

1-1961

Citation Hearing System

Albert E. Hederman

Richard K. Dahlinger

Follow this and additional works at: https://repository.uchastings.edu/hastings_law_journal



Part of the [Law Commons](#)

Recommended Citation

Albert E. Hederman and Richard K. Dahlinger, *Citation Hearing System*, 12 HASTINGS L.J. 275 (1961).

Available at: https://repository.uchastings.edu/hastings_law_journal/vol12/iss3/3

This Article is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Law Journal by an authorized editor of UC Hastings Scholarship Repository.

Citation Hearing System

By ALBERT E. HEDERMAN, JR.* *and* RICHARD K. DAHLINGER†

WITH THE increasing complexities of our modern system of laws, it is difficult for the average person to go through a single day without having violated some statute. The simple and long established processes of arrest and prosecution are still appropriate for the handling of most criminal cases. But sheer volume, together with a need for application of judgment and discretion, dictate the need for some other method of handling cases involving minor infractions, or violations of the type which are perhaps more clearly classed as "failure to follow the rules."

Development of System

The citation hearing system, which is the method that has evolved, has been employed for well over a quarter of a century, yet few people are aware of its existence and effectiveness. It is based upon the exercise of judgment and discretion in the enforcement of criminal law.

In modern times the issuance of a citation for traffic violations as an alternative to physical arrest and incarceration has become a common occurrence. More recently the California Legislature has made it possible for the formal "citation system" to operate in the area of city and county ordinances,¹ and at the discretion of the arresting officer, even in the case of misdemeanor Penal Code violations.²

While the traffic citation system and the Penal Code citation provisions are forward steps in the handling of violations by a process short of physical arrest, they still require court appearances and in many cases contested trials in order to achieve the ends of justice.

It is against this background that the citation hearing, while not authorized by statute, has evolved as a system utilized in most district attorneys' offices in California. While not authorized by statute it nevertheless is a long established procedure, growing from a need

* LL.B. 1951, Golden Gate College School of Law; Assistant District Attorney of Alameda County; Member, California Bar, Alameda County Bar Association.

† Member, Third Year class.

¹ CAL. PEN. CODE §§ 853.1-853.4.

² CAL. PEN. CODE §§ 853.6-853.8.

to handle many so-called criminal cases in a manner apart from the ordinary processes of arrest and prosecution.

Briefly, it involves calling the minor offender into the district attorney's office to discuss the nature of the violation and the means and methods by which compliance may be achieved within a reasonable time.

The process is readily adaptable to cases involving non-compliance with the many and complex regulations governing the operation of nearly every kind of business or occupation. Thus, the person who perhaps unknowingly has neglected to obtain proper licenses or permits before undertaking a particular kind of business, can be called in, apprised of the requirements, and directed to comply.

Neighborhood squabbles or family arguments may be settled in this kind of proceeding before they erupt into offenses involving violence. A minor violator may be thus prevented from becoming a major violator.

In those cases where compliance with the law cannot be achieved or where the facts, after hearing, appear to warrant further action, then the usual processes of complaint, arrest and prosecution can still be undertaken.

The citation hearing, carefully and judiciously used, is a much needed process, filling the gap between a mere administrative warning and the sometimes harsh processes of the Penal Code. It promotes respect for the administration of justice and at the same time saves time and expense, both to the state and to the violator.

Operation of the Citation Hearing System

There are four steps in the procedure used by the prosecutor: determining whether a hearing is warranted, setting the time for the hearing and preparing the notices, notifying the offender, and holding the hearing itself.

Step One—Is the Citation Hearing Warranted?

First, the prosecutor is confronted by the complaining party or governmental agency, and the facts as to the violation are disclosed. The prosecutor must find out the seriousness of the violation, the parties involved and their previous encounters, if any, with the law, the damage which the violation has caused, and the probable effectiveness which will result if the case is handled by citation hearing. On the basis of these facts he must determine whether to utilize the citation hearing process at all, or whether a complaint should issue and prosecution begin.

Second Step—Preparing the Notices

If the prosecutor feels that a hearing might better serve the interests of all parties concerned, he will prepare a notice as specified in the second step. The prosecutor has little to fear if an error in judgment is made in the first step, since the possibility of prosecution still exists. At any time before, during or after the hearing, the prosecutor may file a complaint if it appears the citation hearing system will not produce the proper result.

Third Step—Notifying the Violator

The third step in the citation hearing procedure is to inform the violator that he must come into the prosecutor's office and show cause why he should not be arrested.

Counties differ somewhat in the strength of language used in these notices; however, investigation in several counties indicated some similarity in the forms used. For example, in Marin County two notices are sent. The first merely informs the alleged offender that his presence for an interview at the district attorney's office is required, giving him no notice of the subject matter of the interview. This type of notice has the advantage of bringing in the alleged offender without giving him the opportunity to construct an "alibi." However, because of the lack of compulsive language, some fail to appear. In this event, a second notice is sent, informing the violator that a named complainant has applied for a warrant of arrest, stating the nature of the charge, and requesting him to appear for a hearing and show cause why a warrant should not issue.

In Alameda County, on the other hand, only the second form of notice described above is utilized. Since this type of notice is seldom ignored, it seems that there may be some advantage in using the second form only, in that less time is consumed in setting the citation hearing system into motion.

Fourth Step—the Hearing

The fourth step is the hearing itself. It is held in a private conference room, the only parties present being the prosecutor, the complainant, and the violator, with his attorney if he so desires. Prosecutors have encouraged the attendance of attorneys at these hearings. This seems advisable in that the attorney can thus fully inform himself of his client's situation, and advise a course of action, both to ameliorate this present situation and prevent future occurrences, in addition to advising the client of the correctness or error of the prosecutor's position and of any technical objections to the prosecutor's questions. It also may indirectly benefit the attorney by acquainting him with the

nature of the citation hearing system for future reference.

The hearing is an informal proceeding, the purposes of which are to make the offender fully aware of the fact that he has violated the law, to answer any questions he may have, and to settle the matter in the best manner for all parties. If the violator recognizes he was wrong and agrees to perform in the future as required, he may be dismissed with merely a reprimand. This, of course, depends on whether or not he committed the offense innocently, or by mistake, or in such a manner that the ends of justice will not be thwarted by his being released with only a reprimand. If the case is not dismissed, the prosecutor may grant an extension of time under certain circumstances to allow the violator to clear up the matter, after which another hearing may be necessary to dispose of the case.

If a dispute arises between the parties as to solution, the prosecutor may suggest a remedy which will satisfy both parties and thereby avoid a court appearance.

If the parties are unable to reconcile their differences, or if the prosecutor feels that the offense was committed in such a manner that prosecution is better suited to the violation, then the hearing is concluded, a formal complaint issued and a trial date is set. This appears to be the exception rather than the rule however, as the citation hearing system has been increasingly successful with each year of its operation.

A permanent record of the hearing is kept in Alameda County by means of a "citation record." In this record a summary of the hearing is noted and the solution reached is recorded for future reference. If agreements reached are breached, or if the violation continues or recurs, then this record is available for use in formal prosecution of the offender. The citation record is kept in the private files of the prosecutor's office and is not a matter of public record.

Offenses Considered for a Citation Hearing

The citation hearing system applies only to penal and regulatory law. It has no application to settlement of litigation between individuals for violations of private rights. The system does cover a wide area however, and pertains to many violations of the Penal Code as well as all the regulatory measures adopted by state, city and county. The type and varieties of offenses handled by different counties will of course vary according to the sociological makeup of the community. By way of example, practices in the Oakland area will be discussed.

First of all, with respect to any given offense, there are only cer-

tain types of situations upon which a citation hearing is warranted. Generally it must involve a first offender, and the violation must not be aggravated. It is with this type of situation that the hearing is most effective. In many cases the offender is unaware that he has violated a law, through ignorance or mistake, and is usually more than willing to accept the suggestions of the prosecutor.

The system has proven effective in many cases of Penal Code violations, but the bulk of violations handled by the citation hearing system relate to infractions of regulatory measures set up for the protection of the general public. Compliance can usually be accomplished through the citation hearing process without necessity for court action. Following below are a variety of violations frequently handled by the citation hearing system.

A) *Violations of the Labor Code*

Violations of this code frequently occur upon discharge of an employee, after which the employer fails or refuses to pay wages, or disputes the amount of the claim due. Section 216 of the Labor Code requires that wages due and payable must be paid on demand, and the employer is in violation of the law if he fails to do so or falsely denies the claim. These disputes over wages due are originally handled by the labor commission, with the additional opportunity for hearing by the prosecuting attorney prior to the issuance of a formal complaint. This type situation has frequently been settled by a hearing involving the employer, the employee, the labor commissioner, and the prosecutor. These and numerous other Labor Code violations are successfully handled by the citation hearing system.

B) *Violations of the Alcoholic Beverage Control Act*

Sales to minors,³ consumption of alcoholic beverages beyond the limits provided in the license issued to the proprietor,⁴ selling alcohol after hours⁵ and many more such offenses are frequently committed and under the proper circumstances may be adequately handled by citation hearing rather than issuing a complaint and requiring a court appearance.

C) *Violations of Building and Housing Ordinances*

With the rapid growth of population in areas surrounding the larger industrial and business sections of the state, it is only natural that the building industry should also expand. Urban renewal and development projects are constantly uncovering substandard dwell-

³ CAL. BUS. & PROF. CODE § 25658a.

⁴ CAL. BUS. & PROF. CODE § 25632.

⁵ CAL. BUS. & PROF. CODE § 25631.

ings and other inadequate structures. Compliance with minimum standards is necessary to protect life and property. Delinquent owners are cited, the deficiencies pointed out, the specific code violations discussed, and often means and methods of correction are indicated. Reasonable time is allowed for accomplishment with formal prosecution as the alternative to compliance. Builders or contractors who are not conforming to minimum standards, or who are not adequately licensed are cited and given opportunity to correct their operations, obtain appropriate licenses or permits, and otherwise meet the requirements of the codes and ordinances.

D) *Violations of State Unemployment Insurance Code*

California law provides certain procedures for deducting unemployment insurance from wages,⁶ and for collecting unemployment funds⁷ when an employee is out of work. Frequently an employer fails to deduct such amounts or deducts an improper amount. A hearing may be held by the prosecutor if he feels that the employer was mistaken or ignorant of the law. An opportunity will be given to the violator to make payment within a reasonable time upon his giving assurance of prompt and accurate compliance thereafter.

E) *Violations by Professional Practitioners*

Violations of laws governing professional standards and regulating the various professions⁸ are frequently the subject of citation hearings. Improper advertising or questionable practices or methods may be discussed and resolved without the need for prosecution and perhaps attendant embarrassing publicity.

F) *Other Violations of Codes*

Other violations of codes which have been settled through the use of the citation hearing system have involved the Department of Agriculture, the Bureau of Weights and Measures, the Society for the Prevention of Cruelty to Animals and many others. Even Penal Code violations may best be settled by informal hearing, rather than by the cold and formal processes of a criminal prosecution. Family disputes, as well, are frequently best handled through the citation hearing system.

Goals and Achievements of the Citation Hearing System

The citation hearing system serves to inform persons of violations of local and state laws, ordinances and regulations. Ignorance of the

⁶ CAL. UN. INS. CODE §§ 976-94.

⁷ CAL. UN. INS. CODE §§ 1251-63.

⁸ See e.g., CAL. BUS. & PROF. CODE §§ 5000-9770.

law is not considered an excuse for violation under ordinary circumstances; however with the increase in number and complexity of modern regulatory laws, this often quoted aphorism has given way to the more realistic approach embodied in the citation hearing procedure.

This informal system, with its emphasis on informing the offender of the nature of the violation, tends to result in compliance with regulatory measures. This point is more readily apparent when one considers that a primary purpose of the informal hearing is to secure compliance *in lieu* of punishment. It may also be argued that the atmosphere of cooperation which predominates in these informal meetings aids in reaching the desired goal of compliance.

Moreover, by reducing the number of cases prosecuted, the burden on crowded court calendars is relieved. This also serves the function of decreasing the expenses of complainant and offender, as well as those of the state.

This reduction in costs and expenses also may have the effect of providing a remedy to those who could not afford the financial burdens attendant to a court room defense, for the issues may be resolved without resort to the courts.

In the event that the citation hearing system fails to bring about the more desirable result of settlement and compliance, and the case must be prosecuted, still the system has served a valuable function in informing both the prosecutor and offender of the precise nature of the issues and defenses which will be raised in court.

The question may be asked: how effective is the system? Have the advantages discussed above been realized?

In preparation for this article various counties⁹ in the San Francisco Bay Area were contacted, and it was found that all use the citation hearing system in some form. It was also found that use of the system has increased yearly. For example, statistics for the City of Oakland show 792 cases handled by citation hearing in 1957, 855 cases in 1958, 1250 cases in 1959, and 1360 cases in 1960.

These figures aid little in answering the question posed: "How effective is the system?" However, they do indicate that prosecutors themselves are pleased with the achievements of the procedure, and are making more frequent use of it each year.

The effectiveness of the citation hearing system may be calculated by ascertaining the amount of time, expense and work which it saves the complainant and offender. But a more gratifying display of its effectiveness is the degree of compliance with the law which results by reason of the hearing. To illustrate this, statistics in San Francisco

⁹ Alameda, Marin, San Francisco and San Mateo.

show that less than one-half of one per cent of the code violations handled by a hearing each year result in a court trial. In almost every case difficulties were discussed in a friendly and informal atmosphere, resulting in immediate compliance. The hearings have actually resulted in increased compliance since less than 5 per cent of all offenders handled have ever been called in for a second violation. These figures indicate that compliance with the law need not be effected solely through the courts. The citation hearing system leads to results at least as desirable as court procedures with less time, energy, and money expended.

Looking toward the future it is hoped that the system will continue to increase in popularity as it has in the past decade, and that eventually all states, cities, and counties will take full advantage of the system. Because of the tremendous increase in the number of criminal cases pending trial in our courts today, it is imperative that some effective procedure be utilized to alleviate this situation. The citation hearing system seems to be the most effective remedy at this time.