



Via Overnight Mail and Email

May 26, 2021

Hon. Russell L. Hom
Superior Court of Sacramento County
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homr@saccourt.ca.gov

Lloyd Connelly
Court Executive Officer
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Dear Presiding Judge Hom and CEO Connelly,

We write on behalf of the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Bay Area Legal Aid, Legal Services of Northern California, and the American Civil Liberties Union of Northern California to request that Sacramento County Superior Court stop imposing civil assessments under Penal Code section 1214.1. The Court's current practice of imposing \$300 civil assessments, without individualized evaluation, violates California law and the state and federal constitutions. It also exacerbates poverty and racial inequality by subjecting the people least able to pay their fines or appear in court, disproportionately overpoliced Black and Brown people, to inordinately harsh punishments. For this reason, we request an end to the Court's imposition of civil assessments. At a minimum, we request that the Court bring its civil assessment policies and practices into compliance with the law.

Our organizations have deep expertise in California fines and fees and protecting the rights of low-income and BIPOC people. Collectively, we have logged thousands of hours representing people in California's court system, including traffic courts. These efforts have led to multiple systemic reforms, including successful litigation against the DMV for unlawful license suspensions for failure to pay and appear¹ and changes to inadequate ability-to-pay procedures at superior courts around the State.²

¹ Hernandez v. Dep't of Motor Vehicles, 49 Cal. App. 5th 928 (2020).

² Settlement Requires L.A. Superior Court to Consider Drivers' Inability to Pay Traffic Fines, ACLU-Southern California, Oct. 8, 2018 [available at: <https://www.aclusocal.org/en/press-releases/settlement-requires-la-superior-court-consider-drivers-inability-pay-traffic-fines>].

Civil assessment fines have long been a contributor to California’s outsized system of fines and fees. For most traffic offenses, the legislature has imposed a \$50 or \$100 base fine as the just penalty. To charge \$300 for missing a payment deadline or the appearance date on an infraction ticket is exponentially more than the punishment for the underlying offense.

Perhaps in recognition of this disproportionality, Penal Code section 1214.1 provides that courts “*may* impose a civil assessment of *up to* three hundred dollars (\$300)” when someone fails to pay or appear. In Sacramento, the Court’s standing order establishes a policy of automatically imposing \$300 civil assessments in each eligible case without providing for any case-by-case evaluation of the appropriateness of the amount given the offense, an ability to pay, and whether there is good cause for the failure to appear or pay.³ And court policy provides that multiple \$300 civil assessments can be imposed in a single case.

As detailed below, the Court’s policy and practice is unlawful. Specifically, the Court contravenes Penal Code section 1214.1 by failing to exercise the discretion that the statute requires. It violates people’s due process and equal protection rights by imposing costs without regard for their ability to pay, and it is an excessive fine under the State and US Constitutions. The Court’s interest in receiving income from these fees creates a conflict of interest. Additionally, the policy and practice of automatically imposing the full \$300 is an invalid rule, because its promulgation did not follow the statutorily required rulemaking.

The court’s policy and practice of imposing multiple \$300 civil assessments in individual cases also causes predictable harm to communities that the Court serves. By dramatically increasing court costs, civil assessments exponentially increase the cost of an infraction and create a debt trap for many low-income people. We have seen this happen first-hand through our work serving clients. The imposition of civil assessments on top of already expensive traffic fines can result in years of collection activities, income tax refund offsets, and suspended licenses. This in turn impacts many clients’ employment opportunities, which then further constrains their ability to pay their debt. We have seen the Court deny post-conviction relief to petitioners with outstanding fines and fees,⁴ which places low-income court users at a disadvantage and makes them less likely to gain employment and pay off their debt. Other clients are forced to choose between paying their court costs or their rent. Some have to drive to care for children or elderly parents, and high fees mean greater risk of failure-to-appear suspensions. And yet others avoid the courthouse completely, even when they need crucial assistance for things like domestic violence, because they fear the consequences of being delinquent on their debts.

These consequences do not affect all populations equally. Because civil assessments punish those who face added barriers to payment or court appearance, they disproportionately target low-income people, people of color, people with unstable housing, and people with disabilities. If the Court is truly committed to “fair, equal, and impartial access to justice,”⁵ it cannot maintain a policy and practice that serves chiefly to widen inequality and punish people for factors beyond their control.

³ Presiding Judge Hon. Michael G. Virga, Order: Imposition of Civil Assessment Pursuant to Penal Code § 1214.1 (July 22, 2005) [available at <https://www.saccourt.ca.gov/general/standing-orders/docs/ssc-05-1.pdf>].

⁴ The Court itself disseminates inaccurate information regarding eligibility for Penal Code § 1203.4 dismissals (“expungement”) for those who owe court debt. The Court’s packet explaining the expungement process states that those owing fines and fees are “not eligible” for § 1203.4 or 1203.4a relief. Not only is this legally inaccurate (See, e.g., People v. Bradus, 149 Cal.App.4th 636 (2007)), but it also causes a chilling effect on low-income petitioners even seeking relief. Such court policies combine to create further barriers to successful reentry. [Available at <https://www.saccourt.ca.gov/criminal/docs/1203-4-dismissal-process.pdf>].

⁵ Mission Statement, Sacramento County Superior Court [available at: <https://www.saccourt.ca.gov/>].

The Court’s policy of automatically imposing \$300 civil assessments in all eligible cases is an abuse of discretion that contravenes Penal Code § 1214.1’s statutory language and denies defendants a fair hearing as provided for by the Statute.

The Court’s automatic imposition of civil assessments represents an unlawful failure to practice the discretion vested in it by law. The legislature’s use of the words “may” and “up to” in Penal Code section 1214.1 shows its intent for courts to exercise discretion before imposing a civil assessment.⁶ Rather than allowing for exercise of this discretion, the Court automatically imposes the maximum amount permitted in all eligible cases, without a judge’s review. By use of this policy and practice, the Court unlawfully presumes, in every instance, that \$300 is an appropriate amount for the offense, that the person can pay that amount, and that no good cause exists.

When the law requires courts to exercise judicial discretion, a failure to do so effects “a denial of a fair hearing and a deprivation of fundamental procedural rights[.]”⁷ For a court to practice discretion, it must consider the particularities of the case before it.⁸ Court-wide policies that do not differentiate between cases cannot serve as a substitute for discretion.⁹ Rather than attend to case-specific facts, such policies apply “a preconceived determination applicable to all cases[.]”¹⁰ By adopting a blanket civil assessment that operates wholly without the review required by section 1214.1, the Court fails to exercise the discretion required by law and thereby violates defendants’ fundamental rights afforded by the statute.

The civil assessment policy is invalid because it was not promulgated according to statutorily required procedures, conflicts with Penal Code section 1214.1, and unlawfully delegates judicial discretion.

Both the Code of Civil Procedure and the Government Code authorize courts to create rules for their own governance.¹¹ These rules, in order to be valid, must be enacted according to specified procedures.¹² Section 575.1 of the Code of Civil Procedure outlines the process that presiding judges must follow. Presiding judges must submit proposed rules to the judges of the court, the local bar, and others, as specified by the Judicial Council. Under the Government Code, a court’s proposed rules will not take effect until they have “been filed with the Judicial Council and the clerk of the court, and made

⁶ See, e.g., Tarrant Bell Property, LLC v. Superior Court, 51 Cal. 4th 538, 542, 544 (2011) (reasoning courts “ordinarily” construe the word ‘may’ as permissive and the word ‘shall’ as mandatory, ‘particularly’ when a single statute uses both terms” and holding the Legislature’s use of “may” in Civ. Proc. Code § 638 means the described action—appointing a referee for the specified dispute—is discretionary as opposed to mandatory); Lopez v. Medical Board, 6 Cal. App. 4th 693, 696-697 (1992) (rejecting appellant’s “interpretation of [Bus. & Prof. Code] section 2084[, which] would convert the permissive word ‘may’ into a mandatory ‘shall’”); Peters v. Superior Court, 212 Cal. App. 3d 218, 223 (1989) (“The word ‘shall’ is ordinarily ‘used in laws, regulations, or directives to express what is mandatory.’ The word ‘may,’ by contrast, is usually permissive and denotes ‘to have power.’” (citations omitted)).

⁷ People v. Penoli, 46 Cal. App. 4th 298, 306 (1996).

⁸ See People v. Hernandez, 51 Cal. 4th 733, 744 (2011) (holding trial court abused its discretion by relying on a standard practice of stationing a deputy at the witness stand, including during the defendant’s testimony, “instead of on individualized facts showing that defendant posed a safety risk or flight risk, or a risk of otherwise disrupting the proceedings”).

⁹ Reifler v. Superior Ct., 39 Cal. App. 3d 479, 481 (1974).

¹⁰ Penoli, 46 Cal. App. 4th at 303.

¹¹ The 2005 Standing Order is straightforwardly a local rule because it is an “order . . . of general application adopted by a court to govern practice or procedure in that court[.]” Cal. Rules of Court, Rule 10.613.

¹² Hall v. Superior Ct., 133 Cal. App. 4th 908, 914–18 (2005).

immediately available for public examination.”¹³ Local policies or practices that effectively function as rules are not exempt from this process.¹⁴

The 2005 Standing Order functions as a rule, as it set an amount to be imposed in all civil assessments. There is no indication that rulemaking procedures were followed when then-Presiding Judge Virga issued the Order. If these procedures were, in fact, disregarded, then the standing order is unlawful under section 575.1 of the Code of Civil Procedure and section 68071 of the Government Code.

In the event that the proper procedures *were* followed, the rule is nonetheless invalid. “[E]ven properly adopted local rules are only valid to the extent they do not conflict with existing law[.]”¹⁵ By providing a court-wide rule that interferes with the discretion statutorily-required by Penal Code section 1214.1, the standing order conflicts with existing law. The standing order also conflicts with section 1214.1(b)(1) by shortening the statutorily provided window of pre-imposition notice from 20 to 15 calendar days.¹⁶ Additionally, the Court has effectively, and unlawfully, delegated the discretionary imposition of civil assessments to ministerial officers of the Court.¹⁷ The Court’s policy is therefore invalid.

The Court’s policy of imposing civil assessments without considering ability to pay is a violation of defendants’ due process and equal protection rights under the California and U.S. Constitutions.

Taken together, the guarantees of Due Process and Equal Protection call for procedures “which allow no invidious discriminations between persons and different groups of persons.”¹⁸ Accordingly, both the U.S. Constitution and the California Constitution prohibit effecting punishments on defendants on the basis of their poverty.¹⁹

By imposing civil assessments without considering ability to pay, the Court ensures that indigent defendants will sustain punishments beyond those faced by wealthier defendants. A \$300 civil assessment imposed on an indigent defendant opens the door to reduced employment opportunities, harassment by debt collectors, and financial instability.²⁰ Meanwhile, defendants with the means to pay face none of these consequences. The policy generates “additional punishment . . . for those unable to pay”²¹ and thereby violates indigent defendants’ due process and equal protection rights.

The Court’s failure to determine an individual’s ability to pay violates the prohibition on excessive fines under the Eighth Amendment and the California Constitution.

Civil assessments imposed under Penal Code section 1214.1 are subject to the excessive fines clause. The excessive fines prohibition in the Eighth Amendment and under article I, section 17 of the California

¹³ Cal. Gov. Code § 68071.

¹⁴ See, e.g., Hall at 915, supra note 14 (holding court’s policy requiring all pretrial motions be filed 30 days before trial was invalid and reasoning “respondent court’s affirmative assertion no such rule exists corroborates petitioner’s claim the Compton court’s policy, which in practical effect amounts to a 30-day motion cutoff rule was not adopted or properly promulgated in accordance with the statutes governing the promulgation and adoption of local rules”); Lokeijak v. City of Irvine 65 Cal. App. 4th 341, 344 (1998).

¹⁵ Hall at 916, supra note 14.

¹⁶ See Hall, 133 Cal. App. 4th at 918 (“It thus appears a local policy or practice which has the effect of automatically cutting off a defendant’s right to file and have hearings on motions at the 30-day mark before trial is inconsistent with the California Rules of Court and would also be invalid on that ground.”).

¹⁷ Cal. Const. art. VI, § 22.

¹⁸ Griffin v. Illinois, 351 U.S. 12, 17 (1956).

¹⁹ In re Antazo, 3 Cal. 3d 100, 115 (1970).

²⁰ People v. Dueñas, 30 Cal. App. 5th 1157, 1168 (2019), review denied (Mar. 27, 2019).

²¹ Dueñas at 1168, supra note 14. (citing People v. Neal, 29 Cal.App.5th 820, 827 (2018)).

Constitution limits the imposition of civil and criminal penalties.²² “[A] monetary sanction that cannot ‘fairly be said *solely* to serve a remedial purpose’ will be subject to scrutiny as an Eighth Amendment fine if it ‘can only be explained as serving in part to punish.’”²³ Here, section 1214.1(a)’s statutory language characterizing it as a “penalty” clearly shows the legislature intended the civil assessment to be punishment.²⁴ It is therefore subject to the excessive fines clause.

The Eighth Amendment and the California constitution require, at a minimum, that defendants be able to demonstrate their inability to pay.²⁵ Imposing a civil assessment without first giving “an opportunity to present evidence and argument why such monetary exactions exceed [] ability to pay” runs afoul of state and federal constitutional safeguards.²⁶ The Court does not provide for such an opportunity.

Under the current trial court funding scheme, the Court’s financial interest in automatically imposing the full \$300 civil assessment violates defendants’ due process right to an impartial decision-maker.

Due process entitles defendants to a hearing by an impartial decision-maker.²⁷ If a judicial procedure “offer[s] a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant,” or “might lead him not to hold the balance nice, clear and true between the State and the accused,” then it “denies the latter due process of law.”²⁸ “[T]hat ‘possible temptation’ may [] exist when the [government]’s executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the [government]’s court.”²⁹

Here, the trial court funding scheme more than satisfies the “possible temptation” test. The Presiding Judge has the power to “control, authorize, and direct expenditures” for the Court.³⁰ Along with this authority comes a responsibility to steward the Court’s finances and an interest in accruing revenue. The primary source of available revenue is the Trial Court Trust Fund (“TCTF”), which funds “trial court operations, salaries and benefits of superior court judges, court interpreter services, assigned judge services, and local assistance grants[.]”³¹ Since 2005, the TCTF has been funded, in part, by civil assessment payments.³² The Court thus has a direct interest in imposing more and larger civil assessments because increased payments expand the TCTF monies available to trial courts. Even more directly, the Court has an interest in increasing civil assessment revenue because it receives more TCTF money, relative to other trial courts, if it exceeds its civil assessment buyout.³³ This funding structure rewards

²² People v. Cowan, 47 Cal.App.5th 32, 44 (2020) (citing Timbs v. Indiana, 139 S.Ct. 682, 686 (2019)); see also Austin v. United States 509 U.S. 602, 610 (1993).

²³ People v. Cowan, 47 Cal.App.5th at 44-45.

²⁴ See People v. Ruiz, 4 Cal. 5th 1100, 1100-18 (2018) (reasoning legislature’s use of word “penalty” was a “clear indicator[] of legislative intent”).

²⁵ Cowan at 48, *supra* note 23 (citing People v. Cota, 45 Cal.App.5th 786, 799 (2020)).

²⁶ Cowan at 48, *supra* note 23.

²⁷ Tumey v. State of Ohio, 273 U.S. 510, 535 (1927).

²⁸ *Id.* at 532.

²⁹ Ward v. Vill. of Monroeville, Ohio, 409 U.S. 57, 60 (1972).

³⁰ Cal. Govt. Code § 71601.

³¹ Trial Court Trust Fund, Department of Finance Manual of State Funds (Revised Feb. 2013) [available at: https://www.dof.ca.gov/budget/Manual_State_Funds/find_a_fund/documents/0932.pdf]; see also Cal. Gov. Code § 68085 (establishing the TCTF and explaining that it serves to fund trial court operations).

³² Materials for the Trial Court Budget Advisory Committee, Judicial Council [available at: <http://www.courts.ca.gov/documents/tcbac-20180405-materials.pdf>].

³³ Civil Assessment Programs and Revenues, Judicial Council p. 2 (Aug. 21, 2007) [available at: <https://www.courts.ca.gov/documents/083107item9.pdf>].

courts for imposing more civil assessments. It is thus no surprise that some courts have explicitly turned to civil assessments to generate revenue.³⁴

The Judicial Council Trial Court Budget Advisory Committee acknowledged the conflict-of-interest problem as recently as April 2020 when it proposed changes to the current funding system to reduce the “perceived conflict of interest” and to reduce reliance on this “[u]nstable funding” stream, which “makes it impossible to provide fair, equitable and timely justice to all litigants.”³⁵ The state Department of Finance rejected the proposal.

The Court’s civil assessment policy, borne of this conflict of interest, violates defendants’ due process right to a determination by an impartial decision-maker.

The Court’s current policy exacerbates poverty and racial inequality.

The Court’s approach to civil assessments also makes for bad policy. The current practice results in exceptionally harsh punishments imposed on already-struggling Californians for conduct that typically results from poverty. This does not advance the purpose of the Court and has severe and harmful consequences for the communities it serves.

When the Court imposes civil assessments for failure to pay, it creates debt for people who are likely already indigent.³⁶ It is irrational and cruel to penalize people for being poor, especially during a pandemic that has had catastrophic impacts for low-income Californians.³⁷ There can be no doubt that this practice principally targets poor people; though the court-wide practice “may appear to apply equally to both the rich offender and the poor one, actually the former has the opportunity to escape his [assessment] while the right of the latter to pay what he cannot, is a hollow one.”³⁸ Imposing a financial penalty on those without the means to pay can only serve to advance economic inequality; such a policy has no place at an institution whose mission is to “provide fair, equal, and impartial access to justice[.]”³⁹

Imposing civil assessments for failure to appear makes for similarly senseless policy. Our experience with low-income Californians suggests that failures to appear are more often than not the result of poverty, including inability to pay a traffic ticket and lack of access to legal assistance in resolving a citation. In working with clients, we see first-hand how often failures to appear result from inadequate public transportation systems, lack of access to vehicles, insufficient childcare, inflexible work schedules, disability, and homelessness. These are largely conditions of poverty. As such, they should not be punished at all, and especially not through the imposition of further fees.

The Court’s policy also has the effect of disproportionately punishing people from marginalized populations. Black and Latinx people face over-policing and are thus more vulnerable to citations and the

³⁴ See Meeting Notes of the Executive Committee for the Riverside County Superior Court (Feb. 5, 2010) (on-file with author) (agreeing to impose civil assessments for failure to pay on misdemeanors and felonies in order to increase revenue).

³⁵ <https://www.courts.ca.gov/documents/tcbac-20200430-materials.pdf>.

³⁶ Back on the Road Coalition, *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California* at 7 (April 2016) (providing data suggesting that FTPs occur at higher rates in lower-income zip codes).

³⁷ Times Editorial Board, *Newsom is Right: Let’s Get More Money in Poor Californians’ Pockets Now*, Los Angeles Times, Jan. 11, 2021 [available at: <https://www.latimes.com/opinion/story/2021-01-11/golden-state-stimulus>] (discussing long food-bank lines, rent paid with credit cards, and other evidence of the economic damage wrought on low-income Californians by the Covid-19 pandemic).

³⁸ *Antazo* at 103–04, *supra* note 20.

³⁹ *Mission Statement*, Sacramento County Superior Court [available at: <https://www.saccourt.ca.gov/>].

civil assessments that can result.⁴⁰ Additionally, because of the racial wealth gap,⁴¹ these defendants are likely to face more barriers to paying for their citations and appearing in court. This means they are likely to be extremely overrepresented in the population receiving civil assessments. Houseless defendants are also at a heightened risk of receiving civil assessments, in their case because housing instability may prevent them from receiving notifications about court dates. Likewise, other people who face unstable housing environments, like juveniles in foster-care and domestic violence survivors, have added challenges to appearing in court and are thus more susceptible to civil assessments. The barriers to payment and appearance that these communities face are largely born of social disadvantage. Civil assessments punish them for factors beyond their control and compound the disadvantages they already experience.

Because of the legal violations outlined above, the Court must cease imposing civil assessments until its policies are changed to comply with statutory and constitutional requirements.

The Court's current policy violates the requirements of Section 1214.1 and the state and federal constitutions. Accordingly, we request that the Court cease imposing civil assessments. If the Court chooses to continue imposing them, it should, at a minimum, bring its policies and practices into compliance with the law. We are happy to meet to discuss options on how to do this in a manner responsive to the needs of court users, particularly from marginalized communities.

The Court should also reconsider its use of civil assessments altogether, given that they are a blunt tool with harmful and inequitable impacts. Penal Code section 1214.1 expressly states that the Court "may" impose a civil assessment; there is no mandate to do so. The Court has other tools available for resolving cases in the event of non-appearance, such as trial by declaration.⁴² It also has other methods of collecting outstanding debts.

The Court's existing Ability to Pay⁴³ process for infraction offenses is inadequate to meet this need, as it does not account for the pre-imposition hearing that should have taken place before issuing civil assessments. In addition, the Court's resolution of Ability to Pay petitions for low-income defendants – requiring community service specifically served with the Sheriff's work program – is an inadequate remedy. This practice imposes unreasonable burdens on low-income individuals who lack access to childcare, who cannot take time off from work, who live out-of-county or otherwise lack transportation to reach the Sheriff's program site, who are victims of domestic violence, and/or who have a disability but are unable to obtain required medical authorization of inability to participate in the Sheriff's community service program.

Please contact us by June 21, 2021 to confirm that you have imminent plans to implement the above requests or would like to meet to discuss possible changes to court policy. Please direct any communications or questions to jdo@aclunc.org.

⁴⁰ Stopped, Fined, Arrested at 21, *supra* note 37.

⁴¹ Anne Helen Petersen, The Mirage of the Black Middle Class, Vox, Jan. 26, 2021 [available at: <https://www.vox.com/the-goods/22245223/black-middle-class-racism-reparations>] (discussing systematic, historically-rooted barriers preventing many Black Americans from entering and remaining in the middle class).

⁴² See Cal. Veh. Code § 40903 (providing for trial by written declaration when the defendant fails to appear).

⁴³ Frequently Asked Questions, Sacramento County Superior Court (last viewed on May 18, 2021) [available at: <https://www.saccourt.ca.gov/traffic/faq.aspx>].

Sincerely,

A handwritten signature in black ink, appearing to read "John Do". The signature is stylized and cursive.

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The ACLU of
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