



Via Overnight Mail and Electronic Mail

March 21, 2016

Rodina Catalano, Court Executive Officer
Superior Court of San Mateo County
400 County Center
Redwood City, CA 94063
rcatalano@sanmateocourt.org

cc: Hon. John L. Gransaert, Presiding Judge
Courtney Tucker, Judicial Council

Re: Traffic Court Practices and Driver's License Suspensions

Dear Ms. Catalano:

I write on behalf of the American Civil Liberties Union of Northern California, Lawyers' Committee for Civil Rights, Legal Services for Prisoners with Children, and the Western Center on Law and Poverty to follow-up on your February 9, 2016 letter to Claire Johnson Raba ("February 9 Letter").

We appreciate that, as you state, you intend to modify your traffic notices, forms and website to address some of our concerns. However, your representations about the prospective changes provide no specifics about how or when the Court will revise its policies and practices or whether those revisions will adequately address the Court's legal obligations that we have raised in our meeting and prior letters.

In our meeting with you on December 14, 2015 and in on our letters, dated November 20, 2015 and December 18, 2015, we made clear the serious and irreparable harm caused to our clients and other low-income and indigent residents in San Mateo County by the Court's policies and practices on driver's license suspensions. We reiterate our concern that the Court is violating its statutory and constitutional duties by referring individuals for driver's license suspension pursuant to Vehicle Code § 40509.5(b) in connection with a failure to pay citation fines and fees, without making a proper determination that the individual's non-payment was willful, instead of being due to an inability to pay.

The Vehicle Code expressly states that the Court may only act to suspend a license for failure to pay if the person "willfully" failed to do so. *See Veh. Code §40509.5(b)*. Under basic statutory construction principles and the plain meaning of the word, "willfully" must be interpreted to mean an intentional act and not due to a person's indigence or financial

circumstances. See Merriam Webster Collegiate Dictionary, 10th Ed. (defining “willful” as “obstinately and perversely self-willed,” or “done deliberately: intentional”); *People v. Hagedorn*, 127 Cal. App. 4th 734, 744 n.6 (2005) (“The word ‘willfully’ as generally used in the law is a synonym for ‘intentionally,’ i.e., the defendant intended to do the act proscribed by the penal statute.”) (internal quotations omitted).¹ Accordingly, in interpreting and enforcing § 40509.5(b), the Court may not act to suspend a license for failure to pay if the nonpayment is due to an inability to pay. *Id.*, see also *Bell v. Burson*, 402 U.S. 535, 542 (1971) (due process requires that a state consider essential statutory elements for driver’s license suspension before suspending the license).

Moreover, because continued possession of a driver’s license is protected by the constitutional guarantees of due process, individuals must be given notice and a meaningful opportunity to be heard on the element of “willfulness.” Both the United States and the California supreme courts have held that suspending a driver’s license triggers due process protection. See *Burson*, 402 U.S. at 539 (noting that a driver’s license may be “essential in the pursuit of a livelihood”); *Rios v. Cozen*, 7 Cal. 3d 792, 795-6 (1972). Finally, the law requires that these statutory and constitutional protections regarding notice and opportunity to be heard occur prior to license suspension. See *Burson*, 402 U.S. at 542 (rejecting state’s argument that post-suspension liability hearings would satisfy due process). The need for a pre-suspension determination on liability is even greater for indigent persons who have a strong interest in uninterrupted access to the statutory entitlement at issue. See *Mathews v. Eldridge*, 424 U.S. 319, 341-42 (U.S. 1976).

As explained previously, the absence of local rules, notices, or forms in San Mateo County informing a defendant that she is entitled to a meaningful ability to pay evaluation prior to the Court finding that she has “willfully” failed to pay under § 40509.5(b), violates the right to notice and a meaningful opportunity to be heard. See *id.*; see also *Memphis Light, Gas, & Water Division v. Craft*, 436 U.S. 1, 13 (1978) (“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”) (citation omitted); *Turner v. Rogers*, 546 U.S. 2507, 2519 (2011) (notice for contempt proceedings in child support case must inform defendants that “ability to pay” is a critical issue).

Moreover, based on recent visits to the traffic court, we are concerned that to the extent the Court offers a payment plan to defendants who appear before a judge, those plans

¹ See also, Cal Veh. Code § 38392 (“‘Willfully’ as used in this section has the same meaning as the meaning of that word prescribed in Section 7 of the Penal Code.”). Under the Penal Code’s definition, “willfully” implies a “purpose or willingness to commit the act or make the omission[.]” See Cal. Penal Code § 7.

are not properly tailored to a person's actual financial circumstances. It is our observation that the Court does not request financial information from defendants and that the payment plan sometimes offered to defendants ranges from a minimum of \$30 per month to much higher, with no clear standards. For most of our clients, who are either on public assistance or have very low income, that amount is simply not feasible. The Court's suspension of driver's licenses of those who are unable to make these payments violates the express terms of section 40509 *et seq.* and the constitutional guarantee of substantive due process. *See Bearden v. Georgia*, 461 U.S. 660, 673-74 (1983) (revoking probation where defendant lacks resources to pay fine violates "fundamental fairness" component of due process); *Williams v. Illinois*, 399 U.S. 235, 242 (1970) (holding that state criminal statute as applied to defendant "works an invidious discrimination solely because he is unable to pay the fine."). Indeed, in its "Dear Colleague" letter last week, the federal Department of Justice took the position that, "automatic license suspensions premised on determinations that fail to comport with *Bearden* and its progeny may violate due process."²

In the February 9 Letter, you state that following your discussions with our coalition, the Court "has decided to modify its traffic notices, forms and website to better inform individuals of their option to request that the court consider their ability to pay, as well as other available options regarding payment plans and community service work." You further state that "[o]nce everything is finalized and implemented, [you] will forward the revised notices, forms and website information to [us] so [we] are aware of the changes [you] made." While we appreciate that the Court anticipates making changes, the Court has not provided sufficient information on how the notices and forms will be changed, nor on whether and how any related court policies or procedures will be changed, that would enable us to determine whether the prospective policies or practices will satisfy the Court's statutory and constitutional duties. For instance, it is not clear what instructions will be given to a defendant on how to exercise the right to an ability to pay determination, nor whether the defendant will be informed that ability to pay is a critical factor in determining whether that person's driver's license may be suspended for failure to pay. In addition, it is not clear whether and how the Court will ensure that a determination on ability to pay is meaningful. For instance, we would like to know whether the Court anticipates using a form to solicit financial information and what procedures will be implemented that guide the Court on how to determine inability to pay.

Finally, the Court has provided insufficient detail as to when the changes will be implemented. We understand that implementing changes, including coordinating with mail vendors and IT staff, will take time, but given the harm visited upon indigent and low-income traffic court defendants in San Mateo County due to license suspensions every day, our interest in implementation is urgent. In order for us to be assured that changes will be taking place, we will need an estimated timeline and benchmarks for implementation.

² Available at: <https://www.justice.gov/crt/file/832461/download>.

Accordingly, we request that the Court cease referring individuals for driver's license suspensions until it fully implements changes to address the concerns we have raised in this letter and in our prior communications. To the extent that the Court will continue to act to suspend driver's licenses for failure to pay, we demand that prior to notifying the DMV of failures to pay under Vehicle Code § 40509.5(b), the Court, at a minimum, inform the defendant of: i) the total amount of fines and fees due, ii) her right to a judicial determination on her ability to pay the fines and fees, and iii) a warning that if an individual doesn't pay the fines or fees, the person's driver's license may be suspended, unless the Court determines that the person does not have the ability to pay the fines and fees. We believe that in order to constitute adequate notice, the above information must be included in the initial notice as well as subsequent notices to individuals prior to the Court acting to suspend a license for failure to pay.

In determining whether an individual has "willfully" failed to pay, the Court must provide a meaningful and pre-deprivation opportunity to be heard on that essential element prior to acting to suspend the person's license. The Court must also make proper evaluations of an individual's financial means and circumstances in deciding whether a person has "willfully" failed to pay, and refrain from acting to suspend a license if a person has demonstrated an inability to pay the imposed fine or any installment plan that the Court offers.³ Appropriate training and guidance to traffic commissioners and all other personnel who handle traffic and other infractions are necessary to ensure consistent and legally-compliant implementation.

The Court's obligation to provide notice and opportunity for an ability to pay determination does not end with its prospective implementation. That legal obligation also applies to those whose licenses have already been suspended due to the Court's referral to DMV under Vehicle Code § 40509 *et seq.* and who have not been provided with a notice and opportunity for an ability to pay determination. While the amnesty program provides an opportunity for reinstatement of licenses for those who learned about the program and could afford installment payments, the Court failed to conduct a mass mailing to all persons whose licenses have been suspended pursuant to § 40509 *et seq.* It now has a responsibility to do so, along with providing an opportunity for an ability to pay determination. As mentioned above, offering fixed installment plans that are not based on a meaningful and individualized assessment of a defendant's ability to pay does not comply with due process or the Vehicle Code.

³ To minimize the burden on the court, the Court could consider adopting a form similar to the civil fee waiver form. To be clear, however, while we believe that meaningful consideration of the information on the form would address many of the problems we have identified, we believe that defendants also must have the right to present argument and evidence to a judge or commissioner on the issue of ability to pay, and also be adequately informed of that right.

To be clear, it is our view that the Court should *not* refer individuals for driver's license suspension as a means to generate and collect revenue, regardless of the procedural safeguards it may implement. Section 40509 expressly states that the Court "may" refer persons to the DMV for license suspension for willful failure to pay; there is no mandate to do so. Indeed, as explained in our December 18, 2015 letter, there are numerous other statutes available to the Court to suspend licenses for public safety reasons. *See, e.g.*, Vehicle Code § 13200 (permitting suspension for speeding or reckless driving); § 13203 (permitting suspension for driver who commits "road rage"); § 13382 (requiring confiscation and suspension of license for driving under the influence); § 12810.5 (permitting suspension for receiving four "points" in a 12 month period and being designated as a "negligent operator"). The Court also has available to it other, non-punitive options to collect any outstanding debt, such as wage garnishment or tax interception. As outlined in a report authored by many of the signatories to this letter, the policy of suspending licenses in connection with traffic tickets has been a failure—resulting in billions of dollars in court-debt that realistically will never be paid. *See* "Not Just a Ferguson Problem: How Traffic Court is Driving Inequality."⁴ However, if the Court is going to continue this failing policy of using license suspensions to collect court debt, it must at least comply with its statutory and constitutional obligations.

Please contact us by Monday, **April 4, 2016** to confirm that you have immediate plans to implement the above demands and to inform us of any other changes the Court anticipates. Otherwise, we will have no option but to seek relief from a court of law. If you have any questions or wish to discuss this matter, please contact Christine Sun at 415.621.2493, ex. 360.

Sincerely,



Christine P. Sun, Esq.
Legal and Policy Director
ACLU Foundation of Northern
California

Elisa Della-Piana, Esq.
Lawyers' Committee for Civil Rights
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⁴ Available at: <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.8.15.pdf>.

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cc: Commission on the Future of California's Court System, Judicial Council