



February 12, 2020

VIA EMAIL AND FAX (415-444-7021)

Hon. Paul M. Haakenson
Presiding Judge
Marin County Superior Court
3501 Civic Center Drive
San Rafael, California 94903
administration@marincourt.org

RE: Release of failure-to-appear notifications sent to the DMV

Dear Judge Haakenson:

We respectfully request the Court's immediate action to bring its traffic court policies in compliance with the Vehicle Code. Marin County Superior Court's policies for sending and recalling failure-to-appear notifications to the DMV are contrary to state law. These unlawful failure-to-appear notifications can result in a driver's license being suspended, causing collateral harms such as loss of employment and risk of further criminal penalties. Please provide a written response to the issues outlined below within 30 days, including copies of any court policies, staff training materials, and public facing information that demonstrate the Court's compliance with Vehicle Code sections 40509 and 40509.5.

First, Marin County Superior Court is not releasing failure-to-appear notifications upon adjudication of the underlying citation in violation of § 40509(a) and § 40509.5(a).

Marin County Superior Court is not complying with the Vehicle Code requirements for recalling failure-to-appear notifications. Sections 40509(a) and 40509.5(a) provide that a court "shall" release a failure-to-appear notification sent to the DMV after a traffic case is adjudicated. Despite this mandatory language, Marin County Superior Court does not send the required release to the DMV until a driver has paid their ticket in full or completed all of their community service. The Court must amend its policies and practice to end this unlawful action and train court staff as to the correct procedures.

The experience of our client, Ms. Stacey Kmetz, is demonstrative of this problem. Ms. Kmetz received a traffic citation in Marin County for failure to show proof of insurance. When she did not appear in traffic court by the date on her citation, Marin County Superior Court sent a failure-to-appear notification to the DMV, which in turn caused her license to be suspended. Ms. Kmetz subsequently appeared and pled no contest. The traffic court accepted her plea and adjudicated

the citation, imposing a \$899-fine and—based on Ms. Kmetz’s financial circumstances— a \$78-per-month payment plan.

Despite Ms. Kmetz’s appearance and adjudication of her citation, Marin County Superior Court did not release the failure-to-appear notification it had sent to the DMV. Ms. Kmetz was unable to reinstate her license, which limited her employment opportunities. Ms. Kmetz and her counsel were told several times by court employees that the failure-to-appear would not be lifted until the ticket was paid in full, which in Ms. Kmetz’s case would have been a nearly a year if she complied with her court-order payment plan. Neither the Court’s website, nor the Court’s policies that we requested through a Judicial Administrative Records request, provide clear directives to drivers or court employees regarding the release of failure-to-appear notifications. Ms. Kmetz had to file a “Motion to Release the Failure-to Appear Notification” to force compliance with § 40509.5(a). (See attached Motion). The motion was a granted and Ms. Kmetz’s failure-to-appear notification was recalled, allowing her to reinstate her driver’s license. (See attached Order on Motion for Release of Failure to Appear Notification and Minute Order dated October 1, 2019).

While we are pleased with the outcome in Ms. Kmetz’s case and the Court’s ruling confirming the proper interpretation of § 40509(a) and § 40509.5(a), Ms. Kmetz’s experience—particularly her communications with court employees—suggests that there are similarly situated unrepresented individuals for whom the Court has not released the failure-to-appear notifications. Individuals should not have to file a motion to compel the Court’s compliance with mandatory provisions of the Vehicle Code. We ask the Court to train staff on sections 40509(a) and 40509.5(a), and confirm the release of any current failure-to-appear notifications that have not been recalled in any adjudicated traffic cases.

The Court’s maintenance of failure to appear suspensions beyond their statutory limits contravenes California’s elimination of failure-to-pay driver’s license suspensions. Assembly Bill 103, signed by Governor Brown on June 27, 2017, removed the statutory authority for the DMV to suspend a driver’s license for failing to pay a traffic ticket. (Stats. 2017, Ch.17, §§ 51–54). AB 103 also amended § 40509 and § 40509.5, removing the subsections that allowed courts to send failure-to-pay notifications to the DMV. Clearly the Legislature did not intend courts to sidestep these statutory changes and misuse failure-to-appear notifications to achieve the same result.

Second, Marin County Superior Court is improperly sending failure-to-appear notifications under §40509.5(a), causing improper license suspensions after only one notification. The Vehicle Code allows traffic courts to notify the DMV of a driver’s failure to appear under § 40509(a) or § 40509.5(a). The difference between the two statutes is that § 40509.5(a) provides that a driver’s license will be suspended after a single failure-to-appear

notification, while § 40509(a) provides that a driver's license will only be suspended after the DMV receives two notifications.

The more severe consequence provided for by § 40509.5(a) is limited to traffic citations for "an offense described in subdivision (d)" of that statute. In turn, subsection (d) specifies the following types of offenses that would qualify:

- (1) the underlying offense is a misdemeanor or felony;
- (2) the underlying offense falls under Division 12, 13, or 15 of Vehicle Code;
- (3) the driver's record does not show that the defendant has a valid California driver's license; or
- (4) the driver's record shows an unresolved charge that the defendant is in violation of his or her written promise to appear for one or more other alleged violations of the law.

Veh. Code § 40509.5(d).

Again, Ms. Kmetz's case demonstrates our concern. Her underlying citation was for a violation of Vehicle Code § 16028. Neither this offense, nor Ms. Kmetz's circumstances, satisfy the enumerated provisions of § 40509.5(d). Yet her DMV driving record shows that the traffic court sent the failure-to-appear notification under § 40509.5(a) by specifying that statute in the "sections violated" field of the notification.

The result of this misuse of § 40509.5(a) is that drivers like Ms. Kmetz are suffering an unlawful license suspension after only a single notification when such a result is not authorized by the Vehicle Code. Our request for Judicial Administrative Records asked for the Court's policies and procedures, staff training, or public information regarding the use of § 40509 and § 40509.5 to send failure-to-appear notifications to the DMV. We did not receive any documents that showed how the Court uses these two notification statutes or how the Court's policies comply with these statutes.

In addition to their illegality, the non-compliant policies described above are simply bad for Marin County and its low-income residents. As Governor Brown explained in support of the elimination of failure-to-pay suspensions, "[o]ften, the primary consequence of a driver's license suspension is the inability to legally drive to work or take one's children to school." (*See* Governor Brown's 2017–18 California State Budget, Full Budget Summary at 84.¹) A growing body of research also shows how low-income drivers and persons of color are disproportionately impacted by state court traffic rules and procedures that result in suspensions of driver's licenses. *See, e.g.*, "Not Just a Ferguson Problem – How Traffic Courts Drive Inequality in California,"

¹ Available at <http://www.ebudget.ca.gov/2017-18/pdf/BudgetSummary/FullBudgetSummary.pdf>



(available at <http://wclp.org/not-just-a-ferguson-problem-how-traffic-courts-drive-inequality-in-california/>). Driver's license suspensions make it harder for people to get and keep jobs, harm credit ratings, and raise public safety concerns. Ultimately they keep people in long cycles of poverty that are difficult, if not impossible, for many to overcome.²

We hope that the Court will take this opportunity to revisit its traffic policies and procedures, staff training, and public information to bring them into compliance with these provisions of the Vehicle Code. Please provide a response to this letter by March 13, 2020. We would also welcome the opportunity to meet with the Court to discuss these issues further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrea Crider'.

Andrea Crider
Bay Area Legal Aid

A handwritten signature in black ink, appearing to read 'Rebecca C. Miller'.

Rebecca Miller
Western Center on Law & Poverty

Cc: James Kim, Court Executive Officer, Marin Superior Court, james_kim@marincourt.org
Stephanie Haffner, Executive Director, Legal Aid of Marin, shaffner@legalaidmarin.org
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² Gustitus, et al., *Access to Driving and License Suspension Policies for the Twenty First Century Economy*, The Mobility Agenda, May 2008, p.4 (available at <http://www.mobilityagenda.org/home/page/Access-to-Driving-and-License-Suspension-Policies.aspx>) (finding that in one Los Angeles neighborhood, residents with a car can reach 59 times as many jobs as those dependent on public transit).