JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 16, 2016

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

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

Recommended by
Traffic Advisory Committee
Hon. Gail Dekreon, Chair

Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2017, with implementation as soon as reasonably possible, but no later than May 1, 2017

Date of Report
December 1, 2016

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Executive Summary

The Traffic Advisory Committee and Criminal Law Advisory Committee recommend amending one rule and adopting three new rules of the California Rules of Court to standardize and improve court procedures and improve notice to defendants regarding procedures in infraction cases, including specifically failures to appear and failures to pay bail and court-imposed fines, fees, and assessments for infraction offenses and ability-to-pay determinations. These rules are designed to promote procedural fairness in infraction cases, enhance guidance for defendants and courts, improve notice to defendants, and clarify procedures regarding ability-to-pay determinations, while also minimizing the need for court appearances by providing for written petitions where possible.

Recommendation

The Criminal Law Advisory Committee and the Traffic Advisory Committee recommend that the Judicial Council, effective January 1, 2017:

1. Amend rule 4.105 of the California Rules of Court to require that trial court websites include a link to the statewide traffic self-help information posted on the California courts website;

2. Adopt rule 4.106 of the California Rules of Court to establish uniform procedures in infraction offenses for which the defendant has received a written notice to appear and has failed to appear or failed to pay;

3. Adopt rule 4.107 of the California Rules of Court to require that trial courts send reminder notices to traffic defendants before their initial appearance and specify what information must be provided in those notices;

4. Adopt rule 4.335 of the California Rules of Court to standardize and improve court procedures and notice to infraction defendants related to ability-to-pay determinations.

5. Repeal standard 4.41 of the California Standards of Judicial Administration, which currently provides recommendations regarding courtesy notices.

Courts must implement these provisions as soon as reasonably possible but no later than May 1, 2017. The text of the new and amended rules are attached at pages 23–31.

Previous Council Action

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

Rationale for Recommendation

The advisory committees developed this proposal in response to Judicial Council directives to consider recommendations to promote access to justice in all infraction cases. The proposed rules are designed to promote procedural fairness for infraction cases, enhance guidance for defendants and courts, improve notice to defendants, and clarify procedures regarding ability-to-pay determinations, while also minimizing the need for court appearances by providing for written petitions where possible.

This proposal also addresses criticisms aimed at state infraction laws that have raised concerns about procedural fairness in infraction proceedings, particularly regarding the fees and fines imposed and the court procedures applied after defendants fail to appear or pay. The Judicial Council has received communications from various advocacy groups and other entities expressing continued concerns about court practices resulting in the suspension of driver's licenses for failure to pay fines and fees and the lack of uniformity regarding information about ability-to-pay determinations, among other concerns.

Amended rule 4.105

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

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

Proposed rule 4.106

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

The proposed rule would provide the following:

- When a court notifies a defendant that a civil assessment will be imposed for failure to appear or pay under Penal Code section 1214.1(b), the notice must inform the defendant of his or her right to petition that the civil assessment be vacated for good cause and must include information about the process for vacating or reducing the assessment.
- A defendant may, within the time specified in the notice, move by written petition to reduce or vacate the assessment.
- When a court imposes a civil assessment for failure to appear or pay, the defendant may petition—without paying any bail, fines, penalties, fees, or assessments—that the court

vacate the civil assessment because the defendant had good cause for failing to appear or pay.

- If a defendant establishes good cause for the failure to appear or pay, the court must vacate the civil assessment. Even absent a showing of good cause, the court may consider other factors in determining whether to impose a civil assessment and, if so, the amount of the civil assessment.
- When a case has not been adjudicated and a court refers it to a comprehensive collection program as delinquent debt, the defendant may request to schedule a hearing for adjudication of the underlying charge(s) without payment of the bail amount, unless the court expressly makes findings that bail is appropriate.
- When a defendant fails to pay under an installment plan, the defendant may request modification of the payment terms.
- When a court has entered a judgment in a trial by written declaration held in absentia, the defendant may request a trial de novo, and the court may require the defendant to deposit bail.
- When a defendant has failed to pay a fine or installment of bail, a court must provide the defendant with notice and an opportunity to be heard on ability to pay before notifying the Department of Motor Vehicles (DMV). This notice may be provided on the reminder notice that would be required by proposed rule 4.107, the civil assessment notice, or any other notice provided to the defendant.

Additionally, an advisory committee comment for proposed rule 4.106 provides guidance for implementing the rule by listing examples of circumstances that may establish good cause for failure to appear or pay when a defendant requests that a court vacate a civil assessment. These examples include the defendant's hospitalization, incapacitation, or incarceration; military duty required of the defendant; death or hospitalization of the defendant's dependent or immediate family member; caregiver responsibility for a sick or disabled dependent or immediate family member of the defendant; or an extraordinary reason, beyond the defendant's control, that prevented the defendant from making an appearance or payment on or before the date listed on the notice to appear.

The advisory committee comment also clarifies that a court may exercise its discretion to deny a request to modify the payment terms and lists some options available to the court if it grants the request. In addition, it clarifies that a court is not required to provide a hearing before notifying the DMV that the defendant has failed to pay, unless requested by the defendant or directed by the court.

Proposed rule 4.107 and standard of judicial administration 4.41

Courts currently may send courtesy notices to defendants who receive traffic tickets to provide them with information about how to resolve the citation. The Judicial Council's recommendations for courtesy notices are set forth in standard 4.41 of the California Standards of Judicial Administration. Although standard 4.41 does not require courts to send courtesy notices, most courts currently send such notices.

This proposal would repeal standard 4.41, move its content into a rule of court, and require that all courts send these notices. To reflect that these notices are no longer optional, the committees recommend that they be renamed as "reminder notices." Proposed rule 4.107 offers the court several options for sending reminder notices to defendants depending on the court's current technological capabilities. Courts may send them in paper or electronic form, including by e-mail or text message. By providing a phone number or e-mail address to the court or to a law enforcement officer at the time of signing the notice to appear, a defendant consents to receiving the reminder notice electronically at that number or address. The proposed rule clarifies that failure to receive a reminder notice does not relieve the defendant of the obligation to appear by the date stated in the *Notice to Appear*.

Under proposed rule 4.107, reminder notices must contain the following information:

- The appearance date and location, whether an appearance is mandatory or optional, the total bail amount and payment options, the statutory notice required under Vehicle Code section 42007 regarding traffic school, notice that a traffic violator school will charge a fee, information regarding trial by declaration and other specific procedures if they are available in the court, correction requirements and procedures for correctable violations, and the court's contact information;
- Warnings about the potential consequences for failure to appear and failure to pay;
- The right to request an ability-to-pay determination; and
- Notice regarding the availability of community service and installment payment plans, if those options are available in a particular court.

Additionally, an advisory committee comment provides further guidance for courts by describing various means for implementing electronic reminder notices and recommends that courts provide website addresses or links to local forms and relevant information on reminder notices, if possible.

Proposed rule 4.335

Vehicle Code section 42003, which governs the payment of fines and costs for Vehicle Code violations, provides that a court must consider a defendant's ability to pay upon the defendant's request. The legislative history of this section demonstrates that the Legislature intended for section 42003 to apply to fines for Vehicle Code infractions.[1] The committees modeled proposed

[1] See Assem. Comm. on Ways and Means, Analysis, Assem. Bill No. 708 (1993–1994 Reg. Sess.) as amended Apr. 29, 1993 ("This bill would provide that in specified misdemeanor cases, the fine shall be double the amount otherwise prescribed; and, in the case of an infraction, the fine shall be one category [sic] higher than the penalty otherwise prescribed by the uniform traffic penalty schedule. This bill would also require that the court, upon the request of the defendant, make a determination of the defendant's ability to pay all or a portion of the increased fine for this offense and all other Vehicle Code violations."); Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 708 (1993–1994 Reg. Sess.) as amended Apr. 29, 1993 ("Existing law provides that a person convicted of an infraction, pursuant to the Vehicle Code, be punished by a fine in accordance with an established fine schedule. This bill, in addition, would require the court, upon the request of the defendant, to make a

rule 4.335 on the ability-to-pay provisions in Vehicle Code section 42003 and clarified this procedure. Proposed rule 4.335 would standardize and improve procedures for ability-to-pay determinations for all infraction cases.[2] This rule would provide the following:

- Courts must provide defendants notice of their right to request an ability-to-pay determination and make instructions available on how to request that determination;
- A defendant may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to collections;
- The court must permit the defendant to make the request by written petition, unless the court directs an appearance. The request must include any information or documentation the defendant wishes the court to consider;
- Based on the ability-to-pay determination, the court may exercise its discretion to provide for payment on an installment plan, allow the defendant to complete community service if available in that court, suspend the fine in whole or in part, or offer an alternative disposition;
- The defendant may request an ability-to-pay determination at any time during the pendency of the judgment; and
- If a defendant has already had an ability-to-pay determination in the case, a defendant may request a subsequent ability-to-pay determination only based on changed circumstances.

An advisory committee comment to the proposed rule clarifies that courts may provide notice of the right to request an ability-to-pay determination on the reminder notice required by rule 4.107, the notice of any civil assessment under Penal Code section 1214.1, a court's website, or any other notice provided to the defendant. The advisory committee comment also clarifies that the court should take into account factors including whether the defendant is receiving public benefits or has a monthly income of 125 percent or less of the current poverty guidelines in determining the ability to pay.

In addition, the advisory committee comment explains that the amount and manner of paying the total fine must be reasonable and compatible with a defendant's financial ability and that the court may still exercise discretion even if the defendant has not demonstrated an inability to pay. The comment also clarifies that regardless of whether the defendant has demonstrated an

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determination of the defendant's ability to pay all or a portion of the reasonable costs of probation, fines, and restitution, and of conducting the pre-sentencing report, as specified. The bill would provide procedures for making that determination, would require the court to set the amount to be reimbursed, and would require the court to order the defendant to pay that amount, if the court determined that the defendant had the ability to pay. The purpose of this bill is to increase the penalties for driving offenses committed within a highway construction or maintenance area.").

[2] Consistent with the Judicial Council's rule-making authority under article VI, section 6 of the California Constitution, which authorizes the council to enact rules not inconsistent with statute, this rules proposal would extend section 42003's ability-to-pay provisions to nontraffic infraction offenses.

inability to pay, the court may consider the severity of the offense among other factors. The committees may develop optional forms to assist courts in making ability-to-pay determinations in recommending future proposals.

Comments, Alternatives Considered, and Policy Implications

The committees received extensive and thoughtful feedback in response to this proposal and have incorporated suggested revisions when feasible.

This proposal circulated twice for public comment. It first circulated from March to April in 2016. In light of the comments received during the first circulation and continued developments on these issues, the committees revised the proposal and recommended its recirculation on an expedited basis from August 3 to August 26 to allow it to go into effect on January 1, 2017. All commenters who submitted comments during the first circulation were instructed to resubmit comments during the second circulation if their concerns had not been addressed in the revised proposal.

Twenty comments were submitted in response to the second invitation to comment; one agreed with the proposal, four agreed with the proposal if modified, two disagreed with the proposal, and 13 did not indicate their position. The committees revised proposed rules 4.106, 4.107, and 4.335 in response to the comments. Their specific responses to each comment are available in the attached comment chart at pages 32–171

Comments on rule 4.105

The committees have recommended only limited amendments to rule 4.105. Apart from a minor technical edit to rule 4.105(c)(3), this proposal would add subdivision (e) to provide that the website for each trial court must include a link to traffic self-help information posted on the Judicial Council website.

One commenter asked that the committees revise rule 4.105 to clarify that defendants should not be required to post bail to receive a trial by written declaration or to set arraignment. The commenter further requested that the rule clarify that a failure to appear may not in and of itself be grounds for requiring payment of bail. The committees declined to pursue these recommendations because they are outside of the scope of the current proposal and may require legislative changes.

Another commenter noted that courts should provide more information online about local court processes and requirements. While this recommendation is outside of the scope of the current proposal, the committees may consider providing more standards for local websites in future proposals.

Comments on proposed rule 4.106(a)

Subdivision (a) of proposed rule 4.106 provides that this rule applies to infraction offenses for which the defendant has received a written notice to appear and has failed to appear or failed to

pay. As circulated, the proposed advisory committee comment to subdivision (a) would have further provided that rule 4.106 was intended to apply only to an infraction offense for which the defendant (1) had received a written notice to appear citation *and been released for a signed promise to appear*, and (2) had failed to appear by the appearance date or an approved extension of that date or had failed to pay as required. Three commenters expressed concern about the reference in the circulated advisory committee comment to a defendant's having "been released for a signed promise to appear." Two suggested that this language inadvertently eliminated red light camera enforcement citations from the rule's scope. The committees agreed and removed this language from the advisory committee comment in response to these comments.

Comments on proposed rule 4.106(c)

Proposed rule 4.106(c) provides procedures for implementing Penal Code section 1214.1(b)'s requirement that courts must vacate a civil assessment if a defendant establishes good cause for a failure to appear or pay.

Guidelines and criteria for the initial imposition of the civil assessment. One commenter requested that the committees expand proposed rule 4.106(c) to clarify that the initial imposition of the civil assessment is not mandatory. The commenter also encouraged the committees to recommend criteria and guidelines for the courts to use in determining whether to impose a civil assessment and the amount of the assessment. The committees declined to expand the rule as requested because procedures governing the initial imposition of the civil assessment are outside of the scope of the current proposal, but they may consider these suggestions in developing future proposals.

Reducing the civil assessment in the exercise of discretion. Two commenters requested that proposed rule 4.106(c) recognize that a judicial officer may reduce the civil assessment, as judicial officers often reduce assessments instead of vacating them. These comments suggested possible confusion about when a civil assessment must be vacated and when it may be reduced. Penal Code section 1214.1 is clear that if good cause is shown, a judicial officer is required to vacate the entire amount of the civil assessment. (Pen. Code, § 1214.1(b).) If good cause is not shown, a judicial officer may still vacate or reduce the civil assessment in the exercise of discretion. (*Id.*, § 1214.1(a).)

As circulated, proposed rule 4.106(c) intended to highlight this distinction. The circulated rule focused primarily on vacating civil assessments for good cause by providing (1) that the notice of civil assessment must inform defendants of their right to petition that the civil assessment be vacated for good cause; (2) that the notice must include information about the process for vacating the assessment; (3) that a defendant may move by written petition to vacate the notice of civil assessment by showing good cause; (4) that the court must permit a defendant to present a showing of good cause without requiring payment of bail, fines, fees, or assessments; (5) that a petition to vacate an assessment does not stay the operation of any order requiring the payment of bail, fines, penalties, fees, or assessment; and (6) that a court must vacate a civil assessment upon a showing of good cause for failure to pay or appear. To the extent that the circulated rule

addressed a court's discretionary authority to reduce a civil assessment it did so only in subdivision (c)(6), which recognized that a court may still exercise its discretion absent a showing of good cause to reconsider whether a civil assessment should be imposed and, if so, the amount of the assessment.

The committees partly incorporated into the proposal the commenters' request that rule 4.106(c) provide greater recognition of a court's discretionary authority to reduce civil assessments. They revised subdivision (c)(1) to require that the notice of civil assessment include information about the process for reducing the assessment. The committees also revised subdivisions (c)(2) and (c)(3) to provide that a defendant may move by written petition to reduce the civil assessment and to recognize that a defendant may request reduction of the civil assessment without paying any bail, fines, penalties, fees, or assessments. However, they declined to require in subdivision (c)(1) that courts notify defendants on the civil assessment notice of their right to request that the civil assessment be reduced out of concern that this additional notice might contribute to confusion.

Deadline for petitioning to vacate or reduce the civil assessment. As circulated, proposed rule 4.106(c)(2) provided that a defendant could petition to vacate the civil assessment only within 20 days after the court sends the notice of civil assessment. One commenter requested that the committees remove this 20-day time limit and instead allow a defendant to establish good cause at any point, including after the assessment is levied. Another echoed the recommendation to amend the rule to allow a defendant to petition to vacate the assessment for good cause at any time.

The committees elected to remove the 20-day time limit from subdivision (c)(2). Penal Code section 1214.1(b)(1) provides that the court must vacate a civil assessment if the defendant appears within the time specified in the notice of civil assessment. Individual courts may specify times longer than 20 days in the notice of civil assessment, and the committees do not intend to limit a court's discretion. Yet, allowing a defendant to come back at any time to vacate the civil assessment, as the commenters recommend, might conflict with statute and require a legislative change. Accordingly, the committees declined to accept this suggestion and instead revised the language in subdivision (c)(2) to track the statute. As noted above, the committees also expanded this subdivision to encompass petitions to reduce the civil assessment in the exercise of discretion.

Request by a defendant for a court appearance. As circulated, proposed rule 4.106(c)(2) allowed a defendant to request a court appearance to adjudicate a petition for vacating the civil assessment for good cause. A commenter recommended removing this provision. The committees agreed and removed the language from the proposal because written petitions, when feasible, should be encouraged for the convenience of both defendants and the courts.

Effect of filing a petition to vacate an assessment. Proposed rule 4.106(c)(4) provides that a petition to vacate an assessment does not stay the operation of any order requiring the payment of bail, fines, penalties, fees, or assessment unless specifically ordered by the court.

This subdivision generated conflicting comments. One the one hand, a commenter recommended deleting subdivision (c)(4) on the view that the filing of a petition to vacate the civil assessment should stay the payment order. This commenter also suggested revising the rule to require that any order suspending a driver's license be recalled upon the filing of a petition to vacate the civil assessment. On the other hand, three commenters supported this subdivision as drafted. The committees declined to remove this subdivision because allowing for proceedings to be stayed could be unduly burdensome for courts.

Examples of good cause for vacating a civil assessment. The advisory committee comment to proposed rule 4.106(c) lists examples of circumstances that may amount to good cause for failure to pay or appear. These examples include the defendant's hospitalization, incapacitation, or incarceration; military duty required of the defendant; death or hospitalization of the defendant's dependent or immediate family member; caregiver responsibility for a sick or disabled dependent or immediate family member of the defendant; or an extraordinary reason, beyond the defendant's control, that prevented the defendant from making an appearance or payment.

Two commenters requested expanding this list. One recommended adding inability to pay, homelessness, and unforeseeable circumstances; the other, lack of child care and an inflexible work schedule. The committees declined to provide additional examples of good cause in the advisory committee comment. The advisory committee comment is not intended to be an exhaustive list. A judicial officer retains discretion to determine that other circumstances amount to good cause in reviewing the individual circumstances presented in the case on review.

Comments on proposed rule 4.106(d)

Proposed rule 4.106(d) addresses adjudication of the underlying charges after a court has referred an unadjudicated case to a comprehensive collection program.

Application only in unadjudicated cases. As circulated, proposed rule 4.106(d)(1) stated that it applied "in unadjudicated cases." The circulated proposal also included an advisory committee comment clarifying that subdivision (d) was "not intended to allow defendants to seek readjudication of the underlying charges if the case has already been adjudicated."

Nevertheless, three commenters requested further clarification that the scope of subdivision (d) is limited only to unadjudicated cases. The committees revised the heading of subdivision (d) and the language of subdivision (d)(1) in an effort to eliminate any confusion as to its intended scope. They also deleted the advisory committee comment because they viewed it as redundant to the revised rule.

Use of alternative scheduling methods. As circulated, proposed rule 4.106(d)(2) provided that a defendant may request an appearance date to adjudicate the charges by written petition. A commenter suggested also allowing courts to use alternative methods other than written petition to request appearance dates. The committees agreed and have revised subdivision (d)(2) as requested to provide courts with greater flexibility.

Clarification of the "unlikely to appear" standard. Proposed rule 4.106(d)(3) provides that a court may require a deposit of bail before adjudication of the underlying charges if the court finds that the defendant is unlikely to appear as ordered without a deposit of bail and the court expressly states the reasons for the finding.

Three commenters requested that the committees provide guidance on the "unlikely to appear" standard. One suggested that the rule state that a failure to appear is not in itself grounds to presume an unlikelihood of appearing. The second supported subdivision (d)(3) but expressed concern that the "unlikely to appear" standard was unclear. The third recommended including factors that a court may consider in assessing the likelihood of appearing, such as a previous failure to appear in the same case. The committees declined to identify factors relevant to determining whether a defendant is unlikely to appear as ordered without a deposit of bail because this determination falls within judicial discretion.

Comments on proposed rule 4.106(e)

Proposed rule 4.106(e) governs the situation where a defendant fails to pay or make a payment under an installment plan. It includes procedures for adjudicating petitions filed by defendants to modify the payment terms.

Petition to modify the payment terms. As circulated, proposed rule 4.106(e) referenced requests to modify and vacate the judgment. Five commenters expressed concern with allowing a defendant to modify the judgment. Another requested that the committees remove the term "vacate," and another suggested replacing the term "request" with "petition" throughout the proposal. The committees agreed and revised subdivision (e) to clarify that a defendant may petition to modify the payment terms. They removed the reference to vacating the judgment and replaced the term "request" with "petition" throughout the proposal.

Additional good cause requirement if case has been sent to collections. One commenter requested that proposed rule 4.106(e) provide that a defendant be required to show good cause to schedule a hearing to modify the payment terms if case was in collections. The committees declined to add this limitation; proposed rule 4.106(e) is intended to allow a defendant to petition the court to modify the payment terms at any time, including after a case has been sent to collections.

Options available to a court in adjudicating a petition to modify payment terms. One commenter expressed concern that proposed rule 4.106(e) created an expectation that a court would necessarily reduce the fine any time that a defendant made a request. A second requested

guidance on what it means to modify the judgment. A third sought to clarify that a court may choose not to modify the payment amount or may modify an installment plan by reducing the amount, giving a defendant more time to pay, or approving community service. A fourth requested revising the rule to clarify that a court is not prevented from denying a request to modify the payment terms for reasons other than those specified in subdivision (e)—namely, because an unreasonable amount of time had passed or the defendant had made an unreasonable number of requests.

In response to these comments, the committees added an advisory committee comment to subdivision (e)(1) to provide guidance on the various options available to courts in adjudicating a defendant's petition to modify the payment terms. The listed options include a court's discretionary authority to deny the defendant's request. Other options available, if the court exercises its discretion to grant a defendant's request, include modifying the payment terms by reducing or suspending the base fine, lowering the payments, converting the remaining balance to community service, or otherwise modifying the payment terms as the court sees fit.

Request by defendant for a court appearance. Proposed rule 4.106(e)(1) allows a defendant to request a court appearance for adjudication of their petition to modify the payment terms. One commenter requested that the committees remove the language allowing a defendant to request a court appearance. While the committees agree that written petitions should be encouraged when feasible, they declined to remove the language as recommended.

Additional notice to defendants after a failure to pay. One commenter requested that the committees revise proposed rule 4.106(e) to require that courts notify defendants—after a failure to pay—of the missed payment and available options. The commenter also suggested that a defendant should be provided with an opportunity to remedy the missed payment before the court imposes a civil assessment or refers the defendant for license suspension. The committees declined to provide for additional notice requirements or procedures beyond those already required by statute and these proposed rules if a defendant has failed to pay, but they may consider these suggestions in developing future proposals.

Denials based on an unreasonable amount of time or number of requests. As circulated, proposed rule 4.106(e)(5) provided that a court may deny the defendants request and order no further hearings if an unreasonable amount of time had passed or the defendant had made an unreasonable number of requests.

A commenter requested modifying subdivision (e)(5) to clarify that it did not apply if the defendant petitioned to modify the payment terms based on ability to pay. Another asked that the committees remove subdivision (e)(5) in its entirety because it would contravene Vehicle Code section 42003 and other statutory provisions. To address these concerns, the committees added language to subdivision (e)(5) to clarify that its scope did not extend to petitions based on ability to pay.

Another commenter requested that the committees provide clearer guidelines for determining how much time and how many requests would be unreasonable. The committees declined to limit judicial discretion by providing more information on these terms.

Comments on proposed rule 4.106(f)

Proposed rule 4.106(f) provides that courts may require the deposit of bail before adjudicating a defendant's request for a trial de novo after entry of judgment in absentia under Vehicle Code section 40903.

Vacating the judgment after receiving a bail deposit. As circulated, proposed rule 4.106(f) required courts to vacate the judgment upon receipt of the bail deposit. One commenter indicated that vacating the judgment would result in significant costs and would double and possibly triple the work of courts. Based on these concerns, the committees elected to remove the language requiring courts to vacate the judgment after receipt of bail.

Allowing courts to require the deposit of bail. One commenter requested that the committees remove subdivision (f) entirely from the proposal because it allows a court to require bail if a defendant requests a trial de novo after an in absentia conviction.

Vehicle Code section 40902 allows defendants to proceed with a trials by written declaration only if the defendant first deposits bail. Section 40902 also entitles a defendant to a trial de novo if the defendant is not content with the outcome of the trial by written declaration. Although section 40903 provides that a defendant who fails to appear may be deemed to have elected to have a trial by written declaration, it does not expressly incorporate the provisions of section 40902, including the right to a trial de novo. The committees intend for this rule to clarify that defendants are entitled to a trial de novo after a conviction in absentia under section 40903. But if a defendant elects to take advantage of the right to a trial de novo, subdivision (f) requires, consistent with section 40902, that the defendant deposit bail. The committees decline to remove subdivision (f) as requested. With subdivision (f), they intend to provide defendants convicted after a trial in absentia under section 40903 with both the rights and responsibilities of section 40902.

Comments on proposed rule 4.106(g)

Proposed rule 4.106(g) addresses referrals to the Department of Motor Vehicles (DMV) for license suspension under Vehicle Code sections 40509(b) or 40509.5(b) after a defendant fails to pay. Specifically, it requires that the court first provide the defendant with notice and an opportunity to be heard on inability to pay before a referral to the DMV.

Specifying where the court may provide notice. As circulated, proposed rule 4.106(g) did not address how courts might provide defendants with notice that they could be heard on their ability to pay. The circulated proposal also included an advisory committee comment to this subdivision, which specified that the court must provide the defendant with notice on ability to pay and with instructions.

Seven commenters requested that the committees revise this subdivision to clarify where courts should provide this notice. Some also recommended specifying that the courts may provide this notice on the reminder notice required by proposed rule 4.107 or on the civil assessment notice. The committees elected to revise subdivision (f) to clarify that the notice may be provided on the reminder notice, the civil assessment notice, or any other notice provided to the defendant. They also deleted the circulated advisory committee comment because they viewed it as redundant to the revised rule.

Allowing for ability-to-pay hearings upon request before referring to DMV for license suspension. Proposed rule 4.106(g) provides for notice and an opportunity to be heard before a court may refer a defendant who fails to pay to the DMV for license suspension. One commenter requested that the committees replace the language providing for "an opportunity to be heard" with "an opportunity for a determination of ability to pay."

The committees declined to incorporate this suggestion into the proposal. Ensuring opportunity for a hearing if requested by the defendant before referring the defendant to DMV for license suspension because of a failure to pay is compatible with due process principles. Nonetheless, courts are encouraged to utilize written petitions if the defendant and court are mutually agreeable to adjudication by written petition. This rule does not preclude them from so doing.

Expanding subdivision (g) to address failures to appear. As circulated, proposed rule 4.106 addresses referrals to the DMV for failures to pay. One commenter requested that the committees expand subdivision (g) to also address failures to appear. The committees declined to expand subdivision (g) because this request is outside the scope of the present proposal. This subdivision governs notifications to DMV under Vehicle Code sections 40509(b) and 40509.5(b), which apply only to failures to pay. The committees may consider developing future proposals to address procedures for license suspension when a defendant fails to appear.

Concerns regarding driver's license suspensions. Although one commenter expressed concerns that these proposals do not curb the use of license suspensions as a debt collection tool, this proposal would ensure that defendants are afforded due process (notice and the opportunity to be heard on ability to pay) before a court may suspend a driver's license for failure to pay.

Comments on proposed rule 4.107

Standard 4.41 of the California Standards of Judicial Administration currently provides guidance for courts if they elect to send a courtesy notice to defendants who receive traffic citations. Proposed rule 4.107 would convert standard 4.41 into a rule of court and would require that all courts send these notices.

Renaming the notice. The circulated proposal retained the name "courtesy notice" in referring to these notices. Two commenters recommended renaming these notices because they would be

mandatory under the proposed rule. The committees agreed and incorporated one commenter's specific suggestion to rename the notices as "reminder notices" into the proposal.

Sending reminder notices to an address provided to the court. One commenter requested that courts send reminder notices not only to the address on the Notice to Appear, but also to the last known address in the DMV database. The committees declined to make this change as requested because it would be unduly burdensome on courts. However, recognizing that a defendant may provide the court with an address that differs from the address on the Notice to Appear, the committees elected to revise subdivision (a)(1) to provide that a court may also satisfy the requirement of providing the defendant with a reminder notice by sending the notice to an address otherwise provided to the court.

Sending reminder notices electronically by e-mail and text message. The committees drafted circulated rule 4.107(a) broadly so that it would allow courts not only to mail paper reminder notices, but also to send electronic notices.

Three courts that do not currently provide courtesy notices submitted comments citing concerns with making these notices mandatory, including increased costs. All three contended that a robust website would be able to provide defendants with sufficient information about their traffic case. One also suggested that requiring courtesy notices would be a regressive rather than a progressive measure, as courts are moving to paperless case environments.

Another commenter recommended that the Judicial Council initiate an electronic notification system through which the court could send defendants notifications via text message or e-mail.

In light of these concerns and suggestions, and to increase access for defendants, the committees revised proposed rule 4.107(a) to provide further guidance for courts that want to send electronic reminder notices. The committees also added an advisory committee comment to further explain options available to the court for providing electronic notices.

Consequences of failing to receive a reminder notice. Four commenters requested that the committees revise proposed rule 4.107 to clarify that a defendant's failure to receive a reminder notice is not a defense for a failure to appear and does not relieve the defendant of the obligation to appear by the date on the citation. One also asked for clarification on applicable procedures if a notice were returned as undeliverable. To address these comments, the committees added subdivision (a)(3) to clarify that a defendant's failure to receive a notice does not relieve the defendant of any obligations. In light of this revision, the court need not implement any procedures to track notices returned as undeliverable.

Information provided to defendants on the reminder notice. As circulated, proposed rule 4.107 specified minimum information that had to appear on the reminder notice, as well as information that a court could provide if desired. Mirroring standard 4.41, the circulated rule recommended but did not require that the notice provide information to defendants about informal trial, trial by

declaration, telephone scheduling options, correction requirements, and procedures for correctable violations. The committees received various comments in response to these provisions on required and recommended information in the reminder notices.

First, the circulated rule required that the notice provide information to defendants on the availability of community service and installment payment plans. One commenter explained that some courts do not offer community service or installment plans. The commenter requested that the committees add the phrase "if available" to clarify that a court need not provide information on community service or installment plans if the court does not currently offer these alternatives. The committees agreed and added the requested language to the proposal. Courts are not statutorily required to provide community service or installment plans; if a court does not offer these options, it need not provide any information about them on the reminder notice.

Second, a commenter requested that the reminder notice inform defendants that a traffic violator school will charge a separate fee. This commenter explained that defendants often believe they have already paid the fee to attend traffic violator school. The committees elected to incorporate this suggestion into the proposal as it provides defendants with additional information and avoids possible confusion.

Third, one commenter suggested that the information on trial by written declaration and telephone scheduling options should be mandatory on reminder notices. The committees revised the rule to provide that the reminder notice must provide information about trial by written declaration, informal trial if available, correction requirements and procedures for correctable offenses, and telephone and website scheduling options if available.

Fourth, based in part on comments received regarding the importance of court websites for providing information to defendants, the committees revised the rule to require that the reminder notice provide the court's website as part of the contact information for the court.

Lastly, one commenter requested the courts send any forms for requesting an ability-to-pay determination with the reminder notice. The committees declined this request because requiring that courts mail ability-to-pay or other forms with all reminder notices would be unduly burdensome. However, they did add an advisory committee comment to this rule to state preferred practices for enhancing defendants' access to relevant forms and information. The advisory committee comment suggests providing direct links on electronic reminder notices and website addresses on paper notices for any information or local forms on the court's website.

Comments on proposed rule 4.335

Proposed rule 4.335 addresses ability-to-pay determinations in infraction cases. The committees modeled the rule on Vehicle Code section 42003,[3] while also expanding on this authority and applying proposed rule 4.335 to nontraffic infraction offenses.

Clarifying where courts may provide notice of the right to request an ability-to-pay determination. Proposed rule 4.335(b) requires that courts provide defendants with notice of their right to request an ability-to-pay determination and make available instructions or other materials for requesting an ability-to-pay determination. Two commenters requested that the committees clarify where to provide this notice. Whereas one recommended allowing courts to provide this notice at any time, including on the reminder notice, the other suggested that courts should make this notice available online and on the original citation. The committees agreed to provide further guidance for courts and added an advisory committee comment to subdivision (b) that would specify that the notice may be provided on the reminder notice, the civil assessment notice, a court's website, or any other notice provided to the defendant.

Imposing limitations on requests for ability-to-pay determinations. Proposed rule 4.335(c) provides that a court, on a defendant's request, must consider his or her ability to pay. It clarifies that a defendant may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program. It further clarifies that a defendant ordered to pay on an installment plan or to complete community service may request to have an ability-to-pay determination at any time during the pendency of the judgment. Lastly, proposed rule 4.335(c) provides that if a defendant has already had an ability-to-pay determination, he or she may request another only based on changed circumstances. The committees received various comments suggesting that proposed rule 4.335(c) include time limits and other restrictions on requesting ability-to-pay determinations.

First, two commenters requested that the committees limit ability-to-pay determinations to preadjudication. Three others suggested restricting the time period in which a defendant may request an ability-to-pay determination. Two offered suggestions of 30 days and six months, while the third recognized that a court should accept the request for an ability-to-pay determination whenever a defendant is able to show changed circumstances. The committees declined to pursue the suggestions to impose a time limit because they modeled proposed rule 4.335 on Vehicle Code section 42003, which contemplates that defendants may request ability-to-pay determinations at adjudication and during the pendency of the judgment. For this reason,

[3] The committees closely examined Vehicle Code section 42003(c). While the plain language of section 42003 may not be clear, its legislative history strongly supports the conclusion that the Legislature intended for its ability-to-pay provisions to apply to the imposition of fines for all Vehicle Code violations and did not intend to limit its scope to the costs associated with probation's presentence investigation. (Assem. Comm. on Ways and Means, Analysis, Assem. Bill No. 708 (1993–1994 Reg. Sess.) as amended Apr. 29, 1993; Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 708 (1993–1994 Reg. Sess.) as amended Apr. 29, 1993.)

proposed rule 4.335 clarifies that its ability-to-pay provisions apply when a case is delinquent or referred to a comprehensive collection program.

Second, one commenter requested that the rule restrict the number of times a defendant could request an ability-to-pay determination. The committees declined to pursue this suggestion because Vehicle Code section 42003(e) contemplates that a defendant may make additional requests for ability-to-pay determinations based on changed circumstances during the pendency of the judgment and does not limit the number of such requests.

Third, another commenter requested that the committees revise rule 4.335 to provide that a defendant may request an initial ability-to-pay determination only up until the date the fine is due. The committees declined to pursue this suggestion. While Vehicle Code section 42003(c) contemplates that defendants may request an initial ability-to-pay determination at the time of adjudication, it is foreseeable that courts may adjudicate a case and render judgment in a defendant's absence under section 40903. If a court elects to proceed by trial in absentia under section 40903, the defendant would never have had an initial ability-to-pay determination from which changed circumstances could be determined.

Fourth, as circulated, proposed rule 4.335 allowed a court to deny a defendant's request for an ability-to-pay determination, order no further proceedings, and order that a case be referred to collections if the court determined that (1) an unreasonable amount of time had passed or (2) the defendant had made an unreasonable number of requests for an ability-to-pay determination. Whereas one commenter suggested providing further guidance on interpreting the phrase "an unreasonable amount of time," another expressed concern that the circulated rule was inconsistent with Vehicle Code section 42003. The committees agreed with the latter and decided to remove this provision from proposed rule 4.335.

Lastly, one commenter requested that the committees revise rule 4.335 to provide that a defendant must show good cause before receiving an ability-to-pay determination if the court has already sent the case to collections. The committees declined to incorporate this suggestion into the proposal. Vehicle Code section 42003(e) provides that a defendant may request an ability-to-pay determination based on changed circumstances at any time during the pendency of the judgment and does not contemplate any other limitations on the right of a defendant to make this request.

Delegation to clerks or county revenue collections agencies. As circulated, proposed rule 4.335 delegated a preliminary step in making ability-to-pay determinations to clerks or county revenue collection agencies. The circulated rule allowed clerks and county revenue collections agents to make an initial determination of whether a defendant received public benefits or had a monthly income of 125 percent or less of the current poverty guidelines. The circulated rule also provided for review of this initial determination, as well as the ultimate determination of a defendant's ability to pay, by a judicial officer. The committees proposed this limited delegation to clerks and county revenue agencies in an effort to provide for greater efficiencies.

Eight commenters expressed concerns over delegating ability-to-pay determinations to clerks and county revenue collections agencies. The commenters explained that evaluating ability to pay is not ministerial and instead falls squarely within judicial discretion. Two commenters also cited real or perceived conflicts of interest with delegating to a county revenue collections agency. And two commenters requested that the committees revise the circulated rule to clarify that a judicial officer has the discretion to order a hearing or review the petition on the written record.

The rule, as circulated, was not intended to eliminate judicial discretion. Because the comments received indicated general confusion over the intended scope of the delegation, the committees decided to remove the provisions on delegation and judicial review of that delegation from the proposal.[4] Instead, the committees have recommended revising the rule to contemplate that only judicial officers will conduct ability-to-pay determinations.

While removing the provisions on delegation, the committees have incorporated the suggestion to clarify that judicial officers have discretion to conduct their review of written requests for ability-to-pay determinations on the written record or to order a hearing. The committees also recommended adding an advisory committee comment instructing courts that they should consider factors including whether a defendant receives public benefits or has a monthly income of 125 percent or less of the current poverty guidelines in light of the importance of these factors in evaluating ability to pay.

Alternatives available to the court in making ability-to-pay determinations. Proposed rule 4.335(c)(4) provides guidance for courts making ability-to-pay determinations on available options. These options include providing for payment on an installment plan, allowing the defendant to complete community service in lieu of paying a total fine, suspending the fine in whole or part, and offering an alternative disposition.

A commenter expressed concern because some courts do not offer community service. Because the committees do not intend for these rules to require courts that do not currently offer community service or installment plans to implement such programs, they revised proposed rule 4.335(c)(4) to clarify that the court may offer community service or installment plans if these alternatives are available.

Another commenter requested that the committees revise proposed rule 4.335(c)(4) to clarify that a court may suspend not only the fine, but also any fees, assessments, and other penalties. Two commenters requested clarification that a judicial officer may not remove all penalties. Another recommended that the rule provide that courts should first reduce or waive fines before converting any remaining fines and fees into community service or jail time. Another requested clarification on alternate dispositions.

[4] Because the committees see the potential benefit of delegation in this manner, they may continue to explore this option in future proposals.

The committees declined to further revise proposed rule 4.335(c)(4) because these matters fall within judicial discretion. However, they added to the advisory committee comment to clarify that (1) a court does not have discretion to alter any mandatory fees imposed by statute, even though it may suspend the base fine in whole; and (2) regardless of whether the defendant has demonstrated an inability to pay, a court may still consider the severity of the offense among other factors. The committees initially recommended that the comment also specify that a court may still consider the defendant's criminal history irrespective of the defendant's ability to pay. In response to the written public comment submitted to the council's Rules and Projects Committee in advance of its November 18, 2016 meeting, the chairs of the committees exercised the discretion delegated to them by their respective committees to remove the requested language.

Global comments

This proposal also elicited global comments on language access and developing forms to implement its provisions.

Expanding language access. A number of commenters requested that the committees revise the proposal to provide greater language access for defendants who do not understand English. In supporting the proposed amendment to rule 4.105, one commenter suggested also requiring that the links on local court websites to statewide self-help materials make clear to defendants that these materials are available in Spanish. Another suggested requiring that courts translate the notices described in proposed rule 4.106 into the most common languages. Another requested that courts translate the reminder notices required by proposed rule 4.107 into the defendant's preferred language where available. Two additional commenters asked that courts make notices informing defendants of their right to request an ability-to-pay determination and instructions available in other languages.

While these suggestions are outside the scope of the present proposal, the committees recognize the importance of increasing access to the courts for defendants who do not read English. In developing future proposals, especially any model forms or optional Judicial Council forms, the committees may consider these suggestions. The committees also note that the Judicial Council's Language Access Planning Task Force has developed a Translation Protocol and a Translation Action Plan to assist the council in prioritizing the translation of Judicial Council forms and other materials.

Developing forms to implement these rules. One commenter requested that the committees develop a Judicial Council form for defendants to request vacating civil assessments. Two other commenters suggesting creating ability-to-pay forms to assist courts in determining a defendant's ability to pay. Another commenter recommended that the council ensure that reminder notices are understandable and readable for all members of the public. While outside the scope of the present proposal, the committees may consider these suggestions in developing future forms proposals.

Policy implications

Several commenters expressed concerns with the laws governing the imposition of fines in infraction cases, especially where court funding is based in part on the imposition of fines, fees, and assessments. The committees recognize these concerns and the need to continue to address issues surrounding court-imposed fines and fees and related issues, and for the Legislature to address these issues. The committees also note that the Chief Justice's Commission on the Future of California's Court System is exploring these issues.

The committees also recognize that some courts are concerned about the costs required to implement this proposal. The committees recognize that implementation may increase costs to courts. However, the committees have decided that, on balance, the benefits of these proposed rules, which are necessary to promote access and fairness, outweigh the costs. The committees have attempted to strike a balance between providing defendants with adequate due process and easing the burden on courts where possible. Also, in response to these concerns, the committees have recommended an extended implementation date for the rule proposals.

Implementation Requirements, Costs, and Operational Impacts

Courts will need to update local websites, and court notices and provide training for court staff and judicial officers regarding these changes for processing infraction cases. The committees are sensitive to the concern that the rules may require changes to court forms and procedures.

Increased costs resulting from requiring reminder notices. An informal survey of courts indicates that approximately 53 out of 58 superior courts currently provide courtesy notices of some type. Three courts that do not currently send courtesy notices submitted comments indicating that requiring reminder notices under proposed rule 4.107 will increase costs. Two other courts that already provide these notices to defendants also cited increased costs resulting primarily from providing additional information on these notices.

Requiring that all courts send these notices will increase the fiscal burden on courts that do not currently provide them. While sensitive to these concerns, the committees decided, on balance, that the benefits of requiring reminder notices outweigh the costs. These notices provide defendants with valuable information and advance due process requirements. To ease any anticipated financial burden on the courts, the committees revised the proposal to provide additional guidance to courts on sending these notices electronically.

Increased workload and costs related to ability to pay. Six commenters expressed concern regarding increased workload and costs related to providing notices under proposed rule 4.335. By removing the provisions on delegation and clarifying that the notice may be provided on existing notices, the committees attempted to reduce the burden on courts.

It is also possible that with increased notice about the procedure for requesting an ability-to-pay determination, more defendants may request review of their ability to pay. The committees

acknowledge the potential increased workload for court staff and judicial officers. However, the committees concluded that any increased burdens are outweighed by the procedural fairness that these rules will advance.

Extended implementation date. The committees are sensitive to the impact on the courts in implementing these rules, if amended and adopted, by a January 1, 2017 effective date. Several commenters suggested a delayed implementation date due to the significant changes in these proposals.

The committees recognize that this proposal may require changes to court procedure, forms, and operations and may result in an increase in workload. In balancing their concern for the courts with the need for speedy implementation of rules that provide increased access and fairness for defendants, the committees have decided to recommend that the rules become effective January 1, 2017, while also allowing courts additional time to implement these rules. The committees have concluded that an extended implementation date of May 1, 2017, is warranted, but urge courts to implement these rules as soon as reasonably possible.

Attachments and Links

1. Cal. Rules of Court, rules 4.105, 4.106, 4.107, and 4.335 at pages 23–31
2. Chart of comments at pages 32–171

California Rules of Court, rule 4.105 is amended, rules 4.106, 4.107, and 4.335 are adopted, and California Standards of Judicial Administration, standard 4.41 is repealed effective January 1, 2017, to read:

Title 4. Criminal Rules

Rule 4.105. Appearance without deposit of bail in infraction cases

(a) – (b) * * *

(c) Deposit of bail

(1) – (2) * * *

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

(4) * * *

(d) Notice

Courts must inform defendants of the option to appear in court without the deposit of bail in any instructions or other materials courts provide for the public that relate to bail for infractions, including any website information, written instructions, courtesy notices, and forms.

(e) Local Website Information

The website for each trial court must include a link to the traffic self-help information posted at: *http://www.courts.ca.gov/selfhelp-traffic.htm*.

Advisory Committee Comment

* * *

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

(a) Application

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

(b) Definitions

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

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

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

(2) When a notice of civil assessment is given, a defendant may, within the time specified in the notice, move by written petition to vacate or reduce the assessment.

(3) When a court imposes a civil assessment for failure to appear or pay, the defendant may petition that the court vacate or reduce the civil assessment without paying any bail, fines, penalties, fees, or assessments.

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

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

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

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

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

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

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

(1) When a case has not been adjudicated and a court refers it to a comprehensive collection program as provided in section 1463.007(b)(1) as delinquent debt, the defendant may schedule a hearing for adjudication of the underlying charge(s) without payment of the bail amount.

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

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

(e) Procedure for failure to pay or make a payment under an installment payment plan

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

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

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

(4) If the defendant petitions to modify the payment terms based on an inability to pay, the procedures stated in rule 4.335 apply.

(5) If the petition to modify the payment terms is not based on an inability to pay, the court may deny the defendant's request to modify the payment terms and order no further proceedings if the court determines that:

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

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

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

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

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

Before a court may notify the DMV under Vehicle Code sections 40509(b) or 40509.5(b) that a defendant has failed to pay a fine or an installment of bail, the court must provide the defendant with notice of and an opportunity to be heard on the inability to pay. This notice may be provided on the notice required in rule 4.107, the civil assessment notice, or any other notice provided to the defendant.

Advisory Committee Comment

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

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

Subdivision (e)(1). A court may exercise its discretion to deny a defendant's request to modify the payment terms. If the court chooses to grant the defendant's request, the court may modify the payment terms by reducing or suspending the base fine, lowering the payments, converting the remaining balance to community service, or otherwise modifying the payment terms as the court sees fit.

Subdivision (g). A hearing is not required unless requested by the defendant or directed by the court.

Rule 4.107. Mandatory reminder notice—traffic procedures

(a) Mandatory reminder notice

(1) Each court must send a reminder notice to the address shown on the *Notice to Appear*, unless the defendant otherwise notifies the court of a different address.

(2) The court may satisfy the requirement in paragraph (1) by sending the notice electronically, including by e-mail or text message, to the defendant. By providing an electronic address or number to the court or to a law enforcement officer at the time of signing the promise to appear, a defendant consents to receiving the reminder notice electronically at that electronic address or number.

(3) The failure to receive a reminder notice does not relieve the defendant of the obligation to appear by the date stated in the *Notice to Appear*.

(b) Minimum information in reminder notice

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

(1) An appearance date and location;

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

(3) The total bail amount and payment options;

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

(5) Notice that a traffic violator school will charge a fee in addition to the administrative fee charged by the court;

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

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

(8) The right to request an ability-to-pay determination;

(9) Notice of the option to pay bail through community service (if available) and installment plans (if available);

(10) Contact information for the court, including the court's website;

(11) Information regarding trial by declaration, informal trial (if available), and telephone or website scheduling options (if available); and

(12) Correction requirements and procedures for correctable violations.

Advisory Committee Comment

Subdivision (a)(2). The court may provide a means for obtaining the defendant's consent and designated electronic address or number on its local website. Because notices to appear state the website address for the superior court in each county, this location may increase the number of defendants who become aware and take advantage of this option. To obtain the defendant's electronic address or number at the time of signing the promise to appear, the court may need to collaborate with local law enforcement agencies.

Subdivision (b). While not required, some local court websites may provide information about local court processes and local forms related to the information on the reminder notice. If in electronic form, the reminder notice should include direct links to any information and forms on the local court website. If in paper form, the reminder notice may include the website addresses for any information and forms on the local court website.

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

(a) Application

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

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

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

(c) Procedure for determining ability to pay

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

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

(3) The court must permit a defendant to make this request by written petition unless the court directs a court appearance. The request must include any information or documentation the defendant wishes the court to consider in connection with the determination. The judicial officer has the discretion to conduct the review on the written record or to order a hearing.

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

(A) Provide for payment on an installment plan (if available);

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

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

(D) Offer an alternative disposition.

(5) A defendant ordered to pay on an installment plan or to complete community service may request to have an ability-to-pay determination at any time during the pendency of the judgment.

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

Advisory Committee Comment

Subdivision (b). This notice may be provided on the notice required by rule 4.107, the notice of any civil assessment under section 1214.1, a court's website, or any other notice provided to the defendant.

Subdivision(c)(1). In determining the defendant's ability to pay, the court should take into account factors including: (1) receipt of public benefits under Supplemental Security Income (SSI), State Supplementary Payment (SSP), California Work Opportunity and Responsibility to Kids (CalWORKS), Federal Tribal Temporary Assistance for Needy Families (Tribal TANF),

Supplemental Nutrition Assistance Program, California Food Assistance Program, County Relief, General Relief (GR), General Assistance (GA), Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI), In Home Supportive Services (IHSS), or Medi-Cal; and (2) a monthly income of 125 percent or less of the current poverty guidelines, updated periodically in the Federal Register by the U.S. Department of Health and Human Services under 42 U.S.C. § 9902(2).

Subdivision (c)(4). The amount and manner of paying the total fine must be reasonable and compatible with the defendant's financial ability. Even if the defendant has not demonstrated an inability to pay, the court may still exercise discretion. Regardless of whether the defendant has demonstrated an inability to pay, the court in exercising its discretion under this subdivision may consider the severity of the offense, among other factors. While the base fine may be suspended in whole or in part in the court's discretion, this subdivision is not intended to affect the imposition of any mandatory fees.

Standards of Judicial Administration

Title 4. Standards for Criminal Cases

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SP16-08
Amend Cal. Rules of Court, rule 4.105; adopt rules 4.106, 4.107, and 4.335; and repeal Judicial Admin. Standards, standard 4.41

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

	Commentator	Position		Committee Response
1.	ACLU of California By Christine P. Sun Micaela Davis A New Way of Life Reentry Project By Theresa Zhen Lawyers' Committee for Civil Rights of the San Francisco Bay Area By Elisa Della-Piana Bay Area Legal Aid By Rebekah Evenson Bay Area Legal Aid By Stephen Bingham Retired Attorney Western Center on Law and Poverty By Antionette Dozier Legal Services for Prisoners with Children By Brittany Stonesifer East Bay Community Law Center By Brandon Greene USC Gould School of Law By Clare Pastore Neighborhood Legal Services of Los Angeles County	N/I	We, the undersigned, are civil rights and legal services organizations assisting low-income Californians who are charged with traffic infractions and are unable to pay the exorbitant fines, fees, and surcharges associated with these tickets. For the past several years, we, individually and in coalition, have advocated for systemic change in the traffic court system to help ensure that low-income defendants do not experience disproportionate and unconstitutional harm. Although we commend the Judicial Council's Traffic Advisory Committee and Criminal Law Advisory Committee ("Committee") for incorporating many of our prior comments in the new set of proposed rules and revised notices, we reiterate our primary concerns that the traffic fines and fees are excessive, and that the courts should not be using driver's license suspension as a means to coerce payment. Even if courts adopt all of the model procedural protections under consideration, the dollar amounts of the traffic fines and fees will still be excessive, and some low-income families will still likely slip through the cracks – because they are homeless and do not receive the newly revised notices, because they cannot read the notices or understand how to clear their tickets or reduce their fines, because their financial circumstances change and they cannot make the agreed-upon payments, or for other reasons. The courts should not be in the business of saddling	The committees appreciate the input of these organizations.

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	by Eliza Schafler		low-income families with crushing debts, or with suspending driver's licenses that are the key to our clients' economic survival. Recognizing that significant additional reforms will be needed to resolve these underlying problems, we offer the following comments on revised Rule 4.105, proposed rules 4.106, 4.107 and 4.335 and revised forms TR-300 and 310. We also highlight critical areas that need to be addressed by the Judicial Council in further rule-making. The comments are not intended to be exhaustive and we remain committed to working with the Judicial Council to find an adequate, fair, and just solution for all traffic court defendants. **Proposed Rule 4.105 – Appearance without deposit of bail** The amendment to Rule 4.105 would require that courts add a link to the state traffic court self-help website on their respective court websites. Although we support providing more information to defendants on their options to dispose of citations, the rules concerning deposit of bail should be modified further in order to ensure equitable access to justice. Specifically, it is our position that traffic court defendants should not be required to post "bail" in order to get a trial by written declaration or to set a trial date without appearing for	Response: The committees decline to pursue this suggestion at this time. Regarding trial by written declaration, the deposit of bail is required by Vehicle Code section 40902 if a defendant elects

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			arraignment—such a policy creates a two-tiered system of justice where the privileged are able to avail themselves of convenient court processes but others are not. It is particularly inequitable to require payment to schedule a court date without an arraignment, given that low-income defendants are more likely to have difficulty finding transportation to court, and may not be able to take time off from hourly-wage jobs. Given the move away from "pay to play" rules, the Judicial Council should explicitly encourage the courts to stop requiring deposit of bail as a condition to accessing these procedures or, at a minimum, to set a bail schedule for these procedures that is "reasonable and sufficient for the appearance of the defendant." *See* Veh. Code § 40511. "Bail" in the amount of the full fine, fees, and surcharges owed on the ticket is not "reasonable" and is indeed, excessive. In addition, we remain concerned about courts' practices in determining likelihood of appearing at trial under Rule 4.105(c)(3). The rule requires 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. *See* Rule 4.105(c)(3). It is standard practice in some courts, Los Angeles Superior for example, for the court to make a finding that a person is unlikely to appear at the next court date, and to require deposit of bail for trial, simply because	to proceed with trial by written declaration. Therefore this cannot be changed by rule of court; it can only be changed by legislation. With respect to bail to set a trial date without appearing for arraignment, the proposal that was circulated for public comment did not include a rule change eliminating bail in these proceedings. Under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal.

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			the person had a failure to appear on that case. This means that even if the person had good cause for the failure to appear, the person would be required to post bail in order to get a trial at which she could demonstrate that good cause.[1] We hope that proposed Rule 4.106(c)(3), which mandates that "[c]ourts must permit a defendant to present a showing of good cause for failure to appear or pay without requiring … payment of bail, fines, penalties, fees, or assessments," remedies this problem. [Footnote in original] [1] According to a publicly filed declaration by Greg Blair, Senior Administrator for the Metropolitan Courthouse of the Superior Court of Los Angeles County, approximately 8,000 complaints for failure to appear were filed *every week* in the fiscal year of 2007-2008. *See* Respondent's Return to Sept. 12, 2012 Order to Show Cause at Attached Exhibit (Second Declaration of Greg Blair, Senior Administrator for the Metro. Courthouse of the Superior Ct. of L.A. County.), *Steen v. App. Div., Superior Ct. of L.A. County* (Cal. 2012) (No. S174733). In a single year, that means approximately 416,000 failures to appear were entered. Assuming that the rate of complaints filed for failure to appear remained roughly stagnant in the last seven years, that is a total of 3,120,000 failures to appear filed since to date since 2007. Proposed Rule 4.105 in its current draft form	

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			would be toothless to these millions of defendants in Los Angeles and will restrict, not promote, access to justice in their individual cases. However, Rule 4.105 should be amended to make clear that it is subject to Rule 4.106(c)(3). Rule 4.105 must also be amended to specify that a failure to appear may not in and of itself be grounds for requiring payment of bail for a trial under Rule 4.105(c)(3). **Proposed Rule 4.106 – Failure to appear or failure to pay for a Notice to Appear issued for an infraction offense** We commend the Committee for acknowledging that current court policies around the imposition of civil assessments and other sanctions for failures to pay or appear are overly punitive and for incorporating some of our prior recommendations in the new proposed rule. However, there are a number of ways in which Proposed Rule 4.106 should be reframed and amended in order to provide defendants with adequate notice and a meaningful opportunity to be heard on these issues. <u>4.106(c) – Procedure for consideration of good cause for failure to appear or pay</u> We thank the Committee for incorporating our prior comments into the new version of the rule,	Response: The committees decline to expand rule 4.105 as recommended, which would limit permissible judicial discretion.

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			including: 1) the requirement that the court inform the defendant of the right to petition to vacate the civil assessment and instructions on how to do so, *see* 4.106(c)(1); 2) clarifying that a defendant may always submit a written petition to vacate, not simply upon order by the court, *see* 4.106(c)(2); 3) clarifying that the court must vacate the assessment upon a showing of good cause, *see* 4.106(c)(5); and 4) reminding the courts that they have discretion to consider whether an assessment should be imposed and if so, the amount, *see* 4.106(c)(6). We also continue to support Rule 4.106(c)(3)'s provision that the court may not require a defendant to deposit bail in order to present good cause for failure to pay or failure to appear. However, we urge the Committee to strengthen the rules in the following ways in order to fully protect defendants' rights. *First*, Rule 4.106(c) should be reframed to clarify that the imposition of a civil assessment on the front-end is not mandatory and should not be automatic. Penal Code § 1214.1 states a court *may* impose a civil assessment of *up to* $300. However, many courts automatically impose the maximum amount for a failure to appear or failure to pay, even in the context of a missed installment payment of just $20 or $30. The $300 late penalty fee is among the most stringent in the nation[2] and the automatic levying of a late fee in this amount may violate the Eighth Amendment's prohibition on	Response: The committees decline to pursue this suggestion at this time. Establishing criteria for and the manner of imposing the civil assessment are outside of the scope of the current proposal. As noted above, under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. The committees may consider adopting proposals in the future to

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			excessive fines and fees. The civil assessment should not be used as an additional punishment for poverty. [Footnote in original] [2] *See, e.g.,* Beth A. Colgan, "Reviving the Excessive Fines Clause," 102 Cal. L. Rev. 277, 289, fn. 55 (2014) (comparing various states' statutory late fee assessments: ALA. CODE § 12-17-225.4 (2006) (30 percent of delinquent amount); ARIZ. REV. STAT. ANN. § 12-116.03 (West 2003) ("reasonable costs"); CAL. PENAL CODE § 1214.1(A) (West 2011) (up to $300); FLA. STAT. ANN. § 28.246(6) (West 2010) (up to 40 percent of amount owed); 730 ILL. COMP. STAT. 5/5-9-3(e) (West 2007) (30 percent of delinquent amount); MICH. COMP. LAWS ANN. § 600.4803(1) (West 2013) (20 percent of delinquent amount); N.C. GEN. STAT. ANN. § 7A-321(b)(1) (West 2004) (lesser of the average cost of collecting debt or 20 percent of the delinquent amount); TEX. LOC. GOV'T CODE ANN. § 133.103(a) (West 2013) ($25 fee for payments made thirty-one days or more after judgment). The Judicial Council should also establish criteria for the courts to use in determining whether to impose any civil assessment at all and guidelines on appropriate and non-punitive assessment amounts. For instance, prior to levying an assessment for failure to appear or	establish criteria for the initial imposition of the civil assessment. Response: Establishing criteria for and the manner of imposing the civil assessment are outside of the scope of the current rules proposal. As noted above, under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for

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			failure to pay, the court should consider a person's diligence in complying with prior court orders and payments, any information the court may have about the person's financial circumstances – whether obtained through an ability to pay determination, an amnesty application, or otherwise – and whether factors such as the court's own delays in processing the ticket contributed to a defendant missing her court date or otherwise failing to comply with a court order. *Second*, Rule 4.106(c)(2) should be amended to eliminate the 20-day time limit in which a defendant may petition to vacate an assessment. It is likely that homeless individuals or those with unstable living conditions will not have received notice about the failure to appear or pay or the civil assessment being added. Even if our clients do receive notice, life circumstances, including homelessness, make it very difficult to respond to the court in that short amount of time. Instead, a defendant should be able to make a showing of good cause for failure to appear or to pay at any point, including after the civil assessment is levied. This mirrors Proposed Rule 4.335 which permits a defendant to request an ability-to-pay determination at or after adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.	public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. The committees may consider adopting proposals in the future to establish criteria for initial imposition of the civil assessment. Proposed rule 4.106(c)(6) includes examples of factors that courts may consider when reconsidering whether a civil assessment should be imposed, including a defendant's due diligence. Response: The committees agree with this recommendation to eliminate the 20-day time limit from the proposed rule. Penal Code section 1214.1 provides that the civil assessment shall not become effective until "at least" 20 days after the court sends a notice, and if the defendant appears within the time specified in the notice and shows good cause, the court must vacate the assessment. Individual courts may provide for times longer than 20 days under section 1214.1, and this proposed rule is not intended to limit the court's discretion. However, allowing a defendant to come back at any time to vacate the civil assessment, as this comment also recommends, might conflict with statute and require a legislative change.

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			Third, Rule 4.106(c)(4), which states that a petition to vacate does not stay any order requiring payment of bail, fees or assessments should be stricken. Instead, the filing of a petition should stay any of those orders. The rule should also specify that any orders of license suspension that have been initiated be recalled upon the filing of a petition to vacate. Otherwise defendants who have good cause may be preemptively sanctioned and could face irreparable harm if their license is in fact suspended.	Response: This subdivision is intended to provide procedures for vacating or reducing civil assessments. Allowing proceedings to be stayed based on the filing of a petition to vacate or reduce a civil assessment could be unduly burdensome for courts.
			Fourth, Rule 4.106(c)(5) should be amended to expand the basis for determining good cause to vacate an assessment. Although the basis for a finding of good cause is not limited in the governing statute, *see* Penal Code § 1214.1, most courts restrict a finding of good cause to instances involving hospitalization, incarceration, active military duty or death of an immediate family member, as is currently specified in the advisory comments to the rule. It is critical that the Judicial Council expand the bases for good cause for failure to appear or failure to pay, including explicitly listing inability to pay as a ground for showing good cause, especially since numerous—if not the vast majority of—courts in California do not currently provide adequate notice of a person's right to an ability to pay determination. Inability to pay is a common reason why low-income and	Response: The committees decline to expand the rule and provide more guidance on what constitutes good cause. The circumstances listed in the advisory committee comment are examples of what may constitute good cause; good cause is not limited to those examples. The determination of good cause falls within judicial discretion.

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			indigent defendants may miss their court dates or fail to make a payment. If a defendant fails to appear or pay due to inability to pay, it is all the more unlikely that the defendant will be able to make an exorbitant extra payment of $300, which hurts both the defendant and the court's efforts to collect debt. Moreover, there are a number of other good reasons that a person might not have been able to appear in court beyond those reasons listed in the advisory comments, including a childcare or transportation emergency or other medical emergency not involving hospitalization. Accordingly, we believe that the rule should specify that good cause exists if the defendant: 1) experiences "homelessness," defined as lack of a fixed and regular nighttime address, or residence in a shelter or transitional living facility; 2) the defendant does not have the ability to pay; or 3) if the defendant experienced any other unforeseeable circumstance that caused the failure to appear. This subsection should again clarify that the imposition of a civil assessment is not mandatory. The Judicial Council should also require the courts to update their notices and instructions to include the expanded definition of good cause. Finally, the guidelines should be listed in the rule itself, rather than simply in the advisory comments. *Fifth*, it is imperative that there be stronger guidelines informing the exercise of the court's	Response: The committees decline to provide additional guidelines on whether to impose the

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			discretion in determining whether to impose an assessment and the amount of the assessment. Currently, courts do not generally exercise discretion in levying assessments even though it is provided under statute. Pen. Code § 1214.1. Rule 4.106(c)(5) should *require* that the court exercise discretion, including considering a defendant's financial circumstances, if known, and other relevant factors as discussed above, in determining whether to impose an assessment and how much to impose, rather than simply suggesting so. <u>Rule 4.106(d) – Procedure for unpaid bail referred to collection as delinquent debt</u> Similar to our comments on Rule 4.105, we recommend that Rule 4.106(d)(3) specify that a failure to appear is not in and of itself grounds to presume an unlikelihood of appearing at court and therefore to require bail for trial. <u>Rule 4.106(e) – Procedure for failure to pay on an installment plan</u> We support rules that stop the all-too-common practice of courts preventing defendants from obtaining judicial review after a failure to pay or after a single payment is missed on a payment plan. To highlight one example of the practice, a member of our coalition recently had a client on public assistance who was diligently paying $25 a month and forgot to make a payment one	civil assessment. These matters fall within judicial discretion. Response: The committees decline to specify that a failure to appear is not in and of itself grounds to presume an unlikelihood of appearing at court. These matters fall within judicial discretion.

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			month. Although he realized his mistake and sent in double the amount the next month to make up for the missed payment, the court had already tacked on a civil assessment of $300 and referred him to the DMV for license suspension. The severity of this sanction in relation to the offense of missing one small installment payment is excessive and violates the constitutional prohibitions on excessive fines. Moreover, it is our observation that courts generally do not meaningfully consider a defendant's ability to pay when setting the amounts of installment plans and, as a result, many low income and indigent defendants are left with payment amounts that are simply unaffordable. For these defendants, and particularly defendants on public benefits, even $20 or $30 a month can be too high. Furthermore, even if a defendant is able to pay the installments at the time she enters into the plan, her financial circumstances may change during the course of the payment plan. Loss of a job or unexpected medical bills for example, can greatly tax a poor family and make it impossible for a defendant to continue with the same plan. Once a defendant misses an installment payment, courts routinely refer the defendant to the DMV for license suspension for failure to pay, which pushes the defendant into an even more untenable financial situation. It is therefore critical that a defendant have a	

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			chance to present her circumstances and request a reduction in the fine or installment amount. We therefore commend the Committee for proposing Rule 4.106(e)(1), which requires a court to permit a defendant to modify a judgment upon a failure to pay a fine or make a payment under and installment plan. However, as we previously commented, the procedural protections set forth in the rule will be meaningless if the defendant is not notified of their existence. The rule must be amended to specify that after failure to pay a fine or make an installment payment, the court must send a notice to the defendant notifying her of the missed payment and of her options to remedy the problem. The defendant should be given at least 30 days to act on the matter. The rule should also clarify what it means for a defendant to seek a "modification" of a judgment. To modify a judgment should mean to reduce, suspend, or waive the judgment amount; reinstate the payment period; convert any remaining balance to community service; or other disposition that the court, in its discretion, determines appropriate given the defendant's circumstances. The Committee should amend the rule to include this description. If it is the Committee's position that those options are not within the definition of "modification," it should amend the rule to	Response: The committees decline to require courts to send additional notices, beyond those already required by statute and these proposed rules, if a defendant has failed to pay. This would be a substantive change to the proposed rules, and advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. Response: The committees agree with the recommendation to clarify this issue. The committees have added an advisory committee comment to provide examples of the options available for a court in modifying the payment terms.

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			separately provide the defendant with a range of options to correct a missed payment, including giving the defendant an opportunity to simply make up the missed payment, to petition the court for a new payment plan, to seek a reduction in the total overall payment amount, or to convert any remaining balance to community service or other alternative. It is also critical that a person be given notice and an opportunity to correct the missed payment *prior* to having a civil assessment or license suspension levied. The rule should be amended to provide that the defendant must be given an opportunity to remedy the missed payment, either by having an opportunity to make up the missed payment, by seeking a modified judgment, or requesting a new payment plan, prior to the court levying a civil assessment or referring the defendant for license suspension. Otherwise a defendant who is willing and able to continue making installment payments will be unjustly and excessively penalized for a failure to make one payment. Subsection (e)(3) should be amended to specify that any license suspension sanction that has been set in motion, be recalled until the defendant receives adequate notice and a meaningful opportunity to be heard. At the very least, Rule 4.106(e) should offer similar protection as the traffic court amnesty repayment plans which require that upon a missed payment the defendant receives a notice	Response: The committees decline to expand the proposal as requested. This comment is beyond the scope of the current proposal. As noted above, under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. The committees may consider these suggestions in developing future proposals.

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			and 30 days to pay or to request a modified payment plan. Finally, Rule 4.106(e)(5), which permits the court to deny a request to modify a judgement if an unreasonable amount of time has passed or the defendant has made an unreasonable number of request to modify, should be stricken. A defendant should never be denied the opportunity to petition to modify or vacate her judgment. Indeed, doing so would contravene Vehicle Code § 42003 and other statutes that permit a defendant to present proof of a change in circumstances at any time. Moreover, if a defendant is in fact unable to pay, it would not make sense to deny a request to modify solely because of the number of times that she has requested a modification or based on some length of time that a court finds "unreasonable." If a person cannot pay, she cannot pay. We believe that this subsection should be eliminated. In the alternative, we recommend narrowing the instances in which a request can be denied. For example, providing that "the court may only deny the defendant's request for an ability-to-pay determination if the court determines that an unreasonable amount of time has passed *and* that the defendant had no good cause to delay the request." <u>Rule 4.106(f) – Procedure after a trial by written declaration in absentia for a traffic infraction</u>	Response: The committees agree with this suggestion, insofar as it applies to requests to modify the payment terms based on ability to pay under Vehicle Code section 42003. The committees have revised the proposal to clarify that the limitations do not apply if the request to modify is based on ability to pay. Response: The committees decline to eliminate this subdivision as requested. Trials by written declaration under Vehicle Code section 40902

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			Because a defendant should not have to pay to avail herself of court procedures and doing so violates due process rights, no fee should be required for requesting a trial de novo after a trial in absentia. We request that this section be eliminated. <u>Rule 4.106(g) – Procedure for referring a defendant to the Department of Motor Vehicles (DMV) for license suspension for failure to pay a fine</u> We commend the Committee for acknowledging the critical need for the court to provide notice and a meaningful opportunity to be heard on ability to pay prior to license suspension. As the Committee is aware, we have been advocating for this provision in a number of forums, including in lawsuits against several counties. However, the Committee must expand the rule to include the following. *First,* the rule must specify that a court is also prohibited from referring a person for license suspension of a failure to *appear* without giving the person notice and an opportunity to be heard on ability to pay, as well as a meaningful opportunity to be heard on the question of willfulness. This is because non-appearance may be due to an individual's inability to pay, or other excusable factors such never having received notice due to homelessness or other reason.	require the deposit of bail, and the defendant is entitled to a trial de novo. Therefore, this cannot be changed by rule of court; it can only be changed by legislation. The committees intend to clarify with this proposal that, within the current statutory structure, defendants are entitled to a trial de novo after a conviction in absentia under section 40903. Consistent with section 40902, a defendant must deposit bail if he or she requests a trial de novo. The proposed rule provides defendants convicted at a trial in absentia under 40903 with the rights and responsibilities of section 40902. Response: The committees decline to expand subdivision (g) as requested to encompass failures to appear. This subdivision applies to notifications to the DMV under Vehicle Code sections 40509(b) and 40509.5(b), which apply only to failure to pay. Adding provisions addressing procedures for license suspension is beyond the scope of the current proposal. As noted above, under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public

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				comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. The committees may consider addressing procedures for license suspension in the future when a defendant fails to appear.
			Second, the rule should make clear that the notice must be *adequate* and in conformance with the requirements on notice set forth in Rule 4.107 (to the extent the Committee amends Rule 4.107 in accordance with our proposals below). The Advisory comments must specify the same.	Response: The committees have revised this subdivision to clarify where this notice may appear.
			Third, the rule must specify that the ability to pay determination must be made in accordance to the requirements set forth in Rule 4.335 (to the extent the Committee amends Rule 4.335 in accordance with our proposals below).	Response: The committees have considered the comments in connection with proposed rule 4.335, and have responded accordingly there.
			Fourth, this subsection should make clear that the court should not notify the DMV unless and until the defendant has been provided adequate notice and a meaningful opportunity to be heard on inability to pay *and* that the person has nonetheless willfully failed to pay and/or appear, as set forth in Vehicle Code § 40508. **Proposed Rule 4.107 – Mandatory courtesy notice – traffic procedures** We are pleased to see that the Committee has	Response: The committees decline to revise the language of this subdivision, the purpose of which is to ensure due process is satisfied.

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			enacted Rule 4.107 to address the concerns we have raised about the notice that must be provided to traffic court defendants concerning their right to an ability to pay determination. However, the courts' notice procedure and the notices themselves need to undergo significant changes in order to constitute adequate notice to defendants about their rights, responsibilities, and options. *First,* we commend the Committee for making it mandatory for courts to send courtesy notices. Rule 4.107(a). It is not reasonable for the initial Notice to Appear to serve as a defendant's only warning when the citation form is in small print, does not contain the amount of the ticket, does not contain information on an ability to pay determination (though as discussed below, we recommend the Notice to Appear form contain that information) and is often illegible. *See* Exhibit A (sample traffic citation). However, even if courts are required to send courtesy notices (which we believe that they should), we note that many people never receive the notices mailed by the court. This could be due to a change in address, a defendant not having a stable address, delays in court processing of tickets which results in the court using outdated address information, or other failures in the system. Many of our low-income clients are homeless, move frequently or live in housing with problematic mail delivery, which makes it more likely that they will not receive the	

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			notices. In order to improve the likelihood that a defendant receives the notices from the court, Rule 4.107(a) should be amended to require that the court send courtesy notices not only to the address provided on the notice to appear, but also to the last known address in the DMV database. This way, if a person has updated their address with the DMV after receiving the ticket, the court will send the notice to the proper address. In addition, given the harsh consequences for failure to respond to a ticket, the court should also send the notices certified mail with return receipt requested, so that it is aware when defendants have not received the courtesy notices. It is also imperative the Judicial Council implement an electronic notification system in which the court can send individuals notifications via text message or email. (Additional suggestions for improving the notice process are set forth below). *Second*, although the Committee has provided some guidelines for the minimum information that must be included in the notices—and in particular has specified that the notices must include information on the right to an ability to pay determination, including the availability of installment plans and community service options, Rule 4.107(b)(7)—the guidelines must be more specific about how that information is to be transmitted.	Response: The committees decline to pursue this suggestion. Requiring courts to verify addresses with the DMV and send multiple notices to defendants would be unduly burdensome. Instead, the committees have revised the proposal to provide that the reminder notice is to be sent to the address shown on the *Notice to Appear*, unless the defendant otherwise notifies the court of a different address. Response: The committees have revised the proposal to clarify that courts may send reminder notices electronically by e-mail or text message. The committees have also added an advisory committee comment to identify several ways a court may obtain the electronic addresses and numbers needed to implement electronic reminder notices.

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			In order to constitute adequate notice, the notification of the defendant's right to an ability to pay determination should be displayed in clear fashion on the front of the notice, rather than in small print on the back. The notification must include a description of what the ability to pay determination entails, how the defendant may avail herself of the determination, and what relief may be afforded upon a finding of an inability or limited ability to pay, e.g. a reduction or waiver of the ticket amount, placement on a payment plan, or other outcomes. If a defendant is required to provide documentation or other evidence to show inability to pay, that information must be listed clearly on the notice. The information about an ability to pay determination must also be displayed alongside the defendant's main suite of options to dispose of the ticket. For example, many courtesy notices contain some version of a list of three options in bold print on the front of the notice indicating that the defendant may either 1) forfeit bail 2) enroll in traffic school or 3) plead not guilty. The option to get an ability to pay determination must be provided alongside those options and must be prominently displayed on the front page of the notice, rather than being listed separately or on the back of the notice. Otherwise, the defendant may believe she is limited to those three options and that she can	Response: The committees decline to pursue these suggestions because they are outside the scope of the present proposal. As noted above, under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. However, the committees may consider these suggestions if they decide to develop model reminder notices or optional Judicial Council forms as part of future proposals. Please see response above.

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			only request the ability to pay determination if she pleads not guilty to the ticket. The notice should also contain a copy of any form the defendant must fill out in order to get the ability to pay determination. For instance, if the court uses a form that permits a person to show that they receive public benefits, or to list their income and expenses, that form should be included along with the courtesy notice. Our detailed comments on ability to pay determinations are below.	Response: The committees agree that, to the extent feasible, the notices should provide defendants with information regarding what paperwork must be completed for an ability to pay determination. However, the committees decline to require courts to send forms with the notices, because the benefit of providing the forms would not outweigh the costs to courts. Instead, the committees added an advisory committee comment which provides (1) that electronic reminder notices should provide direct links to any information and forms on the local court website; and (2) that paper reminder notices may include the website addresses for any information and forms on the local court website.
			Third, the Judicial Council must ensure that the notices are readable and understandable for all members of the public. The notices most courts currently send out are written in confusing language, do not contain clear instructions, and contain small print and crowded typeface. In order to constitute adequate notice, the notices must be at a sixth grade reading level and should use short, direct sentences; use simple words that the client can reasonably be expected to understand; avoid multi-syllable words and acronyms as often as possible; avoid compound sentences or combined reasons by breaking them into two sentences; and explain	Response: The committees decline to pursue these suggestions at this time because they are outside the scope of the present proposal. As noted above, under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. However, the committees may consider these suggestions if they decide to develop model reminder notices or optional Judicial Council forms as part of future proposals.

	Commentator	Position		Committee Response
			complicated ideas. *See e.g.* California Department of Social Services, All County Information No. 1-02-14, CalWorks Requirements for Adequate Notice, dated Jan. 3, 2014, pg. 3 (setting forth requirements for CalWorks notices based on the 1983 *Turner v. McMahon* consent decree and so-called "Turner rules");[3] California Department of Social Services, All County Letter No. 86-57, "Plan for Implementation of *Turner v. McMahon* Consent Decree Regarding AFDC Notices of Action, dated June 30, 1986;[4] *Turner v. Woods*, 559 F. Supp. 603 (N.D. Cal. 1982), *aff'd sub nom. Turner v. Prod*, 707 F.2d 1109 (9th Cir. 1983), *rev'd sub nom. Heckler v. Turner*, 470 U.S. 184 (1985); Gov. Code § 6219(a) ("Each department, commission, office, or other administrative agency of state government shall write each document that it produces in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style."). [Footnotes in original] [3] *Available at* http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acin/2014/I-02_14.pdf. [4] *Available at* http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl86/86-57_1.pdf. In order to ensure that non-English speakers receive adequate notice, the courtesy notices must include translations in the defendant's	Response: The committees decline to pursue this suggestion at this time because it is outside the scope of the present proposal. However, the

	Commentator	Position		Committee Response
			preferred language where available. The information about preferred language could be collected during the citation process, if the defendant chooses to provide it. If the preferred language is not known, the courtesy notice must include a notice of language services and a county contact for translation assistance. *See e.g.* California Department of Social Services, All County Information No. 1-02-14, CalWorks Requirements for Adequate Notice, dated Jan. 3, 2014, pg. 4 (listing language access requirements for CalWorks notices).	committees recognize the importance of increasing access to the courts for defendants who do not read or understand English. The committees may consider proposals in the future to address language and access concerns.
			Finally, inclusion of the information about trial by declaration and telephone scheduling options (optimally, without requiring deposit of "bail") should be mandatory under 4.107(b), rather than permissive.	Response: The committees agree and have revised the proposal to require that the reminder notices inform defendants of information regarding trial by declaration, informal trial (if available), and telephone and website scheduling options (if available). They decline to pursue the suggestion to allow for trial by written declaration without the deposit of bail because bail is statutorily required under Vehicle Code section 40902.
			Proposed Rule 4.107 should be amended to specify that the courtesy notices must conform to the above guidelines and the Judicial Council should design compliant statewide forms for use by all courts. **Proposed Rule 4.355 – Ability to pay determinations for infraction offenses**	Response: The committees decline to pursue the suggestion to develop forms at this time because it is beyond the scope of this proposal. As noted above, under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this

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			We are pleased that the proposed rules mandate ability to pay determinations and begin to set guidelines for determining a defendant's ability to pay. Ability to pay is a critical issue for traffic court defendants. We agree with the proposal to mandate that instructions and information on ability to pay be provided to all defendants and to permit defendants to make a request for an ability to pay determination in writing or by appearance. We also agree that defendants should be able to request an ability to pay determination at multiple points in the process including at or after adjudication, when a defendant has missed a payment, when an account is delinquent, after the account has been referred to collections and under changed circumstances. It is essential that a missed payment or appearance does not block a defendant from an avenue of relief. We are also pleased that the Committee has proposed initial guidelines for ability to pay by enumerating factors for clerks to consider when making an ability to pay determination, including whether a person receives public benefits or her income is below a certain percentage of the federal poverty guidelines. Providing guidelines that clerks can use to make certain threshold ability to pay determinations should streamline the ability to pay determination and make it more accessible. We also agree that if a defendant disagrees with the ability to pay determination by a clerk or	time with the adoption of the changes that are in the proposal. However, they may develop model or optional Judicial Council forms for civil assessment notices, reminder notices, and ability to pay determinations in the future. Response: Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this proposed subdivision from the proposal. Instead, the committees have added an advisory committee comment, which provides that the court, in determining a defendant's ability to pay, should consider whether the defendant receives public benefits and whether the defendant has a monthly income of 125 percent or less of the current poverty guidelines. The committees may continue to work on developing guidelines that

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			collection agency, she should have the right to judicial review and an appearance. We were encouraged to see that the proposed rule lists alternative options for courts in lieu of payment in full when a defendant does not have the ability to pay. Despite being encouraged by many of the proposals, we do not think the proposed rules go far enough to establish a workable ability to pay process and standard. In order to truly protect defendants' rights and ensure that the ability to pay determination is meaningful, the ability to pay procedures must be strengthened to include stronger standards and presumptions for determining inability to pay. These standards and the processes for how they will be applied must be transparent and readily available to defendants. Our coalition has spent many hours researching and discussing ability to pay standards and principles. We would welcome the opportunity to work with the Judicial Council to further develop a standard and processes. The following are our proposed principles and guidelines regarding ability to pay determinations: **1) Ability to Pay Determination** <u>Presumption of Inability to Pay</u> There should be a presumption of inability to	would allow for clerk delegation in considering future proposals. Response: The committees decline to pursue these suggestions because they fall outside the scope of

	Commentator	Position		Committee Response
			pay for people with income below a certain threshold, including: 1) People who receive a means-tested public benefit, including SSI, SSP, CalWorks, Tribal TANF, SNAP, county relief, general relief, or general assistance, CAPI, IHSS, Medi-Cal, Refugee Cash Assistance; or Veterans benefits; 2) People who have a monthly income below a certain percentage of the federal poverty guidelines (given the multiple levels of federal poverty guidelines used to determine eligibility for various federal means-tested programs for low-income people, we recommend that courts use 250% of the federal poverty rate, as the state uses in determining eligibility for Medi-Cal for working disabled individuals); or 3) People who are homeless – defined by a person's lack of a fixed and regular nighttime address, or residence in a shelter or transitional living facility – or living in a mental health treatment facility or drug treatment facility. As in the Civil Fee Waiver context, defendants should be able to self-certify that they are not able to pay due to one of the above categories. <u>Inability to Pay Determinations Based on Individual Circumstances</u> If a person's income does not fall into one of the	this proposal. Some would require statutory changes. To the extent that any are within their purview, the committees may take them under consideration in developing future proposals. Response: While an advisory committee comment urges courts to consider whether the defendant receives public benefits and whether the defendant

	Commentator	Position		Committee Response
			presumed inability to pay categories she should be entitled to an inability to pay determination based on her individual circumstances. This determination should take into account various factors including income, expenses, debt (including court debt), dependents and other financial obligations. We are currently researching which factors would most accurately and fairly reflect a defendant's ability to pay and would welcome the opportunity to share our findings. **2) Standards for reducing and waiving fees, payment plans and alternatives to payment** The proposed Judicial Council rule provides that based on the ability to pay determination, the court *may exercise its discretion* to provide for payment by installment plan, conversion to community service, suspend the fine or offer an alternative. Provision of these alternatives should not be discretionary. There must be strong and transparent guidelines for the relief available to a defendant who is unable to pay or has a limited ability to pay. Unless the court is *required* to employ these guidelines or offer these options, the inability to pay determination will not be meaningfully implemented, particularly given that there are rarely attorneys in traffic court to raise these issues. There should be a standardized process for determining the amount that someone will pay	has a monthly income of 125 percent or less of the current poverty guidelines in determining ability to pay, this proposal preserves judicial discretion. In adjudicating each request on a case-by-case basis, courts may take into account any variety of factors impacting that particular defendant's ability to pay. Response: We have not identified any authority requiring courts to offer installment payment plans or community service. In addition, this proposal is not intended to limit judicial discretion. In reviewing a request for an ability to pay determination, a court has the discretion to fashion a response that is tailored to the situation of the individual defendant and the resources available. Response: This suggestion is outside the scope of the present proposal. The committees may

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			so that it is fair and transparent. We are working on developing a calculator that could be used to determine the amount a person could be required to pay after taking into account various factors including income, debt, dependents and cost of living, and would invite the Judicial Council to work with us on this effort.	consider developing ability-to-pay calculators or other tools in developing future proposals.
			<u>Payment Plans</u> If a defendant meets the presumption for inability to pay, there should be a presumed suspended fine or $0 payment plan. Similar presumptions, resulting in $0 or suspended payments, are currently employed in California child support cases, welfare overpayment cases, wage garnishment, and federal student loan repayment. Some California traffic court judges already use their discretion to suspend fines and fees. The Judicial Council should adopt this presumption to create statewide consistency.	Response: The committees decline to pursue these suggestions as they are outside the scope of the present proposal. In addition, this proposal is not intended to limit judicial discretion. In reviewing a request for an ability-to-pay determination, a court has the discretion to fashion a response that is tailored to the circumstances of the individual defendant. Moreover, while a court may suspend the base fine in whole or in part, discretion to lower or eliminate fees is limited by statute.
			Additionally, for people whose income is higher than the presumption, or who have some ability to pay, any alternative to monetary payment should be reasonable (see community service discussion below). In no case should a payment plan be an excuse to avoid reducing a defendant's fine. When a ticket amount is high and someone has limited or no means to pay, simply putting someone on an installment plan for the entire amount is not a sustainable solution. Therefore, the installment plan should	Please see response above.

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			only be calculated after the total amount of the fine is reduced or waived based on a person's financial circumstances. One possible formula is: (1) the court determines how much a defendant is able to pay each month; and (2) the remaining fines and fees are waived after twelve months of payments at that rate. This cuts down on the court cost of administering lengthy payment plans and creates some equity. For example, if the court determines a defendant could pay $10 a month, any amount above $120 (12 x 10) should be waived. To avoid undue administrative and practical burdens, defendants should be allowed to pay the entire amount in any number of payments necessary to satisfy their obligation within twelve months (*i.e.*, if a person receives enough money to pay the total remaining 12 month amount during the second month she could pay it and the balance would be waived). There should be no sanctions levied for a failure to make one payment. Importantly, defendants should not be required to pay an additional fee to get on an installment plan. <u>Community service</u> Although reasonable alternatives to payment must be provided to traffic court defendants, requiring low-income people and people of color to labor in order to work off infraction fines, reinforces historical problems around	Please see response above.

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			forced labor for the state. The Judicial Council must implement guidelines around community service that protect defendants' rights and ensure that completion of community service is feasible given defendants' circumstances. The below are our recommendations. *First*, any alternative, including community service, must be subject to a similar reasonableness determination as applied to a defendant's ability to pay. The court must provide a number of alternatives that take into account individuals' life circumstances, including employment and family obligations, and must include options for people with physical or mental disabilities. If a defendant meets the presumption of inability to pay as outlined above, the person should be waived from any community service requirement. For defendants with conflicting obligations, particularly employment or with other life stressors due to poverty, flexibility should be the guiding principle. Low-income people have multiple stressors in their lives, many of which are related to their very survival, and court action should not exacerbate these stressors. Weekend or evening community service should be possible and defendants should be encouraged and enabled to propose their own community service sites. For instance, one of our clients was able to do his community service at his local church; another at a	Response: The committees decline to pursue these suggestions because they are outside the scope of the present proposal. This proposal is not intended to limit judicial discretion. In reviewing a request for an ability-to-pay determination, a court has the discretion to fashion a response that is tailored to the circumstances of the individual defendant. Please see response above.

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			community-based non-profit. Such flexibility strengthens community ties and stabilizes individuals' lives. Community service credit should also be available for hours spent in job training, drug or mental health treatment, education, securing or providing child care, or participating in other approved public interest or personal improvement activities. Courts should also allow individuals adequate time to complete the service and avoid creating unreasonable conflicts with individuals' work and family obligations. *See e.g.* U.S. Department of Justice "Dear Colleague" letter, dated Mar. 14, 2016 ("With respect to community service programs, court officials should consider delineating clear and consistent standards that allow individuals adequate time to complete the service and avoid creating unreasonable conflicts with individuals' work and family obligations."). [5] Defendants who demonstrate good cause to waive community service should be eligible to have their community service obligation waived. Good cause can mean a disability, a defendant's (or his dependent's) physical or mental illness, lack of proper transportation, lack of adequate childcare, or other circumstances that would prevent someone from completing their community service. [Footnote in original] [5] *Available at*: https://www.justice.gov/crt/file/832461/downlo	Please see response above.

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			ad. *Second*, the community service plan should only be considered after appropriate fine and fee waivers and reductions have been considered. It would be counter-intuitive to develop procedures to reduce the financial burden on low-income defendants yet require them, should they opt for community service, to "work off" the entire amount of unadjusted fines and fees. Furthermore, neither community service programs nor payment plans should become a means to impose greater penalties on the poor by, for example, imposing user fees or interest to participate in these alternatives. *See e.g.* U.S. Department of Justice "Dear Colleague" Letter, dated Mar. 14, 2016. *Third*, setting an hourly rate, even if minimum wage or more, creates the risk that people with large amounts of outstanding debt will be bound to work without pay for an unreasonable amount of time. If an hourly rate is set, it should be at least set at the minimum wage in the local city or county, there should be limits on the number of hours required per month, and after a certain number of months, the remaining balance should be forgiven. <u>Additional comments on Rule 4.335</u> The rule's provision that permit a court to deny a request to modify a judgement if an	Please see response above. Response: The committees decline to pursue this suggestion because it is outside the scope of the present proposal. It would also appear to require amending Penal Code section 1209.5, which provides that infraction defendants must perform community service at the hourly rate applicable to community service work performed by criminal defendants. The committees may consider developing legislative proposals in the future. Response: The committees agree with this suggestion and have removed this proposed

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			unreasonable amount of time has passed or the defendant has made an unreasonable number of request to modify, should be stricken, for the reasons cited in the comments on 4.106(e)(5). Finally, the proposed rule should specify that the court's ability to suspend the "fine," applies to base fines, fees, assessments and other penalties. 4.335(c)(6).	subdivision from the proposal. Response: The committees decline to pursue this suggestion. The court has discretion to lower the base fine to $0. Because penalty assessments are calculated based on the base fine, lowering the base fine will automatically reduce any penalty assessments. However, the court does not have discretion to alter mandatory fees imposed by statute.
2.	Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O'Leary Cochair Hon. Laurie D. Zelon Cochair	A	The Advisory Committee on Providing Access and Fairness (PAF) is committed to addressing issues of access to the courts and fairness in the court system. PAF understands that there are complicated and intersecting issues involving California's fines and fees, low-income families, and communities of color. Many of the people coming into traffic court do not have attorneys and it can be difficult for them to understand and move through the traffic court process. PAF has been collaborating with the Traffic and Criminal Law Advisory Committees on strategies to improve access *and* fairness for Californians in traffic court. PAF provided input during the development of proposal number SP16-08 and is supportive of that proposal.	The committees appreciates the input provided by the Advisory Committee on Providing Access and Fairness.

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			SP16-09 and SP16-10 take additional, important steps toward improving access *and* fairness for traffic court litigants. PAF looks forward to continued collaboration with the Traffic and Criminal Law Advisory Committees.	
3.	California Commission on Access to Justice State Bar of California By Hon. Mark A. Juhas Chair	N/I	The California Commission on Access[1] to Justice is grateful for the invitation to comment on your Committee's Traffic Proposals, which might help increase fairness to low and moderate income Californians. [Footnote in original] [1] The Commission includes appointees from the California Governor, the Attorney General, the President pro Tem of the State Senate, the Speaker of the California Assembly, the California Supreme Court, 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. The Access Commission was established twenty years ago to improve access to civil justice for Californians living on low and moderate incomes, so the Commission is very concerned about rules that have harsh impacts on those	The committees appreciate the input provided by the California Commission on Access to Justice.

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			who are without the means to avoid those consequences. We are gratified to see that your proposals both acknowledge and ameliorate the impact of current rules on the substantial number of Californians who are unable to pay several hundred dollars while maintaining their housing and sustaining household costs. We submit the following comments on the Proposals: **SP16-08 Traffic and Criminal Procedure: Infraction Procedures Regarding Bail, Fines, Fees, and Assessments; Mandatory Courtesy Notices; and Ability to Pay Determinations** The Access Commission supports the intent of this proposal, because the implementation will increase procedural fairness, better inform those who are cited, minimize the need to go to court, and make ability-to-pay determinations fair.	
			Amendment to rule 4.105 We support the requirement that local courts link to the statewide self-help traffic site. We recommend that the local court links make clear that the site is available in Spanish, in addition to English.	Response: The committees decline to pursue the commission's suggestion because it is beyond the scope of the present proposal. However, the committees recognize that language access is an important issue facing the courts, and may consider this recommendation in the future.
			Proposed rule 4.106 The Access Commission supports the notice, information, and standardization that the rule provides for, because it will help Californians not to amass debts that they are unable to pay. We	Response: The committees decline to pursue the commission's suggestion at this time because it is beyond the scope of the present proposal. However, the committees recognize that language access is an important issue facing the courts, and

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			recommend that court notices be translated into the most common languages besides English that are used in the issuing county, or at least that there be information on the notices that refers to multilingual phone numbers or websites that can translate the notice. **Proposed rule 4.107** We are delighted to support mandatory "courtesy notices", because they will provide people with the information that they need to appear in court or to resolve their citations. We recommend that the warnings about failure to appear be translated into the most common languages in the county. **Proposed rule 4.335** The Access Commission heartily supports the improvement and standardization of ability-to-pay determinations. Notifying those who receive citations of their right to request these determinations will result in more paid fines and fewer harsh consequences for low income Californians. We recommend that the notifications be translated into the most common languages in the county.	may consider this recommendation in the future. Please see response above. Please see the response above.
4.	Hon. Christine Copeland Commissioner Superior Court of California, Santa Clara County	AM	A few questions, really. No doubt this will cost courts money to implement, as more court time will be expended dealing with ability to pay (ATP) hearings, even if they happen via writing. Our court in particular has about a $5 million deficit and we are short-staffed as it is, so the timing is bad. I think giving courts 2 months implementation time is not enough time, since	The committees appreciate the commissioner's input.

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			most of us are on tight budgets and are short-staffed these days. I think the only fair way to do ATP hearings would be on separate calendars (to have ATP hearings as part of an arraignment or trial calendar will make the work of the traffic judge or commissioner very difficult), and new calendars require more staff time.	
			Whether the court considers a written application or has a court hearing on ATP, shouldn't these be treated as confidential applications or hearings, as we do for fee waiver hearings? Applications in writing should be kept confidential, and hearings should be closed-door.	Response: Court records and proceedings are open to the public, unless made confidential by law or sealed by court order. (See *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178 [recognizing a constitutional right of access to criminal cases]; Cal. Rules of Court, rule 2.550(c) ["Unless confidentiality is required by law, court records are presumed to be open"].) Vehicle Code section 42003 does not make ability-to-pay determinations confidential. Providing for confidentiality by rule is outside the scope of the present proposal. Under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. However, the committees may consider this suggestion in developing future proposals.
			Litigants requesting an ATP hearing or submitting an application in writing should have	Response: The committees have revised the proposal to specify that the request for an ability-

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			to submit some form, signed under penalty of perjury, that is like a fee waiver application or a financial statement (civil form), AND attach proof of income. Otherwise, the process, and any orders discounting fines/fees, will at least appear, if not be, arbitrary.	to-pay determination must include any information or documentation the defendant wishes the court to consider. Otherwise, the committees decline to pursue this suggestion at this time because it is outside the scope of the present proposal. As noted above, under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. The committees may consider developing forms in the future.
			While I appreciate and understand the spirit of the proposals, I think bottom line the emphasis is mis-placed: fines and fees are too high, and the $300 ceiling allowed for a civil assessment under PC1214.1 needs to be lowered. Also, in my experience, many defendants default on "expensive" violations, like insurance and registration issues. If they had sufficient funds to begin with, they likely would've renewed their registration and /or obtained insurance. There's nothing we can do about insurance rates, but it shouldn't go unmentioned that state vehicle registration rates are quite high. It feels like the courts burn a lot of time and money trying to collect fines and fees that are perhaps too high or disproportionate to the "crime" to begin with, and now with these proposals, we	Response: The committees recognize the need for the Legislature to consider revising the fees and fines established by statute and address the issue of court funding.

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			are going to have to spend more time and money to consider discounting already-adjudicated matters. It would be more cost-effective to re-examine what rules and procedures exist which might create undue debt burdens on drivers. Perhaps all the add-ons to base fines, including the penalty assessments, should be overhauled. Lastly, and on a completely different tangent, re: ATP issues, some drivers have decreased ability to pay simply because they have repeat and successive violations (i.e. multiple citations for driving on a suspended license, for having lapsed registration and/or no insurance). Of course the more tickets a driver racks up will no doubt adversely effect that driver's ability to pay, so discounting fees and fines feels a bit un-deserved in that context. Again, I reiterate my comments above re: wouldn't it just be more cost-effective and sensible to lower CA-FTA rates and lower traffic fines/fees and maybe even car registration rates altogether?	Please see the response above.
5.	Albert De La Isla Principal Administrative Analyst West Justice Center Superior Court of California, Orange County	N/I	[Proposed rule 4.106(e)(1): "When a defendant fails to pay a fine or make a payment under an installment plan as provided in section 1205 or Vehicle Code sections 40510.5, 42003, or 42007, the court must permit the defendant to appear by written petition to modify the judgment, or the defendant may request or the court may direct a court appearance."]	The committees appreciate Mr. De La Isla's input.

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			This needs to be reworded as it should not state that they can modify the judgement by written petition, but they can seek relief to modify the terms of payment. Leaving it to say modify the judgement leads them to believe that findings of guilty and sentences imposed are not final. [Proposed rule 4.106(e)(5)(A): "An unreasonable amount of time has passed, or"]	Response: There were several comments expressing concerns about the phrase "modify or vacate the judgment." The committees have revised the rule to state "modify the payment terms" to address these concerns.
			Need standards / guidelines on what is considered an unreasonable amount of time. Is it more than 30/ 60 days from the failure to pay? I would recommend 30. [Proposed rule 4.106(e)(5)(B): "The defendant has made an unreasonable number of requests to modify the judgment."]	Response: The committees decline to limit judicial discretion by assigning a time limit.
			Same here, what is to be considered unreasonable? [Proposed rule 4.106(g): "Before a court may notify the DMV under Vehicle Code sections 40509(b) or 40509.5(b) that a defendant has failed to pay a fine or an installment of bail, the court must provide the defendant with notice of and an opportunity to be heard on the inability to pay."]	Response: The committee declines to limit judicial discretion by assigning a number.
			If we include this notice on the non compliance notice sent out advising them of the impending	Response: Several commenters requested clarification regarding notice of and opportunity

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			civil assessment, how long does the court need to wait to give them the opportunity to be heard on their inability to pay? Is it the same 20 days? Need clarity as to when, after notice as described above, can the hold go out.	to be heard on the ability to pay. The committees have revised the proposed rule to clarify that this notice may be provided on the reminder notice required in rule 4.107, the civil assessment notice, or any other notice provided to the defendant. As long as it complies with due process, twenty days should be sufficient.
			[Advisory committee comment to rule 4.106(a): "The rule is intended to apply only to an infraction offense for which the defendant (1) has received a written notice to appear citation and been released for a signed promise to appear, and (2) has failed to appear by the appearance date or an approved extension of that date or has failed to pay as required."] Since it is based on receiving a written notice to appear and released with a sign promise to appear, please confirm that this rule's intent is to exclude accident, owners and red light citations which do not have a signed promise to appear.	Response: Several commenters expressed concerns about this advisory committee comment. The committees have deleted the language "and been released for a signed promise to appear." The proposed rule is not intended to exclude red light citations.
			[Proposed rule 4.107(a): "Each court must send a mandatory 'courtesy notice' to the address shown on the Notice to Appear or to the defendant's last known address before the initial appearance."] If this is now to be mandated, should eliminate reference to a courtesy notice as it would no longer be a courtesy. In Orange County, we use	Response: The committees agree and have changed the name to "reminder notice."

	Commentator	Position		Committee Response
			Violation Information Notice. Also, since it is now mandatory, we need rules for processing of notices if the address comes back undeliverable, no forwarding address etc... so that it is clear service was attempted and not successful for purposes of the court record.	Response: The committees have revised the proposal to provide that the failure to receive a reminder notice does not relieve the defendant of the obligation to appear by the date stated in the signed notice to appear. While the court must send the notice, no consequences would attach if the notice were returned as undeliverable. Accordingly, courts would not need to track notices that were returned as undeliverable.
			[Proposed rule 4.335(c)(4): "The court may delegate to a clerk or other county revenue collections agency the initial determination of the defendant's ability to pay a court-ordered fine using the following criteria:"] This should not be delegated to a clerk or collection agency, this should remain a judicial determination.	Response: This rules proposal is not intended to eliminate judicial discretion. Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this proposed subdivision from the proposal.
			[Proposed rule 4.335(c)(7): "A defendant ordered to pay on an installment plan or to complete community service may request to have an ability-to-pay determination at any time before the final payment date or the completion date."] There should be a time line for this hearing within XX number of days from the failure to pay.	Response: This provision clarifies that the ability-to-pay provisions apply to installment plans and community service during the pendency of the judgment. It is modeled on Vehicle Code section

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			Suggest 30 days. [Proposed rule 4.335(c)(9)(A): "An unreasonable amount of time has passed; or"] It would benefit the court to have a time line, suggest 30 days from the failure to pay. [Proposed rule 4.107(c)(9)(B): "The defendant has made an unreasonable number of requests for an ability-to-pay determination."] Unreasonable number without a change in circumstances correct? If the defendant can show the change, then we should accept the request for the determination.	42003, which does not contemplate any time restrictions while the judgment remains pending on making this request. Response: Because Vehicle Code section 42003 contemplates that a defendant may request an ability to pay determination while the judgment remains pending, the committees have removed this provision from the proposal. Please see the response above.
6.	Robert M. Hertzberg Senator, 18th Senate District	N/I	I appreciate the opportunity to comment on the proposed rules related to traffic criminal procedures, notices, and fees. It is encouraging to see continued work by Judicial Council to make rules of the court easier for individuals to seek remedies and to make amends for vehicle violations. I reviewed the three traffic proposals, and generally appreciate the clarity of notices, timeliness, standardization, and attempts to move certain actions online. It is a great frustration that county courts have different rules and forms, not to mention the near-total	The committees appreciate Senator Hertzberg's input.

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			lack of online uniformity and access to county courts. These proposals will make it clearer to all Californians what their rights are and how to seek fee waivers or ability to pay determinations and will take a modest, but important, step toward modernizing the courts. These proposals will hopefully reduce the crushing burden of fines and fees for low income individuals by facilitating ability to pay determinations and fee waivers. The modest online tool for requesting a payment plan should be mandatory, not optional, for each of the 58 courts. These are important, if small, steps in the right direction. Unfortunately, the proposals do nothing to eliminate the widespread use – and abuse – of the license suspensions to collect-court ordered debt. The United States Department of Justice indicated last year that this practice is of questionable constitutionality. Years ago, license suspensions may have seemed like a useful tool for collection court-ordered debt, but now we know the negative impact it has on millions of Californians. The fact is, a suspended license means lost income, lost employment, and generally increases the burden of poverty. It's much harder to get childcare, education, and work without transportation. And state data shows that the tool unfairly burdens communities of	 Response: This suggestion is directed at the forms proposal (SP16-09) that the Traffic Advisory Committee is concurrently presenting to the Judicial Council. The Traffic Advisory Committee has provided a response to this comment in the comment chart attached to that proposal. Response: This proposal would ensure that defendants are afforded due process (notice and the opportunity to be heard on ability to pay) before a driver's license may be suspended.

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			poverty and color. This is an issue about which I am passionate. I have carried several pieces of legislation over last two years addressing injustice. And until we start using better, fairer, punishments that more closely fit the nature of these crimes (i.e., minor traffic offenses), we will not have the fair justice system that Californians deserve.	
7.	Legal Aid Foundation of Los Angeles By Yolanda C. Arias Managing Attorney	N/I	The Legal Aid Foundation of Los Angeles is a frontline nonprofit law firm that provides civil legal aid to low-income people in Los Angeles County. As a part of our commitment to serving low income communities, we currently advocate for clients in traffic court proceedings and assist them with reinstating their driver's licenses. We provide these services with the aim of reducing the financial burden excessive traffic court fines and fees impose on our client's lives and eliminating the barriers to employment created by driver's license suspensions. We have seen firsthand the devastating effects a driver's license suspension can have on someone's life. For example, a driver's license suspension can lead to loss of employment or housing, difficulty transporting children to school, difficulty transporting oneself or loved ones to medical appointments, impoundment of one's vehicle, and can even lead to an arrest and incarceration for driving on a suspended license.	The committees appreciate the input of the Legal Aid Foundation of Los Angeles.

	Commentator	Position		Committee Response
			We applaud the efforts of the Judicial Council to increase procedural fairness within the traffic court system. In particular, we applaud those efforts addressing the problematic practice of using driver's license suspensions as a means to collect unpaid traffic court fines and fees from people who cannot afford to pay them. However, despite our support for the reforms being made, we do have concerns regarding certain aspects of the proposed rules, and have provided comment on them as follows: **I. SP16-08, Traffic and Criminal Procedure: Infraction Procedures Regarding Bail, Fines, Fees, and Assessment; Mandatory Courtesy Notices; and Ability to Pay Determinations** **A. Proposed Changes to Rule 4.105** **The self-help portal should include more comprehensive and robust information to ensure self-represented litigants are adequately equipped.** We appreciate the Judicial Council's efforts to make the traffic citation process easier to understand. We think the self-help portal would be even more helpful to the public if it included more robust information about how to contest a citation and the potential consequences of a citation. For example, the Council could include	Response: Information contained on the Judicial Council's website is outside of the scope of the rules proposal. However, the committees may consider some of these suggestions to update website content in the future.

	Commentator	Position		Committee Response
			an easy-to-follow interactive guide to navigating the traffic court system, including possible grounds for dismissal.	
			With reference to the proposed language of Rule 4.105, under subsection (c) **Deposit of Bail**, subsection (2) states: Court may require the deposit of bail when the defendant ***does not sign*** a written promise to appear as required by court. Could application of this subsection be used when the defendant refuses to sign a written promise to appear as opposed to a non-willful failure to sign the written promise to appear? Are there circumstances where signing a written promise to appear was outside the control of the defendant where the requirement to deposit bail would be unjustified?	Response: This proposal would not amend subdivision (c) of rule 4.105, which has been in effect since June 8, 2015. Subdivision (c) allows a court to exercise its discretion to require the deposit of bail when the defendant does not sign a written promise to appear as required by the court. These matters fall within judicial discretion, and the committees decline to limit discretion.
			With reference to the Notice referred to in proposed Rule 4.105 (d), defendants should have meaningful language access to information regarding the ability to make an appearance without the deposit of bail in infraction cases. Please see our comment on language access for Limited English Proficient individuals on page 4.	Response: The committees decline to pursue this suggestion because it is beyond the scope of the present proposal. However, the committees recognize that language access is an important issue facing the courts. The committees may consider this recommendation in the future.
			B. Proposed Changes to Rule 4.106	
			The Judicial Council should create a uniform form for vacating civil assessments.	Response: This suggestion is outside the scope of the current rules proposal. Advisory bodies cannot present a proposed new form to the Judicial Council for adoption without first circulating for
			As the Judicial Council is aware, there is no	

	Commentator	Position		Committee Response
			uniformity in how civil assessments are imposed or vacated, so we encourage the Judicial Council to create a form that may be used to request vacating of a civil assessment anywhere in the state and to make the form available online.	public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. However, the committees may develop model civil assessment notices or optional Judicial Council forms in the future.
			The Judicial Council should provide more guidance about the definition of "good cause" for failure to appear, when a defendant is unlikely to appear as ordered without a deposit of bail, and when an "unreasonable" amount of time has passed after failure to pay an installment. We are heartened by the Judicial Council's expansion of circumstances that could constitute good cause for a failure to appear, and we appreciate that the rule encourages the court to exercise its discretion to determine whether the civil assessment should be imposed at all, taking into account the individual's financial circumstances. Many of our clients have difficulties getting to court because of circumstances that are beyond their control, and we think it would be useful to include "lack of child care" and "inflexible work schedule" in the factors that constitute good cause for failure to appear.	Response: The committees decline to provide more guidance on these terms. The court retains discretion to determine whether these circumstances amount to good cause based on its review of the facts presented in the case on review.
			Similarly, given the wide variation in court procedures across the state, we believe it would	Response: The committees decline to revise the proposal to specify factors the court may consider

	Commentator	Position		Committee Response
			be wise for the Judicial Council to include factors that the court may consider in determining that a defendant is unlikely to appear as ordered without a deposit of bail, such as a previous failure to appear on the same case. Further, if the court has determined that the defendant is not likely to appear, the court should consider the defendant's ability to pay when ordering him or her to pay. We also encourage the Judicial Council to provide more guidance as to when an unreasonable" amount of time has passed after failure to pay an installment and a court may deny a request to modify the judgment. We are concerned that the language will be interpreted in an overly restrictive manner, and many of our clients will be unable to modify their judgments, rendering this rule ineffective. **The Judicial Council should not limit the amount of time that someone can move to vacate their civil assessment.** Finally, P.C. 1214.1 states that the court may impose a civil assessment against a defendant who fails to appear without good cause. Therefore, a defendant may move to vacate the assessment at any time by showing that he/she had good cause for the failure to appear. **C. Proposed Changes to Rule 4.335** **In order to promote uniformity and access to**	in determining whether a defendant is unlikely to appear as ordered without a deposit of bail. These matters fall within judicial discretion. Response: Penal Code section 1214.1 provides (1) that the assessment must not become effective until at least 20 days after the mailing of the notice and (2) that if the defendant appears within the time specified in the notice and shows good cause, the court must vacate the assessment. It appears a legislative change would be necessary to allow a defendant to move to vacate the assessment at any time.

	Commentator	Position		Committee Response
			ability to pay determinations, we recommend that the Judicial Council create a form for ability to pay determination requests. Like many other organizations, we have seen the impact a single citation can have on an individual's financial stability when courts refuse to consider an individual's ability to pay. We have also seen the devastating impact a suspended license has on an individual's ability to seek and maintain employment. Therefore, we appreciate that the Judicial Council is addressing this pressing issue by requiring courts to consider defendants' ability to pay citation fines and fees. Again, because of the wide variation in court procedures across the state, we urge the Judicial Council to create a readily available form with which defendants may request an ability-to-pay determination so that it is clear what information is pertinent to the determination. Individuals appearing in court should be allowed to request an ability to pay determination in person without submitting the form. In addition, for those courts that allow hearings to be scheduled and payments to be made online, we believe the Judicial Council should require them to offer individuals the ability to request an ability-to-pay determination online. **The Judicial Council should provide more guidance to courts about what an ability to pay determination must consider.**	Response: The committees appreciate the suggestion and are contemplating developing model or optional Judicial Council forms related to ability to pay.

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			In order for this rule to have an actual impact on the courts, the Judicial Council must give more guidance as to what remedies a court should offer depending on the individual's circumstances. For example, if a person's sole income is $221 from General Relief, the court should suspend the fine in whole. **The Judicial Council should provide more guidance on what an "unreasonable" amount of time is to request an ability to pay determination.** We are concerned about the council's proposal that a court may deny an ability to pay determination if "an unreasonable amount of time has passed." In our experience, many of our clients did not appear in court because they knew it was impossible to pay the full amount of the fine, and they did not know they had a right to an ability to pay determination. Consequently, they have citations dating back many years. We ask that the Council provide more guidance on what an "unreasonable" amount of time is, and start the clock from the date these rules go into effect. **An offer of community service should not be substituted for an ability to pay determination.** Many courts have ordered our indigent clients to	Response: The committees decline to pursue this suggestion at this time because it is outside the scope of the present proposal. As noted above, under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. However, the committees may consider this in developing future proposals. Response: Because Vehicle Code section 42003 contemplates that a defendant may request an ability-to-pay determination during the pendency of the judgment, and this rule is modeled on Vehicle Code section 42003, the committees have removed this provision from the proposal.

	Commentator	Position		Committee Response
			complete community service instead of conducting a meaningful ability to pay determination. Because of the way the community service program is operated in Los Angeles County, it is often difficult for our clients to complete the community service as ordered. Community service hours are currently converted at minimum wage, so if the defendant has a very large fine or multiple citations, he or she can be ordered to complete hundreds of hours of community service within a few months, without extensions. Many of our clients have demanding schedules, due to work, school, taking care of children, looking for employment, or caring for ill relatives, and completing the hours within such short amount of time can be nearly impossible. We are concerned that community service will be used as a replacement for judicial discretion to consider ability to pay. We recommend that the Judicial Council's rules advise Courts to first consider ability to pay, reduce or waive fees accordingly, and then offer individuals the chance to convert any remaining fines and fees into community service or jail time. In addition, we believe the Judicial Council should recommend that courts consider the fees imposed on individuals who choose community service when making ability-to-pay determinations. In many courthouses in Los Angeles, individuals must pay at least $40 up front to sign up for community service, and the	Response: The committees decline to pursue this suggestion because this rules proposal is not intended to limit judicial discretion. It is up to the court to determine whether to offer community service based on its assessment of the defendant's ability to pay.

	Commentator	Position		Committee Response
			fees can be much higher if they are ordered to complete many hours of community service. This can make the community service option difficult to access for many of our clients. We ask that the Council either eliminate the use of community service fees or require judges to consider the fees involved when imposing community service sentences.	Response: The committees decline to pursue this suggestion because it is outside the scope of the present proposal.
			Notices of the right to request an ability-to-pay determination and instructions must be accessible to Limited English Proficient individuals Proposed rule 4.335 states that the Court must provide defendants notice of the right to request an ability-to-pay determination and make instructions available on how to request that determination. In Los Angeles County alone, 57% of county residents speak a language other than English and 27% of that number report that they speak English less than well.[1] For this population to have meaningful access to ability-to-pay determinations, both the notice itself and the instructions should be in the threshold languages spoken by the population in the court's service area. A tag line on the notice in various threshold languages directing defendants to a website where the notice and instructions are translated into their languages would be one way of ensuring meaningful language access.	Response: The committees decline to pursue the commission's suggestion at this time because it is beyond the scope of the present proposal. However, the committees recognize that language access is an important issue facing the courts and may consider this recommendation in the future.

	Commentator	Position		Committee Response
			[Footnote in original] [1] Los Angeles Superior Court LEP Plan 2016, page 1. **Courts should avoid conflicts of interest and not delegate the initial determination of the defendant's ability to pay to county revenue collection agencies.** Most collection agencies that contract with courts to collect fines, fees, etc., have a financial disincentive to determine that defendants have an inability to pay. Because of this conflict of interest, the Judicial Council should not recommend that Courts delegate this responsibility to collection agencies. Should the Judicial Council proceed with making this recommendation, we would suggest that an appeal process with proper notice be instituted so that defendants could challenge the determination made by either a clerk or county revenue collection agency.	Response: As discussed in other responses above, the committees have decided to remove the provision allowing for delegation to a county revenue collections agency from the proposal because of apparent confusion over the scope of the intended delegation.
8.	Hon. Christopher Martin Commissioner Superior Court of California, Monterey County	N/I	**Amended rule 4.105** **Rule 4.105 prohibits courts from requiring infraction defendants to deposit bail in order to secure a court appearance at either arraignment or trial unless a specified exception applies. Under the rule, courts may require infraction defendants to deposit bail before a first appearance only in the following circumstances: (1) the defendant elects a statutory procedure (such as trial by**	

	Commentator	Position		Committee Response
			written declaration) that requires the deposit of bail; (2) the defendant at arraignment refuses to sign a written promise to appear for future court proceedings; or (3) the court determines that the particular defendant is unlikely to appear as ordered without a deposit of bail and states its reasons for that finding. Only question here is whether we now will be providing promise to appear documents to the defendant at arraignment in lieu of just ordering them back (apparently for further arraignment or trial). The verbal order to appear is on the orally recorded record. It is a court order to appear, orally communicated to a defendant who is present in court and as such should be sufficient without a signed promise to appear as well. Impact: A promise to appear is one more document to print (possibly in duplicate or triplicate) and store, one more to translate into other languages or to take the time for an interpreter to read to defendant (, one more procedure for the court to outline to the defendant at arraignment, one more procedure/distraction for the bailiff to have to deal with and yet another document to scan for our "paperless" experience. (Query: If defendant refuses to sign a promise to appear how likely is it they will go and post bail as well?) New Rule 4.106	Response: This proposal would not amend subdivision (c) of rule 4.105, which has been in effect since June 8, 2015. Subdivision (c) explains when courts may require bail for the defendant to appear at arraignment or trial.

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			When a court notifies a defendant that a civil assessment will be imposed for failure to appear or pay under Penal Code section 1214.1(b), the notice must inform the defendant of his or her right to petition that the civil assessment be vacated for good cause and must include information about the process for vacating the assessment. **□ When a court imposes a civil assessment for failure to appear or pay, the defendant may request -- without paying any bail, fines, penalties, fees, or assessments -- that the court vacate the civil assessment because the defendant had good cause for failing to appear or pay.** ***Even absent a showing of good cause, the court may consider other factors in determining whether to impose a civil assessment and, if so, the amount of the civil assessment.*** [Emphasis added.] Courts should generally be on the same page as to what comprises good cause in these cases and I understand it varies widely among courts. Query whether we can circumscribe the boundaries of good cause if the defendant has legal redress under these new proposed rules , and whether these proposed rules expand the previous redress under P.C. 1214.1(d): "The assessment imposed under subdivision (a) shall be subject to the due process requirements governing defense and collection of civil money judgments generally." The last sentence of the proposed rule tends to vitiate the good cause	Response: This proposed rule provides procedures for implementing Penal Code section 1214.1, which provides both that courts must vacate a civil assessment based on a showing of good cause and that courts have discretion to decide whether to impose a civil assessment and, if so, in what amount. The committees believe that the current language is sufficient.

	Commentator	Position		Committee Response
			requirement and opens up a wide avenue for subsequent assertion of "abuse of discretion." **New Rule 4.106 (cont'd)** **When a court has entered a judgment in a trial by written declaration held in absentia, the defendant may request a trial de novo.** **□ When a defendant has failed to pay a fine or installment of bail, a court must provide the defendant with notice and an opportunity to be heard on ability to pay before notifying the Department of Motor Vehicles (DMV).** The procedure in the first paragraph above refers to a trial in absentia outlined in Vehicle Code section 40901 which requires an enacted local rule, and is highly problematic as to the evidence it might allow in. (It is **not** a reference to "Trial by Declaration" under Vehicle Code section 40902.) My fellow Commissioners have routinely stated they thought the statute ignores due process and allows evidence that is inadmissible. Query whether this rule would modify a current statute which to me appears to be an unlawful legislative action by enactment of a Court Rule. There is no provision in VC 40901 et seq for a trial de novo, See e.g. the Vehicle Code sections implementing the TBD process which are adopted into the ruled of court.	Response: Proposed rule 4.106(f) addresses procedures for trial in absentia under Vehicle Code section 40903. The rule does not purport to modify this Vehicle Code section.

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			The second paragraph will require the sending of more notices. Impact: This procedure contemplates a law and motion calendar for Court, or adding these to the regular mix in with the arraignment or trial calendar. These hearings may bog down in minutiae: each hearing will require court records regarding payments made and records re the defendant's financial status (by experience these often tend to be, shall we say, somewhat fictional). The court records may be in an Odyssey file, the clerk will have to bring them up or the court will have to sort through Odyssey to find each one. See my discussion infra on the issues presented by accessing court files in Odyssey. I don't think the process is amenable to using Judges Edition. **4.107 Courtesy Notices** The proposed rule makes them mandatory thus no longer courtesy. All our Courtesy Notices will have to be redrafted. We send out tens of thousands of theses yearly as a single page document. Impact: the required/suggested changes to courtesy notices will substantially expand the verbiage they already contain and likely push them out to a 2-page document. I believe we should determine what sort of written notice is required "globally" based on all the changes these rules implement such that the usual information presently imparted that allows the user to consider his or her options also	Response: The notice and opportunity to be heard provided for in subdivision (g) is required before a court notifies the DMV under Vehicle Code section 40509(b) and/or 40509.5(b). Furthermore, a hearing is not required under subdivision (g) unless requested by the defendant or directed by the court. Response: The committees recognize that mandating reminder notices may increase costs to courts. However, the committees have decided that, on balance, the benefits of ensuring sufficient notice to defendants outweighs such costs. To help mitigate such costs, the committees have revised the proposal to expressly recognize that the reminder notices may be sent electronically by e-mail or text message. They have also added an advisory committee comment identifying several possible ways courts may implement electronic notices. Lastly, they have recommended an extended implementation date to allow courts

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			includes any additional notice required by these new rules so as to cut down on the number of mailings. Additional notice forms on separate document swill substantially impact costs of processing and mailing. In that additional notice may only be triggered by an FTA or FTP it may not be possible to give all required notice in one mailing but that should be the goal. We cannot assume that traffic litigants generally have access to the internet for further information, in truth most of those who might be seeking redress on FTAs and civil assessments don't have that luxury. **Proposed rule 4.335** **Vehicle Code section 42003, governing payment of fines and costs for Vehicle Code violations, provides that, upon request of a defendant, the court must consider the defendant's ability to pay. This proposed rule would standardize and improve procedures for ability-to-pay determinations for all infraction cases. This rule would provide the following:** **□ Courts must provide defendants notice of the right to request an ability-to-pay determination and make instructions available on how to request that determination;** **□ A defendant may request an ability-to-pay**	additional time to implement this requirement.

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

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			determination based on changed circumstances; **□ The court may deny the defendant's request for an ability-to-pay determination if the court determines that an unreasonable amount of time has passed or the defendant has made an unreasonable number of requests.** This substantial procedure is triggered by 1) our required notice to defendant of the rights and procedures involved in a due process setting for "ability to pay" and how to request that determination, and 2) the defendant's communication to the court, both requiring clerical processing and possible calendar setting. 1. The court MUST allow the defendant to make that request in writing. That will either occur prior to arraignment, or at trial or at sentencing or post sentencing. Assumably written requests post judgment could be handled in the course of business by way of what the Commissioner already handles in ex parte requests to modify. Pre arraignment written requests will have to be processed and added to the file if the request is to be heard at arraignment. Of course any precourt announcements either oral or recorded will have to be re-written and re-recorded to include advisements	Response: This proposal requires courts to provide defendants with notice of their right to request an ability-to-pay determination and to make available instructions or other written materials. The committees have added an advisory committee comment noting that this notice may be provided on the reminder notice required by proposed rule 4.107, the notice of civil assessment required by Penal Code section 1214.1, a court's website, or any other notice provided to the defendant. A court may revise its advisements to defendants to inform them of their right to make a request under this rule, but it is not required to. It may notify defendants utilizing other means.

	Commentator	Position		Committee Response
			pertaining to this rule. (Query however whether the People have any vested interest in this and may also be entitled to notice that the defendant has made the request.) The court would have to accept at face value the documents or declarations any defendant might provide. The court may also have to reference court records of the defendant's payments, or have reference to data that would allow the court to determine whether "an unreasonable amount of time has passed or the defendant has made an unreasonable number of requests" which are stated as grounds to deny the request. Someone in clerical may have to amass data on that defendant's case(s). Impact: Clerical processing of requests and the court's response as well as mailing the court's response. In implementation of Odyssey this will also require scanning these written requests at intake, and possibly creating a new "calendar" in Odyssey with Judicial access to allow on-line response by the judicial officer (assumably doing these in batches). Correlating information from Odyssey as to court records or payments made or bail will require toggling back and forth through other Odyssey records unless clerical can make up a "Review Packette" which is sent to the Commissioner for review.	Response: If the court questions the veracity of the documents or the defendant's credibility, it may direct a court appearance to examine the defendant. The court retains discretion to deny the defendant's request. Response: The committees have removed the provision allowing for courts to deny requests because an unreasonable amount of time has passed or the defendant has made an unreasonable number of requests.

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	Commentator	Position		Committee Response
			2. If these requests are made at arraignment it likely will substantially slow the arraignment process which generally moves very quickly. I am only speaking as to a traffic arraignment calendar which usually does not include misdemeanors other than simple VC 12500 license violations and does not include participation by appointed defense counsel, so I am not speaking to the additional issues presented by any defense counsel needing to become involved in the client's representations at arraignment.	Response: Under proposed rule 4.335(c)(2), a defendant may request an ability-to-pay determination at arraignment after admitting guilt. However, rule 4.335 does not require a court to make an ability-to-pay determination at that time. The court may direct an appearance on another date under subdivision (c)(3) of that proposed rule if the arraignment calendar cannot accommodate a determination of the defendant's request.
			3. The defendant may request an ability to pay determination "at or after adjudication" which means the defendant must be able to provide all information to the court to make that assessment at the arraignment and plea or at trial. Further the court would have to have access to any relevant court data that may assist in determining the merits.	Response: The committees have revised the proposal to allow a defendant to request an ability-to-pay determination at adjudication or while the judgment remains unpaid. The court retains discretion to direct another hearing if the defendant or the court is not prepared to proceed at the time the defendant makes the request.
			4. The court may delegate the initial determination of the defendant's ability to pay to a clerk or other county revenue collections agency using specified factors. What comprises a "determination" is unclear, a non-judicial forum may be available but see a 2016 case Weiss v. City of Los Angeles (http://www.courts.ca.gov/opinions/documents/B259868.PDF) for the pitfalls of trying to outsource judicial obligations.	Response: This rules proposal is not intended to eliminate judicial discretion. Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this proposed subdivision from the proposal.

SP16-08
Amend Cal. Rules of Court, rule 4.105; adopt rules 4.106, 4.107, and 4.335; and repeal Judicial Admin. Standards, standard 4.41
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	Commentator	Position		Committee Response
			Delegating the initial ability to pay to clerical or revenue will require strict guidelines and I suggest delegating it to Revenue (or any collections agency) could be viewed by some as a conflict of interest since it is Revenue's obligation to maximize recovery on any debt owed. Who decides what "specified factors" are? Are they the same across the state? In that the defendant then has an additional right to a judicial review after "the sending of notice" is that review satisfied if a judicial officer makes the determination in the first place? Is it a de novo review? **Rule 4.106. Failure to appear or failure to pay for a Notice to Appear issued for an infraction offense** **(a) Application** **This rule applies to infraction offenses for which the defendant has received a written notice to appear and has failed to appear or failed to pay.** The language here is problematic as it does not differentiate between a signed promise to appear and a "written notice to appear." The Vehicle Code speaks to violating a "written promise to appear" and giving notice to the DMV for any FTA. Does "written notice to appear" also include cite-in letters issued by the District	Response: The committees agree with the suggestion that the application of this proposal should be clarified. The committees have deleted the language "and been released for a signed promise to appear" from the proposed advisory committee comment.

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			Attorney, cite-in letters issued by the Court and/ or the mandatory courtesy notices? A failure to appear on a signed promise to appear is would seem equivalent to failing to appear on a personally served subpoena. We generally don't issue bench warrants on FTAs on infractions, thus the only other recourse has been to declare the matter eligible for collections, which under this new scheme would appear to require an additional round of notice to afford the defendant yet another chance to dispute it before or after it goes into collections. These are only general observations, there are many more nuances that for the sake of brevity I cannot cover here, but I believe the substantial impact these rules might create on the courts, court costs, daily existing calendars, adding additional calendars, additional clerical processing , mailing, and computer programming or modification of existing programs to enable efficient data collections should be viewed critically in view of what the court needs to accomplish to reach the due process goal.	
9.	Bill Niles Owner Traffic Violator School	N/I	My name is Bill Niles, and I am one of the owners of a traffic violator school. We would request that the committee consider including a notice, in the proposed Mandatory Courtesy Notice, that states in effect: "Any traffic violator school you attend will charge you a fee, that is in addition to the	The committees appreciate Mr. Niles' input. The committees agree with his suggestion and have revised the proposal to require that the reminder notice notify defendants that a traffic violator school will charge a fee in addition to the administrative fee charged by the court.

	Commentator	Position		Committee Response
			administrative fee you pay to this court for the privilege of attending a traffic school." Very often when a traffic violator calls in to schedule a class, they believe that they have already paid the fee to attend a traffic school class, and we have to continuously explain the difference in these "fees". Thank you for your consideration of this issue.	
10.	Superior Court of California, El Dorado County By Jackie Davenport Assistant Court Executive Officer	N	Proposed Rule 4.106 Recommend the following changes. Often a judicial officer may reduce the civil assessment as opposed to vacating the entire assessment. It would clarify for individuals that civil assessment may be reduced as well as vacated. • When a court notifies a defendant that a civil assessment will be imposed for failure to appear or pay under Penal Code section 1214.1(b), the notice must inform the defendant of his or her right to petition that the civil assessment be vacated or reduced for good cause and must include information about the process for vacating or reducing the assessment. • When a court imposes a civil assessment for failure to appear or pay, the defendant may request -- without paying any bail, fines, penalties, fees, or assessments -- that the court vacate or reduce the civil assessment because	Response: The committees agree that this section needs clarification. The statute is clear that if good cause is shown, a judicial officer *must* vacate (as opposed to reduce) the civil assessment. (Pen. Code, § 1214.1(b).) If good cause is not shown, a judicial officer may still vacate or reduce the civil assessment in his or her discretion. (*Id.,* § 1214.1(a).) The proposed rules, as circulated, were intended to highlight this distinction, but several commenters wanted to specify reduce in this subdivision. Proposed rule 4.106(c)(1) now includes "reduce" along with "vacate".

	Commentator	Position		Committee Response
			the defendant had good cause for failing to appear or pay. Even absent a showing of good cause, the court may consider other factors in determining whether to impose a civil assessment and, if so, the amount of the civil assessment. Suggest that the proposal to allow for the defendant to request a hearing for adjudication be clarified to apply only to cases that have not previously been adjudicated. • When a court refers unpaid bail to a comprehensive collection program as delinquent debt, the defendant may request to schedule a hearing for adjudication of the underlying charge(s) without payment of the bail amount, unless there has been a prior adjudication of guilt. We disagree with the proposal to allow for a defendant to request a modification of the judgment and would recommend this be deleted. The judgment should be final and a defendant should not have the option to request a modification. • When a defendant fails to pay under an installment plan, the defendant may request modification of the judgment. Recommend be deleted. Proposed Rule 4.107	Response: The committees agree this section needs clarification. Proposed rule 4.106(d)(1), as circulated, stated that it applied in unadjudicated cases. However, several commenters requested further clarification that this subdivision applies only in unadjudicated cases. The committees have revised this subdivision as requested. Response: The committees agree this subdivision needs clarification. The committees received several comments expressing concerns about the phrase "modify or vacate the judgment." The committees have revised the rule to state "modify the payment terms" to address these concerns.

	Commentator	Position		Committee Response
			We are opposed to providing the defendant with a courtesy notice. May 1, 2013 the El Dorado Court discontinued providing courtesy notices as an efficiency for the court and due to budget constraints. Defendants may review the court index online to find their case information, bail (fine) or appearance information. Our online information also includes information regarding installment payment plans, requesting a trial, potential consequences for FTA/FTP, etc. This works well for our court and defendants. Defendants already sign the citation "promising to appear at the time and place indicated". On the reverse side of the signed citation under "What to Do", it specifically outlines the required steps. Our court provides defendants with a 20 day notice if they fail to appear or fail to pay which gives them an opportunity to address their citation. This proposed change would create a financial burden on the court. The cost to provide courtesy notices would be conservatively estimated at $38,000 with annual citation filings ranging from 13,000 to 18,000. If this proposed change is to be considered, it should include funding. Proposed Rule 4.335 These requirements would put extreme burden on the court's resources. During a defendant's arraignment or trial they have an opportunity to request an ability to pay determination, a	Response: The committees recognize that mandating reminder notices will increase costs to courts. However, the committees have decided that, on balance, the benefits of providing enhanced notice to defendants outweigh the costs. To help mitigate these costs, the committees have revised the proposal to expressly recognize that the reminder notices may be sent electronically by e-mail or text message. They have also added an advisory committee comment identifying several possible ways courts may implement electronic notices. Lastly, they have recommended an extended implementation date to allow courts additional time to implement this requirement.

	Commentator	Position		Committee Response
			reduction of the fine, community services or payment plans. Requests for an ability to pay determination should be limited to pre-adjudication. If allowed for post adjudication there should be a time limit. The number of times a defendant may request an ability to pay determination should also be limited. These requirements should only be implemented if funding is provided. El Dorado Court files 13,000 to 18,000 citations annually. The cost of providing additional notices of the right to request an ability to pay determination would be conservatively estimated at $38,000 which includes postage, envelops, paper, and staff time. The cost for conducting hearings on 50% of the filings is estimated to be $106,110. The impact of these proposed rules on the court's budget would be a substantial hardship which would affect our staffing levels, backlogs for courtroom calendars and processing.	Response: This rule is modeled on Vehicle Code section 42003, which contemplates that the court will consider a defendant's ability to pay when the defendant appears "for adjudication" and "[a]t any time during the pendency of the judgment." (Veh. Code, § 42003(c), (e).) The committees decline to limit the request to pre-adjudication. Additionally, because section 42003 contemplates that a defendant may request an ability-to-pay determination based on changed circumstances, the committees decline to revise the proposal to restrict the number of times that a defendant may make the request. Please see the response above on the impact of these proposed rules on the court's budget.

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11.	Superior Court of California, Glenn County By Kevin Harrigan Court Executive Officer	N/I	The proposals would not provide cost savings. The proposal would likely increase costs by way of implementation (i.e., programming changes for notices and case management systems, staff training of new processes) and ongoing operational costs (i.e., supplies, courtroom and staff time for an unknown number of ability to pay determinations, unknown number requests for appearances after a case has been sent to collections, etc.). Further, it is foreseeable that the changes would negatively impact civil assessment revenue. While the Court has no objection to the intent of the rule changes which are to enhance procedural fairness for traffic infraction proceedings, the combination of additional workload and less operating revenue needs to be addressed in some manner to prevent sacrifices in access and fairness on other case types.	The committees appreciate the court's input. The committees recognize that implementation may increase costs to courts. However, the committees have decided that, on balance, the benefits outweigh the costs. The committees have recommended an extended implementation date for the rule proposals.
12.	Superior Court of California, Los Angeles County	AM	**Amendment to Rule 4.105** The proposed amendment adds one sentence: "The website for each trial court must include a link to the traffic self-help information posted at: http://www.courts.ca.gov/selfhelp-traffic.htm." Comment: Support. The thrust of much of the criticism of existing traffic procedures is not that defendants lack due process protections, but that too many defendants do not know the law.	The committees appreciate the input provided by the court. No response necessary.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

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	Commentator	Position		Committee Response
			Given that nearly all traffic defendants are self-represented, self-help for traffic makes sense. The challenge will be to craft self-help guidelines that reflect accurately the complexity of traffic case processing. **Proposed rule 4.106. Failure to appear for failure to pay for a *Notice to Appear* issued for an infraction offense** *(c) Procedure for consideration of good cause for failure to appear or pay* General comments: First, statutory provisions should not be incorporated into rules of court. This is redundant, incurs costs when rules must be updated to reflect statutory changes, and risks the rule becoming out of date when statutes change. It appears that the drafters are seeking to transform the CRC into self-help materials for litigants. But there is no reason to believe that the CRC is significantly more accessible to defendants than is the Vehicle Code; in any case, that is not the proper function of the CRC. Second, court procedures should be transparent to defendants, but that transparency is better achieved through online or written materials, not notices. Generally, these proposals illustrate the	Please see responses to specific comments below.

	Commentator	Position		Committee Response
			proposition that suitable and easily accessible self-help materials, online and in writing, are better solutions to the needs of defendants than are extensive and costly rule-making and notice requirements. "(1) A notice of a civil assessment under section 1214.1(b) must inform the defendant of his or her right to petition that the civil assessment be vacated for good cause and must include information about the process for vacating the assessment." Comment: The enumerated right is redundant with PC 1241.1(b)(1). The rule goes beyond the statute to the degree that it requires applicable procedures to be incorporated in the notice. Available procedures can be explained in self-help materials. "(2) When a notice of civil assessment is given, a defendant may, within 20 days of sending the notice, move by written petition to vacate the assessment by showing good cause to excuse the failure to appear or failure to pay." Comment: Redundant with PC 1214.1(b)(1), which states that "The assessment imposed pursuant to subdivision (a) shall not become effective until at least 20 calendar days after the	Response: Although the commenter correctly states that a defendant's rights are enumerated under Penal Code section 1214.1(b)(1), proposed rule 4.106 provides additional procedures for vacating and reducing civil assessments. The California Rules of Court commonly restate statutory requirements where necessary to provide context for the rules of court administration and practice and procedure adopted by the council. (See Cal. Rules of Court, rule 10.1(b) [recognizing that the California Constitution requires the council "to improve the administration of justice by . . . [a]dopting rules for court administration and rules of practice and procedure that are not inconsistent with statute"].) Response: Although the commenter correctly states that the defendant's rights are enumerated in Penal Code section 1214.1, proposed rule 4.106 provides courts with guidance on procedures for

	Commentator	Position		Committee Response
			court mails a warning notice to the defendant…" Available procedures for requesting to vacate can be explained in self-help materials. "(3) Courts must permit a defendant to present a showing of good cause for failure to appear or failure to pay a fine or installment of bail without requiring receipt of the payment of bail, fines, penalties, fees, or assessments." Comment: Redundant with existing CRC 4.105(b). The Advisory Committee Comment enumerates some of the circumstances that may indicate good cause, potentially reducing judicial discretion, or at least causing confusion, to the extent that its embodiment in rule encourages defendants to cite to it. "(4) A petition to vacate an assessment does not stay the operation of any order requiring the payment of bail, fines, penalties, fees, or assessment unless specifically ordered by the court." Comment: Support. This provision helps to discourage defendants from using such petitions as tactics to delay payment. "(5) The court must vacate the assessment upon a showing of good cause under section 1214.1(b)(1) for failure to appear or failure to pay."	vacating or reducing the civil assessment. As discussed above, this is a common and appropriate purpose for rules of court. Self-help materials cannot establish procedures. Response: This portion of proposed rule 4.106 specifically addresses situations when defendants have failed to appear or pay and when civil assessments are imposed, whereas rule 4.105 addresses arraignment and trial. No response necessary.

	Commentator	Position		Committee Response
			Comment: Redundant with PC 1214.1(b)(1). "(6) If the defendant does not establish good cause, the court may still exercise its discretion under section 1214.1(a) to reconsider: (A) Whether a civil assessment should be imposed; and (B) If so, the amount of the assessment. In exercising its discretion, the court may consider a defendant's due diligence in appearing or paying after notice of the assessment has been given under section 1214.1(b)(1), as well as the defendant's financial circumstances, among other factors." Comment: Redundant with PC 1214.1(a) ("the court **may** impose a civil assessment of **up to** three hundred dollars," emphasis added). This is an example where the conciseness of the existing statute is preferable to the more verbose language that results when using the CRC to provide instructions to litigants. *(d) Procedure for unpaid bail referred to collection as delinquent debt* Rule 4.106(d) has the effect of declaring that the provisions of 4.105 pertain to collections referrals. It is thus redundant with Rule 4.105.	Response: Although rights are enumerated under Penal Code section 1214.1(b)(1), proposed rule 4.106 provides additional procedures for vacating and reducing civil assessments. As discussed above, this is a common and appropriate purpose for rules of court. Response: The commenter is correct that the statute provides judicial discretion to impose an amount of up to $300. (Pen. Code, § 1214.1(a).) The proposed rule is intended to provide courts with guidance regarding vacating or reducing civil assessments and to clarify the statute. As discussed above, this is a common and appropriate purpose for rules of court. Based on the comments received, it appears that there is confusion regarding whether a civil assessment can be reduced for good cause, thus this clarification appears warranted. Response: The Judicial Council adopted rule 4.105, effective June 8, 2015, on an urgency basis on the request of the Chief Justice to address concerns regarding requiring defendants to post bail before challenging traffic infractions. In

	Commentator	Position		Committee Response
			(e) Procedure for failure to pay on an installment payment plan "When a defendant fails to pay a fine or make a payment under an installment plan as provided in section 1205 or Vehicle Code sections 40510.5, 42003, or 42007, the court must permit the defendant to appear by written petition to modify the judgment, or the defendant may request or the court may direct a court appearance." Comment: Insofar as it does not specify the grounds for the petition, this section is overly broad. VC 42003(e) provides that, "At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the rendering court to modify or vacate its previous judgment **on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment.**" (emphasis added) There is no such limitation in proposed Rule 4.106(e). If there were, the proposed rule would be redundant with statute. *(f) Procedure after a trial by written declaration in absentia for a traffic infraction* "When the court issues a judgment under Vehicle Code section 40903 and a defendant requests a trial de novo within the time	adopting rule 4.105, the council directed the appropriate advisory committees to consider changes to rules, forms, or any other recommendations necessary to promote access to justice in all infraction cases, including recommendations related to postconviction proceedings or after the defendant has previously failed to appear or pay fines or fees. This subdivision of 4.106 is meant to address situations when a defendant has failed to appear in unadjudicated cases. Response: The committees agree that this subdivision needed clarification. The rule has been revised to clarify the limitations that apply if the request to modify is based on a request other than ability to pay.

	Commentator	Position		Committee Response
			permitted, courts may require the defendant to deposit bail. After the court receives the bail deposit, the court must vacate the judgment." No comment. *(g) Procedure for referring a defendant to the Department of Motor Vehicles (DMV) for license suspension for failure to pay a fine* "Before a court may notify the DMV under Vehicle Code sections 40509(b) or 40509.5(b) that a defendant has failed to pay a fine or an installment of bail, the court must provide the defendant with notice of and an opportunity to be heard on the inability to pay." Comment: The VC sections cited refer to failures to pay, and thus assume that the case has been adjudicated. Standard case processing would satisfy proposed Rule 4.106(g) if, at adjudication, the defendant has notice and opportunity to raise the issue of ability to pay. This could be accomplished by a general notice provided to all those who attend a court hearing or participate in a Trial by Declaration. Such standard procedures, accomplished elsewhere in the CRC, would render this section redundant and thus obviate the need for an additional notice. **Proposed rule 4.107: Mandatory courtesy notice**	No response necessary. Response: Several commenters requested clarification regarding notice of and opportunity to be heard on ability to pay. The proposed rule has been revised to clarify that the notice may be provided on the notice required in rule 4.107, the civil assessment notice, or any other notice provided to the defendant

	Commentator	Position		Committee Response
			No comment. **<u>Propose Rule 4.335: Ability-to-pay determinations for infraction offenses</u>** *<u>Proposed Rule 4.335(b) Required notice regarding an ability-to-pay determination</u>* "Courts must provide defendants with notice of their right to request an ability-to-pay determination and make available instructions or other materials for requesting an ability-to-pay determination." Comment: This is redundant with the provisions of the mandatory courtesy notice. *<u>Proposed Rule 4.335(c) Procedure for determining ability to pay</u>* "(1) The court, on request of a defendant, must consider the defendant's ability to pay. (2) A defendant may request an ability-to-pay determination at or after adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program. (3) The court must permit a defendant to make this request by written application unless the court directs a court appearance." Comment: Redundant with VC 42003.	No response necessary. Response: Although proposed rules 4.107 and 4.335 do overlap, rule 4.335(b) is more expansive than rule 4.107(b)(7) because (1) it encourages courts to provide notice of the right to request an ability-to-pay determination not only in the reminder notice, but also in other notices and locations, if applicable; and (2) it requires that courts also "make available instructions or other materials for requesting an ability to pay determination." In addition, the committees have revised this subdivision to provide further guidance by clarifying that the notice "may be provided on the notice required in rule 4.107, the civil assessment notice, or any other notice provided to the defendant." Response: This rule is modeled on Vehicle Code

	Commentator	Position		Committee Response
			"(4) The court may delegate to a clerk or other county revenue collections agency the initial determination of the defendant's ability to pay a court-ordered fine using the following criteria: (A) Evidence of receipt of public benefits under one or more of the following programs: (i) Supplemental Security Income (SSI); (ii) State Supplementary Payment (SSP); (iii) California Work Opportunity and Responsibility to Kids (CalWORKS); (iv) Federal Tribal Temporary Assistance for Needy Families (Tribal TANF); (v) Supplemental Nutrition Assistance Program, California Food Assistance Program; (vi) County Relief, General Relief (GR), or General Assistance (GA); (vii) Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI); (viii) In-Home Supportive Services (IHSS); and (ix) Medi-Cal; and (B) Evidence of a monthly income of 125 percent or less of the current poverty guidelines, updated periodically in the Federal Register by the U.S. Department of Health and Human Services under 42 U.S.C. § 9902(2)." Comment: Cf. VC 42003(c), which provides	section 42003, which does require that courts consider the defendant's ability to pay. The California Rules of Court commonly restate statutory requirements where necessary to provide context for the rules of court administration and rules of practice and procedure adopted by the council. (See Cal. Rules of Court, rule 10.1(b) [recognizing that the California Constitution requires the council "to improve the administration of justice by . . . [a]dopting rules for court administration and rules of practice and procedure that are not inconsistent with statute"].) In addition, proposed rule 4.335(c)(3) would provide for a procedure to implement Vehicle Code section 42003 that is not stated expressly in the statute: a court would be required to permit a written request for an ability-to-pay determination, unless it directs a court appearance.

	Commentator	Position		Committee Response
			that: "In any case when a person appears before a traffic referee or judge of the superior court for adjudication of a violation of this [Vehicle] code, the court, upon request of the defendant, shall consider the defendant's ability to pay. Consideration of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required." We note that defendants appearing in court routinely plead inability to pay; this is not a new right, nor a new practice. The proposed rule creates the possibility of an administrative determination of ability to pay, and thus an increase in efficiency compared to a courtroom hearing. However, we believe this benefit is outweighed by the following problems: First, the proposed rule, by specifying binary criteria (i.e., evidence of SSI), appears to make the ability-to-pay determination all-or-nothing, while statute provides that, upon request, the court may inquire "into the ability of the defendant to pay all or a portion of those costs…" (VC 42003(c)), thus implying the ability to impose partial judgments. This would have the effect of	Response: This rules proposal is not intended to eliminate judicial discretion. Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this proposed subdivision from the proposal. Instead, the committees have added an advisory committee comment, which provides that the court, in determining a defendant's ability to pay, should consider whether the defendant receives public benefits and whether the defendant has a monthly income of 125 percent or less of the current poverty guidelines.

	Commentator	Position		Committee Response
			making a large class of people immune to financial penalty for traffic violations. Second, such policy decisions are beyond the purview of the Judicial Council. Third, by making bright-line criteria (modeled upon fee waiver provisions), the proposed rule would remove the judge's discretion in this area. Additionally, if a court delegates the review to a clerk on a case that has not yet gone to collections, then the costs are not recoverable; these cases will result in increased court costs. "(5) The defendant has the right to a review by a judicial officer of the determination made by the clerk or the collection agent, if requested in writing within 20 calendar days of the sending date of the notice of decision. The defendant must be advised of the right to seek this review." No comment.	No response required.
13.	Superior Court of California, Riverside County By Susan Ryan Chief Deputy of Legal Services	AM	General Comments: There is an appearance of impropriety when a judicial officer is required to both impose a fine and determine a defendant's ability to pay that fine. This is because there is a great deal of notoriety concerning the imposition and collection of fines and fees by traffic courts. Recently, legal advocacy groups, as well as other organizations have claimed that the judicial system is funding courts, in part, off the	The committees appreciate the input provided by the court. Response: The committees recognize the need for the Legislature to consider revising the fees and fines established by statute and address the issue of court funding.

	Commentator	Position		Committee Response
			backs of poor people by imposing unreasonably costly fines; and when the defendant can't pay, enforcing collection through an unjust system of drivers' license suspensions. In this climate it is difficult, if not impossible, for a judicial officer to avoid the appearance of impropriety when imposing a fine, and then determining the defendant's ability to pay, as the bench officers decision will be perceived as driven by the need to secure court funding. Though a discussion about court funding is beyond the scope of these proposals, it is nevertheless important to recognize this reality as we consider the proposed rules, particularly as they relate to requiring court hearings on a defendant's ability to pay. In addition to the appearance of impropriety, from a practical standpoint there are good reasons for a judicial officer to refrain from making ability to pay determinations in open court. In order to determine the ability to pay a defendant is required to provide proof of his or her financial circumstances. To protect a defendant's privacy and encourage disclosure of all relevant financial information, a defendant should not be required to disclose sensitive information at a court hearing. While a defendant may be reluctant to disclose in open court that he or she is receiving public assistance, such reluctance is significantly reduced in a private administrative setting.	Response: Court records and proceedings are open to the public, unless made confidential by law or sealed by court order. (See *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178 [recognizing a constitutional right of access to criminal cases]; Cal. Rules of Court, rule 2.550(c) ["Unless confidentiality is required by law, court records are presumed to be open"].) Vehicle Code section 42003 does not make ability-to-pay determinations confidential. Providing for confidentiality by rule is outside the scope of the present proposal, but the committees may consider this suggestion in developing future proposals.

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			Thus, while the ultimate decision on reducing the fines or conversion to community service would remain with the judicial officer, the rules should encourage an administrative process to assess a person's financial circumstances. Additionally, an ability to pay determination should take place only after adjudication of the offense either by plea of guilty or no contest or following trial. Rule 4.106(d)(2) This rules states that "the defendant may request an appearance date to adjudicate the underlying charges by written petition". The rule should allow for flexibility to allow defendants (and courts) to use alternative methods other than written petition to request appearance dates, such as online reservations systems, etc. Rule 4.106(e) This rule states that if a defendant fails to pay on an installment plan he or she may request modification or vacation of the judgment. This raises an expectation that by making a request the defendant may either have their fine vacated or reduced. The rule should clarify that the court may choose not to modify the amount of the judgment, and that it may modify the installment plan by reducing the payment amount and giving more time to pay, or approve community service.	Response: The committees agree with this suggestion and have revised the subdivision as recommended. Response: The committees have clarified in the advisory committee comment for subdivision (e)(1) that a court may exercise its discretion to deny a defendant's request to modify the payment terms. The committees have also added an advisory committee comment to clarify the options available to the court, including modifying the payment terms as the court sees fit.

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			However, if rule remains 'as is' section (e)(5) should reflect "The court may deny the defendant's request to modify or vacate the judgment […].	
			Rule 4.335(c)(4) This rule contemplates that if a defendant requests an ability to pay determination the court may delegate the initial evaluation to a clerk, or other county revenue collections agency. Thus, it seems to suggest that a judicial officer must make any subsequent determination. The rule should be clarified to permit the court to delegate initial and subsequent ability to pay determinations to a clerk, a comprehensive collection program, or other county revenue collections agency.	Response: This rules proposal is not intended to eliminate judicial discretion. Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this proposed subdivision from the proposal. Instead, the committees have added an advisory committee comment, which provides that the court, in determining a defendant's ability to pay, should consider whether the defendant receives public benefits and whether the defendant has a monthly income of 125 percent or less of the current poverty guidelines.
			Rules 4.105, 4.106, 4.107 should clarify the applicability of the rules to minors (under the age of 18). Welfare and Institutions codes §§256, 257 & 258 specifically address infraction violations that are handled under the jurisdiction of the juvenile court. However, many courts make a distinction between vehicle code (VC) and non-vehicle code infraction citations when it comes to minors. Some courts allow infraction violations to be handled outside the jurisdiction of the juvenile court. Request for Specific Comments	Response: The committees decline to specify whether the rules apply globally to "juveniles" in light of the varying practices for handling traffic violations that are authorized by statute. (Compare Welf. & Inst. Code, § 603.5 [adjudicating traffic infractions committed by minors in adult traffic court], with *id.*, § 256 [procedure using juvenile hearing officers].) To the extent that traffic violations by minors are adjudicated in adult traffic court, these rules would apply.

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			• Does the proposal appropriately address the stated purpose? Yes. • Would the proposal provide costs savings? No. • Would the proposal increase costs? Potentially; bail quotes (courtesy notices) will need to be modified to include information specified in the proposed rules. In some instances, the rule provides for additional notice (or review) which will potentially increase judicial and staff time. • What would the implementation requirements be for courts? Possible changes to case managements system, including notices and updates to website. Possible changes will be needed to internal interfaces and/or interfaces with third-party vendors (IVR systems, E-Pay systems, Kiosks, etc.). Judicial and staff training will be required. • Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? No. Being that interfaces with third-party vendors may need to be updated. We strongly urge that the effective of the proposed rules be changed to July 1, 2017.	Response: The committees recognize that implementation may increase costs to courts. However, the committees have decided that, on balance, the benefits outweigh the costs. The committees have recommended an extended implementation date for the rule proposals. Please see response above. Please see response above.
14.	Superior Court of California,	N	Overview – Currently, Sacramento Court does	The committees appreciate the court's input. They

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	Sacramento County By Marcia Barclay Director of Operations		not send courtesy notices to the violator and has not since 2010. After much analysis and study, the Court worked with local law enforcement agencies to develop a method for giving the violator a date to appear at the time of arrest. Along with the date to appear, the Court's website information is printed at the bottom of every citation, including those that are now electronically filed. As a result, the violator knows immediately the date they must appear by, has access via the web to their bail and much more information than can be included on a single piece of paper, and in much less time than it would take for the Court to print and mail a courtesy notice. Increase in Mailing/Printing Costs - Based on the average number of citation filings over the past 5 years in Sacramento, and the price of paper, envelopes, printer ink, and postage, the mailing cost for courtesy notices would be approximately $108,768.00 per year. Increase in Staff Costs - Mandatory courtesy notice printing and mailing of over 200,000 notices per year would require .75 FTE at a cost to the Court of approximately $63,534.00. This does not include the cost of the time required for determination of whether or not the violator received their courtesy notice, a complaint that will be inevitable once the information that the Court is again providing them is distributed.	recognize that mandating reminder notices will increase costs to courts. However, the committees have decided that, on balance, the benefits of providing enhanced notice to defendants outweighs the costs. To help mitigate these costs, the committees have revised the proposal to expressly recognize that the reminder notices may be sent electronically by email or text message. They have also added an advisory committee comment identifying several possible ways courts may implement electronic notices. Lastly, the committees have extended the implementation date to allow courts additional time to implement this requirement. Please see response above. Please see response above.

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			This would be in addition to the recent Amnesty program which is costing the Court another two (2) FTE.	Please see response above.
			Increased Development for New CMS – Because Sacramento does not currently send courtesy notices, no provision was made for that functionality in development of our new case management system. Although batch printing of courtesy notices is included in the requirements and no extra cost will result, development hours will need to be spent in configuration of the system and forms. As these notices are mandatory, they will need to be stored in the document management system, requiring more memory and possibly increasing hardware costs.	Please see response above.
			Increased Judicial Involvement – "I never received a courtesy notice your honor". This will be the refrain for many who fail to appear on their promise to appear date. What response is necessary from the Court when a defendant so states? Is it a defense for failing to appear now that the notice is mandatory?	Response: To address these concerns, the committees have revised the proposal to provide that the failure to receive a reminder notice does not relieve the defendant of the obligation to appear by the date stated in the signed notice to appear. While the court must send the notice, no consequences would attach if the notice were returned as undeliverable.
			The Sacramento Court in general would comment that the proposed rule is both costly and unnecessary. Courtesy notices serve no purpose to those who are homeless or those who have changed their address without notifying DMV. Courtesy notices are especially	Please see response above.

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			irrelevant when at the time of the arrest and signing of the citation, the violator is given a date to appear and a means of accessing all the information needed to resolve the matter.	
15.	Superior Court of California, San Francisco County By T. Michael Yuen Court Executive Officer	N/I	The San Francisco Superior Court submits our comments regarding the Invitation to Comment SP16-08.This letter details our operational impacts from the proposed changes to Rules 4.106, 4.107, and 4.335 of the California Rules of Court. Enclosed are our proposed changes to mitigate our concerns. If the proposed rules are adopted, it would create an additional annual cost of $1,480,446 to our Court to implement these processes. There would also be an additional cost to train 33 staff members on these new processes. Our specific comments on the proposed changes are below. **Rule 4.106(c)(2)** The language, "Alternatively, the defendant may request or the court may direct a court appearance," should be stricken because allowing a court appearance hearing for every petition request would require significantly more staff and judicial resources. Specifically, our Court estimates that 18,000 petition requests would be received annually. With a processing time of 15 minutes each, this would create an additional annual cost of	The committees appreciate the court's input. Response: The committees recognize that implementation may increase costs to courts. However, the committees have decided that, on balance, the benefits outweigh the costs. The committees have recommended an extended implementation date for the rule proposals. Response: The committees agree this language should be stricken because written petitions, when feasible, should be encouraged for the convenience of both the defendant and the courts. The committees have removed the language as suggested.

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			$397,937 for our Deputy Clerks II and Deputy Clerks III ("our staff") to process these petitions. Rather, we believe that the current paper petition and review process is sufficient. The Rule would read as follows: When a notice of civil assessment is given, a defendant may, within 20 days of sending the notice, move by written petition to vacate the assessment by showing good cause to excuse the failure to appear or failure to pay. **Rule 4.106(e)** Adding the language "or make a payment under" and striking the word "on" would ensure language consistency throughout the Rule. The Rule would read as follows: Procedure for failure to pay or make a payment under an installment payment plan **Rule 4.106(e)(l)** The language "or the defendant may request" should be stricken because requests for a court appearance would require significantly more staff and judicial resources. Approximately 40 percent of cases on installment plans fall delinquent, which is the statewide average. Specifically, our Court currently has 100,000 cases on installment plans, which equates to	Response: The committees agree to make this revision as recommended. Response: The committees decline to accept this suggestion. While written petitions should be encouraged when feasible, the committees decline to remove the language as recommended.

	Commentator	Position		Committee Response
			the Court having to consider 40,000 requests for court appearances. With a processing time of 10 minutes each, this would create an additional annual cost of $719,716 for our staff to process these requests. The Rule would read as follows: When a defendant fails to pay a fine or make a payment under an installment plan as provided in section 1205 or Vehicle Code sections 40510.5, 42003, or 42007, the court must permit the defendant to appear by written petition to modify the Judgment or the court may direct a court appearance. **Rule 4.106(e)(3)** Revising "request" to "petition" would ensure language consistency throughout the Rule. The Rule would read as follows: The petition to modify a judgment or order does not stay the operation of any order requiring the payment of bail, fines, penalties, fees, or assessments unless specifically ordered by the court. **Rule 4.106(e)(4)** Revising "requests" to "petitions" would ensure language consistency throughout the Rule.	Response: The committees agree and have made this revision as recommended. Response: The committees agree and have made this revision as recommended.

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			The Rule would read as follows: If the defendant petitions to modify or vacate the judgement based on an inability to pay, the procedures stated in rule 4.335 apply. **Rule 4.106(e)(5)** Adding the language, "If the petition to modify or vacate the judgement is not based on an inability to pay," would clarify that a petition to modify a judgement is not solely based on a defendant's inability to pay. The Rule would read as follows: If the petition to modify or vacate the judgement is not based on an inability to pay, the court may deny the defendant's request to modify the judgment and order no further proceedings if the court determines that: .... **Rule 4.106(e)(5)(C)** The addition of a new subdivision (C) would uphold judicial discretion when considering requests to modify or vacate the judgement. The Rule would read as follows: (C) This subdivision does not preclude the court from denying the petition to modify or vacate the judgment for other reasons. **Rule 4.106(f)**	Response: The committees agree and have made this revision as recommended. Response: The court may still deny the defendant's petition for other reasons. The committee has added an advisory committee comment clarifying that the court may exercise its discretion to deny the request to modify the payment terms.

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			The language, "After the court receives the bail deposit, the court must vacate the judgment," should be stricken because this proposal would essentially create double, and possibly triple, work for our staff. Specifically, our Court considers approximately 600 trials de novo annually. Should this proposal be implemented, clerks would have to vacate the judgement as well as submit a request to the DMV to remove the conviction from the defendant's driver's license. At a process time of 10 minutes each, this is an annual additional cost of $10,256 to process these changes. Additionally, approximately 30 percent of defendants who have been granted a trial de novo do not appear at their new hearing. Thus, under this proposal, it would take our court another additional 10 minutes to restore the judgement that it had recently vacated, as well as reapply the conviction on the defendant's driver's license. Further, this identical staff process would be performed for cases where defendants did appear for their trial de novo and were found guilty. This work, including the potential duplication and triplication, would equate to another additional annual cost of $10,256 to the court. <u>The Rule would read as follows:</u> When the court issues a judgment under Vehicle Code section 40903 and a defendant requests a trial de novo within the time permitted, courts may	Response: The committees agree to revise the rule as recommended. The committees are sensitive to the administrative costs of the circulated proposal. To reduce costs, courts may consider delaying reporting of a conviction at a trial in absentia until after the time permitted for a trial de novo has passed. Additionally, the committees may consider standardizing forms and procedures for trials in absentia in the future.

	Commentator	Position		Committee Response
			require the defendant to deposit bail. **Rule 4.106(g)** Revising the language from "to be heard on the inability to pay" to "for a determination of ability to pay" would allow for a paper petition and review process rather than require an in- person hearing. In-person hearings would require additional staff and judicial resources. Specifically, our Court estimates that it would process around 30,000 annual hearing requests, which would take around two minutes each to process. This is an annual additional cost of $342,281 for our staff to process these requests. Rather, we believe that a paper petition and review process is sufficient. The Rule would read as follows: Before a court may notify the DMV under Vehicle Code sections 40509(b) or 40509.5(b) that a defendant has failed to pay a fine or an installment of bail, the court must provide the defendant with notice of and an opportunity for a determination of ability to pay. **Advisory Committee Comment Subdivision (a)** The language, "and been released for a signed promise to appear" should be stricken because only applying this rule to signed promises to	Response: The committees decline to accept this suggestion in order to ensure that due process principles are protected. If the defendant and the court are mutually agreeable to a written petition, courts are encouraged to utilize written petitions. Response: The committees agree with this suggestion. Several commenters expressed concerns about this advisory committee comment.

	Commentator	Position		Committee Response
			appear would exclude other citations, such as those for red light camera enforcement. The Rule would read as follows: The rule is intended to apply only to an infraction offense for which the defendant (1) has received a written notice to appear citation, and (2) has failed to appear by the appearance date or an approved extension of that date or has failed to pay as required. **Advisory Committee Comment Subdivision (g)** The language, "unless requested by the defendant or directed by the court" should be stricken because requiring a hearing for every request would require additional staff and judicial resources. Specifically, our Court estimates that it would process around 30,000 annual hearing requests, which would take around two minutes each to process. This is an annual additional cost of $342,281 for our staff to process these requests. Rather, we believe that a paper petition and review process is sufficient. Rather, we believe that a paper petition and review process is sufficient. The Rule would read as follows: Before notifying the DMV, the court must provide the defendant with notice regarding the right to request an ability-to-pay determination and with instructions on how to request that	The language "and been released for a signed promise to appear" has been deleted. The proposed rule is not intended to exclude red light citations. Response: The committees decline to accept this suggestion in order to ensure that due process principles are protected. If the defendant and the court are mutually agreeable to a written petition, courts are encouraged to utilize written petitions.

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			determination. A hearing is not required. **Rule 4.107** Revising the language from "courtesy" to "reminder" removes the contradictory language between "mandatory" and "courtesy". <u>The Rule would read as follows:</u> Mandatory reminder notice-traffic procedures **Rule 4.107(a)** Revising the language from "courtesy" to "reminder" removes the contradictory language between "mandatory" and "courtesy". The language, "or to the defendant's last known address before the initial appearance," should be stricken because the Court does not have a way to verify the defendant's last known address. <u>The Rule would read as follows:</u> Mandatory reminder notice Each court must send a mandatory "reminder notice" to the address shown on the *Notice to Appear*. **Rule 4.107(b)**	Response: The committees agree and have changed the name to "reminder notice." Please see the response above. Response: The committees have changed the language to state "unless the defendant otherwise notifies the court of a different address."

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			Revising the language from "courtesy" to "reminder" removes the contradictory language between "mandatory" and "courtesy. The Rule would read as follows: Minimum information in reminder notice In addition to information obtained from the Notice to Appear, the reminder notice must contain at least the following information: .... **Rule 4.107(c)** Revising the language from "courtesy" to "reminder" removes the contradictory language between "mandatory" and "courtesy. The Rule would read as follows: Additional information in reminder notice Courts may provide additional information in the reminder notice, as appropriate, including the following: .... **Rule 4.335(C)(2)** Adding the language "initial" and revising the language from "at or after adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program" to "up until the date that the fine is due" would	Please see the response above. Please see the response above. Response: Vehicle Code section 42003(e) states that a defendant may petition the court for an ability-to-pay determination "[a]t any time during the pendency of the judgment" based on changed circumstances, suggesting an initial determination by which the alleged "changed circumstances"

	Commentator	Position		Committee Response
			clarify that Rule 4.335(c)(8) appears to allow for subsequent ability-to-pay determinations. The Rule would read as follows: A defendant may request an initial ability-to-pay determination up until the date that the fine is due. **Rule 4.335(C)(8)** Adding the language "or if it is past the due date for the fine;" revising the language from "based on" to "where there are;" and adding the language "consistent with Vehicle Code section 42003(e)" is consistent with 4.335(C)(2) and VC42003(e). The Rule would read as follows: If a defendant has already had an ability-to-pay determination, or if it is past the due date for the fine, a defendant may request a subsequent ability-to-pay determination only where there are changed circumstances consistent with Vehicle Code 42003(e). **Rule 4.335(C)(9)** Adding the new language we propose for subdivisions (A) and (B) would clarify the instances in which a judicial officer may deny a request for an ability-to-pay determination, order no further proceedings, and order that a case be referred to collections.	may be measured. The statute contemplates that this initial determination would occur at the time of adjudication when the court renders judgment: section 42003 provides that the court will consider the defendant's ability to pay, upon request of the defendant "at adjudication" and will advise the defendant of this right "at the time of rendering judgment." (Veh. Code, § 42003(c) ["In any case when a person appears before a traffic referee or judge of the superior court for adjudication of a violation of this code, the court, upon request of the defendant, shall consider the defendant's ability to pay," italics added]); *id.,* § 42003(e) ["The court shall advise the defendant of this right at the time of rendering the judgment," italics added].) Nevertheless, it is foreseeable that a court might adjudicate the case and render judgment in the defendant's absence. (See, e.g., Veh. Code, § 40903.) Proposed rule 4.335 would account for such variation in practice while staying true to the letter and spirit of section 42003—a defendant would receive one ability-to-pay determination, upon request, and would be eligible for a second only upon a showing of changed circumstances. Response: Because Vehicle Code section 42003 contemplates that a defendant may request an ability-to-pay determination during the pendency of the judgment, and this rule is modeled on section 42003, the committees have removed this provision from the proposal.

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			The Rule would read as follows: ... (A) The defendant has the ability to pay; (B) There are no changed circumstances;	
16.	Superior Court of California, San Mateo County By Elizabeth Evans Chief of Operations	N/I	Proposed Rules 4.106, 4.107, and 4.335 aim to offer relief to defendants facing high traffic fines without the financial resources to pay their court ordered debt. We believe that the core issue is high traffic fines and the proposed Traffic Rules add workload and costs to courts while failing to address the problem of high fines. Is imposing high fines and then incurring the court administrative costs to reduce those fines a good use of public funds? While we question the philosophical soundness of the proposed traffic rules, San Mateo's response focuses on the budget impact and the cost of providing the needed additional staff resources needed to implement the rule provisions. Proposed Rules 4.106, 4.107, and 4.335 will likely increase the Traffic Clerk's Office, Courtroom, and Judicial Officer workload. The proposed rules will likely result in an increased number of defendants submitting written petitions for relief. An increased correspondence workload would strain an already under resourced traffic court that has sustained significant budget cuts in the last five years. Budget cuts have resulted in shortened office and phone hours in the Traffic Clerk's Office. Since 2012, the Clerk's Offices closes at	The committees appreciate the court's input. Response: The committees recognize the need for the Legislature to consider revising the fees and fines established by statute and address the issue of court funding. Response: The committees recognize that implementation may increase costs to courts. However, the committees have decided that, on balance, the benefits outweigh the costs. The committees have recommended an extended implementation date for the rule proposals.

	Commentator	Position		Committee Response
			2:00 p.m. each day to give clerks time to process paperwork and complete data entry. With the current workload, the court lacks the resources to restore office hours to 400 p.m. An increased clerk workload is unsupportable with the current budget allocation. We project an increased correspondence workload and request for hearings resulting from the proposed rule changes will require additional clerk positions, a commissioner position, additional facility space, and additional postage costs. There are currently remedies for defendants to seek relief based on financial hardship. We respectfully submit that adding new administrative procedures to augment what is currently available adds significant costs to courts without a commensurate increase in funding. **Proposed Rule 4.106 Regarding Failure to Pay** Proposed Rule 4.106 adds an additionally and potentially burdensome administrative layer to the process of defendants seeking relief from the court. Most of these types of remedies are already available to defendants who make a court date or write a letter to the court and present appropriate evidence and information to support their request. Currently the Traffic Clerk's office processes approximately 10,800 pieces of correspondence per year and the correspondence workload requires 1 full time clerk. Last year the court imposed civil assessments on 13,272 Vehicle Code cases after	

	Commentator	Position		Committee Response
			the defendant had received a Notice of Bail and a subsequent Failure to Appear and/or Pay Notice. If 50%, or 6,600 defendants, submit written petitions to have their civil assessment vacated, the correspondence workload would increase dramatically. We estimate the court would require an additional 1-1.5 full time positions to process the additional correspondence workload. The annual additional cost for 1.5 full time clerks is approximately $159,000. Not withstanding our serious concerns regarding the potential increase in workload and resulting budgetary impact, If proposed Rule 4.106 is enacted, we suggest the following edits:	
			1. On page 10, section (d), language should be added in the title to clarify that this only pertains to "unadjudicated cases". Also, under (d)(1), language should be added to clarify that trial in absentia cases are excluded since those are considered convicted/adjudicated cases.	Response: The committees agree this section needs clarification. Proposed rule 4.106(d)(1), as circulated, stated it applied in unadjudicated cases. However, several commenters wanted further clarification that this subdivision applied only in unadjudicated cases. The language of this subdivision has been changed, except that the committees decline to revise the rule to state that trial in absentia cases are excluded because trial in absentia convictions are convictions and adjudicated cases.
			2. On page 10, section (e)(1), we suggest the following statement be revised as indicated in red: "When a defendant fails to pay a fine or make a payment	Response: There were several comments expressing concerns about the phrase "modify or vacate the judgment." The committees have revised the rule to state "modify the payment

	Commentator	Position		Committee Response
			under an installment plan as provided in section 1205 of Vehicle Code sections 40510.5, 42003, or 42007, **due to a change in financial circumstances,** the court must permit the defendant to appear by written petition to **request the court to consider ability to pay to determine whether** to modify **the** judgment **and/or current payment plan**, or the defendant may request or the court may direct a court appearance." 3. On page 10, section (e)(4), we suggest the changes in red: "If the defendant requests to modify **~~or vacate~~** the judg**e**ment based on an inability to pay....."	terms" to address these concerns. Response: There were several comments expressing concerns about the phrase "modify or vacate the judgment." The committees have revised the rule to state "modify the payment terms" and deleted "or vacate the judgment" to address these concerns.
			4. On page 11, section (g), language should be added to clarify that the notice to the defendant of the opportunity to be heard on the inability to pay can be provided as early as in the courtesy notice. **Proposed Rule 4.107 Mandatory Courtesy Notices** The provision that notices be mandatory may lead to arguments to dismiss a matter where a courtesy notice was not sent and/or received.	Response: The committees agree with this suggestion. This subdivision has been revised to state: "This notice may be provided on the notice required in rule 4.107, the civil assessment notice, or any other notice provided to the defendant." Response: The committees agree with this recommendation. To address this concern, the committees have revised the proposal to provide that the failure to receive a reminder notice does

	Commentator	Position		Committee Response
			This puts courts in a difficult position especially concerning failures to appear and the signed promise to appear that is part of the ticket as this promise is what many judicial officers use to determine if the defendant received valid notice of their court date and willfully failed to appear. The mandatory notice requirement could essentially render the promise to appear obsolete as it would make the court responsible for ensuring the defendant's appearance by sending them a courtesy notice. If proposed Rule 4.107 is enacted to mandate courtesy notices, the language should clarify that *not receiving* a courtesy notice does not relieve the defendant of the obligation to appear and/or address the ticket by the promise to appear date on the citation. **Proposed Rule 4.335 Consideration of a Defendant's Ability to Pay** San Mateo currently provides the opportunity for the defendant to request an ability to pay determination and the Commissioners consider requests in court during the arraignment calendar. The proposed Rule 4.335 provision for requiring the court to permit the defendant to request an ability to pay determination in writing would create a significant workload increase for the Clerk's Office and potentially San Mateo County Revenue Services, if the determination responsibility is delegated to them. Moreover, requests for review by a judicial officer of the decision regarding the	not relieve the defendant of the obligation to appear by the date stated in the signed notice to appear. Response: Under this proposal, defendants may still make requests orally during arraignment or other calendars. And the committees have removed the subdivision on delegation from the proposal.

	Commentator	Position		Committee Response
			ability to pay determination (whether by a court hearing or written petition) would increase the courtroom and commissioner workload. San Mateo processes over 100,000 traffic matters each year. If only 10 percent of the defendants with unpaid traffic fines request an ability to pay determination, the number of requests would be 10,000. Without factoring the added complexity of determining ability to pay, the simple processing of paperwork would require additional two full-time clerks. The cost of two additional full-time clerks would be approximately $211,976 per year. If the ability to pay determination responsibility was delegated to San Mateo County's Revenue Services Department, the cost would be considerably higher. The County's Revenue Services agency currently charges $50 per case to formally determine ability to pay. If 10 percent, or 10,000 defendants annually submit a written petition for an assessment of their ability to pay, and Revenue Services charges $50 per case, the additional cost could be $500,000, annually. If the criteria for assessing ability to pay in traffic matters is simpler and the cost is less, there would still be a substantial additional budget impact. If 10,000 defendants applied for an ability to pay determination at $25 per case, the budget impact would be $250,000.	Response: The committees recognize that implementation may increase costs to courts. However, the committees have decided that, on balance, the benefits outweigh the costs. The committees have recommended an extended implementation date for the rule proposals. Response: The committees have removed the proposed subdivision on delegation from the proposal.

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			Setting aside the issue of the cost of a formal ability to pay petition and resulting determination, we are concerned about the proposed rule's provision that the ability to pay determination responsibility be delegated to clerks. We do not consider determining a defendant's ability to pay a ministerial task. An ability to pay determination currently involves judicial discretion and we do not think clerks should be put in the position of exercising discretion, even given the criteria listed under section (c)(4) of the proposed rule. Regarding the defendant's right to a review by a judicial officer of the determination made by the clerk or the collection agent, the proposed rule is not clear as to whether that would require a court hearing or whether the review can be done by way of petition and written decision. Regardless, if the defendant exercises their right to a judicial officer review, this will create additional staff and judicial time in handling these reviews. Currently there is a one to two month wait to obtain a Traffic hearing. If only 1 percent of defendants per year request an ability to pay hearing, separate from the arraignment, this would add an additional 1,000 matters to the commissioner workload. This would strain the already full calendars and lengthen the time it takes to obtain a court date. A several month delay in obtaining an arraignment hearing impedes defendants' right to swift and fair	Response: This proposal is not intended to eliminate judicial discretion. Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have removed the proposed subdivision on delegation from the proposal. Response: Because the committees decided to remove the provision on delegation from the proposal, they also removed the provision on judicial review of any determination made by the clerk or county revenue collections agency. They have also added language clarifying that the judicial officer has the discretion to conduct the review of written requests on the written record or to order a hearing.

	Commentator	Position		Committee Response
			justice. Even if a hearing is not required for the judicial review, an increase in written petitions for judicial review would nevertheless increase the commissioner workload exponentially. We estimate that the increase in correspondence would make it necessary to set aside a half or full day per week for the commissioner to rule on written correspondence. Given the other assignments and calendars that our commissioners hear, an increased Traffic workload would require additional commissioner resources. If the court were to hire a half-time commissioner to hear the additional calendar matters and/or review written petitions, the budget impact would be approximately $170,000 annually, including the cost of courtroom clerk support. In summary, if these rules are approved, the cost to fully support a formal process for financial petitions, assessments, and review hearings is conservatively estimated at $1 million to San Mateo. Assuming this funding is allocated according to WAFM, the statewide appropriation would have to total at least $53.7 million. While this analysis did not address the economics or cost benefit analysis of the proposed rule changes, just San Mateo's cost estimate alone suggests that spending $1 million in Traffic to implement a more formal financial assessment process on perhaps 10 percent of the traffic cases does not make budgetary sense. In	Please see response above.

	Commentator	Position		Committee Response
			FY15-16, the San Mateo Superior Court spent a little over $1.6 million on its reduced Traffic Division. The needed budget to implement these proposed rule changes represents a 64 percent increase. A 64 percent budget increase for traffic to address the needs of 10 percent of the cases does not make budgetary sense. Given that Trial Courts are underfunded by 25 percent to 35 percent statewide, that total estimated appropriation of $53.7 million might be better spent on other areas of the courts. Given the magnitude of the additional staffing needs, San Mateo could not implement the proposed traffic rules without additional funding. If we receive the necessary funding to add staff and commissioner resources, we would need a minimum of four months to implement the proposed rules.	
17.	Superior Court of California, Sonoma County By Hon. Raima H. Ballinger Presiding Judge Jose Octavio Guillen Court Executive Officer	N/I	Thank you for the opportunity to provide input on whether, or in what form, to adopt proposed Rules of Court 4.106, 4.107, and 4.335, relating to infraction cases. Sonoma County Superior Court would initially observe that the proposed rules appear to be a good faith effort to remediate the effect current infraction fines (meaning the total fine, fee and assessment amounts) have on a particular segment of the population, those with diminished ability, or inability, to pay. The laudable goal is to relieve individuals of consequences that seem	The committees appreciate the court's input.

	Commentator	Position		Committee Response
			disproportionate to an infraction violation of the law, such as being rendered unable to pay rent or buy food, because funds for a traffic ticket must be diverted from that person's budget. Or in some cases, making a choice between paying for those necessities, and risking the loss of a driving privilege through suspension because the infraction fine is not paid. This Court's position is that the true solution needed to address this concern is a reduction in the amount of the fines generally. The purpose of an infraction penalty is generally regulation. As stated in I*n re Jennings*, (2004) 34 Cal.4th 254: "Under many statutes enacted for the protection of the public health and safety, e.g., traffic... criminal sanctions are relied upon even if there is no wrongful intent. **These offenses usually involve light penalties** and no moral obloquy or damage to reputation. Although criminal sanctions are relied upon, **the primary purpose of the statutes is regulation** rather than punishment or correction. The offenses are not crimes in the orthodox sense, and wrongful intent is not required in the interest of enforcement." ' " (Jorge M., supra, 23 Cal.4th at p. 872, 98 Cal.Rptr.2d 466, 4 P.3d 297.) *Id.* at 267 (emphasis added). A fine of $238, *the minimum* fine for speeding and lowest moving violation fine amount, added to the cost of traffic school totals up to close to $350, an	

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	Commentator	Position		Committee Response
			amount not generally seen by people as a "light" penalty. The infraction penalty structure should be based on reasonable fines for the conduct to be deterred. The need for fundamental revision of the traffic fine structure is beyond the Judicial Branch's ability to effect. Rather, it lies in the hands of the State Legislature. Any efforts to mitigate the effects of the current out of proportion fine structure by the Judicial Branch through its rule making power amount to makeshift solutions to dissipate the foreseeable effect of the fines as currently set by law. The Sonoma County Superior Court would urge the Committees to reconsider proposing any Rules or other efforts to relieve the State Legislature of the pressure necessary to make changes where they are most appropriate -the fine amounts set by the State. The above concerns are also part and parcel of the current funding structure supporting court operations around the state which is based on fluctuating and inconsistent revenue streams tied to such things as fines collected and cases filed. As the Committees are aware, it is of great importance to every court, and all residents of the State who wish to have ready and consistent access to justice, that there be a predictable and stable income stream for court operations, such as an allocation from the General Fund. This Court's view is that a discussion about the infraction fine structure is necessary and part of a larger discussion about how state services, and	Response: The committees recognize the need for the Legislature to consider revising the fees and fines established by statute and address the issue of court funding.

	Commentator	Position		Committee Response
			judicial access in particular, are funded. In recognition that the Judicial Branch may move forward with some rule enactment despite the above identified issues, comments specific to the proposed rules are included below. Generally, this Court would reject as an underlying principle the following statement in the Invitation to Comment that "...the amount and manner of paying the total fine must be reasonable and compatible with the defendant's financial ability ..." The principle that the amount of a fine should be based on a person's means has the corollary that the fine for a very wealthy person should be proportionately increased. A system of punishment based on the status of the defendant is repugnant to the United States system of justice. As to Proposed Rule 4.106, the language should make clear that the civil assessment may be imposed up to a maximum amount, or a reduced amount, or vacated all together. We recommend the following modification, in bold, to clarify: When a court notifies a defendant that a civil assessment will be imposed for failure to appear or pay under Penal Code section 1214.1(b), the notice must inform the defendant of his or her right to petition that the civil assessment be vacated ***OR REDUCED*** for good cause and must include	Response: The committees agree that this section needs clarification. The statute is clear that if good cause is shown, a judicial officer must vacate (as opposed to reduce) the civil assessment. (Pen. Code, § 1214.1(b).) If good cause is not shown, a judicial officer may still vacate or reduce the civil assessment in his or her discretion. (*Id.,* § 1214.1(a).) The rules, as circulated, intended to highlight this distinction, but several commenters wanted to specify reduce in this subdivision. Proposed rule 4.106(c)(1) now includes "reduce" along with "vacate."

	Commentator	Position		Committee Response
			information about the process for vacating ***OR REDUCING*** the assessment. When a court imposes a civil assessment for failure to appear or pay, the defendant may request -- without paying any bail, fines, penalties, fees, or assessments -- that the court vacate ***OR REDUCE*** the civil assessment because the defendant had good cause for failing to appear or pay. Even absent a showing of good cause, the court may consider other factors in determining whether to impose a civil assessment and, if so, the amount of the civil assessment. That portion of this proposed rule that allows for a hearing on cases referred to collections, but not yet adjudicated, should be clarified to exclude cases with a prior adjudication. This Court is aware that historically, a number of courts around the state have sent cases to collections that are unadjudicated. They have then refused to allow defendants to be heard and proceeded as if a conviction occurred. This Court agrees that this is generally violative of due process and such practice should be ended, or the defendant given an opportunity to address the ticket in a substantive way despite a referral to collections. However, where a court has a comprehensive trial in absentia program, as allowed by Vehicle Code section 40903, with procedural due process safe guards such as notice of the ruling and the ability to address the	Response: The committees agree this section needs clarification. Proposed rule 4.106(d)(1), as circulated, stated it applied in unadjudicated cases. However, several commenters wanted more clarification that this subdivision only applied in unadjudicated cases. The language of this subdivision has been changed to address these concerns.

	Commentator	Position		Committee Response
			case on calendar, this rule should not undo the finality of that process. We would propose the following modification: When a court refers unpaid bail to a comprehensive collection program as delinquent debt, the defendant may request to schedule a hearing for adjudication of the underlying charge(s) without payment of the bail amount, ***unless there has been a prior adjudication of guilt.***	
			This Court recommends deleting that part of the proposed rule which allows a defendant to request a modification of the judgment. The proposed language "[w]hen a defendant fails to pay under an installment plan, the defendant may request modification of the judgment," is contrary to the important judicial principle of finality of judgments. If not deleted, perhaps it could be redrafted to state "modification of how the sentence is to be served" or "judgment is to be performed."	Response: There were several comments expressing concerns about the phrase "modify or vacate the judgment." The committee has revised the rule to state "modify the payment terms" to address these concerns.
			As to the final portion of the proposed rule, this Court's position is that it will severely and negatively impact the court's ability to enforce its orders. If this process is kept, it is suggested the rule be modified as follows: When a defendant has failed to pay a fine or installment of bail, a court must provide the defendant with notice and an opportunity to be	Response: The committees agree with this suggestion. This subdivision has been revised to state: "This notice may be provided on the notice required in rule 4.107, the civil assessment notice, or any other notice provided to the defendant."

	Commentator	Position		Committee Response
			heard on ability to pay before notifying the Department of Motor Vehicles (DMV).1. ***This notice may be provided at any time, including with the courtesy notice.***	
			As to Rule 4.107 regarding mandatory "courtesy" notices, it would be appropriate to now refer to the notices as something other than a "courtesy" notice if they are mandated. Perhaps appearance notices, or traffic resolution notices.	Response: The committees agree and have changed the name to "reminder notice."
			As to Rule 4.335 and ability to pay determinations, please see the individual comments as to each portion below:	
			Courts must provide defendants notice of the right to request an ability-to-pay determination and make instructions available on how to request that determination; - ***This notice may be provided at any time, including with the courtesy notice. .***	Response: The committees agree. They have added an advisory committee comment to rule 4.335(b) to clarify that the notice of the right to request an ability-to-pay determination may be provided on the reminder notice required by rule 4.107, the notice of civil assessment required by Penal Code section 1214.1, the court's website, or "any other notice provided to the defendant."
			▪ A defendant may request an ability-to-pay determination at or after adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to collections; - ***This should be limited to pre-adjudication. If not, there should be some reasonable outside time limit for this type of review post adjudication. Otherwise, there will be, again, no finality to the court's***	Proposed response: The committees decline to pursue this recommendation because Vehicle Code section 42003 does not contemplate any time restrictions on making this request while the judgment remains pending. Instead, it contemplates that the court will consider a defendant's ability to pay when the defendant appears "for adjudication" and "[a]t any time during the pendency of the judgment." (Veh.

	Commentator	Position		Committee Response
			orders. CCP section 473 has a six month limit to seek relief based on mistake, surprise, excusable neglect or inadvertence; this could be seen as an analogous standard and the same time period applied.	Code, § 42003(c), (e).) The time periods stated in proposed rule 4.335 mirror the statute.
			▪ The court must permit the defendant to make the request in writing, unless the court directs an appearance;	
			▪ The court may delegate the initial determination of the defendant's ability to pay to a clerk or other county revenue collections agency using **specified factors*; it is not proper to put a clerk in the position of exercising discretion. Absent a standardized state process similar to the fee waiver application, this will pose problems. However, using the same structure as a request or fee waiver could be a good solution.***	Response: This rules proposal is not intended to eliminate judicial discretion. Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this proposed subdivision from the proposal. Instead, the committees have added an advisory committee comment, which provides that the court, in determining a defendant's ability to pay, should consider whether the defendant receives public benefits and whether the defendant has a monthly income of 125 percent or less of the current poverty guidelines.
			▪ A defendant has the right to a review by a judicial officer if requested in writing within 20 calendar days of the sending of the notice of the decision; ***What if the ability to pay determination is made in person by the judicial officer (such as at arraignment or trial) -is there any review of that determination and what are the time***	Response: Since the committees have removed the subdivision on delegation, the committees have also removed the subdivision relating to review by a judicial officer.

	Commentator	Position		Committee Response
			standards if so?	
			▪ Based on the ability-to-pay determination, the court may exercise its discretion to provide for payment on an installment plan, allow the defendant to complete community service, suspend the fine in whole or in part, or offer an alternative disposition; - ***What would an example of an alternative disposition be? Dismissal? Or?***	Response: This option was introduced to preserve judicial discretion and provide room for courts to be creative in developing alternative options and local programs. For example, a court might form an infraction diversion program.
			▪ The defendant may request an ability-to-pay determination at any time before the final payment date or completion date; - ***Again, this should before-adjudicate ion only. If not, some reasonable outside time limit set such as six months.***	Response: The committees decline to pursue this suggestion. This subdivision clarifies that the ability-to-pay provisions apply to installment plans and community service up until the final payment or completion date. It is based on Vehicle Code section 42003, which does not provide for pre-adjudication ability-to-pay determinations or any time restrictions while the judgment remains pending.
			▪ If a defendant has already had an ability-to-pay determination, a defendant may only request a subsequent ability to pay determination based on changed circumstances; - ***In the same case, or for any new cases or a pre-determined period of time?***	Response: The committees agree this subdivision needs clarification. This subdivision is intended to allow for additional ability-to-pay determinations in the same case, but only if the defendant makes a showing of "changed circumstances." The committees have revised the proposal to clarify that the "changed circumstances" standard applies if the defendant has already had an ability-to-pay determination "in the case." Please see the response above to the suggestion that the rule provide for time restrictions.

	Commentator	Position		Committee Response
			▪ The court may deny the defendant's request for an ability-to-pay determination if the court determines that an unreasonable amount of time has passed or the defendant has made an unreasonable number of requests. - ***In the same case, or for any new cases or a pre-determined period of time?***	Response: Because Vehicle Code section 42003 contemplates that a defendant may request an ability-to-pay determination while the judgment remains pending, and this rule is modeled on section 42003, the committees have removed this provision from the proposal.
			This Court would also provide the following information regarding the potential fiscal impact should the proposed rules be enacted. Ability to pay hearings are presently authorized in the Vehicle Code and this option is regularly exercised in this County. The proposal to vastly expand this existing power by creating new layers of administrative procedures will lead to a substantial increase in workload at the local court level and greater costs. It does not appear that there are any additional resources or funds that will be made concurrently available to support these new trial court obligations. One example of immediate costs to this Court will be compliance with the new notice requirement regarding an ability to pay determination. In our Court alone written notices would be mandated in 101,014 cases. The approximate cost of postage is $43,000. The cost for conducting hearings, assuming only a fifty percent rate of request, and a five minute hearing, is estimated at approximately $872,761 annually. Sonoma County is presently classified as a donor court under the WAFM and will likely have its immediate annual budget reduced by $400,000	Response: The committees recognize that these rules will increase costs to courts. However, the committees have decided that, on balance, the benefits outweigh the costs. The committees have recommended extending the implementation date.

	Commentator	Position		Committee Response
			this year. The additional impact of the costs of implementation of these rules would be devastating to the court's ability to continue to employ personnel, operate courtrooms, and provide services to the community at current levels. The proposed rules are thoughtful and reflect a great deal of consideration and effort by the Committees. They appear well intended in their attempt to mitigate the above identified problems. However, this Court would urge the Committees to look to the State Legislature for the much more comprehensive solution that can only come from there, and to not enact the proposed rules at this time. Thank you for the opportunity to have input on the proposed amendments and for consideration of this Court's position.	
18.	Superior Court of California, Sonoma County By Hon. Anthony Wheedlin Commissioner, Traffic Division Jose Octavio Guillen Court Executive Officer	N/I	Our Court supports both procedural due process and access to justice for infraction defendants. Our Court shares the widespread concern that the California fine structure and collection procedures have resulted in the suspensions, statewide, of millions of California Driver's Licenses for failure to pay infraction fines. The impact is most pronounced on those with financial hardship. The legislated fine structure converts a $100 base fine into a $490 bail due and a "failure to	The committees appreciate the court's input.

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			pay or appear" usually adds $300. The legislature, regrettably, uses infraction fines as revenue and apportions some of that money to the state DNA data bank and courthouse construction fund rather than to regulate and promote traffic safety. Superior Courts have routinely sent cases to collection that were not adjudicated and then denied defendants access to any judicial hearings unless the original bail was posted. This procedure has raised due process concerns. Legislative and judicial change is clearly needed. Our view is that the fundamental unfairness, especially for those of limited financial means, is that infraction fines are too high. If fine amounts were reasonable to begin with, focusing on regulation and safety rather than revenue, public compliance, we believe, would increase significantly. Our Court agrees with the Traffic Advisory Committee that current Court infraction procedures unfairly limit access and raise due process concerns. While the proposed amendment to Rule 4.105 and the proposed addition of Rules 4.106, 4.107; and, 4.335 may help with those concerns, the proposed amendments do not address the fundamental problem and will, if implemented as proposed, burden and likely overwhelm traffic trial courts and traffic staff.	

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			If adopted the proposed amendments could generate the following scenario: a defendant with a seatbelt case could request a Trial by Declaration; then request a Trial de Novo; and, if the judgment is not paid and a civil assessment imposed, request a hearing to vacate the assessment; then request an Ability to Pay Hearing, and if an installment plan were ordered, could then request a post judgment adjustment based on change in circumstances, the seatbelt ticket has a base fine of $25, a total bail of $162. While too little due process is unfair to defendants, too much due process would be an unfair allocation of the Court's time, denying or significantly delaying access to the Court for other defendants. Our view is that the proposed initial ability to pay determinations could be "delegated to a clerk" is unworkable. Specifically, a clerk would have to review and consider information from one of many potential documents and make an on the spot determination. This process would occur while others are in line. This would further subject the clerk to making a discretionary call while in a face to face situation with the defendant. Our concluding general comment is that, yes, access to courts and appropriate due process for infraction defendants both need judicial	Please see response below. Response: Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this proposed subdivision from the proposal.

	Commentator	Position		Committee Response
			revision; however, the proposed rules go too far in creating additional procedures that would burden the trial courts and trial staff while still not dealing with the fundamental unfairness of high fines. **Specific Comments** **Amendment to Rule 4.105** (d) Our Court **supports** the addition to (d) regarding the website for self-help information. **Rule 4.106** (c) Our Court **opposes** elements of Section C as follows: Change the language to "A notice of civil assessment……inform the defendant……of right to Petition the Court to review the Civil Assessment and must include…..about the process for filing a Petition with the Court for that review. (2) This subsection appears covered by 4.335 and/or 1214.1.	No response necessary. Response: The committees decline to accept this suggestion. The committees drafted proposed subdivision (c)(1) to inform defendants of their rights under the statute. The commenter's suggested language would not notify defendants that they may request that the civil assessment be vacated for good cause. Response: Although the commenter correctly states that the defendant's rights are enumerated in Penal Code section 1214.1, proposed rule 4.106 provides courts with guidance on procedures for vacating or reducing the civil assessment. This is a common and appropriate purpose for rules of court.

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	Commentator	Position		Committee Response
			(3) **Supported**.	No response necessary.
			(4) **Supported**.	No response necessary.
			(5) Upon a showing of good cause, the Court shall vacate the assessment.	Response: In drafting rules of court, the term "must" is preferred over "shall."
			(6) If Court discretion is applicable here; it should also apply to (2).	Response: The statute is clear that if good cause is shown, a judicial officer must vacate (as opposed to reduce) the civil assessment. (Pen. Code, § 1214.1(b).) If good cause is not shown, a judicial officer may still vacate or reduce the civil assessment in his or her discretion. (*Id.,* § 1214.1(a).)
			(d) (1) **Supported**.	No response necessary.
			(2) **Oppose**- as the first sentence is written, lacks a time frame. The second sentence as written, lacks clarity.	Response: The committees decline to specify a time frame, as there does not appear to be a time limit for a defendant to make such a request.
			(3) **Supported except that this "unlikely to appear" standard is unclear**.	Response: The committees decline to provide more guidance on how to interpret the phrase "unlikely to appear." This matter falls within judicial discretion.
			(e) **Oppose**- in its entirety. This proposal undermines the finality of judgments and would specifically expand the workload of traffic staff and the Court. Our Court does allow a letter to the Judicial Officer seeking extensions of time or possible conversion to payment plan or	Response: There were several comments expressing concerns about the phrase "modify or vacate the judgment." The committee has revised the rule to state "modify the payment terms" to address these concerns.

	Commentator	Position		Committee Response
			community service; however, as proposed the judicial labor necessary to meet this open ended proposal would be substantial.	
			(f) **Support**- (Our Court practice does not require bail)	No response necessary.
			(g) **Oppose**- While our County does not report under these code sections, the proposed amendment would create an additional hearing.	Response: The notice and opportunity to be heard that are provided for in subdivision (g) are required before a court notifies the DMV under Vehicle Code section 40509(b) and/or 40509.5(b). Furthermore, a hearing is not required unless requested by the defendant or directed by the court.
			Rule 4.107	No response necessary.
			(a) **Support** (b) **Support**. - (1)-(6), (8)	
			(7) **Oppose.** Our Court approves this additional hearing. We have a robust and flexible community service program, working exclusively with non-profits. Our program can accommodate disabled, non-English speaking, and out of county defendants. For FY 15-16, of the 6,838 defendants who appeared on the arraignment calendar, 1,497 requested community service. Of those referred to community service 962 defendants completed their sentence providing more than 28,000 community service hours to 152 Sonoma County non-profit organizations. Our history	Please responses to 4.335.

	Commentator	Position		Committee Response
			with ability to pay hearings is that they are predictably uneven because evidence produced is inconsistent and defendants request "another chance" to bring the correct paperwork. (c) (1) Our Court makes available the community service alternative. (2) **Oppose**. (3) **Oppose**. (4) Specifically **oppose** as putting the clerk's in a position of too much authority. (5) **Oppose**. (6) **Oppose** as written. Our Court always makes available community service and payment plan options. Our court views existing authority as allowing a Judicial Officer the authority to "suspend the fine in whole or in part" or to "offer an alternative disposition". (7) **Oppose**. Our Court presents at arraignment and on its web site information	No response required. No response required. Response: This rules proposal is not intended to eliminate judicial discretion. Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this proposed subdivision from the proposal. No response required. Response: The committees agree that judicial officers have discretion to provide for payment on an installment plan, allow the defendant to complete community service in lieu of paying the total fine, suspend the fine in whole or in part, or offer an alternative disposition. The rule is designed to clarify this existing authority. Response: The proposed rule does not diminish the court's existing discretion. A court is not

	Commentator	Position		Committee Response
			regarding community service and installment payment plans. Given the nature of our community service program, to add "ability to pay determination" would at best undermine the community service program. One could seek a lower fine and then have it converted to community service. **Rule 4.335** Oppose in its entirety. Again, our Court relies on its convenient, available, affordable Community Service Program. We believe this procedure would undermine that program. This procedure also proposes a clerk determination (initially) with a subsequent right to request judicial determination of ability to pay. To ask clerks to look at one of the eight documents listed or the "monthly income of 125 percent or less…." is not viable for clerk staff working a window with a line of people. As previously indicated, the clerk would need to make this determination while face to face with defendant. Assuming a clerk made the determination, the question becomes, then what? Certainly the clerk would not just lower the fine. Presumably, the matter would then need to be set for hearing on what outcome given that an "ability to pay determination" has been made. The vagueness, the lack of time standard, the delegation to a clerk are all of concern. Because this amendment contemplates an "ability to pay determination at any time before the final	necessarily required to lower the base fine amount. Rather, the court must make an individualized determination based on the defendant's individual circumstances. So long as the manner and amount of paying the total fine is reasonable for each defendant, ordering community service in lieu of the total fine may an appropriate option. Response: Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this provision from the proposal. Instead, the committees have added an advisory committee comment, which provides that the court, in determining a defendant's ability to pay, should consider whether the defendant receives public benefits and whether the defendant has a monthly income of 125 percent or less of the current poverty guidelines. Response: Under the proposed rules, in reviewing requests for an ability-to-pay determination, the court retains discretion to fashion the appropriate response after reviewing the facts of the case. The

	Commentator	Position		Committee Response
			payment date…," that means a defendant receiving another infraction violation could use that as a change of circumstance. That procedure would reward, in effect, continuing infraction violations. Accountability should not be undermined by due process procedures. Again, our practice is to allow a defendant with either community service or a payment plan to write a letter to the Judicial Officer and request for time to complete the sentence.	committees have added an advisory committee comment to clarify that the court may consider the severity of the offense, among other factors. Response: Under the proposed rules, the court retains discretion to order community service in lieu of paying the fine under rule 4.335. This proposal also would not prevent a court from reviewing a request for more time to complete the sentence.
19.	Superior Court of California, Yolo County By Hon. David Rosenberg Presiding Judge Shawn C. Landry Court Executive Officer	N/I	Thank you for the opportunity to comment on the proposed Rules of Court related to infraction cases, including Rules of Court 4.106, 4.107 and 4.335. While in general Yolo Superior Court supports the Advisory's recommendations, ultimately, the legislature should review and modify the current penalty structure and provide trial courts funding that is not generated by fees and penalties that many people are unable to pay. However, until the legislature does act, the proposed rules would provide some relief to those defendants who are caught in the system, unable to pay their fines and some who have lost the right to drive due to unpaid penalties and assessments. **Amended rule 4.105 -** We agree with requiring courts to provide links to www.courts.ca.gov/selfhelp-traffic.htm on their websites but courts should also provide	The committees appreciate the court's input. Response: The committees recognize the need for the Legislature to consider revising the fees and fines established by statute and address the issue of court funding. No response necessary.

	Commentator	Position		Committee Response
			more information online on local process and requirements. Providing additional information online makes it available to everyone, since most people have smart phones and/or access to the internet and do not have to have a permanent address in order to get information. **Proposed rule 4.106 -**	
			We agree with several of the proposed changes to rule 4.106, however, we have concerns about a defendant requesting to schedule a hearing for modification of judgment after a case has been sent to collections unless there is good cause.	Response: There were several comments expressing concerns about the phrase "modify or vacate the judgment." The committee has revised the rule to state "modify the payment terms" to address these concerns. However, there does not appear to be anything in the statute requiring good cause for a defendant to modify the payment terms.
			If additional information is available online on the court's website and is on the courtesy notice (for those courts that already provide one) regarding the ability to pay hearings, failure to pay penalties and possible ramifications from the OMV, additional notice should not be required. **Proposed rule 4.107 -**	Response: The committees agree with this suggestion. This subdivision has been revised to state: "This notice may be provided on the notice required in rule 4.107, the civil assessment notice, or any other notice provided to the defendant."
			We do not agree with requiring courtesy notices to be mandatory. Instead, more information should be available to defendants online on the courts' website, including case information, fine amounts, traffic school options, the option to	Response: The committees recognize that implementation may increase costs to courts. However, the committees have decided that, on balance, the benefits outweigh the costs. To help mitigate these costs, the committees have revised

	Commentator	Position		Committee Response
			request an Ability to Pay Hearing as well as the other penalties noted above. Further, a courtesy notice is just that, a courtesy but not necessary as the information on the citation indicates relevant information in most courts. If it does not, citations could be modified. A courtesy notice is duplicative and can often cause confusion. Violators should be directed to follow instructions on the citation.	the proposal to expressly recognize that the reminder notices may be sent electronically by email or text message. They have also added an advisory committee comment identifying several possible ways courts may implement electronic notices. The committees have recommended an extended implementation date for the rule proposals.
			Requiring Notice would increase the cost to trial courts for mailing, vendor services, staffing for processing and modifications to case management systems.	Please see response above.
			Relying on "courtesy notices" seem to be going backward rather than forward - since many courts are moving toward paperless and using technology to interface with the public, we should be making more information available online.	Please see response above.
			Proposed rule 4.335	
			We do agree that notice should be provided. Notice should be available online and should be on the original citation.	Response: The committees agree that notice of the right to request an ability-to-pay determination should be provided online. They have added an advisory committee comment to proposed rule 4.335(b) to clarify that the notice of the right to request an ability-to-pay determination may be provided on the reminder notice required by proposed rule 4.107, the notice of civil assessment

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				required by Penal Code section 1214.1, the court's website, or "any other notice provided to the defendant." The committees decline to pursue the suggestion to modify the Notice to Appear at this time because it is beyond the scope of the present proposal. Under rule 10.22, advisory bodies cannot present a new form to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. They may consider this suggestion in developing future proposals.
			We agree that the defendant may request the ability to pay determination at any time before the final payment or completion date but if the request is after it has been sent to collections, there must be good cause to grant that request.	Response: Vehicle Code section 42003(e) provides for an ability-to-pay determination based on changed circumstances "[a]t any time during the pendency of the judgment." It does not require a showing of "good cause" or otherwise allow courts to restrict the defendant's ability to make this request if the case has been sent to collections. The committees decline to pursue this suggestion as providing for additional restrictions in the rule may be inconsistent with statute.
			Many counties, including Yolo, do not have the ability to create and run community service programs to direct and track community service and report it to the court. Having a community service requirement without program oversight	Response: This rules proposal preserves judicial discretion; it does not to require that the court provide any particular option to a defendant. To clarify that the court is not required to offer community service or installment plans, the

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			could overwhelm the limited volunteer options with requests and could result in unfulfilled community service orders. Infraction penalties should not be overly punitive and should fit the seriousness of the infraction. However, penalties should not be based solely on status. One must consider the ability to pay, but should not punish unequally those who do have the ability to pay. A defendant's ability to pay should be determined using the similar system as the fee waiving request process or the amnesty program structure. If a defendant is below the poverty level or receiving public assistance, fines and fees may be reduced more significantly than those who do not meet those requirements. However regardless of how this is determined, penalties should be reduced - even substantially reduced - but not eliminate.	committees have added the qualifying phrase "if available." Response: The committees have added an advisory committee comment to clarify that the defendant's ability to pay is not the only consideration that a court may consider in the exercise of discretion. The comment states that a court may also consider the severity of the offense, among other factors. Response: The committees have added an advisory committee comment to specify that a court should consider whether a defendant is receiving public assistance or has an income below the poverty line in determining the defendant's ability to pay. Response: Although a court may suspend the base fine in whole, it may not reduce any mandatory fees.
20.	Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee, Joint Rules Subcommittee	AM	**General Comments:** 1. The JRS *strongly* recommends that the effective date of the new and amended rules discussed in this proposal be changed to July 1, 2017 to provide the trial courts with additional time to successfully and comprehensively implement this and the	The committees appreciate the subcommittee's input. Response: The committees have recommended an extended implementation date for the rule proposals.

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			other urgent traffic proposals. While the JRS appreciates the authoring committees adjusting their timeline to present at the October 2016 Judicial Council business meeting, trial courts will not know in advance the substance of the final rules until the Council vote. Thus, the trial courts would have only two months to implement, doing so would not actually give the courts two months for implementation, during a season when there are a significant number of court holidays and pre-arranged staff vacation. Accurate and comprehensive implementation will require more than two months for most trial courts and, especially so, for the smaller courts. An implementation period of less than two months creates significant challenges and burdens for courts of all sizes. For smaller courts, the following changes were specifically identified: • Smaller courts do not have internal technology staff to assist in making changes to forms or case management systems. It would be costly to expect any vendors to quickly expedite any changes including necessary programming modifications. • Small court management teams may only consist of two to three individuals (at best) that need additional time to develop	Please see response above.

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			processes and appropriate training for staff in and out of the courtroom. Those same individuals are also responsible for attempting to work with technology vendors to implement changes on courtesy notices, programming, and in-house forms. • Increased costs that have not been built into the 2016-17 budget allocations. • Significant costs for printing, postage and mailing. • Increased costs for related vendor services. • Increased staff workload to process notices, applications, hearing requests, other new requirements. • Additional costs and time associated with the modification of case management systems. While the JRs sees the urgency in payment the rules of court and related forms, it strongly recommends the implementation date be changed to July 1, 2017 so that the courts have the ability to implement the changes accurately and effectively. 2. The JRS recommends that no language be added to the revised and proposed new rules that would prohibit a court from first offering the defendant the ability to make full	Response: The committees have not added any language to the rules that would prohibit or encourage this practice.

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			payment within 90 days before considering the other alternatives to full payment, such as fee reductions, installment plans, community service, etc. This practice has worked well in at least one court and other courts may consider this approach. **Regarding the adoption of rule 4.106:** **General comments:** 1. Statutory provisions should not be incorporated into rules of court. This is redundant, incurs costs when rules must be updated to reflect statutory changes, and risks the rule becoming out of date when statutes change. While the drafters are attempting to assist litigants and understandably so, there is no reason to believe that the rules of court are significantly more accessible to defendants than is the Vehicle Code; in any case, that is not the proper function of the rules of court. Court procedures should be transparent to defendants, but that transparency is better achieved through online or written materials, not notices. Generally, these proposals illustrate the proposition that suitable and easily accessible self-help materials, online and in writing, are better solutions to the needs of defendants than are extensive and costly rule-making and notice requirements. 2. Regarding proposed rule 4.106(c)(1), the	Response: Although the commenters correctly state that a defendant's rights are enumerated under Pen. Code 1214.1(b)(1), proposed rule 4.106 provides additional procedures for vacating and reducing civil assessments. The California Rules of Court commonly restate statutory requirements where necessary to provide context for the rules of court administration and practice and procedure adopted by the council. (See Cal. Rules of Court, rule 10.1(b) [recognizing that the California Constitution requires the council "to improve the administration of justice by . . . [a]dopting rules for court administration and rules of practice and procedure that are not inconsistent with statute"].) Self-help materials cannot establish procedures. Response: Although the commenters correctly

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			enumerated right is redundant with PC 1241.1(b)(1). The proposed text goes beyond the statute to the degree that it requires applicable procedures to be incorporated in the notice. Available procedures can be explained in self-help materials.	state that the defendant's rights are enumerated in Penal Code section 1214.1, proposed rule 4.106 provides courts with guidance on procedures for vacating or reducing the civil assessment. As discussed above, this is a common and appropriate purpose for rules of court. Self-help materials cannot establish procedures.
			3. Regarding proposed rule 4.106(c)(1)(2), the proposed text is redundant with PC 1214.1(b)(1), which states that "The assessment imposed pursuant to subdivision (a) shall not become effective until at least 20 calendar days after the court mails a warning notice to the defendant…" Available procedures for requesting to vacate can be explained in self-help materials.	Response: This portion of proposed rule 4.106 specifically addresses situations when defendants have failed to appear or pay and civil assessments are imposed, whereas rule 4.105 addresses arraignment and trial.
			4. Regarding proposed rule 4.106(c)(1)(3), the proposed text is redundant with existing CRC 4.105(b). The Advisory Committee Comment enumerates some of the circumstances that may indicate good cause, potentially reducing judicial discretion, or at least causing confusion, to the extent that its embodiment in rule encourages defendants to cite to it.	Response: The committees have revised subdivision (c)(3). The advisory committee comment provides examples of good cause and is not intended to limit judicial discretion.
			5. Regarding proposed rule 4.106(c)(1)(4), the JRS supports this new language as it helps to discourage defendants from using such petitions as tactics to delay payment.	No response necessary.

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			6. Regarding proposed rule 4.106(c)(1)(5), the proposed text is redundant with PC 1214.1(b)(1).	Response: Although rights are enumerated under Penal Code section 1214.1(b)(1), proposed rule 4.106 provides additional procedures for vacating and reducing civil assessments. As discussed above, this is a common and appropriate purpose for rules of court.
			7. Regarding proposed rule 4.106(c)(1)(6), the proposed text is redundant with PC 1214.1(a) ("the court **may** impose a civil assessment of **up to** three hundred dollars," emphasis added). This is also an example where the conciseness of the existing statute is preferable to the more verbose language that results when using the rules of court to provide instructions to litigants.	Response: The commenters are correct that the rule provides judicial discretion to impose an amount of up to $300. (Pen. Code, § 1214.1(a).) The proposed rule is intended to provide courts with guidance regarding vacating or reducing civil assessments and to clarify the statute. As discussed above, this is a common and appropriate purpose for rules of court. Based on the comments received, it appears that there is confusion regarding whether a civil assessment can be reduced for good cause, thus this language appears warranted.
			8. The language in proposed rule 4.106(d) has the effect of declaring that the provisions of rule 4.105 pertain to collections referrals. It is thus redundant with rule 4.105.	Response: The Judicial Council adopted rule 4.105, effective June 8, 2015, on an urgency basis on the request of the Chief Justice to address concerns regarding requiring defendants to post bail before challenging traffic infractions. In adopting rule 4.105, the council directed the appropriate advisory committees to consider changes to rules, forms, or any other recommendations necessary to promote access to justice in all infraction cases, including recommendations related to postconviction proceedings or after the defendant has previously

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				failed to appear or pay fines or fees. This subdivision of 4.106 is meant to address situations when a defendant has failed to appear in unadjudicated cases.
			9. Regarding proposed rule 4.106(e)(1), insofar as it does not specify the grounds for the petition, this section is overly broad. VC 42003(e) provides that, "At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the rendering court to modify or vacate its previous judgment **on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment.**" (emphasis added) There is no such limitation in proposed rule 4.106(e). If there were, the proposed rule would be redundant with statute.	Response: The committees agree that this subdivision needed clarification. The rule has been revised has to clarify the limitations apply if the request to modify is based on a request other than inability to pay.
			10. Regarding proposed rule 4.106(g), the VC sections cited refer to failures to pay, and thus assume that the case has been adjudicated. Standard case processing would satisfy proposed rule 4.106(g) if, at adjudication, the defendant has notice and opportunity to raise the issue of ability to pay. This could be accomplished by a general notice provided to all those who attend a court hearing or participate in a Trial by Declaration. Such standard procedures, accomplished elsewhere in the rules of court,	Response: This subdivision has been revised to state: "This notice may be provided on the notice required in rule 4.107, the civil assessment notice, or any other notice provided to the defendant."

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			would render this section redundant and thus obviate the need for an additional notice. **Regarding the adoption of rule 4.107:** **Suggested Modifications:** **1. The JRS recommends adding the following highlighted language to proposed rule 4.107(a):** Each court must send a mandatory "courtesy notice" to the address shown on the *Notice to Appear* or to the defendant's last known address before the initial appearance. The failure to receive a courtesy notice shall not be a defense to failure to comply with the promise to appear on the citation. The JRS strongly recommends adding the above highlighted text so that it remains clear that courtesy notices are not official notices to appear in court. Courtesy notices are unofficial reminders sent to the defendant as a courtesy. They are not sent with any kind of mail tracking, such as proof of service. The official notice is the citation and a defendant's signature on the citation is his/her agreement to appear. Because the citation is the official notice, failure to receive a courtesy notice should not be a defense to failure to comply with the promise to appear on the citation. The	Response: The committees agree and have revised the proposal to provide that the failure to receive a reminder notice does not relieve the defendant of the obligation to appear by the date stated in the signed notice to appear.

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			JRS strongly recommends adding the above highlighted text so that it is clear to both the courts and the public that a defendant cannot use a failure to receive a courtesy notice as grounds for challenging why he/she did not appear in court on the date specified on the citation. **2. The JRS recommends modifying the language in proposed rule 4.107(b)(1) as indicated by the highlighted text below:** In addition to information obtained from the Notice to Appear, the courtesy notice must contain at least the following information: (1) ~~An appearance date and location;~~ Text stating that the appearance date and location are specified on the citation; The appearance date and location are already specified on the citation. Requiring the courts to include this information on the courtesy notices increases the workload of court staff significantly and unnecessarily. A generic statement referring defendants to their citations for this information achieves the same goal and it would make the processing of the courtesy notices quicker and easier for the courts. **3. The JRS recommends modifying the language in proposed rule 4.107(b)(7) as indicated by the highlighted text below:**	Response: The committees have declined to pursue the suggestion. Requiring that the notice state the appearance date and location furthers one of the notice's primary purposes: providing defendants with information about their case to ensure that they do not fail to appear.

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			(7) The right to request an ability-to-pay determination, including the availability of community service (if available) and installment payment plans (if available); and Some trial courts do not offer community service and installment payment plans as options. By adding "if available" to the above rule language, the new rule would be more clear in conveying that the courts are not mandated to provide community service and installment payment plans as alternatives to payment in full. **Regarding the adoption of rule 4.335:** **General Comments:**	Response: The committees agree and have incorporated the suggested language into the proposal.
			1. The JRS recommends that forms be developed to assist the courts with determining defendants' ability to pay. The JRS recommends that the forms be modeled after the Income and Expense Declaration forms.	Response: The committees appreciate the suggestion and are contemplating developing statewide forms related to ability to pay.
			2. The JRS also recommends that a form be created to request an ability to pay determination or a review of this determination.	Please see response above.
			3. Regarding proposed rule 4.335(b), the proposed language is redundant with the	Response: Although the two rules do overlap, proposed rule 4.335(b) is more expansive than

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			language in proposed rule 4.107(b)(7).	proposed rule 4.107(b)(7) because it (1) encourages courts to provide notice of the right to request an ability-to-pay determination not only in the reminder notice, but also in other notices and locations, if applicable; and (2) requires that courts also "make available instructions or other materials for requesting an ability to pay determination."
			4. Regarding proposed rule 4.335(c)(1-3), the proposed language is redundant with VC 42003.	Response: Vehicle Code section 42003 does require that courts consider the defendant's ability to pay. The California Rules of Court commonly restate statutory requirements where necessary to provide context for the rules of court administration and rules of practice and procedure adopted by the council. (See Cal. Rules of Court, rule 10.1(b) [recognizing that the California Constitution requires the council "to improve the administration of justice by . . . [a]dopting rules for court administration and rules of practice and procedure that are not inconsistent with statute"].)
			Suggested Modifications: **1. The JRS recommends that proposed rule 4.335(c)(4) include language that states that the courts may inquire into the ability of the defendant to pay all or a portion of the fee(s).** The proposed rule creates the possibility of an administrative determination of ability to pay, and thus an increase in efficiency	In addition, proposed rule 4.335(c)(3) would provide for a procedure to implement Vehicle Code section 42003 that is not stated expressly in the statute: a court would be required to permit a written request for an ability-to-pay determination, unless it directs a court appearance. Response: This rules proposal is not intended to eliminate judicial discretion. Because various comments indicate general confusion over the

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			compared to a courtroom hearing. However, the JRS believes this benefit is outweighed by the following problems. The proposed rule, by specifying binary criteria (i.e., evidence of SSI) appears to make the ability-to-pay determination all-or-nothing, while statute provides that, upon request, the court may inquire "into the ability of the defendant to pay all or a portion of those costs…" (VC 42003(c)), thus implying the ability to impose partial judgments. This would have the effect of making a large class of people immune to financial penalty for traffic violations. By making bright-line criteria (modeled upon fee waiver provisions), the proposed rule would remove the judge's discretion in this area. The JRS, therefore, suggests adding in language that states that the courts may inquire into the ability of the defendant to pay all or a portion of the fee(s). **2. The JRS recommends modifying the language in proposed rule 4.335(c)(5) as indicated by the highlighted text below:** <u>(5) The defendant has the right to a review by a judicial officer of the determination made by the clerk or the collection agent, if requested in writing within 20 calendar days of the sending date of the notice of decision. The defendant must be advised of the right to seek this review. The review is not required to be in the form of a hearing. The judicial</u>	intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this provision from the proposal. Instead, the committees have added an advisory committee comment, which provides the court, in determining a defendant's ability to pay, should consider whether the defendant receives public benefits and whether the defendant has a monthly income of 125 percent or less of the current poverty guidelines. Response: The committees agreed with the suggestion to specify that the judicial officer has the discretion to conduct the review on the written record or to order a hearing. Because they removed subdivision (c)(5) from the proposal, they incorporated this suggested language into subdivision (c)(3).

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			officer has the discretion to conduct the review on the written record or to order a hearing. The JRS recommends the above language modification so that the rule clearly states that judicial officers are not required to provide a hearing for a review and that, in fact, it remains within judicial discretion to order a hearing or review by writing only. This section of the new rule could result in numerous requests by defendants for in-person hearings. Therefore, the JRS recommends this modification so that the new rule does not inadvertently result in a significantly greater workload for judicial officers and court staff. **3. The JRS recommends modifying the language in proposed rule 4.335(c)(6)(C) as indicated by the highlighted text below:** (C) ~~Suspend~~ Reduce the fine in whole or in part; As discussed above, the JRS believes that it would be inappropriate to remove all penalties in adjudicating an infraction violation based on the financial status of the defendant. One who has been adjudicated to have violated the law should suffer some detriment, even if, based on the defendant's financial circumstances, it is appropriate to	Response: This proposal preserves judicial discretion. It is ultimately up to the reviewing judge to determine whether to lower the base fine and, if so, by how much. Regardless of whether the judge suspends the base fine in full, any mandatory fees requires by statute cannot be suspended.

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			reduce the penalty to a nominal amount in one payment or over time, or to order community service.	