



Judicial Council of California

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Title

Criminal and Traffic Procedure: Appearance in Court for Infractions Without Deposit of Bail (Action Required)

Summary

The Criminal Law and Traffic Advisory Committees recommend amendments to rule 4.105 of the California Rules of Court to apply the rule to non-traffic infractions and to require courts to consider the totality of the circumstances when setting bail amounts before trial. The committees also recommend adding advisory committee comments to clarify the scope of the rule and explain that the totality of the circumstances may include whether the bail amount would impose an undue hardship on the defendant. The amendments were developed in response to recent Judicial Council directives to expand the application of the rule and promote access to justice in all infraction cases.

Recommendation

The Criminal Law and Traffic Advisory Committees recommend that the Judicial Council, effective December 1, 2015, amend rule 4.105 to:

1. Apply the rule to non-traffic infractions by deleting various references to “traffic” and the “Vehicle Code”;
2. Add subdivision (c)(4) to require courts to consider the totality of the circumstances in determining the amount of any bail set before trial under subdivisions (c)(2) and (c)(3);
3. Add the following advisory committee comment to clarify the application of the rule under subdivision (a): “The rule does not apply to post conviction matters or cases in which the defendant seeks an appearance in court after a failure to appear or pay”;
4. Add to the advisory committee comment an explanation of the distinct statutory purposes and functions that bail and related considerations serve in infraction cases as distinguished from felony and misdemeanor cases;
5. Add the following citation to the advisory committee comment to provide examples of statutory alternatives to appearing for arraignment: “(See, e.g., Pen. Code, §§ 853.5, 853.6; Veh. Code, §§ 40510, 40512, and 40512.5 [authorizing defendants to post and forfeit bail in lieu of appearing for

arraignment].)”;

6. Add to the advisory committee comment a statement that in considering the “totality of the circumstances” under new subdivision (c)(4), courts may consider “whether the bail amount would impose an undue hardship on the defendant”; and
7. Delete unnecessary references to the totality of the circumstances in light of the addition of those considerations under new subdivision (c)(4).