~

~~(7) A telephone number to call for additional information.~~

~~**(c) Additional information in courtesy notice**~~

~~Courts should provide additional information in the courtesy notice, as appropriate, including the following:~~

~~(1) Informal trial, trial by declaration, traffic violators' school, and telephone scheduling options; and~~

~~(2) Correction requirements and procedures.~~

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