

SUPREME COURT
FILED

OCT 5 2009

Frederick K. Orlich Clerk
Deputy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JEWERELENE STEEN, Petitioner, v. APPELLATE DIVISION, SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest	Supreme Court No. S174773 2d App. No. B217263 (Division Four) LASC App. Div. No. BR046020 (Hon. Debre K. Weintraub, Hon. Patti Jo McKay, Hon. Fumiko H. Wasserman) LASC No. 6200307 (Hon. Elizabeth Munisoglu, Comm.)
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RESPONDENT'S RETURN TO ORDER TO SHOW CAUSE

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Los Angeles County

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Introduction

By order filed September 9, 2009, this Court ordered respondent and real party in interest to show cause before this court why the relief prayed for in the petition for writ of mandate filed July 20, 2009, should not be granted on the ground Penal Code section 959.1, subdivision (c), violates the separation of powers doctrine. The returns are to be filed within 30 days of the order.

Normally, the trial court is a nominal party to appellate proceedings, and it is the real party in interest that has the right and duty to file the return. Respondent trial court has not previously participated in these proceedings as a party. Out of an abundance of caution, counsel for respondent court confirmed with the clerk of the Supreme Court that a return from the respondent court was in fact directed and expected.

This may be because the relief requested in the petition, if granted, would have a significant adverse impact upon not only the ability of the Los Angeles Superior Court to operate but may also adversely affect superior courts statewide.

Penal Code section 959.1 was amended in 1990 at the request of the statewide Association of Municipal Court Clerks on behalf of their courts that were in the process of implementing electronic case management systems “that eliminate the need for hard paper,” and to “maximize the savings from an automated system....”[Senate Committee on Judiciary Analysis, AB3168, June 19, 1990; Attachment A]

Penal Code section 959.1 authorizes the clerk of the court to electronically file an accusatory pleading with respect to complaints issued for the limited offenses of failure to appear, pay a fine, or comply with an order of the court. Pursuant to such authority, whenever a person charged with a traffic offense fails to appear as promised on the citation, the court's electronic case management system automatically and ministerially files a complaint charging violation of Vehicle Code section 40508(a), failure to appear.

Petitioner contends that hundreds of such complaints are filed each week by court clerks in the Los Angeles Superior Court. In fact, based upon a four-week sample, it is estimated that more than 8,000 such electronic complaints are filed by the clerk pursuant to Penal Code section 959.1 weekly, court-wide in the Los Angeles Superior Court. (Declaration of Blair) Since the enabling legislation was sponsored by the statewide Association of Municipal Court Clerks the issue presented by these proceedings may have statewide impact, as well.

The Los Angeles Superior Court is comprised of more than 400 judicial officers housed in more than 50 courthouses divided into 12 districts spread out over some 4,000 square miles in a County with approximately 88 independent incorporated municipalities. Traffic citations are filed by approximately 156 different police agencies, and are prosecuted by some 17 separate and independent County and city prosecutorial agencies.

These prosecutorial agencies may lack the means, the practical ability or the resources to determine when traffic offense failures to appear occur, review the records related thereto, and file complaints in the first instance this volume of traffic citations. Invalidating this efficient and appropriate mechanism specifically authorized by the Legislature with no viable or practical alternative process may result in a substantial and significant loss of fine, forfeiture and civil assessment funds upon which county and city government and the Judicial Branch are necessarily dependent. Counsel is informed and believes that the fine, forfeiture and civil assessments imposed electronically by the clerk pursuant to Penal Code section 959.1(c) in the Los Angeles Superior Court exceeds \$75 million dollars annually.

Return to Petition

In response to the petition for writ of mandate, respondent admits, denies and affirmatively alleges as follows:

1. The record in this case indicates that on June 8, 2002, during a traffic stop, petitioner was cited for driving a motor vehicle with an expired registration [Veh. Code §4000(a)(1)]; driving a motor vehicle without a valid driver's license [Veh. Code §12500(a)]; and failing to provide evidence of financial responsibility for the vehicle on request of a peace officer [Veh. Code §16028(a)]. [City of Los Angeles Notice to Appear number 6200307; hereafter "citation."] On the citation, petitioner signed and declared, "Without admitting guilt, I promise to appear" on

or before July 23, 2002, at the Clerk's Office of the Superior Court at 1945 South Hill Street, Los Angeles, California 9007.

2. Petitioner did not appear on or before July 23, 2002, as promised. On August 13, 2002, a complaint was issued electronically charging petitioner with a violation of Vehicle Code section 40508(a), willfully violating her written promise to appear in court. Since the charge was for the offense of failure to appear, the complaint was issued as specifically permitted by Penal Code section 959.1, electronically by the clerk of the court.

3. Five years later, on July 27, 2007, petitioner was in court with counsel and challenged the validity of the complaint on the grounds that it was issued solely by the clerk of the court and not by the city attorney. [07/27/07 RT 1.] The city attorney advised the trial court that the complaint was concurred in by the prosecutor. [*Id.*, RT 5.] The trial court overruled the challenge, concluding “that there was no basis to find that the complaint is invalid on its face.” [RT 8] The trial court found that there was no separation of powers problem in this case because court clerks “do not exercise judicial functions,” but instead “[t]heir functions are ministerial,” and because “[t]he Supreme Court has never applied rigid interpretations to the division between executive, legislative, and judicial powers.” [RT 5]

4. With respect to the constitutionality of Penal Code section 959.1, the trial court ruled that it was “assumed to have been enacted by the legislature with a

full understanding of prior case law and other statutes, including Government Code 100 which vests the power to prosecute in the District Attorney or the City Attorney.” [RT 5-6] In “attempt[ing] to harmonize those statutes with the facts before it and the arguments made,” the trial court ruled that “the fact that the prosecution in this matter has concurred in the complaint as it stands is sufficient to render it constitutional and provide the Court with [an] adequate legal basis for denying your demur[er].” [RT 6]

5. A notice of appeal was timely filed. On June 8, 2009, the Appellate Division of the Superior Court filed its Memorandum Judgment affirming the trial court judgment. The court rejected petitioner's contention that her due process rights were violated because the misdemeanor complaint was not authorized and approved by the city attorney's office before it was filed, stating “the record reflects that the city attorney's office had approved and authorized the initiation of criminal proceedings. When the prosecutor appeared at the hearing on the demurrer, he stated that his office was aware that court clerks routinely file such complaints in failure to appear cases and that his office approves of the issuance and filing of such criminal complaints. Furthermore, the prosecutor indicated that he had taken action in prosecuting this case.” [Memorandum Judgment, p. 3:1-9.] Footnote 2 of the Memorandum Judgment here reads:

“At the hearing on the demurrer, the prosecutor informed the court in part as follows: '[T]he actions of the People of the State of California

through the Los Angeles City Attorney's Office demonstrates that we approve and concur of this complaint as well as all the other complaints that are filed in all the other cases in this courthouse. We know the practice exists where a complaint is generated via a notice to appear in which the person cited in the notice to appear has failed to appear. We have not asked the Court and/or its clerk to stop. [¶] Moreover, we have not filed a motion to dismiss in this case. Additionally, when the case was presented to our office this morning, we reviewed the complaint and made an offer on that particular case. Therefore, based upon all those actions, we also not only explicitly approve and concur in this complaint, but our actions in this case and in all other cases demonstrate, unless otherwise indicated, that we approve and concur in these complaints."

6. Based upon these facts, the Appellate Division found that the filing of the criminal complaint by the court clerk did not infringe on the city attorney's exercise of prosecutorial discretion so as to violate the separation of powers doctrine. The city attorney's office at all times retained the ultimate discretion on whether to proceed on the criminal complaint. The court said: "If the city attorney's office decided not to prosecute the matter, it could then alert the court that it did not consent to the filing of the complaint. Upon doing so, the complaint is nullified, and the court must dismiss it upon such request. (*See People v.*

Municipal Court (Pellegrino), ... [(1972) 27 Cal.App.3d 193,] at p. 206.)”

[Memorandum Judgment, pp. 3-4].

7. Petitioner contends that hundreds of such complaints are filed each week by court clerks in the Los Angeles Superior Court. In fact, respondent is informed and believes that more than 8,000 such electronic complaints are filed by the clerk electronically pursuant to Penal Code section 959.1(c) each week, court-wide in the Los Angeles Superior Court. Since the enabling legislation was sponsored by the statewide Association of Municipal Court Clerks the issue presented by these proceedings may have statewide impact, as well.

8. The Los Angeles Superior Court is comprised of more than 400 judicial officers housed in more than 50 courthouses divided into 12 districts spread out over some 4,000 square miles in a County with approximately 88 independent incorporated municipalities. Traffic citations are filed by approximately 156 different police agencies, and are prosecuted by some 17 separate and independent County and city prosecutorial agencies.

9. Respondent is informed and believes that at least some of these prosecutorial agencies may lack the means, practical ability or resources to determine, review, and file complaints in the first instance with regard to failure to appear at court on this volume of traffic citations. Invalidating this efficient and appropriate mechanism specifically authorized by the Legislature with no viable or practical alternative process may result in a substantial and significant loss of fine,

forfeiture and civil assessment funds upon which county and city government and the Judicial Branch are necessarily dependent. Counsel is informed and believes that the fine, forfeiture and civil assessment funds related to cases filed pursuant to Penal Code section 959.1(c) in the Los Angeles Superior Court exceeds \$75 million dollars annually.

10. Attached hereto as Attachment A is a true and correct copy of the Assembly Committee on Public Safety analysis of AB3168, dated April 17, 1990, and of the Senate Committee on Judiciary analysis of AB3168, dated June 19, 1990, which amended Penal Code section 959.1 to add the provisions at issue in this petition.

WHEREFORE respondent respectfully prays that this court find Penal Code section 959.1 constitutional and not in violation of the separation of powers doctrine.



Frederick R. Bennett
Court Counsel, Los Angeles Superior Court

Argument

- 1. The procedures authorized by the Legislature in Penal Code §959.1(c) are warranted by numerous policy considerations unique to the efficient, cost-effective processing of the traffic violations at issue here that do not deprive defendants of due process of law.**

Petitioner contends that it is a violation of due process for a defendant to be subjected to criminal prosecution unless the initiation of criminal proceedings is preceded by individual screening and approval by the authorized prosecutor, a process that petitioner contends is demanded by the principles of separation of powers.

However, such contentions are inconsistent with the fact that the Legislature has long prescribed simplified procedures for the initiation of traffic proceedings without the involvement of prosecutors, which procedures are warranted by numerous policy considerations, and have not been found to violate due process or principles of separation of powers.

The traffic citations that lead to filing of charges for failure to appear are filed by police officers without the involvement of prosecutors [Vehicle Code §40505], are largely resolved by the posting and forfeiture of bail without the involvement of prosecutors, and may lawfully be heard and determined even without the presence of prosecutors. *See People v. Carlucci* (1979) 23 Cal.3d 249.

Numerous policy considerations warrant the validity of these procedures for traffic violations. As stated by this Court in *People v. Carlucci* (1979) 23 Cal.3d 249, 257, in finding that a traffic infraction hearing conducted without a prosecutor by the judge who calls and questions the witnesses, including the defendant, does not deprive the defendant of due process of law:

“For sometime it has been recognized that it is in the interests of the defendant, law enforcement, the courts, and the public to provide simplified and expeditious procedures for the adjudication of less serious traffic offenses.”

The fines imposed in these traffic cases can be significant. However, their nature and character is sufficiently different from more serious criminal offenses, that the more flexible, efficient procedures applied to them is warranted and justified. As well stated by this Court in *People v. Carlucci, supra*:

“The courts and the Legislature have not been unaware of the penalties that may attach to an individual who is found guilty of a traffic infraction. The driver may lose his driving privileges. He may be obliged to pay higher insurance rates or be denied insurance altogether. In addition, the fines which are levied by the traffic courts, while relatively insignificant in terms of possible penalties for violations of the criminal statutes, may constitute a very real hardship for some of those obliged to pay. However, with these considerations before them, the courts and the Legislature have

repeatedly evidenced their determination to keep the processing of traffic infractions free from the procedural intricacies that characterize more serious criminal proceedings.”

2. **The procedures authorized by the Legislature in Penal Code §959.1(c) are an appropriate exercise of the limited, inherent, and necessary powers historically exercised by all three branches of government consistent with the principles of separation of powers.**

As pointed out by the trial court in this case, “[t]he Supreme Court has never applied rigid interpretations to the division between executive, legislative and judicial powers.” [RT 5] Rather, each branch of government exercises each of these powers in some contexts. The Legislative Branch exercises executive and judicial powers in subpoenaing witnesses, as well as initiating and prosecuting contempt proceedings relating to persons subpoenaed to testify before its committees. *In re Battelle* (1929) 207 Cal. 227, 241. The Executive Branch exercises legislative and judicial functions in adopting and enforcing administrative regulations. *See generally*, Government Code §§ 11340, *et seq.*, relating to Administrative Regulations and Rulemaking. The Judicial Branch exercises legislative powers in enacting rules of court related to its judicial functions [Government Code § 68070], and executive powers in initiating and prosecuting acts of contempt of its authority. Code of Civil Procedure § 1209, *et seq.*

The authority of court clerks to electronically file complaints is limited to a select group of offenses, each of which is directly related to an act or omission in respect to a court of justice over which courts have traditionally had the authority to initiate enforcement proceedings: “offenses of failure to appear, pay a fine, or comply with an order of the court.” Penal Code section 959.1(c)(1). Such offenses relate directly to “acts or omission in respect to a court of justice, or proceedings therein,” for which courts have historically had the authority to initiate proceedings and impose punishment, as these offenses track the offenses for which a court may initiate contempt. *See* Code of Civil Procedure §1209(a)(5): “The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court: * * * * (5) Disobedience of any lawful judgment, order, or process of the court.” The proceedings involving such acts and omissions, even when initiated by the court as contempt, are regarded as criminal in character. *Morelli v. Superior Court* (1969) 1 Cal.3d 328, 333.

The historical acceptance of judicial branch authority to initiate quasi-criminal contempt proceedings for acts and omissions directly related to court proceedings is little different in nature from the authority to initiate the filing of a complaint in traffic cases for acts and omissions directly related to court proceedings.

The exercise of the power to initiate and punish such acts and omissions directly related to the exercise of their primary constitutional responsibilities by both the legislative and judicial branches of government without violation of the principles of separation of powers “has been recognized from the earliest times in the history of American legislation, both federal and state, and from even earlier epochs in the development of British jurisprudence.” *See In re Battelle* (1929) 207 Cal. 227, 241.

Here the Legislature has appropriately limited the authority to offenses directly related to court proceedings, “offenses of failure to appear, pay a fine, or comply with an order of the court.” The limited authority granted by the Legislature to court clerks to initiate these limited proceedings has not defeated or materially impaired the prosecutor's fulfillment of his duties. *See Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 57. The prosecutor is aware of and concurs in the practice; became involved in the prosecution of this case before it was heard by the court by making an offer of settlement; ratified the prosecution to the court; and always retained the ability to inform the court that it did not consent to the filing of the complaint, in which case, as was stated by the Appellate Division, “the complaint is nullified, and the court must dismiss it upon such request. (*See People v. Municipal Court (Pellegrino)*, ... [(1972) 27 Cal.app.3d 193,] at p. 206)” [Memorandum Judgment, pp. 3-4]. The Legislature does not violate the principles of separation of powers when, as here, it prescribes a

reasonable mode for the exercise of such powers. *See Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 57.

Conclusion

This Court should find the procedures authorized by the Legislature in Penal Code §959.1 are warranted by numerous policy considerations unique to the efficient, cost-effective processing of the traffic violation at issue here; and that such procedures are an appropriate exercise of the limited, inherent, and necessary prosecutorial powers historically exercised by the Judicial Branch consistent with the principles of separation of powers

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'F. R. Bennett', written over a horizontal line.

Frederick R. Bennett
Court Counsel, Los Angeles Superior Court

Declaration of Greg Blair

Declaration of Greg Blair

I, Greg Blair, declare:

1. I am the Senior Administrator for the Metropolitan Courthouse of the Los Angeles Superior court. As such I am responsible, among other things for supervising both Criminal and Traffic Operations within that courthouse. In the course of my duties I am required to be knowledgeable of the Los Angeles Traffic case management system and Traffic imaging system, and the procedures by which complaints are electronically generated in accordance with Penal Code section 959.1.

2. The Traffic case management system (ETRS) works together with the Traffic imaging system (TRIS) to identify past due traffic citations by their appearance date and automatically issue the appropriate failure to appear violation based upon the case type. The court issues on average over 8,000 failure to appears (FTA's) each week on traffic matters.

3. Every Sunday, ETRS identifies all past due traffic citations based upon the appearance date. It sends a file to TRIS and compares the document type of each citation to determine the appropriate action to issue on each overdue citation.

4. This information is then sent electronically to the County Internal Services Department (ISD) for them to run a weekly program on Tuesday nights to create the electronic filings. Once this is completed, the file is sent back to the court on Wednesday morning and TRIS creates the FTA complaint as a document that is stored as an image in the imaging system to show that an FTA was issued on each citation. The FTA's are automatically sent to DMV and the County-wide Warrant System (CWS) as soon as the data is downloaded in ETRS every Wednesday.


5. The vast majority of these FTA's are treated as an infraction by the prosecuting

agencies unless the defendant requests to be heard on the violation as a misdemeanor. At that time, the citation is transferred to a criminal courtroom where a city attorney is present and can review the citation to determine their course of action.

6. I am informed and believe, based upon four weeks of data provided me by Janice Teramura, the Deputy Chief Information Officer for the Los Angeles Superior Court, and who is in charge of the Court's case management system support, that the average number of batch failure to appear citations exceeds 8,000 per week. I am informed and believe that the fines, forfeitures, and assessments related to these citations exceeds \$75 million dollars annually.

7. I am informed and believe that the total number of law enforcement agencies that file traffic citations with the Los Angeles Superior Court is 156.

I declare under penalty of perjury under the laws of California, that the foregoing is true and correct. Executed this 30th day of September, 2009, at Los Angeles, California.



Greg Blair

Attachment A

Date of Hearing: April 17, 1990
Counsel: Judith M. Garvey

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
John Burton, Chair

AB 3168 (Frazee) - As Introduced

ISSUE: SHOULD COURT CLERKS BE ALLOWED TO ELECTRONICALLY FILE COMPLAINTS
ISSUED FOR THE OFFENSES OF FAILURE TO APPEAR, FAILURE TO PAY A FINE,
OR FAILURE TO COMPLY WITH AN ORDER OF THE COURT?

DIGEST

Under current law:

- 1) Accusatory pleadings may be filed electronically by prosecutors and law enforcement agencies. Pleadings include the complaint, the information, the indictment, and any citation or notice to appear issued on a form approved by the Judicial Council. (Penal Code Section 959.1(a) and (b))
- 2) A notice of parking violation or a notice to appear may be received and filed by the court in electronic form. (Penal Code Section 959.1(4))

This bill would allow court clerks to electronically file complaints issued for the offenses of failure to appear, failure to pay a fine, or failure to comply with an order of the court.

COMMENTS

- 1) Purpose. According to the author, some courts are in the process of developing automated systems that eliminate the need for hard paper. This bill will permit the clerk of the court to file an electronic complaint for offenses of failure to appear, pay a fine, or comply with a court order.
- 2) Efficiency. Electronic filing should increase court efficiency by streamlining the filing of pleadings by court clerks.
- 3) Condition. Under the bill, a magistrate or court would be authorized to receive and file complaints issued for the specified offenses and orders only if (a) the magistrate or court has the facility to electronically store the accusatory pleading for the statutory period of record retention and (b) the magistrate or court has the ability to reproduce the accusatory pleading in physical form upon demand and payment of any costs involved.

SOURCE: Association of Municipal Court Clerks

SUPPORT: None on file

OPPOSITION: None on file

SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1989-90 Regular session

AB 3168 (Frazee)
As introduced
Hearing date: June 19, 1990
Penal Code
Gww/jm

CRIMINAL PLEADINGS

- ELECTRONIC FILING -

HISTORY

Source: Association of Municipal Court Clerks
Prior Legislation: AB 3864 (1988) - Chaptered
Support: Unknown
Opposition: No Known
Assembly Floor vote: Ayes 67 - Noes 0

KEY ISSUE

SHOULD COURT CLERKS BE ALLOWED TO FILE CRIMINAL COMPLAINTS ISSUED FOR THE OFFENSES OF FAILURE TO APPEAR, FAILURE TO PAY A FINE, OR FAILURE TO COMPLY WITH AN ORDER OF THE COURT, IN AN ELECTRONIC FORM?

PURPOSE

Existing law permits accusatory pleadings to be filed electronically by prosecutors and law enforcement agencies. These pleadings include the complaint, the information, the indictment, and any citation or notice to appear issued on a form approved by the Judicial Council.

Existing law also permits a notice of parking violation or a notice to appear to be received and filed by the court in electronic form.

This bill would allow court clerks to file electronically complaints issued for the offenses of failure to appear, failure to pay a fine, or failure to comply with an order of the court.

The purpose of this bill is to improve court efficiency by maximizing use of electronic filings.

COMMENT

1. Stated need

According to the author, some courts are in the process of

developing automated systems that eliminate the need for hard paper. To maximize the savings from an automated system, proponents assert that court clerks should also be permitted to file an electronic complaint for offenses of failure to appear, pay a fine, or comply with a court order. The proponent points out that a notice to appear may already be filed electronically, and asserts that it logically follows that a complaint for failing to appear in response to the notice should also be capable of being filed electronically.

Finally, the proponent contends that electronic filing should increase court efficiency by streamlining the filing of pleadings by court clerks.

2. Conditions for electronic filing

Under the bill and existing law, a magistrate or court would be authorized to receive and file complaints issued for the specified offenses and orders only if (a) the magistrate or court has the facility to electronically store the accusatory pleading for the statutory period of record retention, and (b) the magistrate or court has the ability to reproduce the accusatory pleading in physical form upon demand and payment of any costs involved.

END OF REPORT

Certification of Word Count

This brief was prepared on a computer, and counsel certifies that the word count of the computer program used to prepare this brief indicates that the brief contains 3,686 words.

A handwritten signature in black ink, appearing to read 'F. R. Bennett', written over a horizontal line.

Frederick R. Bennett
Court Counsel, Los Angeles Superior Court

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Los Angeles, California, over the age of 18 years, and am not a party to the within-entitled action. My business address is 111 No. Hill Street, Suite 546, Los Angeles, California 90012. On the date set forth below, I served the following document(s) by the method indicated below:

Respondent's Return to Order to Show Cause in Jewerlene Steen v. Appellate Division, Superior Court of Los Angeles County; People of the State of California, Real Party in Interest; Supreme Court No. S174773, 2d App. No. B217263.

✓

First Class Mail by placing the document(s) listed above in a sealed envelope(s) with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below pursuant to California Code of Civil Procedure §1013(a). I am readily familiar with the business practice at Los Angeles Superior Court for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

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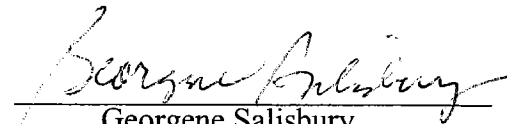
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Eric Schnurpfeil
Office of the General Counsel
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 5, 2009, at Los Angeles, California.


Georgene Salisbury