

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SP16-02**

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Title	Action Requested
Traffic and Criminal Procedure: Infraction Procedures Regarding Bail, Fines, and Assessments	Review and Submit Comments by April 20, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 4.105; adopt rule 4.106	October 1, 2016
Proposed by	Contact
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Criminal Law Advisory Committee	
Hon. Tricia A. Bigelow, Chair	

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### **Executive Summary and Origin**

The Traffic Advisory Committee and Criminal Law Advisory Committee propose amendment of California Rules of Court, rule 4.105, regarding procedures related to deposit of bail for infraction offenses and adoption of rule 4.106, regarding procedures after failure to appear or pay for an infraction offense. Amendment of rule 4.105 is proposed to improve notice of court procedures by requiring the local website for trial courts to include a link to statewide self-help information posted on the California judicial branch website for traffic cases. Adoption of rule 4.106 is recommended to standardize and improve court procedures related to failure to appear or pay for infraction offenses. The proposed amended rule and new rule were developed in response to Judicial Council directives that the advisory committees continue to explore recommendations necessary to 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 and after defendants fail to appear or pay. In response, the Judicial Council adopted rule 4.105 on an expedited basis, 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

*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 These proposals are circulated for comment purposes only.*

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 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.

In response, rule 4.105 was amended on an expedited basis in December 2015 to apply to all infractions. In addition, to ensure that courts consider whether the deposit of bail before trial would create undue hardship on defendants, the rule was also amended to require courts to consider the “totality of the circumstances” when determining whether bail is appropriate, and an advisory committee comment was added 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 rule 4.105 is limited to cases in which the defendant appears in court as promised and does not address circumstances in which the defendant has failed to appear or pay for an infraction offense.

## **The Proposal**

### **Amended rule 4.105**

Rule 4.105 prohibits courts from requiring infraction defendants to deposit bail in order to appear at either arraignment or trial unless a specified exception applies. Under the rule, courts may only require infraction defendants to deposit bail prior to a first appearance when:

- The defendant elects a statutory procedure (such as trial by written declaration) that requires the deposit of bail;
- The defendant at arraignment refuses to sign a written promise to appear for future court proceedings; or
- 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 on the record.

To promote procedural fairness for infraction cases, the committees propose amendment of rule 4.105(d) to facilitate the notice provisions. The amended rule would require that the local website of trial courts must include a link to the statewide traffic self-help information posted on the California judicial branch website at: <http://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, and consequences for failure to appear or pay.

### **Proposed Rule 4.106**

The Traffic Advisory Committee and Criminal Law Advisory Committee have continued to examine court procedures for infraction cases and develop ways to improve access to justice as directed by the council. As part of that effort, the committees propose a new rule of court to

standardize and improve the imposition of bail, fines, and assessments when the defendant has failed to appear or pay in an infraction case.

Proposed rule 4.106 seeks to standardize and improve procedures:

- When courts impose a civil assessment for failure to appear or pay and a defendant requests that the court modify or vacate a civil assessment without payment to schedule a hearing and consider circumstances that may indicate good cause for failure to appear or pay;
- When courts refer unpaid bail to a comprehensive collection program as delinquent debt and a defendant requests adjudication of an underlying charge without payment to schedule a hearing;
- When courts schedule a hearing without payment for a defendant's request to modify or vacate a judgment after failure to pay under an installment plan;
- When a defendant requests that a court consider ability to pay for court procedures relating to unpaid bail referred to collection programs or a default on payment of installment payment plans; and
- When courts process a request by a defendant for a trial de novo after a judgment in a trial by written declaration in absentia.

Additionally, the advisory committee comment for rule 4.106 provides guidance for implementation of 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 modify or vacate a civil assessment.

In general, the rule proposals are designed to promote procedural fairness for infraction cases, reduce confusion about the scope of the rules, enhance guidance in the advisory committee comments, and clarify circumstances where consideration of ability to pay is appropriate.

### **Alternatives Considered**

The committees have considered other alternatives provided by legislative proposals and related revision and creation of forms. Those proposals, however, involve a process that must be pursued independently in an expedited but different time frame and have other implications that are distinct from the procedures addressed in an expedited fashion by the current rule proposal. Accordingly, the committees are separately considering recommendations to promote access to justice by additional proposals.

## **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 changes for processing infraction cases. No significant costs or operational impacts are projected due to the proposal. Although the rules are designed to ensure that infraction defendants have access to courts without prior deposit of bail, fines, or assessments unless limited exceptions apply, as explained above, the rules are not intended to change or 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 rules would require courts to modify procedures for infraction cases, because courts will have until October 1, 2016, to implement the rules, the committees do not anticipate significant implementation issues.

## **Attachments**

1. Proposed amendment to rule 4.105 of the Cal. Rules of Court, at pages 5-6.
2. Proposed rule 4.106 of the Cal. Rules of Court, at pages 6-8.

## **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 month 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?

Rule 4.105 of the California Rules of Court would be amended, and rule 4.105 would be adopted, effective October 1, 2016, 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 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.
  - (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>.

## **Advisory Committee Comment**

**Subdivision (a).** The rule is intended to apply only to an infraction violation for which the defendant has received a written notice to appear and has appeared by the appearance date or an

1 approved extension of that date. The rule does not apply to postconviction matters or cases in  
2 which the defendant seeks an appearance in court after a failure to appear or pay.  
3

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

13 This rule is not intended to modify or contravene any statutorily authorized alternatives to  
14 appearing in court. (See, e.g., Pen. Code, §§ 853.5, 853.6; Veh. Code, §§ 40510, 40512, and  
15 40512.5 [authorizing defendants to post and forfeit bail in lieu of appearing for arraignment].)  
16 The purpose of this rule is to clarify that if the defendant declines to use a statutorily authorized  
17 alternative, courts must allow the defendant to appear *without* prior deposit of bail as provided  
18 above.  
19

20 **Subdivision (c)(2).** As used in this subdivision, the phrase "written promise to appear as required  
21 by the court" refers to a signed promise, made by a defendant who has appeared in court, to  
22 return to court on a future date and time as ordered by the court.  
23

24 **Subdivision (c)(3).** In exercising discretion to require deposit of bail on a particular case, courts  
25 should consider, among other factors, whether previous failures to pay or appear were willful or  
26 involved adequate notice.  
27

28 **Rule 4.106. Failure to appear or failure to pay for a notice to appear issued for an**  
29 **infraction offense**

30 **(a) Application**

31  
32 This rule applies to infraction offenses for which the defendant has received a written  
33 notice to appear and has failed to appear or failed to pay.

34  
35 **(b) Definitions**

36  
37 As used in this rule, "failure to appear" and "failure to pay" mean failure to appear or  
38 failure to pay as those terms are used in subdivision (a) of Penal Code section 1214.1.

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

- 2
- 3      (1) When notice of a civil assessment has been given under subdivision (b) of Penal Code  
4      section 1214.1, a defendant may, within 20 days of mailing of the notice, move to  
5      modify or vacate the assessment by showing good cause to excuse the failure to appear  
6      or failure to pay by written petition or court appearance as directed by the court. Courts  
7      must permit a defendant to present such a showing without requiring receipt of the  
8      payment of any bail, fines, penalties, fees, or assessments. A request to modify or  
9      vacate an assessment does not stay the operation of any order requiring the payment of  
10     any bail, fines, penalties, fees, or assessment unless specifically ordered by the court.
- 11
- 12     (2) In exercising discretion to determine the amount of an assessment under section 1214.1,  
13     courts should consider in ruling on a request to modify or vacate an assessment, a  
14     defendant's diligence in appearing or paying after notice of the assessment has been  
15     given under section 1214.1(b)(1).

16

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

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19     When unpaid bail is referred to a comprehensive collection program as provided in  
20     subdivision (b)(1) of Penal Code section 1463.007, courts must allow a defendant to appear  
21     by written petition or court appearance as directed by the court regarding adjudication of  
22     the underlying charges without payment of the bail amount. A request to adjudicate the  
23     underlying charges does not stay the operation of any order requiring the payment of bail  
24     unless specifically ordered by the court. When a court adjudicates an underlying charge  
25     under this subdivision for a violation of the Vehicle Code, the defendant may request that  
26     the court consider the defendant's ability to pay as provided in Vehicle Code section  
27     42003.

28

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

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31     When a defendant fails to make a payment under an installment plan as provided in Penal  
32     Code section 1205 or Vehicle Code sections 40510.5, 42003, or 42007, courts must permit  
33     the defendant to present a petition to modify or vacate a judgment or order under those  
34     sections without requiring payment of any fines, penalties, fees, or assessments to consider  
35     the petition. The request to modify or vacate a judgment or order does not stay the  
36     operation of any order requiring the payment of any bail, fines, penalties, fees, or  
37     assessment unless specifically ordered by the court. When a court agrees to modify or  
38     vacate a judgment for a violation of the Vehicle Code, the defendant may request that the  
39     court consider the defendant's ability to pay as provided in Vehicle Code section 42003.

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

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3        When the court issues a judgment under Vehicle Code section 40903 and the defendant  
4        requests a trial de novo within the time permitted, courts may require the defendant to  
5        deposit bail at the time the request is filed and upon receipt of the bail deposit shall vacate  
6        the judgment after the trial by written declaration.

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8                    **Advisory Committee Comments**

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

14  
15        **Subdivision (c)(1).** Circumstances that indicate good cause may include, but are not limited to:  
16        hospitalization or incapacitation of the defendant; incarceration of the defendant; military duty  
17        required of the defendant; death or hospitalization of a dependant or immediate family member  
18        of the defendant; caregiver responsibility for a sick or disabled dependant or immediate family  
19        member of the defendant; or an extraordinary reason, beyond the defendant's control, which  
20        prevented the defendant from making an appearance or payment on or before the date listed on  
21        the notice to appear.