

“The Traffic Ticket Manual” Volume 2

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Dedication

I dedicate this great legal work to my fellow dear friends – all those who were on the scene in my life when I was heavy into law and learning the System by attempting to change the System and challenging the System.

Major props and thanks to all of the following:

Odis and Danni Muhammad, Ansel Littlejohn, Roland and Romaine Reese, Ana Gonzalez (a/k/a Kira Akasha), Travon Dugar Muhammad, Alvis “Lucky” Grundy, Oniji Medji (Doug Cook), Jason Orman, Gabriela Venezuela, Ahman Dolphin, Sis. Buashie, Martin Casillas, Ryan “Karast” Jackson, Loreal Muhammad, Mark C. Lomax, Anthony Myron Brooks, Raw-Sheed, Edafe Okurume, Tanjareen Martin, and Ruthie Grant (Dr. Parthenia Onasis).

Sincere thanks to all of you! I couldn’t be who I am today as far as my legal knowledge, wisdom, and understanding is concerned, without your help, assistance, and friendship.

I will never forget any of you! We have some fun, rough, tumultuous, and challenging times but we prevailed and came out of the meat grinder court system in one piece.

Peace and Love!

Djehuty Ma’at-Ra

Preface

The Traffic Ticket Manual is a long overdue book that I have promised people over the years that I would one day write and make readily available to all the bold American and state citizens who are tired of getting fleeced like wool by the American judicial system in general, the traffic court system in particular.

This manual will help the most legally un-astute person to learn the entire traffic court game front to back and is sure to enlighten and empower at the same time.

Ninety percent of all people who contest their traffic ticket in court in a trial lose and they lose for one reason: they don't know the Game! They argue the facts of a case rather than the law.

In American law, it has nothing to do with being right, but all to do with knowing the rules, and that's what you learn in the Traffic Ticket Manual, Volumes 1 and 2!

You will learn the rules, procedure, and the law regarding traffic tickets. You will also learn the legal loopholes, the tricks of the trade as well as the trade itself, and you will know all the pitfalls, snares, and booby traps the traffic court system has set up for the *Boobus Americanus* (ignorant Americans).

You will even learn how to type up your own legal pleading(s) in which to file in your very own traffic case.

After reading this book, The Traffic Ticket Manual, you will no longer go to court and be afraid due to ignorance. You will receive exclusive knowledge in this book, all 3 volumes, and when you apply this knowledge, you will become powerful in many respects and regards – guaranteed! You don't have to be a lawyer to know and perform the law. As a matter of fact, it is your duty as a citizen to know the laws of the land and to enforce your rights, privileges, and immunities under the law.

Use this book as a study guide and resource. Read it as much as possible as often as you can.

No other book compiles as much useful and practical information and knowledge on the subject of traffic tickets and traffic court.

Though much of the legal references in the book are taken from California law, it is 100% applicable in every other State. All you have to do is study your state's laws (statutes and codes) and substitute California law with your respective state's law.

This book is a labor of love and I trust that you will enjoy reading it as well as applying the information and knowledge it contains.

Djehuty Ma'at-Ra, July 17, 2009

Chapter 1

“Bail”

Bail only exists in traffic infraction cases to raise extra revenue and when you understand what bail means based upon how it's defined in law, you'll know why bail in a traffic case is fraud and extortion as well as the legislatures making citizens pay for the constitutionally secured right of Due Process of law.

Bail defined. A monetary or other form of security given to insure the appearance of the defendant at every stage of the proceedings. See P.2d 980. Those posting bail are in the position of surety and the money is the security for the accused's appearance. It is thus used as a means “to procure release of a prisoner by securing his future attendance.” 42 F.2d 26, 28: **object of bail is to relieve the accused of imprisonment**, and the state of the burden of keeping him pending trial or hearing, and at the same time to secure the appearance of the accused at the trial or hearing. **190 F.2d 16, 19**

“Bail.” A security, bonds, or money deposited with the court to **obtain the temporary release of an arrested person**, on the assurance that the person will obey the court, as by attending a legal proceeding at a stated time and place. If the person does not attend, the bail may be forfeited. **Webster's New Encyclopedic Dictionary (1993), Page 1632**

How can there be bail requested for an infraction when state law (i.e. Penal Code section 19.6) clearly states that an infraction is not an offense punishable by imprisonment? Infractions are not arrestable offenses!

Now let's get deeper here in exposing the fraud of bail in traffic cases.

As stated above, bail is to prevent or secure release from **imprisonment**. Traffic violations are not punishable by imprisonment (CA Penal Code, section 19.6). If you can't go to jail (and you can't, not for an infraction), what are you bailing out from?

Also consider California Vehicle Code, section 40511 “Fixing bail.” It states: “If bail has not been previously fixed and approved by the judges of the court in accordance with a schedule of bail, the magistrate shall fix the amount of bail which in his judgment, in accordance with Section 1275 of the Penal Code, will be reasonable and sufficient for appearance of the defendant and shall endorse upon the notice a statement signed by him in the form set forth in Section 815a of the Penal Code.

California Penal Code, section 1275 (Setting, reducing or denying bail; consideration) specifically states:

In **setting**, reducing, or denying bail, the judge or magistrate shall take into consideration **the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or hearing of the case.** The public safety shall be the primary consideration.

In considering the seriousness of the offense charged, the judge or magistrate **shall include the consideration of the alleged *injury to the victim***, and alleged threats to the victim or a witness to the crime charged, the alleged use of a firearm or other deadly weapon in the commission of the crime charged, and the alleged use or possession of controlled substances by the defendant.

Did you read the above? California Penal Code section 1275 mentions “victim.”

Victim??? What victim? Alleged injury??? What alleged injury and to whom?

California Code of Civil Procedure, section 27 states: An injury is of two kinds: (1) To the person, and (2) To property. You will find the same for your particular state by checking your state’s Code of Civil Procedure or perhaps its Civil Code.

Where is the statement (by the alleged victim) or verified complaint filed with the District Attorney’s office and/or the court, pursuant to California Evidence Code, Section 356; California Code of Civil Procedure, Section 2015.5; California Penal Code, Sections 853.9 and 1427; and California

Vehicle Code, section 40513 or your particular state's Evidence Code, Code of Civil Procedure, Penal or Criminal Code, or Vehicle Code?

Technically, a traffic ticket (written promise to appear, written notice to appear) is a ROR (Release on Own Recognizance), which is a "promise to appear."

A ROR (promise to appear) waives the posting of bail. You see, people would wake up and really understand the fraud of the traffic ticket scheme if police officers asked them to post bail during an actual traffic stop. Most people would not have the money to post immediate bail and would therefore be immediately taken to jail (and for infractions which are notailable in the first place). The jails would be overcrowded with motorists.

So instead of peace officers directly taking the money (bail) on the streets (constituting highway robbery), the peace/police officers make you promise to appear (ROR) under "threat of imprisonment" (duress and menace) so that the courts can ask for and get the money (bail) directly, since the court has the appearance of law and authority and most people in their ignorance trust the courts.

However, once you sign an ROR (promise to appear), bail becomes obsolete, so when you go to court and plead "not guilty" and the judge or commissioner tells you to go see the clerk (or cashier) to post bail, what are you posting bail for?

You can't go to jail for a traffic infraction. You've already signed an ROR (promise to appear) when you first got the ticket on the street. We're talking EXTORTION BY FRAUD!!!

Extortion. Extortion is the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right. **Penal Code, Section 518**

The court and judge are violating one's constitutional right of due process of law under the 14th Amendment as well as the state's own Constitution, and also are violating one's redress of grievance under statutory guidelines for economic necessity to the benefit of the treasury or coffer of the municipality. The state legislature and court (judge) are forcing a person to PAY for a constitutionally secured right.

Please reference the Following:

“Economic necessity cannot justify a disregard of Constitutional guarantee.”

***Riley v. Carter*, 79 ALR 1018; 16 American Jurisprudence [2nd], Const. law, Section 81**

Being required to post excessive bail before a hearing is a violation of a citizen’s constitutional rights, both civil and criminal.

Bail MAY only be imposed after a person has been determined to be a defendant in the custody of a court, either actual (physical) or constructive custody.

For a crime, real crime, to exist there must be an injured party. A corporate entity, whether a municipality, county, State or federal government, cannot testify as an injured party, and thus cannot be cross-examined.

“The difference between criminal and civil bail is noteworthy because it is a clue as to the status of vehicle code violations. If you pay the bail for a ticket when you get the courtesy notice in the mail you no longer need to appear on the date you signed to appear. Your so-called bail is revoked and it then simply becomes “payment of debt.” The courts will tell you speeding is criminal, but is the bail you paid handled as it is in a criminal matter? If you pay a bail for release from jail for auto theft, what happens if you don’t show for court? Think about it. Richard A.” Bellon, *author*, The Traffic Ticket Scam (1997)

Do I have to pay or post bail?

Usually, when you plead “not guilty” the judicial officer (usually a commissioner) orders you to post bail. But because you have filed documents in regards to bail (i.e. Affidavit of Poverty or Financial Insolvency), the court should release you on O/R (Own Recognizance) or schedule a hearing to determine your economic status to post bail. Municipalities are too cash strapped today to hold extra hearings that require extra government employees and employee pay so citizens can have their rights and privileges under law. It’s just simply cheaper to release the person on O/R instead of scheduling a hearing that will cost the municipality more money than the money it is attempting to collect from a litigant under a pseudo bail.

What if I am ordered to pay or post bail?

If the judicial officer instructs or orders you to pay or post bail at your arraignment despite your bail documents being filed with the court: (1) Request your right to a “Consideration of Ability to Pay” hearing (in California, in accordance pursuant to Vehicle Code section 42003(c)), and if the judicial officer refuses to grant this request, (2) request an extension (10-20 days) so you can prepare additional paperwork for you to address the issue of bail and to also file a Writ of Mandate or Writ of Prohibition and or prepare an appeal after the case has been adjudicated.

How come I don't have to pay or post bail?

Basically, in an infraction case, the law states that an infraction is an offense not punishable by imprisonment. If you can't go to jail even upon conviction, what would you be bailing out from? Bail simply procures release of a prisoner. You are not a prisoner for allegedly violating the Vehicle Code.

Chapter 2

“Preparing For Trial”

Recusing A Judge or Commissioner

The authority which allows you to recuse (remove) a judicial officer in California is California Code of Civil Procedure, section 170.6.

For another state, i.e. New York, Illinois, Michigan, Georgia, etc., check the state's Code of Civil Procedure or Rules of Court.

“Demanding A Judge Instead of a Commissioner”

You have a constitutional right to have an Article 6 judge preside over your case unless you waive this right under a stipulation (a green-colored form). Technically, the court is supposed to give you notice of your right to have a judge preside over your case but since traffic court is overcrowded with

traffic cases, the court willfully fails to notify you of this right and allows a commissioner (an attorney, in most cases) to preside over your case.

What can I do or file with the court to have a judge preside over or hear my case?

You can prepare a pleading entitled “Request For Article 6 Judge; Non-Stipulation To Use Of Commissioner” which you can file in your case. It’s best to have this document filed before your arraignment and/or trial.

NOTE: Many of the documents you read about in this manual (Volumes 1 and 2) are available in Volume 3.

What if the court or judicial officer ignores my request for a judge?

First of all, make sure you “object” on the record to a commissioner hearing/trying your case instead of a judge. Objecting to anything you disagree with is important because you can only bring up matters argued in the trial court during your appeal if you object. You must object to what you disagree with or feel is an error regarding the written law. So to argue something on appeal, you first have to object during your trial in the trial or lower court.

NOTE: Trial court and lower court are synonymous.

The next thing you can do is file a **Writ of Mandamus** with the Appellate Division of the Superior Court (or Court of Appeals, whichever is applicable) requesting that the appellate division (or court) command the lower court or judicial officer (commissioner) to follow the laws of the State.

It is a wise investment to purchase Volume 3 which includes sample documents that you can learn to type your own documents from.

Using the Discovery Process During A Traffic Case

Discovery can be used in a traffic case as long as you do it within the allowable time. Most discovery must be completed up to 5-10 days (and sometimes 20-30 days before the trial. Read your state’s Rules of Discovery or Code of Civil (or Criminal) Procedure or Rules of Court for your state’s discovery guidelines.

The best type of discovery to use in a traffic case is the Request For the Production of Documents which would basically be the officer's copy of the traffic ticket he/she issued to you on the day of the traffic stop.

Officers write notes to themselves on the back of citations that they use to remind themselves of pertinent factors and details on the day of the traffic stop, i.e. your description, the weather, incriminating words you may have used, etc.

You can request a copy of this (officer's copy) using discovery.

Chapter 3

“Filing Documents in Your Traffic Case/ Frequently Asked Questions Pertaining to Trial”

Read your documents thoroughly, page for page. Make the time to read so you can understand your case and legal argument and defense.

After reading your documents, sign them on every page requiring a signature from you.

File your documents with the traffic court clerk (and the District/City Attorney, if applicable) as soon as you can, at least 10 days before any proceeding.

After you order your **sample** documents (Volume 3), STUDY, STUDY, STUDY! Study those documents!

Why Do I Have To File Documents?

You have to file documents (legal pleadings, to be exact) because you are dealing with a legal matter and legal matters require legal pleading (documentation); plus, you are probably not legally astute enough to speak on your own behalf in court, despite how minor or insignificant a traffic infraction is. The legal pleadings speak on your behalf.

How Many Times Will I Have To Go To Court in Contesting My Ticket?

In most cases, two times: the arraignment and the trial itself. If the bail aspect becomes an issue, you may have to appear a third time (though rare).

What Documents Will I File in Court:

Request For Verified Complaint

Affidavit of Poverty

Affidavit of Defendant (name)

Judicial Notice (optional depending on your situation)

Non-Stipulation to use Commissioner (optional)

Motion to Dismiss (filed before your trial date)

How do I file my documents?

You should have at least 2 copies of each legal pleading for your case (if your violation was an infraction): one copy for the traffic court clerk and one copy for yourself.

If your case is a misdemeanor, which means the District Attorney is involved, you should have received 3 copies: one for the traffic court clerk, one copy for the City Attorney's office, and one copy for yourself.

When should I file my documents?

You should file your documents as soon as possible. Pursuant to California law, all pleadings (documents) should be filed at least ten (10) days before the court hearing date (which includes traffic court arraignment).

Your state's filing deadline requirements may be difference so study your state's codes.

What's the latest I can file my documents?

In a traffic case, the latest you can file your pleading (documents) is one day before the hearing, but it's no guarantee that the document will be filed in your court file. Always file your documents at least 5-10 days before a hearing or proceeding.

Again, study your respective state's code for precise and specific time frames

Where do I file my legal documents (pleadings)?

All of your documents (pleadings) must be filed at the traffic court clerk's window (for infractions) and the City Attorney's Office.

NOTE: The City Attorney's copy can be mailed instead of directly filed. But it must be mailed on the actual date you sign on the Certificate of Service page. See **sample** documents (in Volume 3) for Certificate of Service document.

What if the traffic court clerk refuses to accept and file my documents?

There is no lawful reason why a traffic court clerk should prevent you from filing your legal documents, but out of ignorance he/she might. Every legal document has the authority upon which it is to be filed on the caption page (first page) of the document (pleading) under the case number and name of the document (pleading). For example, the document entitled "Request For Verified Complaint," states underneath it the following authority that allows it to be filed: "Vehicle Code § 40513(a)" If necessary, make sure you point this out to the clerk.

What if the traffic court clerk still refuses to file my documents after I point out the State's authority?

If the traffic court clerk still refuses to let you file your document after pointing out all of the above, request to speak with his/her supervisor and explain to the supervisor your rights (constitutional Due Process) under the law to be able to file documents (pleading) on your behalf and in your defense.

What if the traffic court clerk refuses to accept my documents (pleadings) and tells me to just bring them on the day of the arraignment?

If a traffic court clerk refuses to accept your documents and tell you to simply bring the documents (pleadings) with you to the court hearing and give them to the judge when your name is called, this advice or information is erroneous, but nevertheless, oblige (obey).

NOTE: make sure you take or write down the name of the clerk you deal with when you are denied being able to file your documents.

So though it is errant information from the clerk, bring the documents with you on the day of court (arraignment) and present them to the judge.

If your documents (pleadings) are not received, stamped and filed with the traffic court clerk in advance of your court hearing date (due to ignorance by the clerk), the documents legally and technically have not been received and filed by the court.

Before you leave court you must make sure you get every one of your documents (pleading) filed with the traffic court clerk unless you are dealing with an ignorant clerk who refuses to receive, stamp, and file your legal documents.

Remember: just bring the documents with you on the day of your arraignment.

NOTE: Make sure you write down the name of any court clerk that refuses to let you file your documents.

Should I send a copy of my legal pleadings to the arresting or citing officer?

Though optional, YES! Sending copies of your legal documents (pleadings) to the arresting or citing officer may help to prevent the officer from showing up to court on the day of your trial.

You can find out where the citing officer is stationed by looking at the traffic ticket that will list the name of the law enforcement agency. Call information (411) or look up the agency's address on-line.

What if I decide to just pay my traffic ticket?

You are free to do that if you wish. Just understand that you will get a strike on your driving record if you pay the fine without contesting the charges of the traffic ticket.

Paying the fine also means you admit to being “guilty” of the charges on the traffic ticket.

What happens or will happen if I miss my court date or appearance?

If you fail to show up as promised, the court will charge you with “Failure to Appear” (in California, Vehicle Code § 40508) which is a misdemeanor and which carries a jail sentence (up to 30-120 days in most states) if you are found “guilty” of failing to appear.

Can I challenge and beat a Failure To Appear?

You sure can! See **sample** documents (Volume 3) for this document title.

All “Failure To Appear” statutes are unconstitutional as they automatically find people guilty of a misdemeanor absent Due Process of law which makes them constitutional Bill of Attainder in the form of Bill of Pains and Penalties which are prohibited by the U.S. Constitution:

“Bill of pains and penalties.” Statutory provision for punishment without judicial determination of guilt similar to bill of attainder except that punishment is less severe. Prohibited by U.S. Const., Art. 1 § 9, cl. 3 (Congress), § 10 (States). **Black’s Law Dictionary (1979), 5th edition, pg. 153**

And,

No Bill of Attainder ...shall be passed. **U.S. Constitution, Article 1, Section 9, clause 3**

“No State shall...pass any Bill of Attainder...” **U.S. Constitution, Article 1, Section 10, clause 1**

No bill of attainder...shall ever be passed. **Constitution of California (1849), Article 1, Section 16**

Is there anything that can be done or prepared on my behalf should I fail to appear?

YES! You can file a **Notice of Excusable Neglect** (which explains your failure to appear), and/or a response document **Motion to Dismiss Charge of Failure To Appear** to the charge of “Failure to Appear” (which is your defense against the charge of failure to appear).

Again, see **sample** documents (Volume 3) for this document title.

What if I am unable to attend court on the day of my arraignment as stated on the traffic ticket (written notice to appear)?

If for any reasons you cannot attend your arraignment as written on the traffic ticket (written notice to appear, written promise to appear) by the officer on the day of the traffic stop, **call the court** (traffic division or department) and ask to speak with the traffic department clerk and request an extension.

By law you are entitled to at least one extension. However, in some instances, you may be allowed two extensions. Please know that when you request an extension you are required to waive your constitutional right to a speedy trial as a condition of receiving an extension.

NOTE: An extension could put off your court date by a few months!

Also, never send someone else to court on your behalf! The court will not acknowledge the person and actually finds this offensive.

Simply pick up the phone and call the court yourself and handle your own business.

What if my ticket was issued to me while I was in another county and it is too far for me to travel to court and/or creates a financial hardship on me? What Can I Do?

Pursuant to state law, you are entitled to file a motion to relocate venue (before your arraignment). Basically, the court must give you the opportunity to fight your ticket without creating a hardship on you. State law

allows your case to be moved to the county closest to your residence or domicile.

NOTE: Technically, you are supposed to notify the issuing officer of the inconvenience of traveling to fight the ticket. You can request the issuing officer to schedule your case in a county nearest to the county you reside or domicile in.

You can also exercise your privilege to contest the ticket via the process of Trial By Declaration. This process allows you to contest your traffic ticket via the mail, U.S. Postal Service.
See **sample** documents (Volume 3).

What if the judicial officer gives me a hard time or does not like me, what can I do about a belligerent and biased judicial officer?

If the judge gives you a hard time for any reason or you feel the judge has something against you personally, by law you have the right to recuse (get rid of) the judicial officer.

You can recuse a judicial officer at anytime (during court or after the hearing).

To recuse a judicial officer you need to fill out a Peremptory Challenge form (available at the traffic court or civil court clerk's office) or prepare your own Peremptory Challenge pleading.

On average and generally, the peremptory challenge must be filed at least ten (10) days before your next scheduled hearing or court date. However, check your court's appropriate statute (code).

Do I have to let a commissioner hear my traffic case?

NO! You have a constitutional right to have an Article 6 judge preside over your case unless you waive this right under a stipulation (a green-colored form). Technically, the court is supposed to give you notice of your right to have a judge preside over your case but since traffic court is overcrowded with traffic cases, the court willfully fails to notify you of this right and allows a commissioner (an attorney, in most cases) to preside over your case.

What can I do or file with the court to have a judge preside over or hear my case?

You can prepare a pleading entitled “Request For Article 6 Judge; Non-Stipulation To Use Of Commissioner” which you can file in your case. It’s best to have this document filed before your arraignment and/or trial.

What if the court or judicial officer ignores my request for a judge?

You can file a **Writ of Mandamus** with the Appellate Division of the Superior Court requesting that the appellate division command the lower court or judicial officer (commissioner) to follow the laws of the State. See **sample** documents (Volume 3)

What if the officer doesn’t show up for trial?

Technically, the case must be dismissed. Usually the court will automatically dismiss your case if the officer fails to show up for the traffic trial.

When your case is called and the cop doesn’t show up, immediately motion the court for a motion to dismiss for failure to prosecute (*Nolle prosequi*).

What if the officer does not show up for trial and the court does not dismiss my case and reschedule the trial?

Technically and legally, the court is violating your constitutional right to a speedy trial. However, the court will always ask you for your permission to reschedule your trial. You have the option of agreeing or disagreeing to your trial being rescheduled.

What if the judicial officer reschedules my trial against my wishes, what should or can I do?

If the judicial officer reschedules your trial against your wishes, simply tell the court that you would like to “Object on the record” to your trial being rescheduled against your will.

Also, if a judicial officer reschedules your trial date despite your objection, file an affidavit stating your inability to attend trial due to other life engagements that you planned in advance. After all, it’s not your fault that

you showed up for court and prepared for trial and the officer didn't show up. That's not your fault!

How many days does the court have to try or prosecute me?

In an infraction and misdemeanor case, you must be given a trial within 30-120 days (depending on the particular State) from the date of your arraignment or your "not guilty" plea, unless you waive your right to a speedy trial (which is done when you request and are granted an extension).

In California, all infractions and misdemeanors must be tried within 45 days of your plea.

What is the authority for my rights to a speedy trial?

In California, the authority for a speedy trial (hearing within 45 days) is California Constitution, Article 1, Section 29 and California Penal Code sections 686 and 1382(a)(3).

For a different state, check the state's Penal or Criminal Code.

Chapter 4

“Your Trial”

First of all, is the judge or judicial officer violating Separation of Powers by serving as the judge and prosecutor in a traffic infraction case?

Technically, yes! Constitutional Due Process of law guarantees to you a fair trial before an impartial judge and jury.

“Due process contemplates opportunity to be fully and fairly heard before impartial decision maker.” *Catchpole v. Brannon* (App. 1 Dist. 1995) 36 Cal.App.4th 237; 42 Cal.Rptr.2d 440

And,

“The hearing required must be a fair one, that is, one before a tribunal which meets at least currently prevailing standards of impartiality.” ***Kwong Hai Chew v. Colding*, N.Y. (1953) 73 S.Ct. 472, 344 U.S. 590**

And,

“Due process requires a fair trial before a fair and impartial judge.” ***Cross v. State of Ga.*, C.A.Ga. (1978) 581 F.2d 102**

But how can a judge be fair and impartial when he or she is also the prosecutor in addition to the fact that he or she receives compensation (salary) from the plaintiff (State, people of the State)? Technically, the judge is receiving a bribe from the plaintiff which creates a conflict of interest in the matter.

Traffic courts allow judicial officers to serve in two capacities in one hearing: Judge [Judicial Branch] and Prosecutor [Executive Branch].

Unbeknownst to most people judges, especially those who sit on higher courts (court of appeals), also serve as Legislator [Legislative Branch] as they make law called “case law” (also known as decisional law or legal precedent).

Technically, judges are above the law and serve in all capacities of government and therefore Separation of Power does not apply to judges. It can't in order for the traffic ticket fraud and scheme to successfully work.

NOTE: Separation of Power is a doctrine (not constitutional in nature) that prohibits officials from serving in two or more capacities simultaneously while serving in term.

Could you imagine how backed up traffic courts would be if prosecutors were required to prosecute traffic court cases? It would shut the System down over night, especially considering if no one ever waived his or her rights to a speedy trial. This is why the legislature and courts created the plea bargain scheme. On the surface, plea bargains appear to let people off the hook and get out of something fairly easy, like pleading “guilty” or “no contest” to a lesser charge. But think about it, how can plead to one charge that you didn't commit in order to escape from pleading to a charge that you did in fact commit?

You see, were not dealing with real crimes here. The simple fact that the word “bargain” exists in this scheme, a la plea bargain, let’s you know this whole traffic court scheme is a business because it is in the realm of business that one gets bargains.

But check this out: in order to get the bargain in court (from the prosecutor/city or district attorney’s office), you have to waive your constitutional rights. Why? Well, because it is the Constitution that makes sure you get a speedy trial and remember, the courts are already backed up and if the courts had to give everybody their speedy trial under the law, the whole system would be constipated and the court system would lose so much money.

So you can see that the plea bargain privilege actually benefits the System more than the defendant who takes the plea.

The plea bargain scheme works successfully in traffic court cases as well as real criminal cases because all the courts and prosecutors have to do is threaten a defendant with jail time if found guilty after a trial. So basically, prosecutors and judges are telling defendants, if you exercise your right to trial and make us exhaust our resources (time, energy, and money), if you lose, your ass is going straight to jail and the System (judges, prosecutors) know damn well that most people are afraid of going to jail, so fear is a major factor in the whole criminal court scheme, and though technically traffic is civil in nature (contractual), it is adjudicated under a criminal jurisdiction so as to scare people with the threat of going to jail.

So just simply play the Game because the fraud starts with the State legislature that makes all the statutes for the State and the scheme is successfully carried out by the judges, prosecutors, and the law enforcement officials (sheriffs/bailiffs, police officers, etc.).

You don’t need to go into court talking all that sovereignty and U.S.C. talk because it’s not necessary, number one, and number two, it only serves to piss the judge and prosecutor off at you and makes matter more difficult for you than they have to be.

What happens at trial in traffic court?

Generally and usually, the judicial officer calls your name to come up to the podium. You are allowed to give your testimony of the facts of the case (what happened on the day of the traffic stop). Then the officer is allowed to give his/her testimonies of the facts. You will then be given a last opportunity to either rebut the officer's testimony or to accept the officer's testimony. This is called "Cross-Examination." After cross-examination between you and the officer, the judge will make a decision who to rule for.

Traffic court trials for infractions are not trials by jury because they are too costly. Jury trials for traffic cases would bankrupt the court system and shut the entire System down.

Traffic court trials for infractions are always Trial By Judge:

"Trial of Infraction." Trial of an infraction shall be by the court, but when a defendant has been charged with an infraction and with a public offense for which there is a right to jury trial and a jury trial is not waived, the court may order that the offenses be tried together by jury or that they be tried separately with the infraction being tried by the court either in the same proceeding or a separate proceeding as may be appropriate. **California Penal Code § 1042.5**

NOTE: A true public offense is a misdemeanor, that's why Section 1042.5 above specifically states, "...an infraction and with a public offense..." Traffic infractions are not public offenses or real crimes.

Also, the simple fact that state statutes clearly prevent defendants from receiving a trial by jury (which is guaranteed under the U.S. Constitution at Amendment 6, by the way) lets us know that traffic court trials are pseudo in nature.

The reason why traffic court trials do not violate the 6th Amendment guaranteeing a jury trial in a criminal case is because traffic offenses are not real crimes (public offenses) under the law but pseudo crimes. This means they have the appearance of a crime but are in fact not crimes.

What if I don't agree to what the officer is saying in his/her testimony?

When it is your time or chance to speak, simply say, “For the record I object to the officer’s testimony.” NEVER interrupt an officer when he/she is giving testimony. Simply wait until it is your turn to speak.

Should I ask questions of law or fact during trial?

NEVER ask questions of facts (what happened on the streets) in a court trial. Always asks questions of law (constitutional, statutory, and case-decisional law) in a court trial. Always prepare for an appeal while arguing your case during trial, as appeals are not concerned with issues of facts, but only issues of law. Law is Vehicle Code, State and Federal constitutional provisions, and other statutory law (i.e. Code of Civil Procedure, Rules of Court, etc.).

What are some general questions I should I ask an officer at trial?

Question: Officer, how long have your served on the force (been a member of the agency)?

Question: Officer, how many hours of training have you had in learning the Vehicle Code?

Question: Officer: Did you file a verified complaint as you are required to do pursuant to state law at Vehicle Code section 40513(a)?

NOTE: If the officer or judge says the traffic ticket is the verified complaint, ask the next question:

Question: Officer/Judge: What legal authority supports your statement that a traffic ticket is a verified complaint or takes the place of a verified complaint?

Question: Officer: Do you have any tangible or physical evidence or proof that supports your allegation that I in fact committed the offense you charged me with?

Question: Officer: Are you aware that because I pled “Not Guilty” at my arraignment you have a duty under the law to prove every single element of the charge you charged me with committing?

You will be able to extract more questions for your trial as you read further in this manual.

Pertinent Information Regarding Radar

Great questions to ask a cop in a case for a speeding ticket due to radar include specific questions about radar (radar gun).

Radar Detector. A radar detector is a radio unit that scans back and forth between several programmed frequencies. These frequencies are licensed to cops by the FCC (Federal Communications Commission) for radar equipment.

Laser (Lidar). Laser is a speed – measuring device that uses laser beam, instead of the radio wave beam radar uses. It is also referred to as “lidar” which stands for ‘Light Detection And Ranging.’ It has a very tight straight – line beam, unlike radar’s flashlight beam.

How Radar Works. When a radar unit is pointed at you and activated, it emits radio waves at a certain frequency which travel to your vehicle, bounce off of it and return to the radar unit at a different frequency. This different frequency is gauged entirely on how fast you are going. The radar unit then measures the difference between the two frequencies, outgoing and incoming, and converts that calculation to a miles – per – hour speed.

The radar unit, to get a correct reading, must be pointed straight at you to read your speed. Plus, there can’t be any obstruction in the way. Furthermore, the unit must be fairly close to you to insure that it is not reading another vehicle’s speed in another lane.

A radar unit does not emit a straight, tight beam; instead, its beam is just like that of a flashlight. In other words, the farther the beam travels, the more it spreads out: Thus, the room for error is increased. At a distance of merely one – eighth (1/8) of a mile from the unit, a radar beam is four lanes wide. So if you get a radar speeding ticket, ask the officer how far away you were when he “clocked” you. If this distance was great, he may have even clocked someone in the far lane on the other side of the road.

Radar also has a tendency to read speeds of larger objects over smaller ones. Example: You are in the right lane of the road and there is a large truck

coming up behind you in the left lane. A police officer with a radar unit points it at you and gets a speed reading of 72 m.p.h., quite a bit faster than you were actually going. What really happened is that the radar unit read the large truck's speed but the officer attributed the speed to you because you were in front.

NOTE: In some places a police officer cannot use radar to enforce speeding tickets if a "traffic and engineering survey" has not been conducted and maintained on the road where he is using radar for this purpose. These "traffic and engineering surveys" must be updated, usually every five years, in order for radar to be used legally for enforcing speeding tickets. This is important because if you get a radar-enforced speeding ticket, the officer must bring a certified copy of an up – to – date "traffic and engineering survey" to court with him. This survey must have been performed on the roadway where he gave you the citation. If the officer does not do this, the judge will usually dismiss the case. Remember, it is up to you to make this request for the "traffic and engineering survey" as most judges do not ask for this document and most officers do not bring it to court with them. If you would like to obtain the survey beforehand so you can check it over, ask for it at the engineering department of your local city hall.

A large number of radar-enforced speeding citations are dismissed every year because the defendant asks for any or all of the following items and doesn't get them, i.e.

1. The radar unit's calibration and maintenance records.
2. The officer's radar training certificates.
3. The tuning fork(s) used to calibrate the radar unit and their calibration certificates.
4. The actual radar unit was used.
5. The agency's FCC (Federal Commissions Commission) license.
6. List of models, makes and serial numbers of all radar units being used by the agency.

If your trial is for a charge of speeding and the officer used a radar gun to clock your speed, then you will ask the officer for all of the above during trial.

EXAMPLE

Question #1: “Officer, on the day of the traffic stop for allegedly speeding, how did you clock my speed?”

Question #2: “Officer, since you used a radar gun to charge me with an alleged violation of speeding, can you please enter the unit into evidence so it can be inspected to make sure it was working accurately and that proper guidelines were being followed on the day of the stop?”

Question #3: “Officer, on the day of the stop, was your radar gun unit calibrated and functioning properly?”

Question #4: “Officer, will you please submit your radar gun’s (the one you used on the day of the traffic stop) calibration and maintenance records into evidence for inspection.”

Question #5: “Officer, will you please enter the tuning fork(s) used to calibrate the radar unit and their calibration certificates into evidence for inspection.

Question #6: “Officer, will you please enter into evidence your agency’s FCC (Federal Commissions Commission) license for inspection.

Question #7: “Officer, will you enter into evidence a list of models, makes and serial numbers of all radar units being used by the agency.”

Now, if the officer doesn’t have the radar gun unit with him, doesn’t have the radar gun unit’s calibration and maintenance records with him, doesn’t have the radar gun’s tuning forks with him, his/her agency’s FCC license for radar gun use, and/or the list of models, makes, and serial numbers of all radar units being used by his/her agency, when you’re done cross-examining the officer, you should say to the court (judicial officer):

May it please the Court, I motion the Court for a dismissal of the charge for “Speeding” as the officer has presented no evidence and has only

provided a personal statement as evidence that a violation of speeding was committed by myself and legal precedent states that a police officer's statement alone is insufficient to prove an offense of the Code was committed.

“Police officer’s mere statement that such a traffic “*violation*” was committed or made is insufficient to prove that it was actually done.” *People v. Sterritt* (1976) 65 Cal.App.3d Supp. 1; *People v. Ellis* (1995) 33 Cal.App.4th 25; *People v. Earnest* (1995) 33 Cal.App.4th Supp. 18

The law is clear in that an officer’s mere statement that you committed a traffic offense is not sufficient proof that the offense was actually committed.

You have to know what to ask for, especially when your charge is for speeding. There are things you can obtain under “Discovery.”

Here’s how the procedure works. Every state in this country has a public records law that allows the public access to certain records (See Public Records Act, California Government Code § 6250). You have two possible options when requesting this ‘stuff.’

First you can go directly to the issuing officer’s agency and ask to speak to the public records custodian officer. (This process is actually part of the Discovery Process). You then present them with a list of what you want. If they cooperate, they will probably give you everything they have except for the radar unit itself and the tuning forks.

Most likely they will inform you that the officer will bring these items with him on your trial date. They generally don’t pass out radar units and forks to anyone who walks in and asks for them.

If they do not cooperate, you have two more options. You call the state attorney general, who prosecutes all violations of public records law. You can bet you’ll get your records really fast, if they have them, after the attorney general gives them a call. Or you may be really vindictive and decide to file a civil lawsuit against the agency for punitive damages. You are entitled to them in this instance. Second, you can subpoena the items from the court. Make your request to the court clerk explaining exactly what it is you want. When using a subpoena, you need to give the court at least

two weeks notice before your trial date. The only drawback to using subpoenas is that you usually don't get to inspect the "goodies" until you actually get to court.

Breaking Down the Elements of a Charge or Violation

Every charge you are cited for on a traffic ticket (written notice to appear) has a section in the Vehicle Code that you can study. Every code section can be broken down into elements.

Let's take a U-Turn section from the Vehicle Code for an example.

U-Turn. The following elements must be proven in a U-Turn in a Residential charge under California Vehicle Code section 22103:

1. Operating a vehicle.
2. Driving in a residential district.
3. Making a U-Turn.
4. Making your U-Turn when a vehicle was approaching either in front of or behind you.
5. Within 200 feet of the vehicle approaching you.

The above 5 elements can become questions to the officer during your cross-examination.

You can ask the officer for proof that you were: (1) Operating a vehicle, (2) driving in a residential district (ask the officer to define "residential district"), (3) making a U-turn, (4) making a U-Turn when a vehicle was approaching either in front of or behind you (ask the officer for any proof to substantiate this), and (5) within 200 feet of the vehicle approaching you (ask the officer for proof that you were within 200 feet; ask the officer how did he determine the length of 200 feet).

Do you see how this thing goes? Simply ask the officer questions pertaining to the law (code). Convert the elements into questions and ask them during trial during cross-examination with the citing officer.

Remember: Traffic is CRIMINAL! The officer must have evidence, no presumptions (Evidence Code § 600) or hearsay [such as a traffic ticket] (Evidence Code § 1204) are allowed. If allowed by the judge, OBJECT to it on the record, so you can bring it up on appeal.

The officer also must have “personal knowledge” of facts in the case. For example, the officer must have “personal knowledge” (Evidence Code § 702) of a ‘residential district.’

Residential district defined. A “residential district” is that portion of a highway and the property thereto, other than a business district, (a) upon one side of which highway, within a distance of a quarter of a mile, the contiguous property fronting thereon is occupied by 13 or more separate dwelling houses or business structures, or (b) upon both sides of which highway, collectively, within a distance of a quarter mile, the contiguous property fronting thereon is occupied by 16 or more separate dwelling houses or business structures. A residence district may be longer than one-quarter of a mile if the above ratio of separate dwelling houses or business structures to the length of the highway exists. **California Vehicle Code § 515**

The following elements must be proven in a U-Turn in Business District charge under California Vehicle Code section 22102.

1. Operating a vehicle.
2. Driving in a business district.
3. Making a U-Turn.
4. That the turning movement was not made as close as practicable to the extreme left-hand edge of the lanes moving in the driver’s direction of travel immediately prior to the initiation of the turning movement, when more than one lane in the direction of travel is present.

Business district defined. A “business district” is that a portion of a highway and the property contiguous thereto (a) upon one side of which highway, for a distance of 600 feet, 50 percent or more of the contiguous property fronting thereon is occupied by buildings in use for business, or (b) upon both sides of which highway, collectively, for a distance of 300 feet, 50

percent or more of the contiguous property fronting thereon is so occupied. A business district may be longer than the distances specified in this section if the above ratio of buildings in use for business to the length of the highway exists. **CA Vehicle Code § 235**

Ask the officer for any proof that you were: (1) operating a vehicle, (2) that you were driving in a business district (ask the officer to define business district since it is defined in law), (3) making a U-Turn, and (4) That the turning movement was not made as close as practicable to the extreme left-hand edge of the lanes moving in the driver's direction of travel immediately prior to the initiation of the turning movement, when more than one lane in the direction of travel is present.

Write these questions on a notepad and ask them during your trial. You have a right to ask questions in your trial pursuant to the 14th Amendment which incorporates the 6th Amendment (right to question your accuser).

The following elements must be proven in a Basic Speed Law charge under Vehicle Code section 22350:

1. Operating a vehicle.
2. Driving at a speed greater than is reasonable or prudent.
3. Driving at a speed greater than is prudent having due regard for the weather, visibility, the traffic on, and the surface and width of, the highway.
4. Driving at a speed that endangers the safety of persons or property.
“Basic speed law.” No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers public safety of persons or property.
California Vehicle Code § 22350

Elements of VC22350:

- (1) That defendant is a person
- (2) That defendant was driving as that term is defined in law

- (3) That the speed was greater than is reasonable or prudent
- (4) That defendant did not have due regard for the weather
- (5) That defendant did not have due regard for visibility
- (6) That defendant did not have due regard for the traffic on
- (7) That defendant did not have due regard for the surface and width of the highway
- (8) That defendant was traveling at a speed that endangered the public safety of persons or property

Convert the elements into questions and ask them during trial during cross-examination with the officer.

The most important thing you can do during cross-examination of an officer is to ask questions pertaining to the specific Vehicle Code section you have been charged with violating.

So, whatever Vehicle Code section(s) you have been charged with, break each and every one down into elements and convert those elements into questions and ask them to the cop during your trial. The officer (cop) will not be prepared for this. Not at all!

Photo Red Light Camera Tickets

The fraud of the photo red light camera ticket (written notice/promise to appear) that arrives in the mail is that you **never** personally SIGNED or EXECUTED a Notice to Appear (NTA) issued by a peace or traffic officer as required by law.

A copy of a mailed notice to appear is not a legal substitute for the criminal complaint that is required to initiate prosecution. In California, see Vehicle Code § 40513 and Penal Code §§ 740 and 853.9. For all other states, see your state's Penal or Criminal Code.

A written notice to Appear is a valid substitute for a complaint ONLY where issued by an officer who observed the alleged violation or issued it as the result of an accident, pursuant to law. In California, see Penal Code § 949

and Vehicle Code §§ 20413 and 40600(d). For all other states, see your state's Penal or Criminal Code.

The written notice to appear issued for alleged red light photo violation was issued in a situation where only a verified complaint may be used. Based upon the above, you can and should demand a verified complaint pursuant to your State's Vehicle Code in order that the Court may have jurisdiction by which it could compel you as the defendant to appear in court.

Photo-radar cases occur where there was no actual traffic stop, so that the written notice (or promise) to appear procedure in your State's Vehicle Code is inapplicable, and no complaint has been filed. Complaints are needed even in infraction cases as displayed earlier within this manual.

The written notice to appear is to be only used in conjunction with an actual "arrest" in which a citing officer apprehends an alleged violator and issues the person a citation (traffic ticket/written notice to appear). It is clear that on these computer-generated red light photo tickets an officer's name is typed or machine-printed on the form and again, your signature does not appear in or on the promise to appear. The written promise to appear is called that because you are compelled to promise to appear and that's why your signature is signed on the traffic citation.

Clearly, a trial where there are no witness(es) to exercise one's right to cross-examine one's accuser and/or witness(es) and where there is no witness testimony or evidence presented upon which a determination can be made is a violation of your Due Process rights granted by both state and federal constitutions (*e.g.* to examine or question one's accuser and/or witnesses).

No State can require as a condition of receiving a "favor" (driver's license, driving privilege) the relinquishment of constitutional rights (*e.g.* the right to be free from self-incrimination, as per U.S.Const.Amend.5), as per ***Frost & Frost Trucking Co v. California Railroad Commission (1926) 271 U.S. 583.***

Study your red light photo ticket diligently because these tickets contain declarations by a people (you don't even know or have ever met) who can be subpoenaed as a witness for purposes of cross-examination on the day of trial.

You will only respond to the mailed photo radar ticket absent your signature on a written notice (or promise) to appear due to economic duress as the Court will issue a “failure to appear” if you don’t show up to contest the mailed ticket and the ticket will show up on Department of Motor Vehicle (DMV) computer databases and the Department of Motor Vehicles will prevent you from receiving new vehicle registration tags when that time comes around – when your registration and registration tags expire. Photo red light issued tickets are nothing but a grand scheme to make money. They are schemes started by private photo-radar companies such as ACS (Affiliated Computer Services), NTS (Nestor Traffic Systems), and RTS (Redflex Traffic Systems) who for example, operate Southern California’s red light cameras.

It is a fact that “\$60 of every \$271 “running red light” fine goes to Lockheed Martin IMS (a private firm) to justify cost of using automatic cameras to catch red-light runners at dangerous intersections. Municipalities pay Lockheed Martin IMS for their cameras and installation from monies collected from traffic tickets.

Consider the following:

“We will comply with the contract and install what we said we would. But we are renegotiating our contracts throughout California and the nation to get out of the business of being paid by the ticket (i.e. traffic citation or Notice To Appear).” – Lockheed Martin company spokesman Mark Maddox.

The industry average for the camera installation at an intersection is estimated at \$100,000.

In 2000, Lockheed Martin IMS, made \$580 million in revenue from serving state and local government agencies.” SOURCE: *Daily News*, Tuesday, November 6, 2001, Article entitled “Intersection camera program running in the red.”

What if I wasn’t driving the car that received a Red-Light Photo Ticket?

That’s easy! Simply file an affidavit declaring under penalty of perjury that you were not the driver of the car (which may be registered to you

nonetheless) and then list the name of the actual person who was driving the car on the day the red light photo ticket was issued.

What if I get a ticket for talking on a cell phone? How do I contest this in court?

These tickets are easy to beat. Some states like California have legislated new laws prohibiting the use of talking on hand-held phones and text messaging while driving, which really makes a whole lot of sense to me, well, for purposes of public safety as cell phones can be great distractions when focus is needed. Lives may depend on it. However, the fines can be pretty steep. In California, the fine is \$130.

However, what most people don't know is that there are a few exceptions for being on a hand-held phone while driving.

Let's look at the statute or code section to find any loopholes that we may be able to use in court as a defense:

Hand-Held Wireless Telephone: Prohibited Use

Section 23123. (a) A person shall not drive a motor vehicle while using a wireless telephone unless that telephone is specifically designed and configured to allow hands-free listening and talking, and is used in that manner while driving. (b) A violation of this section is an infraction punishable by a base fine of twenty dollars (\$20) for a first offense and fifty dollars (\$50) for each subsequent offense. (c) This section does not apply to a person using a wireless telephone for emergency purposes, including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department, or other emergency services agency or entity.

The legal loophole is found in 23123(c) of the California Vehicle Code:

“This section does not apply to a person using a wireless telephone for emergency purposes, including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department, or other emergency services agency or entity.”

You can't use a hand-held cellular phone while driving UNLESS you're on the phone with:

Law Enforcement Agency

Health Care Provider

Fire Department

Other Emergency Services Agency or Entity

Personally, I would concentrate on health care provider. I would program into my phone the number of my health care provider, well, if I had one, and if I was on the phone with someone despite the fact that I'm not supposed to be on the phone while so-called driving and was caught by a cop and pulled over, I would quickly hit the stored number (on the cell phone) for my health care provider to make a phone call to the provider. When the cop approaches my car I would have the cell phone in a visible spot with the call still open, so when the officer says it's against the law to drive and talk on the phone with a hand-held device, I would tell the officer I'm calling my health care provider to schedule an appointment for some medical emergency (for myself or a family member).

Now if the officer is astute in the law, he or she knows what the law or statute says in section 23123, and if not astute, oh well, because the law/statute is plain and holds up in court before a judge.

See, the good thing about calling the health care provider is that when and if the officer issues you a ticket for talking on the phone, a record is now made of the call with your cell phone company provider, so if you go to court and a judge or commissioner asks for proof, you will have it.

Now if a cop in fact issues you a ticket for hand-held phone use, all you have to do is explain the circumstances in a Brief and accompanying affidavit stating that you were on the phone with your health care provider and then quote the law/statute (code section) that allows for the stipulation to be on a hand-held phone with the health care provider. It's that simple! You were not violating the law! You in fact were obeying it, well, at least based upon your legal argument.

In our country, really a corporation these days, it's not about right or wrong but about knowing the rules. Even the court recognizes this maxim of law, so there's no need to feel guilty about anything.

“You have to know the rules. It's got nothing to do with your case being right. It's got to do with the rules.” **Judge Paul M. Marko III**

Law is no longer based upon morals in America. It's a business to make money from the poor, ignorant citizens, well, under the banner or pretense of public safety.

For every charge there is a defense if you would just do your homework.

What if the judicial officer rules against me and finds me guilty during the Trial?

Simply tell the judicial officer that you give notice that you will appeal the judgment or ruling.

NOTE: Usually, you have within 30 days from the date of trial and/or judgment (court order) to file your Notice of Appeal.

Do I still have to pay my fine while appealing the decision?

Technically YES! Traffic court is all about collecting the tribute (money). However, you have a right to request a “Consideration of Ability to Pay Fine” hearing under state law. In California, it is found in Vehicle Code section 42003(c):

“Payment of fines and costs.” (c) In any case when a person appears before a traffic referee or judge of the municipal court or superior court for adjudication of a violation of this code, the court **upon request of the defendant**, shall consider the defendant's ability to pay. Consideration of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. The reasonable cost of these services and of probation shall not exceed the amount determined to be the actual average cost thereof. **The court shall order the defendant to appear before a county officer designated by the court to make an inquiry into the**

ability of the defendant to pay all or a portion of these costs or the court or traffic referee may make this determination at a hearing. At that hearing, the defendant shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, to confront and cross-examine adverse witnesses, to disclosure of the evidence against him or her, and to a written statement of the findings of the court or the county officer.

You must request this hearing as soon as the judicial officer finds you guilty. You can also request for an extension (6-12 months) to pay the fine and you can also request to pay in installments. Study your state's Vehicle Code, Motor Vehicle Code, or Transportation Code.

Also, you have the right to request an extension of time and the ability to pay the fine in installments so as not to cause economic hardship.

Consider the following:

“A judgment that a person convicted of an infraction be punished by a fine may also provide for the payment to be made within a specified time or in specified installments.” California Vehicle Code 42003(a)

Every other state has this statutory provision and it can be found in the Vehicle Code, so do your homework and find it and use it if need be.

What if I don't request the Consideration of Ability to Pay Fine hearing in open court?

Technically, you waive the right to request it. However, you can file the document (motion) with the traffic court clerk and request a date for the hearing on your document/motion (Consideration of Ability to Pay Fine).

What if I don't pay the fine?

If you don't pay the fine the judicial officer can find you in contempt of court of a court order and also order your driving privileges suspended and send the amount due to a collection agency which goes against your credit rating and score which might affect you later on in life in attempting to get material things on credit, e.g. house, car, loan, etc.

Chapter 5

“Trial By Declaration”

Trial by Declaration is a great option to exercise if your citation (traffic ticket) was issued to you in a distant place.

Trial By Declaration is basically your submission of a Brief stating the facts of the case, law (case law, statutes, etc.) backing up your claims and allegations (in the form of a Memorandum of Points and Authorities) and in conclusion, requesting that the Court find you not guilty and if applicable, to reimburse any money that may have been required to submit the Trial by Declaration via mail.

NOTE: Some states as a stipulation to file a Trial By Declaration via mail may require a payment of bail but this may be defeated by submitting a Declaration or Affidavit of Poverty or Financial Insolvency along with your Trial by Declaration Brief.

Outcomes for Trail By Declaration are usually mailed to you within 2-8 weeks.

It may be best for you to contest a traffic ticket using the Trial By Declaration process if your ticket was issued in a different county or perhaps in another State.

Chapter 6

“Appealing An Adverse Decision”

An appeal only allows you to argue questions of law, not questions of fact. In an appeal, you are arguing or bringing up on appeal questions of law that you feel the judicial officer incorrectly ruled on or made an error pertaining to.

Never argue the facts in an appeal. Argue only the law, i.e. what the Vehicle Code or legal precedent (case law) states.

“Appeals are usually determined on questions of law since appellate courts rarely upset a trial court’s determination of a question of fact. **Barron’s Law Dictionary, 4th Edition, pg. 408, “Question of law.”**”

How many days do I have before I file an appeal?

Under California law, in a traffic case you have approximately thirty (30) days from the day of your trial and judgment to file your Notice of Appeal.

In other states the time frame to file a Notice of Appeal may be different.

The filing of a Notice of Appeal starts your appeal process.

After I file my Notice of Appeal, how many days do I have before I file my Appeal Brief?

In California law, you have approximately 14 to 120 days after you file your Notice of Appeal to file your Appeal Brief. Other states will vary so check your particular state’s Rules of Appeals or Court Rules or Code of Civil Procedure.

Your appeal is argued via a Brief. To find out what your Brief must include, consult your state’s Rules of Court or Rules of Appellate Court or the appropriate code or see **sample** documents in Volume 3.

Generally an appeal includes:

Table of Authorities

Opening Statement

Statement of Facts

Issues Argued on Appeal

Memorandum of Points and Authorities

Conclusion/Requested Remedy

The **Table of Authorities** lists (in alphabetical order) all the relevant case law, statutes, and constitutional provisions used in brief.

The **Opening Statement** is a brief synopsis of what the appeal is about

The **Statement of Facts** is a detailed account (the facts of the case or matter, i.e. the kind of traffic charge levied against you, what happened on the day of the traffic stop, what transpired during the trial, the judicial officer's ruling, etc.).

The **Issues Raised on Appeal** list each legal issue or question of law you are appealing, for example, if you feel your constitutional due process of law was violated, that would be one of your issues raised on appeal. If you requested a verified complaint to be filed and it wasn't, that too would be an issue raised on appeal, and so on and on.

The **Memorandum of Points and Authorities** is basically legal substantiation of the issues raised on appeal buttressed by constitutional law, statutory law, and/or case law (legal precedent).

The **Conclusion** basically ends the Brief and tells the appellate court what you want as a remedy from your appeal, i.e. overturn an errant decision, a new trial, etc.

In an appeal, there are 3 Briefs that must be filed:

Appellant's Opening Brief

Respondent's Response Brief

Appellant's Closing Brief

In an appeal, the appellant is allowed to file two briefs, opening and closing briefs. The closing brief allows the appellant to retort or respond to the defenses and responses in the Respondent's (Appellee) Response Brief.

NOTE: In an appeal, the party who files the appeal is the Appellant and the party who responds to the appeal is called the Appellee.

In accordance pursuant to your state's Court Rules or Rules of Appeals (or whatever the code may be titled), the briefs may have to be colored. For example, the opening brief may have to be blue, the response brief red, and the closing brief tan.

The appropriate code will instruct you on the proper coloring of the brief's coverings.

Where do I file the Notice of Appeal?

You file the Notice to Appeal with the traffic court clerk.

Where do I file my Appeal's Brief?

You file your Appeal Brief with the traffic court clerk or with the clerk of the Appellate Division.

Do I have to attend court for my appeal?

Usually NO! However, some people have gone before three judges of the Appellate Division for oral testimony. At any rate, you should be prepared to argue your appeal based upon the arguments typed in your Opening Brief (or Proposed Statement on Appeal).

NOTE: Some courts may require a Proposed Statement on Appeal so as to have advance notification of what your appeal is about. Proposed Statement on Appeal may be optional or mandatory depending on the state you reside in.

If the appellate division or court wants you to personally attend an oral testimony hearing, they will send you notice in the mail. Make sure you arrive early for an oral testimony you will have to give.

Many times, oral testimony may be optional. Just make sure you read the letter carefully. It will either say that oral testimony is necessary (for the appellate judges to make a decision) or optional.

If my appeal is granted in my favor, what happens?

Usually you will be awarded with a *Trial De Novo* which means "new trial." However, the case may be dismissed entirely and any monies paid for fines reimbursed.

You'll find out for sure when the Appellate Division mails you their response/ruling on the appeal. This can take anywhere between 7 and 120 days depending on your State.

How Long Does the Appeals Process Take?

An appeal may take anywhere from 30-120 days, depending on the State. However, each State is different so the duration is also going to vary. The clerk of the appellate court or division may be able to give you a specific time frame.

What If I Lose On Appeal?

You have 2 options: You can allow the judgment to stand and pay any monies (fine, penalty) that may be due if not all ready paid, or, you can file a real appeal with the next level, the State Court of Appeals (which can be very expensive I might add, and just for filing fees, and perhaps is not worth the money; but then there's always the fee waiver.

“Conclusion”

Thank you for reading the Traffic Ticket Manual, Volume 2. After reading Volume 1 and now Volume 2 you should be ready and equipped to contest any traffic ticket that comes your way.

I strongly suggest you purchase and read The Traffic Ticket Manual, Volume 3 (Sample Documents) so you can learn how to prepare your own legal documents (pleading).

Documents are important because they speak for you (during the entire case) and if you forget to raise a point in trial (or a belligerent judge) prevents you from doing so, it doesn't matter because once you file a document with the court through the clerk, it's part of the record and can be used on appeal to make your arguments and claim.

Thank you for standing up and learning your rights in order to enforce them. Learning our rights and enforcing them are the only way we will ever get free from this modern day government tyranny that has us operating under a

De facto statutory-based democracy when in fact we should be operating under a *De jure* sovereign republic.

From the depths of my heart, I thank you!

Other Books By Djehuty

The Traffic Ticket Manual, Volume 1

The Traffic Ticket Manual, Volume 2

The Parking Ticket Manual

The Pro Per and Pro Se Litigant's Manual

Case Law Goodies, Volumes 1, 2, 3

The Mental Science Manual

The Money, Wealth, and Prosperity manual, Vol. 1

The Love Manual

The Sex Manual, Vol. 1

The Sex Manual, Vol. 2

The Chakras Manual

The Full Body Detox Companion

The Alternative Diet and Lifestyle Manual

Law Consultation

\$150.00

(Over-The-Phone)

A law consultation gives you the necessary information (not legal advice) to empower you into making sound decisions regarding your personal legal matter. In law, you have to act, especially if you are served a summons and complaint or subpoena.

Many people are not responding to legal service of process in the form of summons and complaints and end up defaulting and thus causing them great injury and harm in the way of loss of money (judgments, wage garnishments), property, and freedom. In law, ignorance is no excuse for every man and woman in the U.S. are presumed to know the law.

Many people are also being bamboozled into and by sovereignty schemes and scams by so-called religio-political patriot groups, militia groups, legal theorist groups, etc.

Patriot mythology, U.C.C. (Uniform Commercial Code) arguments, tax protester arguments, redemption in law, and expatriation/repatriation processes are NOT the way to go in legal-judicial matters regardless of what you may have heard or even studied.

Also, you cannot get anything for free (free house, car, etc.) in this society nor does the government have a check for thousands of dollars in your name because you were issued a Social Security card. Regardless what any group is saying, this is NOT true and you will end up losing much money, energy, and time with such unproven theories.

Law only consists of: constitutional, statutory, and case-decisional law and these are the tools of your position (defense or offense) in a legal matter.

You have a right under due process of law, U.S.Const.Amend.14, to file appropriate documentation on your behalf as a lawyerless litigant or pro se litigant in your legal action.

Learn the appropriate steps to take in a civil or criminal legal action as well as what statutory-based documentation you need to file on your behalf, i.e. Answer, motion, demurrer, judicial notice, bill of particulars, peremptory

challenge, etc.

Because most county legal aid offices are inundated, people (especially poor people) are not receiving viable and solid information for their best interests in legal matters and many legal atrocities and miscarriages of justice are occurring across the country daily.

So if you are faced with the following matters: traffic and/or parking tickets, child support, eviction (unlawful detainer), civil lawsuit, criminal lawsuit, unemployment/disability claims issues, restraining order, etc. and do not know what your course of action is, you may be interested in scheduling a consultation. We use higher law to help guide people in matters pertaining to lower, man-made law. Whatever your personal situation, all law offers remedy and recourse. In order to benefit from the American judicial system, you must use it. There's no other way!

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