

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SP16-10

Title Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees	Action Requested Review and submit comments by August 26, 2016
Proposed Rules, Forms, Standards, or Statutes Adopt rule 4.108 and approve forms TR-300 (online) and TR-310 (online)	Proposed Effective Date January 1, 2017
Proposed by Traffic Advisory Committee Hon. Gail Dekreon, Chair	Contact Jamie Schechter, Attorney 415-865-5327 Jamie.Schechter@jud.ca.gov

Executive Summary and Origin

The Traffic Advisory Committee proposes new forms and a companion rule of court for online installment payments for traffic infractions. Forms TR-300 (online) and TR-310 (online) are designed for use in online interfaces that allow defendants to enter into installment payment agreements under Vehicle Code sections 40510.5 and 42007. New companion rule 4.108 of the California Rules of Court would allow for the use of online interfaces to form installment payment agreements and would require that defendants be advised of their rights before entering into an agreement. It would also provide that forms TR-300 (online) and TR-310 (online) are alternative mandatory forms intended for use in these online interfaces.

The committee developed this proposal as part of a larger effort to modernize rules and forms and in response to council directives to consider recommendations to promote access to justice in all infraction cases. It was previously circulated for public comment this spring. In light of the comments received and other developments, the committee has revised the proposal and recommended its recirculation on an expedited basis to allow it to go into effect on January 1, 2017, if adopted.

Background

The Judicial Council's Information Technology Advisory Committee (ITAC) is leading a multiyear, collaborative effort to comprehensively review and modernize statutes, rules, and forms to facilitate electronic filing and service and foster modern e-business practices. Last year, the council's advisory committees completed phase I: an initial round of technical amendments to address language in the rules and forms that was incompatible with the current statutes and

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.

rules governing electronic filing and service and with e-business practices in general. The Traffic Advisory Committee is now participating in phase II, which involves identifying statutes, rules, and forms that may hinder electronic filing and modern e-business practices, and developing recommendations to promote and improve e-business practices. ITAC's Rules and Policy Subcommittee provided input on this proposal before it was first circulated for public comment.

Additionally, recent studies and reports on state infraction laws have raised concerns about procedural fairness in infraction proceedings, particularly about procedures relating to deposit of bail before defendants appear for arraignment. 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 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 consider rule, form, 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.

Prior Circulation

This proposal previously circulated for public comment this spring. Based on the comments received, the committee has revised this proposal and is recirculating it on an expedited schedule. Commentators who provided written comments during the first cycle are invited to resubmit those comments if the revised proposal does not address their concerns. Resubmission of comments will ensure that they are presented to the committee again for further consideration.

The Proposal

The committee has examined court procedures for infraction cases to recommend ways to improve access to justice as directed by the council and to modernize court procedures. As part of that effort, the committee proposes the adoption of new form TR-300 (online), *Online Agreement to Pay and Forfeit Bail in Installments*; new form TR-310 (online), *Online Agreement to Pay Traffic Violator School Fees in Installments*; and new companion rule 4.108, *Installment Payment Agreements*.

Use of online interfaces for installment payment agreements

This rules and forms proposal would provide on a statewide basis for the online interfaces offered by some courts for entering into installment payment agreements under Vehicle Code sections 40510.5 and 42007. In effect, these online interfaces simulate the interaction between the clerk and the defendant that would occur if the installment agreement were processed in person at the clerk's counter, rather than online.

The online interfaces contemplated by this proposal differ from electronic filing systems generally in that they would be designed to allow for offer and acceptance of the installment agreement before the agreement is electronically filed into the court. The interfaces would link directly to the court's case management system such that the proposed online forms would be

automatically populated with information relevant to the defendant's case, including pending charges and total bail.

Based in part on input provided by defendants, the online interfaces would be designed to calculate the initial payment, the online transaction fee (if any), the total amount due that day, the remaining balance after first payment, the amount of monthly installment payments, the day those payments are due each month, and the starting and ending dates for the monthly payments. The proposed online forms would be populated with this information.

Before entering into installment agreements, the online interfaces would provide defendants with an advisement of rights. Lastly, the online interfaces would let defendants accept the installment agreement by typing their name on the form and electronically filing the form into the court.

Proposed forms TR-300 (online) and TR-310 (online)

Vehicle Code sections 40510.5 and 42007 require the Judicial Council to adopt forms for courts to use for processing installment payment plans under those statutes. Courts are not required to offer installment payment plans, but courts that offer installment payment plans for bail or traffic violator school fees in traffic infraction cases must use forms adopted by the Judicial Council for the intended procedures.

As provided in Vehicle Code section 40510.5, existing form TR-300 is used by court clerks to accept payment and forfeiture of bail in installments for traffic infraction violations that do not require a mandatory appearance in court. Under current law, a court that offers installment plans for bail is required to continue the case for completion of the payments and report a bail forfeiture to the Department of Motor Vehicles as a conviction on the date of the initial payment. (Veh. Code, § 40510.5(b), (d).) No trust account is required and payments are distributed when received. (*Id.*, § 40510.5(f).) If a defendant fails to make a payment as agreed, the court may report the failure to pay to the Department of Motor Vehicles, issue a warrant, or send a notice that a civil assessment will be imposed if the defendant does not show good cause for the failure to pay. (*Id.*, §§ 40509.5, 40510.5(e).) Each bail installment payment made in this procedure for infractions is final and not subject to reconsideration as is bail that is deposited for other criminal cases. (*Id.*, § 40510.5(c).)

Existing form TR-310 is used for installment payment of traffic violator school fees for eligible traffic infractions. Installment payment agreements are limited to a maximum length of 90 days by statute. (Veh. Code, § 42007(a)(2).) Proof of completion for attendance of traffic violator school is due at the time of the final payment. (*Ibid.*) If a defendant fails to pay an installment, the court may convert the fee to bail, declare it forfeited, and report the forfeiture as a conviction under Vehicle Code section 1803. (*Id.*, § 42007(a)(3).) The court may declare that no further proceedings be had or charge a failure to pay and impose a civil assessment or issue a warrant. (*Ibid.*)

Proposed forms TR-300 (online) and TR-310 (online) are drafted to follow similar procedures when the court allows defendants to request installment payments through online interfaces without having to appear in person at the court for a clerk to process the request. This procedure

would facilitate payment plans for many defendants, including those who live in different counties or other states. The information on the proposed forms is consistent with the above statutes.

Advisement of rights. An online installment payment procedure does not require an arraignment or an appearance before a judicial officer in court, and there are significant legal consequences for failure to make an installment payment. To further enhance procedural fairness for infraction cases, the committee proposes adoption of forms TR-300 (online) and TR-310 (online) with attachments containing the advisement and waiver of rights.

In addition to the advisements provided in existing forms TR-300 and TR-310,¹ the proposed forms TR-300 (online) and TR-310 (online) would expand notice of a defendant's rights to include appearing in court without deposit of bail for formal arraignment, plea, and sentencing. These proposed forms would also advise the defendant of the right to ask the court to consider ability to pay in determining the fine, penalties, and fees for the case and, where applicable, the fee for traffic violator school. The forms would also advise defendants of the availability of community service.

Proposed forms TR-300 (online) and TR-310 (online) would also provide notice to defendants of the right to request an ability-to-pay determination at any time before making the final payment, as well as the options available to the court in considering that request:

At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay. If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service instead of paying the total fine, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request.

Proposed form TR-310 (online) would contain the additional notice that “[i]f the court grants your request, you may no longer be eligible for traffic school.”

By electronically filing forms TR-300 (online) or TR-310 (online) through a court's online interface, the defendant acknowledges that he or she has read and understood the advisement and the terms and conditions of the agreement, elects to waive the rights in the advisements, and agrees to pay and forfeit bail in installments.

Optional provisions. Proposed forms TR-300 (online) and TR-310 (online) would include the following optional provisions:

- Section 2 would have optional shaded text regarding proof of correction for correctable violations. Some online interfaces may not be programmed to process or track proof of correction for correctable violations. The proposed forms would include optional text

¹ A proposal to expand the advisement of rights on forms TR-300 and TR-310 is being recirculated on the same expedited schedule.

shaded in grey for courts with systems that must exclude correctable violations from online installment payments.

- Section 5 on form TR-300 (online) and section 4 on form TR-310 (online) would be partially shaded in grey, indicating that the following requirement is optional, depending on local court practices: “If I do not make my payments by each due date, I will see the clerk on the next court day after the due date of the missed payment.” The intention is that the shaded area may be omitted or modified to provide flexibility and reflect local court practices such as substitution of a requirement to call the court or use of a different deadline for contacting the clerk about the missed payment. Optional language would also be provided in grey on the attachments to inform defendants: “If you do not make a payment, please contact the court as soon as possible to make arrangements.”
- Section 5 on form TR-300 (online) and section 4 on form TR-310 (online) would include optional language allowing courts to charge an additional online transaction fee as authorized by Government Code sections 6159 and rule 10.820.
- The forms would include optional provisions for defendants to request electronic notifications and SMS text messages about the installment payments due under the agreement. The shaded text is intended to be optional so that courts can omit the option if the court’s system is not able to provide electronic notices or text messages.

Proposed rule 4.108

Proposed rule 4.108 would recognize that courts may use online interfaces to enter into installment payment agreements with traffic infraction defendants under Vehicle Code sections 40510.5 and 42007. It would require that these online interfaces provide defendants with the advisement of rights in the attachments to forms TR-300 (online) and TR-310 (online) before a defendant may enter into an installment agreement.

Lastly, proposed rule 4.108 would provide that forms TR-300 and TR-300 (online) and forms TR-310 and TR-310 (online) are alternative mandatory forms for use by the courts in entering into installment payment agreements under Vehicle Code sections 40510.5 and 42007.

Alternatives Considered

The committee has considered other alternatives such as legislative proposals and creating additional new forms. Those additional proposals, however, involve a lengthy process that must be pursued separately and have other implications that are distinct from the procedures addressed in an expedited fashion by the current forms proposal. Accordingly, the committee is separately considering recommendations to promote access to justice by additional proposals in the future.

Implementation Requirements, Costs, and Operational Impacts

Courts may need to 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 proposal includes advisements of additional procedures available in court, the committee believes that those notices can be provided without significant interference with calendar management and any increased burdens are outweighed by the resulting procedural

fairness. The committee has abbreviated the comment period with the goal of presenting the proposal to the Judicial Council during its October meeting. If adopted at that time, courts would have a two-month period to implement the forms by a January 1, 2017 effective date. Although the forms may require courts to modify procedures for infraction cases, the committee does not anticipate significant implementation issues given this time frame.

There would also be additional costs to courts associated with creating online interfaces and programming their case management systems to connect with these interfaces. However, because courts are not required to offer online interfaces to defendants for entering into online installment payments, it would be left to the courts to decide whether any efficiencies gained outweigh the costs.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Could forms TR-300 and TR-300 (online) or forms TR-310 and TR-310 (online) be combined to provide for one set of forms for each type of installment payment agreement, while also serving as forms that may be used both at the clerk's counter and online? If yes, how?
- Are there any additional forms, procedures, instructions, or advisements that should be added to the proposal?

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

- Would the proposal provide cost savings? If so please quantify.
- 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

1. Proposed rule 4.108 of the California Rules of Court, at page 7.
2. Proposed form TR-300 (online), *Online Agreement to Pay and Forfeit Bail in Installments*, at pages 8–9.
3. Proposed form TR-310 (online), *Online Agreement to Pay Traffic Violator School Fees in Installments*, at pages 10–11.

Rule 4.108 of the California Rules of Court would be adopted, effective January 1, 2017, to read:

1 **Rule 4.108. Installment Payment Agreements**

2
3 **(a) Online interface for installment payment agreements**

- 4
5 (1) A court may use an online interface to enter into installment payment
6 agreements with traffic infraction defendants under Vehicle Code sections
7 40510.5 and 42007.
8
9 (2) Before entering into an installment payment agreement, an online interface
10 must provide defendants with the Advisement of Rights stated in Attachment
11 1 of form TR-300 (online), *Online Agreement to Pay and Forfeit Bail in*
12 *Installments*, and form TR-310 (online), *Online Agreement to Pay Traffic*
13 *Violator School Fees in Installments*.

14
15 **(b) Alternative mandatory forms**

- 16
17 (1) The Judicial Council has adopted the following alternative mandatory forms
18 for use in entering into installment payment agreements under Vehicle Code
19 sections 40510.5 and 42007:
20
21 (A) Form TR-300, *Agreement to Pay and Forfeit Bail in Installments*; and
22 form TR-300 (online), *Online Agreement to Pay and Forfeit Bail in*
23 *Installments*; and
24
25 (B) Form TR-310, *Agreement to Pay Traffic Violator School Fees in*
26 *Installments*; and form TR-310 (online), *Online Agreement to Pay*
27 *Traffic Violator School Fees in Installments*.
28
29 (2) Forms TR-300 (online) and TR-310 (online) may be used only in online
30 interfaces for installment payment agreements as provided in subdivision (a).

<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:</p>	<p><i>FOR COURT USE ONLY</i></p> <p style="font-size: 2em; font-weight: bold; margin: 0;">DRAFT</p>
<p>PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT:</p>	
<p>ONLINE AGREEMENT TO PAY AND FORFEIT BAIL IN INSTALLMENTS (Vehicle Code, § 40510.5)</p>	

TO BE COMPLETED BY THE COURT
Read carefully, and if you agree, type your name below and submit the form.

TICKET NUMBER:
CASE NUMBER:

1. I am the defendant in this case, and I have been charged with the following infraction violation(s) of the Vehicle Code that do not require me to go into court:
 a. § _____ b. § _____ c. § _____ d. § _____ e. § _____

2. My court appearance date has not passed [and I have provided proof of correction for any correctable violations].
 3. I want to forfeit and pay bail for the violation(s) listed above. I understand that the court does not have to allow me to make installment payments.
 4. I understand that by completing this agreement each violation that is reportable to the Department of Motor Vehicles (DMV) will be reported as a conviction.

5. **TERMS OF THE AGREEMENT:**
 Total bail (including penalties and administrative fee of \$ _____) is \$ _____
 Initial Payment (10% minimum): \$ _____
 [Online transaction fee (if applicable): \$ _____]
 Total amount due today: \$ _____
 Remaining balance after first payment: \$ _____

I agree to pay the remaining balance in monthly installments of at least \$ _____ due on the ___ day of each month, starting on ___/___/___ and until paid in full on or before ___/___/___.

I agree that: All payments must be made by the due date, and there is no grace period.
 If I do not make a payment on time, I may have to pay the rest of my unpaid bail immediately.
 [If I do not make my payments by each due date, I will see the clerk on the next court day after the due date of the missed payment.] [Optional]

I understand that if I do not complete my payment plan the court may:
 Charge me with a misdemeanor under Vehicle Code section 40508.
 Charge a civil assessment of up to \$300 (Pen. Code, § 1214.1) or have a warrant issued for my arrest.
 Report the failure to pay to the DMV, which may suspend or place a hold on my driver's license.
 Assign the case to a collection agency or the State Franchise Tax Board for collection.

I understand that if I pay as agreed [and if any proof of correction has been filed with the court as required], my bail forfeiture will be complete, and at that time, the case will be closed.

I have read and understood my rights as explained in this agreement and attachment, and I choose to give them up. (See Attachment 1.) I have read, understood, and agreed to the terms and conditions stated above.

I understand that by electronically filing this document it will be deemed signed. (Code of Civ. Proc., § 1010.6(b)(2)(A) and Cal. Rules of Court, rule 2.257(b).)

(TYPE NAME OF DEFENDANT)	(DRIVER'S LICENSE/ID NUMBER)	(ADDRESS)
(TELEPHONE NUMBER)		(CITY, STATE, ZIP CODE)
(E-MAIL ADDRESS)	<input type="checkbox"/> [I have provided a cellular phone number, and I authorize the court to send me SMS text messages regarding payments that I owe under this agreement.] [Optional] <input type="checkbox"/> [I authorize the court to send me electronic notices regarding payments that I owe under this agreement.] [Optional]	

ACCEPTED (date): _____ BY: _____
(CLERK OF THE SUPERIOR COURT)

ADVISEMENT OF RIGHTS

By choosing to forfeit and pay bail in installments and not go into court, you will be giving up these rights:

- To appear in court without deposit of bail for formal arraignment, plea, and sentencing;
- To ask the court to consider your ability to pay in determining the fine, penalties, and fees for the case;
- To ask for community service instead of paying the total fine;
- To request and have a court trial to challenge the charges without deposit of bail, unless the court orders bail;
- To have a speedy court trial and have the charges dismissed if a speedy trial is requested but not provided;
- To be represented by an attorney at your expense;
- To subpoena or present witnesses and physical evidence using the power of the court at no cost to you and to testify on your own behalf;
- To confront and cross-examine all witnesses under oath testifying against you; and
- To remain silent and not testify.

At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay. If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service instead of paying the total fine, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request.

[If you do not make a payment, please contact the court as soon as possible to make arrangements.]

[Optional]

ADVISEMENT OF RIGHTS

ATTACHMENT 1

By choosing to pay traffic violator school fees in installments and not go into court, you will be giving up these rights:

- To appear in court without deposit of bail for formal arraignment, plea, and sentencing;
- To ask the court to consider your ability to pay in determining the fee for traffic violator school and the fine, penalties, and fees for the case;
- To ask for community service instead of paying the total fine;
- To request and have a court trial to challenge the charges without deposit of bail, unless the court orders bail;
- To have a speedy court trial and have the charges dismissed if a speedy trial is requested but not provided;
- To be represented by an attorney at your expense;
- To subpoena or present witnesses and physical evidence using the power of the court at no cost to you and to testify on your own behalf;
- To confront and cross-examine all witnesses testifying under oath against you, and
- To remain silent and not testify.

At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay. If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service instead of paying the total fine, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request. If the court grants your request, you may no longer be eligible for traffic school.

[If you do not make a payment, please contact the court as soon as possible to make arrangements.]

[Optional]