

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

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3 **(a) Application**

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

7  
8 *(Subd (a) amended effective January 1, 2016.)*

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10 **(b) \* \* \***

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12 **(c) Deposit of bail**

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

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

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

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25 (4) In determining the amount of bail set under (2) and (3), courts must consider  
26 the totality of the circumstances.

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28 *(Subd (c) amended effective January 1, 2016.)*

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30 **(d) Notice**

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

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38 *(Subd (d) amended effective January 1, 2016.)*

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40 *Rule 4.105 amended effective December 1, 2015; adopted effective June 8, 2015.*

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42 **Advisory Committee Comment**

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1 **Subdivision (a).** The rule is intended to apply only to an ~~traffic~~ infraction violation of the ~~Vehicle~~  
2 ~~Code~~ for which the defendant has received a written notice to appear and has appeared by the  
3 appearance date or an approved extension of that date. The rule does not apply to postconviction  
4 matters or cases in which the defendant seeks an appearance in court after a failure to appear or  
5 pay.

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7 **Subdivision (c).** This subdivision takes into account the distinct statutory purposes and functions  
8 that bail and related considerations serve in infraction cases, including, for example, the posting  
9 and forfeiting of bail in uncontested cases and the use of bail to satisfy later judgments, as  
10 distinguished from felony and most misdemeanor cases.

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12 **Subdivision (c)(1).** Various statutory provisions authorize ~~traffic~~ infraction defendants who have  
13 received a written notice to appear to elect to deposit bail in lieu of appearing in court or in  
14 advance of the notice to appear date. (See, e.g., Veh. Code, §§ 40510 [authorizing defendants to  
15 deposit bail before the notice to appear date]; 40519(a) [authorizing defendants who have  
16 received a written notice to appear to declare the intention to plead not guilty and deposit bail  
17 before the notice to appear date for purposes of electing to schedule an arraignment and trial on  
18 the same date or on separate dates]; 40519(b) [authorizing defendants who have received a  
19 written notice to appear to deposit bail and plead not guilty in writing in lieu of appearing in  
20 person]; and 40902 [authorizing trial by written declaration].)

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22 This rule is not intended to modify or contravene any statutorily authorized alternatives to  
23 appearing in court. (See, e.g., Pen. Code, §§ 853.5, 853.6; Veh. Code, §§ 40510, 40512, and  
24 40512.5 [authorizing defendants to post and forfeit bail in lieu of appearing for arraignment].)

25 The purpose of this rule is to clarify that if the defendant declines to use a statutorily authorized  
26 alternative, courts must allow the defendant to appear *without* prior deposit of bail as provided  
27 above.

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

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

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37 **Subdivision (c)(4).** In considering the “totality of the circumstances” under this subdivision,  
38 courts may consider whether the bail amount would impose an undue hardship on the defendant.

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