



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For special meeting on: June 8, 2015

Title	Agenda Item Type
Traffic Law: Appearance in Court for Infractions Without Deposit of Bail	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt rule 4.105 of the California Rules of Court	June 8, 2015
Recommended by	Date of Report
Hon. Harry E. Hull, Jr. Chair, Rules and Projects Committee	June 4, 2015
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Executive Summary

The Rules and Projects Committee recommends that the Judicial Council adopt a new rule of court to state that courts must allow traffic infraction defendants to appear as promised for arraignment and trial without prior deposit of bail unless certain specified exceptions apply, and must provide defendants with notice of the option to appear in court for arraignment and trial without the deposit of bail in any instructions or other materials regarding bail provided by the court to the public. The rule was developed on an urgency basis at the request of Chief Justice Tani G. Cantil-Sakauye in response to recent concerns about court procedures for deposit of bail when defendants challenge infraction citations in court.

Recommendation

The Rules and Projects Committee (RUPRO) recommends that the Judicial Council, effective June 8:

1. Adopt rule 4.105 of the California Rules of Court to:
 - a. State that courts must allow traffic infraction defendants to appear for arraignment and trial without the deposit of bail unless a specified exception applies;
 - b. Describe three specific exceptions to the requirement that courts allow traffic infraction defendants to appear for arraignment and trial without prior deposit of bail;
 - c. Require courts to inform traffic infraction defendants of the option to appear in court without the deposit of bail in any instructions or other materials provided to the public that relate to bail for traffic infractions, including any website information, written instructions, courtesy notices, and forms¹; and
 - d. Provide advisory committee comments that clarify the meaning of specific provisions and the application and purpose of the rule, including that the rule is not intended to modify or contravene any of the various statutory provisions that authorize or require the deposit of bail in lieu of appearing in court.

2. Direct the appropriate advisory committees as follows:
 - a. The Traffic Advisory Committee to expeditiously review all related Judicial Council traffic forms and to recommend any revisions that are needed to make the forms consistent with rule 4.105;
 - b. The Criminal Law Advisory Committee to consider recommendations, consistent with rule 4.105, to provide for appearances at arraignment and trial without the deposit of bail in non-traffic infraction cases; and
 - c. 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 post-conviction proceedings or after the defendant has previously failed to appear or pay.

The text of proposed rule 4.105 is attached at pages 10–11.

Previous Council Action

Proposed rule 4.105 is new. There is no previous Judicial Council action to report directly related to this rule.

¹ To provide courts with additional time to implement the rule’s notice requirements, the rule also provides that courts must implement those provisions “as soon as reasonably possible but no later than September 15, 2015.”

Rationale for Recommendation

Background

Recent criticisms aimed at state traffic infraction laws have raised significant concerns about procedural fairness in traffic infraction proceedings. In particular, concerns have been voiced about trial court procedures for deposit of bail for traffic infractions before defendants appear in court to challenge their infraction citations.

In response, Chief Justice Cantil-Sakauye charged the Judicial Council's Rules and Projects Committee with developing a recommendation, on an emergency basis, to establish fair and effective statewide practices related to the deposit of bail in traffic infraction cases. The purpose of the recommendation is to improve access to justice for traffic infraction defendants who appear as promised to challenge their infractions in court. Some of the issues raised about procedural fairness in traffic infraction cases will require statutory changes and solutions outside of the scope of the authority of the Judicial Council to act unilaterally. This proposal is limited to an immediate concern that is appropriate to address by rule on an expedited basis. It is focused on improving uniformity in traffic infraction bail procedures for pre-trial proceedings. Additional actions will be considered in the near future, including procedures other than arraignment and trial and post-conviction practices, under the usual procedures for consideration of rules and forms or through the work of the Chief Justice's Commission on the Future of the Courts.

Traffic infractions and bail

Violations of the Vehicle Code are classified as infractions unless expressly provided otherwise. (Veh. Code, § 40000.1.) The Vehicle Code provides specific provisions for processing arrests for violations of the Vehicle Code, but the procedures are not exclusive of other methods prescribed by law for arrest and prosecution of an infraction. (Veh. Code, § 40300.) Infractions are public offenses that are not punishable by imprisonment. (Pen. Code, §§ 16, 17, and 19.) Except as otherwise provided by law, "all provisions of law relating to misdemeanors shall apply to infractions," including the "powers of peace officers, jurisdiction of courts, periods for commencing action and for bringing a case to trial and burden of proof." (Pen. Code, § 19.7.) Infraction defendants are not entitled to a jury trial. (Pen. Code, §§ 19.6 and 1042.5.) In addition, an infraction defendant is not entitled to a court-appointed counsel unless the defendant is arrested and not released on a written promise to appear, on his or her own recognizance, or on a deposit of bail. (Pen. Code, § 19.6.)

Courts are vested with statutory authority to fix bail in misdemeanor and infraction matters. (See, e.g., Pen. Code, § 1458 ["The provisions of this code relative to bail are applicable to bail in misdemeanor or infraction cases. The defendant, at any time after arrest and before conviction, may be admitted to bail"]; Veh. Code, § 40511 [Authorizing courts to fix bail, if not previously fixed pursuant to a bail schedule, in an amount "reasonable and sufficient for the appearance of the defendant"].) When a person is arrested for a traffic infraction, refuses to sign a notice to appear in court, and is taken into custody by the arresting officer, that person must be taken

before a magistrate and “shall thereupon be released from custody upon his or her own recognizance or upon such bail as the magistrate may fix.” (Veh. Code, §§ 40302 and 40306.)

Arraignment procedure

An arraignment is a court hearing at which an individual accused of a public offense—an infraction, a misdemeanor, or a felony—is informed of the nature of the charge or charges and given an opportunity to enter a plea. (Pen. Code, § 988.) The arraignment is typically the defendant’s first court appearance and unless a statute expressly provides otherwise, entry of a plea occurs in open court at arraignment. (Pen. Code, §§ 1017 and 1018.)

Unless detained in custody, defendants typically appear in court as directed on citations, which include a written notice to appear in court that provides the time, place, and date of the court appearance. (Pen. Code, § 853.5.) The date to appear is usually the date for entry of a plea at the arraignment. (Pen. Code, § 1003.)

In the absence of a traffic-specific alternative provision regarding the arraignment and deposit of bail, the basic arraignment procedure described above generally applies to infractions. As discussed below, however, there are several such traffic-specific statutory provisions.

Traffic-specific arraignment procedures

Several Vehicle Code sections prescribe traffic-specific arraignment and bail procedures that are entirely distinct from misdemeanor procedures for non-traffic offenses, including the following, which authorize the deposit of bail before the appearance date under specified circumstances:

- ***Deposit of Bail:*** Vehicle Code sections 40510 and 40521 authorize defendants to deposit bail before the appearance date. This is the common mechanism many defendants use to avoid having to appear in court by allowing the court to declare forfeiture of the posted bail in *uncontested* cases.
- ***Declaration of Intention to Plead Not Guilty:*** Under Vehicle Code section 40519(a), infraction defendants may elect, before the first appearance date, to deposit bail and declare the intention to plead not guilty. Depositing bail in advance under this provision allows the defendant to choose whether to have an arraignment and trial on the same or separate days. The actual plea in the case must be made in court at the arraignment.
- ***Not Guilty Pleas in Writing:*** Under Vehicle Code section 40519(b), infraction defendants may elect, before the first appearance date, to plead not guilty in writing in lieu of appearing in court to enter a plea. These defendants must also deposit bail when the written plea is filed with the court. Thereafter, the arraignment and trial are set on the same day, unless the defendant requests separate dates, and the case proceeds to trial as if the defendant had appeared in person to enter the plea at arraignment.
- ***Trial by Written Declaration:*** Under Vehicle Code section 40902 (and related rules of court), certain infraction defendants “may elect” to have a trial by written declaration for traffic infractions in lieu of appearing in court. If the defendant elects this option, the

defendant must deposit bail in advance and the case proceeds by submission of testimony and evidence without the defendant appearing in person.

The proposed rule is not intended to modify or interfere with these statutory alternatives regarding bail, arraignment, and setting of trials in traffic infraction cases.

Proposed rule 4.105

Rule 4.105 is designed to address concerns about access to justice in traffic infraction cases and reduce uncertainties about the rights of defendants to appear for arraignment and trial without deposit of bail in such cases. The purpose of the rule is to clarify that if a defendant declines to use a statutorily authorized alternative, courts must allow the defendant to appear as promised for arraignment and trial without prior deposit of bail as specified in the rule. The rule is *not* intended to modify or contravene any statutorily authorized alternatives to appearing in court, nor to address post-conviction proceedings or instances in which the defendant has failed to appear or pay.

Application.

Rule 4.105 is located in title 4 of the California Rules of Court (Criminal Rules). The rule specifically applies to any traffic infraction violation of the Vehicle Code for which the defendant has received a written notice to appear. (See subdivision (a).)²

Appearance without deposit of bail.

Subdivision (b) provides that courts must allow a defendant to appear as promised for arraignment and trial without deposit of bail, except as provided in subdivision (c).

Deposit of bail.

Subdivision (c) describes specific circumstances under which courts may require defendants who appear as promised to deposit bail. Specifically, subdivision (c) provides that:

- Courts must require the deposit of bail when the defendant elects a statutory procedure that requires the deposit of bail;³
- Courts may require the deposit of bail when the defendant does not sign a written promise to appear as required by the court; and

² An Advisory Committee Comment is included on subdivision (a) explaining that the rule is intended to apply only to a traffic infraction violation of the Vehicle Code for which the defendant has received a notice to appear and has appeared by the appearance date or an approved extension of that date.

³ To provide additional guidance, an Advisory Committee Comment is included with rule 4.105 describing specific statutory provisions that authorize traffic infraction defendants who have received a written notice to appear to elect to deposit bail in lieu of appearing in court or in advance of the notice to appear date.

- Courts may require a deposit of bail before trial if the court finds, based on the circumstances of a particular case, 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

Notice.

Subdivision (d) requires courts to inform defendants of the option to appear in court as promised without the deposit of bail in any instructions or other materials that courts provide to the public relating to bail for traffic infractions, including any website information, written instructions, courtesy notices, and forms. In recognition that courts will require time to implement this new notice provision, subdivision (d) also states that courts must implement this subdivision as soon as reasonably possible but no later than September 15, 2015.

Revision of traffic forms and other recommendations

A preliminary review of Judicial Council traffic forms indicates that some of these forms may need to be revised to provide improved notice to defendants in traffic infraction cases. Therefore, in addition to the adoption of rule 4.105, the committee recommends that the council direct the Traffic Advisory Committee to expeditiously review all related Judicial Council traffic forms and to recommend any revisions that are needed to make the forms consistent with rule 4.105.

In addition, the committee recommends that the council direct (1) the Criminal Law Advisory Committee to consider recommendations consistent with the rule to provide for appearances at arraignment and trial without the deposit of bail in non-traffic infraction cases; and (2) 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 post-conviction proceedings or after the defendant has previously failed to appear or pay.

Comments, Alternatives Considered, and Policy Implications

Because of significant concerns about traffic infraction cases, and more specifically, about defendants' access to courts in such cases, the development of the rule was considered an urgent matter and handled on an expedited basis.

Although the recommendation for the adoption of rule 4.105 was undertaken without the usual period for public comment, there was some opportunity for comment both within and outside the judicial branch as explained below.

Initial Feedback

Before the draft rule was finalized, informal feedback on the proposed rule was received from the Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives

⁴ An Advisory Committee Comment is also included about this provision. It states that: "In exercising discretion to require deposit of bail in a particular case, courts should consider the totality of the circumstances, including, among other factors, whether previous failures to pay or appear were willful or involved adequate notice."

Advisory Committees (JRS) and the Traffic Advisory Committee. Notably, subdivision (c)(3) of the rule was originally drafted to require courts to state the reasons for a finding that the defendant is unlikely to appear “on the record.” Based on the JRS’s comments, to reduce confusion in instances where court reporters are unavailable in traffic infraction cases, the phrase “on the record” was deleted. In addition, an advisory committee comment was added to provide more guidance on the circumstances under which courts would exercise discretion to require deposit of bail.

Notable Comments and Alternatives Considered

After initial feedback was received, the draft rule was posted publicly on May 27, 2015. The notice solicited written comments from the public by May 29, 2015. A total of 11 comments were received, including comments from the JRS, American Civil Liberties Union of Northern California, California Commission on Access to Justice, Western Center on Law & Poverty, and the Superior Courts of Fresno, Orange, Riverside, and Tulare Counties. A chart with all comments received and committee responses is attached at pages 12–27.

Notably, the committee amended the rule in response to the following comments:

- **Application.** Some commentators suggested expanding application of the rule to circumstances *other than* when the defendant seeks an arraignment and trial after receiving a written notice appear, including post-conviction proceedings and when the defendant has failed to appear or pay. The committee declined the suggestions as exceeding the narrow scope of the urgency proposal, but added the following advisory committee comment to reduce confusion about the rule’s application: “**Subdivision (a):** The rule is intended to apply only to a traffic violation of the Vehicle Code for which the defendant has received a written notice to appear and has appeared by the appearance date or an approved extension of that date.”
- **Notice to appear.** Some comments also reflected confusion about the scope of the rule that stemmed from lack of clarity on the distinction between the phrases “notice to appear” and “promise to appear” as used in the rule. To eliminate confusion, the committee added the following advisory committee comment: “**Subdivision (c)(2):** As used in this subdivision, the phrase ‘written promise to appear as required by the court’ refers to a signed promise to appear, made by a defendant who has appeared in court, to return to court on a future date and time as ordered by the court.”
- **Implementation deadline.** As originally drafted, the rule would have required courts to implement the notice provisions in subdivision (d) “as soon as reasonably possible but no later than August 15, 2015.” Concerns were raised that the proposed rule provided insufficient time for courts to implement the rule’s new notice provisions, which may include changes to website information, written instructions, courtesy notices, and forms. In light of these concerns, the JRS suggested that the committee delete the August 15 deadline in favor of only stating “as soon as reasonably possible.” Although the

committee recognizes the implementation challenges faced by courts, the committee recommends against deleting the specific deadline that will promote expeditious implementation of the new notice requirements. Instead, in response to the concerns raised by the JRS, the committee has modified the rule to provide for an implementation deadline of September 15 instead of August 15.

The committee also considered the following notable comments:

- ***Non-traffic infractions.*** Some commentators suggested expanding application of the rule to non-traffic and certain administrative infraction proceedings and related appeals. The committee, however, declined the suggestions as exceeding the limited scope of the urgency proposal, which includes references to specific statutory alternatives that apply only to traffic infractions. Because procedures for non-traffic infractions may raise similar access-to-justice issues, the committee recommends that the Judicial Council direct the appropriate advisory committees to consider recommendations to address the imposition of bail in those proceedings.
- ***Constitutional concerns.*** Some comments raised broad constitutional concerns about the imposition of bail during various stages of traffic infraction proceedings, including proceedings that fall outside of the scope of the rule. As noted above, courts are vested with statutory authority to set bail in infraction matters. The rule, which is limited in application to circumstances in which a defendant has received a written notice to appear and has appeared as required, is designed to be consistent with existing statutory authority.
- ***Forms.*** Several commentators recommended the development of new or revised Judicial Council forms in relation to the rule or other procedures, including forms for waiver of bail and civil assessments. The committee declined to make recommendations at this time regarding any specific forms, particularly ones that would exceed the scope of this urgency proposal, but recommends that the Judicial Council direct the appropriate advisory committees to consider developing rule, form, and any other recommendations necessary to improve access to justice in infraction cases.

Implementation Requirements, Costs, and Operational Impacts

When adopted by the Judicial Council, rule 4.105 will become effective immediately. However, the council recognizes that it will require time for all the superior courts to fully implement the notice requirements in subdivision (d). Depending on courts' current notice, arraignment, and trial setting procedures, the amount of time required for the different courts to fully implement the new rule will vary. For some courts, implementation can take place immediately with minor changes to the courts' courtesy notices and websites. For other courts, the changes required may be more substantial. To give courts sufficient opportunity to revise instructions, websites, and forms, rule 4.105 provides that subdivision (d) must be implemented "as soon as reasonably

possible but no later than September 15, 2015.” This will allow immediate action if reasonably possible, which is highly desirable; however, the language in subdivision (d) also recognizes that some time may be required—for example, to modify a case management system or to draft and obtain approval of changes to local rules and forms.

It is acknowledged that the new rule will have fiscal impacts on the courts and may require some courts to modify their operations. Whenever there are changes in law or court procedures, there are costs of implementing the changes. The adoption of rule 4.105 is no exception. The impacts will vary among the courts, depending on each court’s current forms, notices, information sheets, rules, forms, and procedures. Ultimately, based on the relatively limited scope of the rule, the changes should not be too burdensome and the importance of improving access to the courts clearly warrants the costs.

The Workload Assessment Advisory Committee will conduct an update of the Resource Assessment Study (RAS) in fall of 2015 and any changes in case processing practices resulting from this rule will be reflected in the next update of the RAS. Updating the models that are used for resource measurement (RAS) and trial court funding (WAFM) should address some of the concerns about the impact of the rule on the courts and provide for fair treatment among the courts.

Relevant Strategic Plan Goals and Operational Plan Objectives

The adoption of rule 4.105 would advance the Judicial Council goal of providing access and fairness in the courts. (See *Justice in Focus: The Strategic Plan for California’s Judicial Branch*, Goal I, Access, Fairness, and Diversity).

Attachment

1. Cal. Rules of Court, rule 4.105, at pages 10–11.
2. Comment chart at pages 12–27.

Rule 4.105 of the California Rules of Court is adopted, effective June 8, 2015, to read:

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

2
3 **(a) Application**

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

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

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

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

14
15 (1) Courts must require the deposit of bail when the defendant elects a statutory
16 procedure that requires the deposit of bail;

17
18 (2) Courts may require the deposit of bail when the defendant does not sign a
19 written promise to appear as required by the court; and

20
21 (3) Courts may require a deposit of bail before trial if the court finds, based on
22 the circumstances of a particular case, that the defendant is unlikely to appear
23 as ordered without a deposit of bail and the court expressly states the reasons
24 for the finding.

25
26 **(d) Notice**

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

33
34 **Advisory Committee Comment**

35
36 **Subdivision (a).** The rule is intended to apply only to a traffic infraction violation of the Vehicle
37 Code for which the defendant has received a written notice to appear and has appeared by the
38 appearance date or an approved extension of that date.

39
40 **Subdivision (c)(1).** Various statutory provisions authorize traffic infraction defendants who have
41 received a written notice to appear to elect to deposit bail in lieu of appearing in court or in
42 advance of the notice to appear date. (See, e.g., Veh. Code, §§ 40510 [authorizing defendants to

1 deposit bail before the notice to appear date]; 40519(a) [authorizing defendants who have
2 received a written notice to appear to declare the intention to plead not guilty and deposit bail
3 before the notice to appear date for purposes of electing to schedule an arraignment and trial on
4 the same date or on separate dates]; 40519(b) [authorizing defendants who have received a
5 written notice to appear to deposit bail and plead not guilty in writing in lieu of appearing in
6 person]; and 40902 [authorizing trial by written declaration].)

7
8 This rule is not intended to modify or contravene any statutorily authorized alternatives to
9 appearing in court. The purpose of this rule is to clarify that if the defendant declines to use a
10 statutorily authorized alternative, courts must allow the defendant to appear *without* prior deposit
11 of bail as provided above.

12
13 **Subdivision (c)(2).** As used in this subdivision, the phrase “written promise to appear as required
14 by the court” refers to a signed promise, made by a defendant who has appeared in court, to return
15 to court on a future date and time as ordered by the court.

16
17 **Subdivision (c)(3).** In exercising discretion to require deposit of bail on a particular case, courts
18 should consider the totality of the circumstances, including, among other factors, whether
19 previous failures to pay or appear were willful or involved adequate notice.

Traffic Infraction Procedure: Appearances in Court without Deposit of Bail (rule 4.105)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Comment	Committee Response
1.	<p>ACLU of Northern California <u>and</u> Pillsbury Winthrop Shaw Pittman LLP</p> <p>by Christine P. Sun, Esq., Director of Legal and Policy Dept., ACLU of Northern California <u>and</u> Marley Degner, Esq., Counsel, Pillsbury Winthrop Shaw Pittman LLP</p>	<p>We are attorneys with the law firm of Pillsbury Winthrop Shaw Pittman LLP and the American Civil Liberties Union of Northern California, respectively. We are writing to provide comments regarding Proposed Rule 4.105 which is set for discussion and possible adoption at the June 1, 2015, meeting of the Rules and Projects Committee and the Executive and Planning Committee (the “Committees”).</p> <p>We would like to thank the Judicial Council for taking emergency action to address the unconstitutional local rules, policies, and practices some Superior Courts have adopted requiring those charged with traffic infractions to pay the full amount of the penalty before they can receive a trial. Withholding the right to contest a traffic citation until the fines, penalty assessments, and other surcharges for the citation are paid in full is a clear violation of due process (among other things), and we appreciate the Judicial Council’s attention to this important issue.</p> <p>We have the following comments to the Proposed Rule:</p> <p>I. <u>The Inability to Pay “Bail” Should Not Foreclose The Right to Trial</u> [sic]</p> <p>We appreciate that the Committees have made clear that the imposition of “bail” is not appropriate for traffic infractions except under limited circumstances. We suggest that the Committees further clarify that in no circumstance will a defendant be denied a trial because of an inability to post “bail.” If the Proposed Rule is adopted without the addition of language that makes clear that no defendant will be denied a trial due to an inability to post “bail,” the rule could be misinterpreted to allow courts to continue violating the California and federal constitutions.</p>	<p>I. The committee declines the suggestion to amend the rule to address ability-to-pay considerations as exceeding the scope of the proposal. The rule is designed to set forth the circumstances in which a court may require the deposit of bail before arraignment and trial after the defendant has received a written notice to appear and has appeared as required. Ability-to-pay considerations, some of which are separately prescribed by statute (see, e.g., Veh. Code, § 42003), typically apply to various other traffic infraction proceedings, including proceedings that occur post-conviction, which are beyond the scope of the rule. The</p>

Traffic Infraction Procedure: Appearances in Court without Deposit of Bail (rule 4.105)

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Commentator	Comment	Committee Response
	<p>For example, if a person accused of a traffic infraction fails to sign a written promise to appear, Proposed Rule 4.105(c)(2) states that courts may require a deposit of “bail.” Yet if that person is unable to pay the “bail,” the proposed rule could be misinterpreted to deny them a trial, which would be a clear constitutional violation. The same comment applies to Proposed Rule 4.105(c)(3). Even if a court finds, “based on the circumstances of a particular case, that the defendant is unlikely to appear as ordered without a deposit of bail and the court expressly states the reasons for the finding,” it would be a serious constitutional violation to deny that defendant a trial if they were unable to post the “bail.”</p> <p>Any interpretation of the Proposed Rule that permits a court to deny a defendant a trial because of an inability to post “bail” violates the 14th Amendment to the U.S. Constitution as well as Article I, § 7 of the California Constitution by depriving people of property without due process of law. A criminal fine is a type of criminal punishment. (<i>Southern Union Co. v. U.S.</i> (2012) 132 S.Ct. 2344, 2350-51; <i>People v. Hanson</i> (2000) 23 Cal.4th 355, 360-363.) Due process prohibits the government from imposing criminal punishment prior to an adjudication of guilt. (<i>Bell v. Wolfish</i> (1979) 441 U.S. 520, 535; <i>Kennedy v. Mendoza-Martinez</i> (1963) 372 U.S. 144, 165-166; <i>Wong Wing v. U.S.</i> (1896) 163 U.S. 228, 237.) Due process generally requires that individuals must receive notice and an opportunity to be heard before the government deprives them of property. (<i>United States v. James Daniel Good Real Property</i> (1993) 510 U.S. 43, 48, 53.)</p> <p>Any interpretation of the Proposed Rule that permits a court to deny a defendant a trial because of an inability to post bail further violates the fundamental right of access to the courts under both the 1st Amendment to the U.S. Constitution and Article I, § 3 of the California Constitution. (<i>Jersey v. John</i></p>	<p>committee acknowledges, however, that ability-to-pay considerations raise important access-to-justice issues that warrant careful consideration. Accordingly, the committee separately recommends that the Judicial Council direct the appropriate advisory committees to consider all rule, form, or other appropriate recommendations to promote access to justice across all infraction proceedings, including post-conviction proceedings or after the defendant has previously failed to pay or appear. With regard to the broader constitutional considerations raised, the committee notes that the rule is designed to reflect existing statutory authority that vests courts with discretion to set bail in traffic infraction cases. (See, e.g., Pen. Code, § 1458 [“The provisions of this code relative to bail are applicable to bail in misdemeanor and infraction cases. The defendant, at any time after arrest and before conviction, may be admitted to bail”]; Veh. Code, § 40511 [Authorizing courts to fix bail if not previously fixed pursuant to a bail schedule in an amount “reasonable and sufficient for the appearance of the defendant”]; Veh. Code, § 40306(c) [An infraction defendant who has been arrested and taken into custody must be taken before a magistrate. Once before the magistrate, the defendant “shall thereupon be released from custody upon his own recognizance or upon such bail as the magistrate may fix”]; see also, Cal. Const., art. I, § 12 [“A person may be released on his or her own recognizance in the court's discretion”].)</p>

Traffic Infraction Procedure: Appearances in Court without Deposit of Bail (rule 4.105)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Comment	Committee Response
		<p><i>Muir Medical Center</i> (2002) 97 Cal.App.4th 814, 821; see also <i>O'Connell v. Judnich</i> (1925) 71 Cal.App. 386, 388 [noting those who have the right to acquire property also have the right to appear in person to prosecute or defend all actions for its protection or preservation].) To the extent the trial occurs, but the defendant is not permitted to be present because he has not paid the “bail,” the process violates Article I, § 15 of the California Constitution.¹ (<i>People v. Kriss</i> (1979) 96 Cal.App.3d 913, 919 [holding that “the defendant may be absent when the court adjudicates guilt and sentences in a misdemeanor or infraction proceeding if (1) he is represented by counsel, or (2) he knowingly and intelligently waives his right to be present”].)</p> <p>And because such an interpretation of the Proposed Rule would create two classes of people: those who can pay to access the courts in a traffic infraction case and those who cannot, it violates the right to equal protection under the 14th Amendment of the United States Constitution and Article I, § 7 of the California Constitution. (See <i>Payne v. Superior Court</i> (1976) 17 Cal.3d 908, 922-923.)</p> <p>In sum, although we are pleased that the Judicial Council is taking swift action to address this serious issue throughout the State of California, the current proposed rule is unconstitutional to the extent it could be misinterpreted to permit a court to require “bail” before trial even of someone who was unable to pay it. We respectfully request that the Committees provide clarification in the Proposed Rule that in no circumstance should a defendant be denied the right to trial because of his or her inability to pay “bail.”</p> <p>II. <u>Comments Regarding Proposed Rule 4.105(c)(2).</u></p> <p>We suggest that the Committees clarify that this exception</p>	<p>II. To eliminate confusion stemming from the intended distinction between the phrases “notice to appear” and “promise to appear” as</p>

Traffic Infraction Procedure: Appearances in Court without Deposit of Bail (rule 4.105)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Comment	Committee Response
		<p>applies only where a defendant has been presented with an opportunity to sign a written promise to appear, and refuses to do so. Imposing “bail” in a circumstance where a person has not been given actual notice of the opportunity to promise in writing to appear would be a serious constitutional violation.</p> <p>Thank you for your time and attention to this matter.</p> <p>¹ “The defendant in a criminal cause has the right . . . to be personally present with counsel”</p>	<p>used in the rule, the committee has added the following advisory committee comment: “Subdivision (c)(2): As used in this subdivision, the phrase ‘written promise to appear as required by the court’ refers to a signed promise to appear, made by a defendant who has appeared in court, to return to court on a future date and time as ordered by the court.”</p>
2.	<p>Hon. Mark Borenstein Judge Superior Court of Los Angeles County</p>	<p>Administrative appeals under Govt Code 53069.4 and Veh. Code 40320.</p> <p>As you consider no longer requiring a Defendant to post bail to contest a traffic ticket, please also consider the corollary practice in connection with administrative appeals under the above noted statutes. These administrative appeals may involve simple parking tickets, but can also involve moving violations where a city or agency has re-classified these violations as administrative penalties. They can also include city code violations (building, safety, etc). Penalty assessments and other mandatory fees are not typically added to the bail amount, but absent a fee waiver by the city or the administrative agency, the penalty must be paid in full as a condition of having an administrative hearing which is itself a pre-condition to judicial review. Often, the alleged violator does not understand (or is unaware) that the parking fine or the code enforcement penalty must be paid first and when they realize this, the time to appeal has expired. If you decide to adopt a rule impacting vehicle code violations in the traffic court, please consider a rule that prevents the collection of the parking ticket (or other code violations that can have penalties in excess of \$2500) as a condition of an administrative hearing and judicial review.</p>	<p>The committee declines—as exceeding the scope of the proposal—the suggestion to extend application of the rule to the specified non-traffic and administrative proceedings and related appeals. The committee acknowledges, however, that other infraction-related proceedings may raise important access-to-justice issues. Accordingly, the committee separately recommends that the Judicial Council direct the appropriate advisory committees to consider all rule, form, or other appropriate recommendations to promote access to justice across all infraction proceedings.</p>

Traffic Infraction Procedure: Appearances in Court without Deposit of Bail (rule 4.105)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Comment	Committee Response
3.	<p>California Commission on Access to Justice by Hon. Mark A. Juhas, Chair</p>	<p>The California Commission on Access to Justice¹ writes this letter in support of Rule 4.105, <i>Traffic Procedures: Appearance without Deposit of Bail in Infraction Cases</i>, Agenda Item 1 of the June 1 open meeting. The Commission urges the Rules and Projects Committee to recommend Rule 4.105 for Judicial Council action to make clear that individuals do not have to pay for a traffic infraction before being able to appear in court.</p> <p>The Access Commission was established in 1997 to improve access to civil justice for Californians living on low and moderate incomes. With this goal in mind, we commend the Chief Justice’s request for expeditious rulemaking to ensure fair and consistent practices throughout the state regarding hearing requests in traffic matters. Rule 4.105 will improve access to justice by making access to a court hearing available to all, regardless of income. This rule will assist low-income people especially, allowing them the opportunity to present their cases or to request alternatives to paying the full fine.</p> <p>In addition to this immediate action, the Access Commission supports the Judicial Council’s engagement in a systematic evaluation of the manner in which court fees and fines impact access to justice throughout the state’s court system. While fee waivers are available for civil court appearances, there are a variety of other contexts where prohibitive costs mean that justice is not equally accessible to all.</p> <p>We encourage the Council to identify the range of contexts where the ability to pay might present a barrier and to consider, where appropriate, rulemaking and other tools (e.g., bench cards) that authorize and facilitate alternative approaches, including fee waivers, partial payment plans, and community service in lieu of fines.</p>	<p>The committee agrees that various aspects of traffic procedures that fall outside the scope of this rule raise important access-to-justice issues, including ability-to-pay considerations. Accordingly, the committee separately recommends that the Judicial Council direct the appropriate advisory committees to consider all rule, form, or other appropriate recommendations to promote access to justice across all infraction proceedings, including post-conviction proceedings or after the defendant has previously failed to pay or appear.</p>

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	Commentator	Comment	Committee Response
		<p>The Commission is grateful for the opportunity to submit these comments and would be happy to assist the Judicial Council in this critical endeavor.</p> <p>¹ The Commission includes appointees from your office as well as from the Attorney General, the President pro Tem of the Senate, the Speaker of the Assembly, the California Judicial Council, California Judges Association, the State Bar of California, Consumer Attorneys of California, California Chamber of Commerce, California Labor Federation, League of Women Voters, the California Council of Churches, the Council of California County Law Librarians, and the Legal Aid Association of California.</p>	
4.	<p>Hon. Karen Riley Commissioner Superior Court of San Diego County Traffic Division</p>	<p>Because many (perhaps most) so called “Traffic Courts” hear many, many infractions <i>other than Vehicle Code infractions</i> (e.g. Municipal Codes, County Codes, Business & Professions Codes, Transit District Codes, Fish & Game Codes, Animal Control Codes, etc., etc.), I suggest that the language of the newly proposed Rule 4.105 include reference to <u>all infractions</u> as opposed to only Vehicle Code infractions.</p> <p>I suggest the following language:</p> <p>(a) <u>Application</u> <u>This rule applies to any infraction violation for which the defendant has received a written notice to appear.</u></p> <p>Thank you for your consideration and work in making the proposed changes to insure equal access to justice.</p> <p>(P.S. please note that none of the San Diego Municipal or Superior Court Traffic & Infraction courts (at least in the last 23 years) have ever, to my knowledge, required (as opposed to allowed) posting of bail in order for a defendant to appear for arraignment or court trial on any infraction case. The only exceptions would be after a defendant has previously</p>	<p>The committee declines the suggestion to extend application of the rule to non-traffic infractions as exceeding the scope of the rule, which includes references to specific statutory alternatives that apply only to traffic infractions. The committee acknowledges, however, that other infraction proceedings may also raise important access-to-justice issues. Accordingly, the committee separately recommends that the Judicial Council direct the appropriate advisory committees to consider all rule, form, or other appropriate recommendations to promote access to justice across all infraction proceedings.</p>

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	Commentator	Comment	Committee Response
		<p>failed to appear for trial on the same case, or as required by VC40902 for a trial by declaration. (Of course defendants are allowed to post bail as authorized under VC 40510 and 40519.))</p>	
5.	<p>Chris Ruhl Court Executive Officer Superior Court of Mendocino County</p>	<p>I see no problems with the proposed rule other than those noted below; it is clear, concise and operates within the existing statutory framework. I have also solicited input from our bench and managers and will pass that on by tomorrow if I receive any.</p> <p>A few thoughts:</p> <ol style="list-style-type: none"> 1. JCC might want to consider creating a uniform bail waiver form to accompany the new rule. 2. Many courts may also have local rules that will need to be revised to be consistent with this new rule. See Mendocino’s attached. It will not be possible for those rules to be formally revised by the Aug. 15 implementation deadline. It may make sense to note that in the Advisory Committee Comment. 3. The Aug. 15 deadline may also create issues if changes are required to the pre-printed language on courtesy notices. See Mendocino’s attached – especially the pre-printed language on the back RE: Consequences of Failure to Respond. We purchase these in bulk and our current supply probably goes through the end of the year. We’d have to throw away a lot of them and scramble to get new ones by Aug. 15. We haven’t budgeted for that. 	<ol style="list-style-type: none"> 1. In response to various suggestions for new and revised Judicial Council forms in relation to the rule or other infraction procedures, the committee separately recommends that the Judicial Council direct the appropriate advisory committees to consider all rule, form, or other appropriate recommendations to promote access to justice across all infraction proceedings. 2. With regard to the need to amend local rules in response to the rule, the committee notes that rule 10.613(i) of the California Rules of Court provides a procedure for local rules and forms to be approved on an expedited basis to be effective on a date other than January or July 1. Specifically, that subsection states: “A court may adopt a rule to take effect on a date other than as provided by Government Code section 68071 if: (1) The presiding judge submits to the Judicial Council the proposed rule and a statement of reasons constituting good cause for making the rule effective on the stated date; (2) The Chair of the Judicial Council authorizes the rule to take effect on the date proposed; and (3) The rule is made available for inspection as provided in (b) on or before the effective date.” 3. Please see related response to comment # 10

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	Commentator	Comment	Committee Response
			below from the Trial Court Presiding Judges and Court Executives Advisory Committees' Joint Rules Subcommittee.
6.	Superior Court of Fresno County by Hon. Jonathan B. Conklin Presiding Judge	<p>The Fresno Superior Court is one of the many courts recently contacted by the ACLU requesting that we modify policies related to the collection of traffic court fines and fees during the pendency of court proceedings. Since that contact, our court has been working diligently to address the concerns set forth by the ACLU.</p> <p>The perception that our court requires all individuals who receive traffic citations to post bail in the full amount of potential fines and fees is one that needs to be corrected. In reality, our court, like most others, provides an option to a litigant to request a reduction or elimination of bail prior to a hearing when financial or other circumstances support such request. We have recently modified language present on our court's website and we continue to examine existing policies and practices to ensure such option is made clear to all traffic court litigants.</p> <p>I request this committee consider all aspects of any potential Rule change, including increased administrative tasks and financial cost to the trial courts. Perhaps more important, this committee should also consider the potential negative impact of any Rule change upon the traffic litigants impacted by such rules.</p> <p>Many traffic litigants ultimately resolve matters without an actual trial, even if they initially request such trial. Typically, those litigants fully intend to resolve matters, however, if given the option, delay such resolution as long as possible. Unfortunately, such delays often result in those same litigants failing to appear or failing to otherwise resolve</p>	<p>The committee appreciates the comments regarding the potential impacts of the rule on trial court operations. The Workload Assessment Advisory Committee will conduct an update of the Resource Assessment Study (RAS) in fall of 2015 and any changes in case processing practices resulting from this rule will be reflected in the next update of the RAS. Updating the models that are used for resource measurement (RAS) and trial court funding (WAFM) should address some of the concerns about the impact of the rule on the courts and provide for fair treatment among the courts. In addition, although the rule provides that courts must allow traffic infraction defendants to appear for arraignment and trial with deposit of bail unless specified exceptions apply, subdivision (c)(3) preserves judicial discretion to require deposit of bail before trial if the court finds, based on the circumstances of a particular case, that the defendant is unlikely to appear as ordered. As explained in the advisory committee comments, in exercising discretion to require deposit of bail on a particular case, courts should consider the totality of the circumstances, including, among other factors, whether previous failures to pay or appear were willful or involved adequate notice.</p>

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		<p>their traffic citation.</p> <p>If a litigant, after consideration of any request to reduce or eliminate bail, is required to post bail, any subsequent failure to appear or to pay a fine or fee will not otherwise adversely impact the status of their license. A failure to appear or pay will also not result in additional administrative fees and fines based upon such failure. Since the litigant has already posted bail in the amount of a potential fine, that money is available to the court to resolve the matter and close the case upon a finding of guilt.</p> <p>A Rule change that would eliminate the discretion of a judicial officer to require posting of fees and fines prior to a hearing creates not only significant administrative challenges for a trial court, it may actually work to the detriment of traffic court litigants. I encourage the Rules Committee leave the discretion of a judicial officer to require posting of fees and fines, dependent upon financial ability to do so, unchanged.</p>	
7.	<p>Superior Court of Orange County by Adriaan Ayers Chief Operations Officer</p>	<p>The following comments are submitted on behalf of Orange County Superior Court.</p> <p>The proposed rule, as written, may potentially remove the incentive for a defendant to appear in court while increasing the court's workload and cost in court resources for non-appearances at court trial. If the goal is to provide defendants the opportunity to appear in court without depositing bail, a mechanism to ensure an appearance at the court trial proceeding should be included in the process. Without this mechanism, courts may experience a high rate of failures to appear (FTA) for court trials when bail or a bail waiver is not required. Court resources are expended to set cases for trial and subpoena law enforcement officers. In addition, when a</p>	<p>The committee appreciates the comments regarding the potential impacts of the rule on trial court operations. The Workload Assessment Advisory Committee will conduct an update of the Resource Assessment Study (RAS) in fall of 2015 and any changes in case processing practices resulting from this rule will be reflected in the next update of the RAS. Updating the models that are used for resource measurement (RAS) and trial court funding (WAFM) should address some of the concerns about the impact of the rule on the courts and provide for fair treatment among the courts. The committee declines the suggestion to</p>

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		<p>defendant fails to appear, court resources are expended for the hearing process, as well as time expended by law enforcement officers or others subpoenaed for the hearing.</p> <p>4.105(a)- Application of this rule states that it applies to any traffic infraction violation of the Vehicle Code. There are instances when the citation lists combined violations (i.e., VC code and H&S code on one citation.) For clarity, the rule should be amended to read that it <i>“applies to any traffic infraction citation for violations of the Vehicle Code.”</i></p> <p>4.105(b)- Consider the proposed rule change to include the following:</p> <ul style="list-style-type: none"> • A defendant who requests a court trial must sign an own recognizance (OR) release form and promise to appear on the trial date. The form should include the consequences for failing to appear such as the imposition of a civil assessment, suspension of driver’s license, imposition of a VC40508(a) for failure to appear, etc. • The signature by a defendant on such a form may increase the likelihood of an appearance and provide the court with various courses of action if the defendant fails to appear at trial. • The rule should read “Except as provided in (c), courts must not require a deposit of bail for a defendant to appear for arraignment and trial upon the signing of an own recognizance release form and promise to appear at trial”. • Attached is Orange County’s local bail waiver form as an example. A similar type mandatory or optional Judicial Council form could be created for these OR release purposes. 	<p>extend application of the rule to non-traffic infractions as exceeding the scope of the rule, which includes references to specific statutory alternatives that apply only to traffic infractions. The committee acknowledges, however, that other infraction proceedings may also raise important access-to-justice issues. Accordingly, the committee separately recommends that the Judicial Council direct the appropriate advisory committees to consider all rule, form, or other appropriate recommendations to promote access to justice across all infraction proceedings.</p> <p>The committee declines the suggestion to amend the rule to require signed OR forms as exceeding the cope of the urgency basis rule, but notes that subdivision (c)(2) recognizes the court’s ability to require signed promises to appear as an alternative to posting bail.</p> <p>In addition, in response to various suggestions for new and revised Judicial Council forms in relation to the rule or other infraction procedures, the committee separately recommends that the Judicial Council direct the appropriate advisory committees to consider all rule, form, or other appropriate recommendations to promote access to justice across all infraction proceedings.</p>
8.	Superior Court of Riverside County by Hon. Harold W. Hopp Presiding Judge	Our judicial officers are concerned that the presumption of the proposed rule is that defendants charged with traffic offenses may enter a not guilty plea and obtain a trial date without	Although the rule provides that courts must allow traffic infraction defendants to appear for arraignment and trial without deposit of bail

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	<p>posting bail or demonstrating an inability to post bail.</p> <p>Currently, at least in our court, if a defendant is unable to post bail, he or she may request an arraignment before a judicial officer and, at that hearing, request OR release or reduced bail. We are very concerned that if defendants may routinely obtain a trial date without posting bail, many who could have posted bail will not do so and will request a trial date on the hope that the citing officer will not attend and that the case will be dismissed. The proposed rule will result in far more requests for trial and far more police officers taken away from other duties only to attend court for a trial that never occurs because the defendant either does not attend (again, hoping that the case will be dismissed if the officer does not attend) or does not occur because the officer attends the trial and the defendant changes his or her plea, essentially not contesting the charge.</p> <p>We recommend that the rule be written so that defendants are given the opportunity to either post bail or to be arraigned by a judicial officer, where they may request either OR release or reduced bail. Although this likely would result in more arrangement hearings, it would also permit the court to require bail where the defendant can post it, perhaps in a reduced amount, and would be far less likely than the proposed rule to result in more cases being set for trials that will never occur.</p> <p>To give you the front line perspective, here are some comments on the proposed rule from of our most experienced judicial officers hearing traffic matters:</p> <p>I believe that Proposed Rule of Court 4.105 will result in the following:</p> <ul style="list-style-type: none"> • An increase in the number of trials • An increase in the number of failures to appear on the trial date 	<p>unless specified exceptions apply, subdivision (c)(3) preserves judicial discretion to require deposit of bail before trial if the court finds, based on the circumstances of a particular case, that the defendant is unlikely to appear as ordered. As explained in the advisory committee comments, the rule is not intended to modify or contravene any of the various statutory alternatives that permit the defendant to deposit bail in lieu of appearing in court or in advance of the notice to appear date.</p> <p>In addition, the committee appreciates the comments regarding the potential impacts of the rule on trial court operations. The Workload Assessment Advisory Committee will conduct an update of the Resource Assessment Study (RAS) in fall of 2015 and any changes in case processing practices resulting from this rule will be reflected in the next update of the RAS. Updating the models that are used for resource measurement (RAS) and trial court funding (WAFM) should address some of the concerns about the impact of the rule on the courts and provide for fair treatment among the courts.</p>

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		<ul style="list-style-type: none"> • An increase in expense for law enforcement agencies as a result of more trials being set and more officers subpoenaed for trial • A decrease in the fines collected, and an increase in the costs of collecting those fines • An increased need for judicial officers and staffing in the traffic departments. 	
9.	Superior Court of Solano County by Deanna A. Jasso Director of Court Administration	Tulare County has reviewed the proposed language for Rule 4.105. We do not have any comment for suggested changes as the proposed rule is in line with our court's current practices. As such, implementation of the rule could take place immediately in Tulare County with minor changes to our courtesy notice and website.	No committee response is required.
10.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and Court Executives Advisory Committee (CEAC) by TCPJAC/CEAC Joint Rules Subcommittee	<p>On behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC), the TCPJAC/CEAC Joint Rules Subcommittee (JRS) supports the proposal to add rule 4.105 with the following suggested amendments.</p> <p>Specifically, the JRS recommends the following amendments to the proposed new rule:</p> <ul style="list-style-type: none"> • Regarding rule 4.105(a), the JRS recommends that the language be changes to the following, "This rule applies to any traffic infraction violation of the Vehicle Code for which the defendant has received a written notice to appear <u>and has appeared by the appearance date or an approved extension of that date.</u> <p>The members of the JRS understand that the proposed rule is not intended to apply to circumstances when the defendant has failed to appear pursuant to a notice to appear or to an approved extension of the date to appear. The added language clarifies the rule in this regard by</p>	<p>The committee declines to amend subdivision (a) as suggested but acknowledges the important of clarifying the scope of the rule. To reduce confusion regarding the application of the rule, the committee added the following advisory committee comment, which tracks the language of this suggestion: "Subdivision (a): The rule is intended to apply only to a traffic violation of the Vehicle Code for which the defendant has received a written notice to appear and has appeared by the appearance date or an approved extension of that date."</p> <p>Although the committee recognizes the various implementation challenges faced by courts, the committee declines to delete altogether the specific deadline for completing implementation of the notice requirements in (d) as suggested, in order to promote expeditious implementation of the new notice</p>

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		<p>explicitly stating that it is applicable only to defendants who appear as required.</p> <ul style="list-style-type: none"> Regarding rule 4.105(d), the JRS recommends that the last sentence of this subsection be amended to read, “Courts must implement this subdivision as soon as reasonably possible but no later than August 15, 2015.” <p>The members of the JRS propose this modification to allow the trial courts and law enforcement sufficient time to initiate the changes necessary to implement the new rule.</p>	<p>requirements. In response to these concerns, however, the committee has modified subdivision (d) to extend the implementation deadline by 30 days to September 15, 2015: “Courts must implement this subdivision as soon as reasonably possible but no later than September 15, 2015.”</p>
11.	<p>Western Center on Law & Poverty; A New Way of Life Reentry Project; Lawyers’ Committee for Civil Rights; East Bay Community Law Center; <u>and</u> Bay Area Legal Aid</p> <p>by Michael Herald and Antionette Dozier Western Center on Law & Poverty</p> <p>Theresa Zhen A New Way of Life Reentry Project</p> <p>Stephen Bingham, Retired Legal Aid Attorney, and Dana Isaac Lawyers’ Committee for Civil Rights</p> <p>Elisa Della-Piana East Bay Community Law Center</p> <p><u>and</u></p>	<p>Thank you for the opportunity to comment on proposed Rule 4.105. The organizations signatory to this letter have been intimately involved in how current traffic court policy affects Californians on the ground, as well as in development of policy solutions to the problem. We are happy that the Judicial Council is taking action to change the current policies that keep people out of court simply because they cannot afford to pay full bail up front.</p> <p>We submitted the comments below in italics following a conference call yesterday with [Judicial Council] staff. As our comments are only minimally reflected in the written proposed rule issued today, we repeat them here:</p> <ol style="list-style-type: none"> <i>The Rule should include all infractions. Though Vehicle Code violations make up a substantial number of infractions for which prepaid bail is required for a court appearance, there are many municipal and county code, transit code, and Penal Code violations that are heard as infractions in traffic court. The same need for equal access applies with all infractions.</i> 	<p>The committee declines the suggestions to amend the rule to apply to non-traffic infractions and the various other proceedings mentioned, including post-conviction proceedings and after failures to appear or pay. The rule is designed to set forth the circumstances in which a court may require the deposit of bail before arraignment and trial after the defendant has received a written notice to appear. As such, the suggestions to apply the rule to other proceedings would exceed the scope of the rule. In addition, ability-to-pay considerations, some of which are separately prescribed by statute (see, e.g., Veh. Code, § 42003), typically apply to various other traffic infraction proceedings, including proceedings that occur post-conviction, which are beyond the scope of the rule. To reduce confusion regarding the application of the rule, the committee added the following advisory committee comment: “Subdivision (a): The rule is intended to apply only to a traffic</p>

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Commentator	Comment	Committee Response
<p>Claire Johnson Raba Bay Area Legal Aid</p>	<p>2. <i>The Rule should not include an exception that swallows the rule. The currently proposed 3(c) would allow the current, unequal practices to continue, because the draft rule affords judges complete discretion in requiring advance bail, so long as they state a reason. Without narrow standards about when people can be charged in advance for a court appearance, it is unlikely that county courts will make the needed changes to allow court access for poor and middle class people. Further suggestions about a redraft for this subsection:</i></p> <ul style="list-style-type: none"> • <i>To correspond with existing law about failure to pay and failure to appear (see, e.g., Vehicle Code section 40508(a) and (b)), a bail requirement should only be imposed if there is a finding of willfulness.</i> • <i>The Rule should distinguish failures to appear and failures to pay, and allow people with failures to pay to appear in court to contest willfulness of the failure to pay, get installment plans, sign up for community service, or get a reduction in fines/fees based on changed financial circumstance. Even if, under subsection 3(c), people are not allowed to contest the underlying charges without bail, providing more options for payment will allow the court to collect more funds and reduce the number of people who have suspended driver’s licenses because they cannot afford to pay.</i> • <i>The current exception under 3(c) may be impractical to implement. Our experience representing low-income clients in traffic court leads us to believe that people are typically convicted of a failure to appear without a hearing. It is unclear at which point, if at any point, a judge or commissioner reviews each</i> 	<p>violation of the Vehicle Code for which the defendant has received a written notice to appear and has appeared by the appearance date or an approved extension of that date.”</p> <p>The committee acknowledges, however, that post-conviction and other proceedings, as well as ability-to-pay considerations, raise important access-to-justice issues that warrant careful consideration. Accordingly, the committee separately recommends that the Judicial Council direct the appropriate advisory committees to consider all rule, form, or other appropriate recommendations to promote access to justice across all infraction proceedings, including post-conviction proceedings or after the defendant has previously failed to pay or appear.</p> <p>In addition, to eliminate confusion stemming from the intended distinction between the phrases “notice to appear” and “promise to appear” as used in the rule, the committee has added the following advisory committee comment: “Subdivision (c)(2): As used in this subdivision, the phrase ‘written promise to appear as required by the court’ refers to a signed promise to appear, made by a defendant who has appeared in court, to return to court on a future date and time as ordered by the court.”</p> <p>With regard to the broader constitutional considerations raised, the committee notes that the rule is designed to reflect existing statutory that vests courts with discretion to set bail in</p>

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		<p><i>failure to appear conviction. As such, it is also unclear at which point FTA convictions (which, in cities like Los Angeles, are entered at the rate of many thousands per week) could addressed “on the record” without creating numerous new court hearings. Removing the bail requirement across the board would likely be less costly to implement.</i></p> <p>3. <i>The Rule should include a way to petition the court to waive bail if imposed under an exception to the Rule. What appears on one day to be willful failure to appear could be justified by good cause, such as medical emergencies, lack of notice (particularly for homeless defendants), or good faith attempts to come to court that were stymied (i.e., wrong courthouse).</i></p> <p>4. <i>The Judicial Council should, in its advisory comments, make clear that the “written promise to appear” in subsection 3(b) is satisfied by the signature on a citation that meets the Judicial Council approved form.</i></p> <p>5. <i>In implementing this rule, the Judicial Council should adopt standardized forms. For example, the form should allow good cause waiver of civil assessment as required by Penal Code 1214.1. Current forms often limit good cause to three or four enumerated reasons, in conflict with the broad good cause language in section 1214.1. Implementation should also include some internal monitoring and a court certification program to ensure compliance.</i></p> <p>Upon further review of the written proposed rule, we would like to add the following additional comments:</p> <p>1. The mandatory language of c (1) doesn’t make sense since</p>	<p>traffic infraction cases. (See, e.g., Pen. Code, § 1458 [“The provisions of this code relative to bail are applicable to bail in misdemeanor and infraction cases. The defendant, at any time after arrest and before conviction, may be admitted to bail”]; Veh. Code, § 40511 [Authorizing courts to fix bail if not previously fixed pursuant to a bail schedule in an amount “reasonable and sufficient for the appearance of the defendant”]; Veh. Code, § 40306(c) [An infraction defendant who has been arrested and taken into custody must be taken before a magistrate. Once before the magistrate, the defendant “shall thereupon be released from custody upon his own recognizance or upon such bail as the magistrate may fix”]; see also, Cal. Const., art. I, § 12 [“A person may be released on his or her own recognizance in the court's discretion”].)</p>

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		<p>the defendant has chosen to post bail. We suggest this language instead: “This rule does not pertain to a defendant who elects a statutory procedure that requires the deposit of bail.” The proposed Advisory Committee comment supports such language.</p> <p>2. The language of section c (2) assumes failure to sign promise to appear was willful. Many people never receive the notice to appear so obviously can’t sign it. We suggest instead this language: “Courts may only require the deposit of bail when it is established that (a) the defendant received the notice to appear and (b) the defendant refused to sign a written promise to appear as required by the court.”</p> <p>3. The Advisory Committee language regarding c (3) should be included in section c(3) itself, slightly modified: “In exercising discretion to require deposit of bail on a particular case, courts must consider the totality of the circumstances, including, among other factors, whether previous failures to pay or appear were willful or involved lack of adequate notice.”</p> <p>We have also reviewed and join in the comments to Proposed Rule 4.105 submitted by the ACLU, with its several constitutional objections. Our comments above are designed to slightly improve a flawed proposed rule but should not be interpreted as indicating our agreement that the proposed rule adequately addresses these constitutional objections.</p> <p>Thank you for considering our views on this very important rule change.</p>	