

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT

**SP13-02**

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Title	Action Requested
Telephone Appearances: Amendment of the Fee Amount	Review and submit comments by April 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 3.670	July 1, 2013
Proposed by	Contact
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### **Executive Summary and Origin**

This is a proposal to amend rule 3.670 of the California Rules of Court on telephone appearances. The proposed amendment would increase the fee to appear by telephone in civil cases from \$78 to \$86, effective July 1, 2013, and would make other changes to clarify the operation of the fee provisions in the rule.<sup>1</sup> The changes in the rule are needed at this time to respond to recent legislation and to provide for the amendment of the statewide master agreement for telephone appearance services, which is set to end on June 30, 2013. The proposal is recommended by the Administrative Office of the Courts (AOC).

### **Background**

The rule provisions establishing statewide, uniform fees for telephone appearances were adopted in 2011 under Senate Bill 857 (Stats. 2010, ch.720). This 2010 budget trailer bill for the judicial branch, which became effective on October 19, 2010, provided: "On or before July 1, 2011, the Judicial Council shall establish statewide, uniform fees to be paid by a party for appearing by telephone, which shall supersede any fees paid to vendors and courts under existing agreements

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<sup>1</sup> Further proposed substantive amendments to rule 3.670 on telephone appearances in civil cases are anticipated to be circulated this year, to take effect, if approved by the council, on January 1, 2014. Because action to change the amount of the fee is needed by July 1, 2013, this proposal focusing on fee issues is being circulated now.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

and procedures.” The legislation specified that the fees to be paid for telephone appearances shall include: (1) a fee for providing the telephone appearance service pursuant to a timely request to the vendor or court; (2) an additional fee for providing services if the request is made shortly before the hearing, as defined by the Judicial Council; and (3) a fee for canceling a telephone appearance request. (See Code Civ. Proc., § 367.6(a).) To implement SB 857, the Judicial Council, effective July 1, 2011, established the amounts of the three fees to be charged for telephone appearances. The council adopted (1) a fee for timely requests for telephone appearances of \$78,<sup>2</sup> (2) a late request fee of \$30, and (3) a cancellation fee of \$5.

The legislation providing for the three fees for telephone appearances originally would have expired in July 2013. Under SB 857, the statutes that provided for these fees (Code Civ. Proc., § 367.6 and Gov. Code, § 72011) stated that the fees would become inoperative on July 1, 2013, and, as of January 1, 2014, would be repealed, unless a later-enacted statute operative on or before January 1, 2014, were to delete or extend the dates on which they would have become inoperative or repealed. Legislation was passed in 2012 that removed the sunset language from sections 367.6 and 72011. Hence, the Judicial Council is now authorized to establish by rule telephone appearance fees beyond July 1, 2013.

In addition, SB 857 provided: “On or before July 1, 2011, and periodically thereafter as appropriate, the Judicial Council shall enter into one or more master agreements with a vendor or vendors to provide for telephone appearances in civil cases under Section 367.5 of the Code of Civil Procedure or as otherwise authorized by law.” (See Gov. Code, § 72010(a).) Effective July 1, 2011, the AOC on behalf of the Judicial Council entered into a master agreement for telephone appearance services for a term of two years ending June 30, 2013. It is contemplated that the master agreement will be amended for an additional multi-year term commencing July 1, 2013.

### **This Proposal**

The amounts of the telephone appearance fees set in rule 3.670 and the master agreement were established effective July 1, 2011, for an anticipated duration of two years. Now that the sunset provisions in the statutes relating to the telephone appearance fees have been removed and the master agreement is set to terminate, the amount of the fees set in the rule and the anticipated amended master agreement need to be reconsidered.

### **Proposed amendments to the amount of the fee**

This proposal recommends increasing the amount of the basic telephone appearance fee from \$78 to \$86. No changes are proposed to the amounts of the late request fee<sup>3</sup> or the cancellation fee.

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<sup>2</sup> Under Government Code section 72011, enacted as part of SB 857, for each telephone appearance fee collected, the vendor transmits \$20 to the State Treasury for deposit in the Trial Court Trust Fund.

<sup>3</sup> However, as explained in the next section, the proposal to amend rule 3.670 includes some clarifications of how the late request fee operates and who must pay it.

The proposed increase in the telephone appearance fee is intended to address the cost and other concerns of the vendor that provides telephone appearance services to the 58 trial courts under the master agreement. CourtCall, LLC, is presently the only provider of telephone appearance services to the California courts. It has provided telephone appearance services for the courts for many years and it is anticipated that it will continue to provide such services, although the master agreement with CourtCall is non-exclusive.

Under this proposal, effective July 1, 2013, the vendor (or vendors) of telephone services would receive an increase in the portion of each uniform fee that it receives from \$58 to \$66. No increase would be made at this time to the \$20 amount currently deposited in the Trial Court Trust Fund from each fee.<sup>4</sup> Thus, the total new fee for telephone appearances, effective July 1, 2013, would be \$86. It is anticipated that this proposed new fee would last for five years (i.e., for the duration of a proposed extension of the master agreement from July 1, 2013 through June 30, 2018), unless the Legislature changes the statutory amount of the portion of the telephone appearance fee to be deposited in the Trial Court Trust Fund.

The current vendor has provided an explanation in support of the proposed increase in the fee amount. CourtCall contends that more than 50 percent of its cost structure is comprised of three primary categories: employee benefits, courtroom expenses, and general overhead. Collectively, these costs have increased at a compound annual rate of nearly 12 percent between 2010 and 2012. CourtCall states that it offers comprehensive health insurance options to all eligible full-time employees—more than 70 percent of which is paid for by the company—and health care premiums have increased significantly in the past decade. CourtCall also states that it lost the opportunity to initiate a \$5 per call increase in the telephone appearance fee in 2011 as a result of the enactment of SB 857. CourtCall had been increasing the amount of its fee by \$5 once every three years; but it last initiated such an increase in most California counties in June 2008, resulting in a statewide average fee of \$58 at the time the uniform fee was implemented. In sum, CourtCall contends that the proposed increase is reasonable and fair, especially when viewed over the course of the proposed extension term, in the context of past revenues lost, and mindful of the company's rising costs.

The AOC Fiscal Services Office has reviewed how the current \$58 share of the telephone appearance fee received by the vendor (the “base fee”) might be adjusted based on the Consumer Price Index (CPI).<sup>5</sup> Using the CPI index to adjust the 2008 \$58 year-end average fee would result in a 2012 year-end fee of \$61.84. Assuming that the annual increase in the CPI from 2013

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<sup>4</sup> Any increase in the \$20 amount would require legislative amendment to Government Code section 72011. Also, under section 72011, vendors under the statewide master agreement for telephone appearance services are required to transmit an amount equal to the amount of revenue received by all courts from all vendors for providing such services in the 2009–2010 fiscal year; this amount will continue to be transmitted after July 1, 2013, as provided by law.

<sup>5</sup> The source of the CPI data is the U.S. Department of Labor, Bureau of Labor Statistics.

through 2018 will be the same as the annual average increase in the CPI from 2001 through 2012 (i.e., 2.4 per cent), the CPI adjusted base fee at 2018 year-end would be \$71.40.<sup>6</sup> Thus, the proposed base fee of \$66, effective from July 1, 2013, through June 30, 2018, appears to be reasonable.

#### **Other proposed amendments to rule 3.670**

In addition to changing the amount of the telephone appearance fee, this proposal recommends several other amendments to rule 3.670 to clarify and update the operation of the law.

First, rule 3.670 currently states that courts may provide for telephone services only by one of the following three methods: (1) under an agreement with a vendor or vendors that have entered into a statewide master agreement with the Judicial Council; (2) by directly providing telephone services; or (3) under an agreement that was entered into before July 1, 2011 between the court and a vendor, and has not expired. SB 857 requires that, if an existing local contract for telephone appearance services is subject to cancellation by the court after July 1, 2011, the court shall exercise its option to cancel the contract as soon after July 1, 2011 as is legally possible. This proposal recommends eliminating the third alternative because all pre-July 1, 2011 contracts have expired or been cancelled, and all trial courts have participation agreements under a statewide master agreement. Therefore the transitional provision for unexpired pre-July 2, 2011 contracts is no longer needed in the rule.<sup>7</sup>

Second, the provision in rule 3.670 (j)(2) on late fees currently provides that an additional late request fee shall be charged for an appearance by telephone if the request to the vendor or court providing telephone services is not made at least three days before the scheduled appearance, except under certain circumstances. Under this proposal, the amount of the late fee (\$30) would not be changed; however, the exceptions for ex parte applications in subdivision (j)(2) would be modified.

As mentioned previously, rule 3.670 on telephone appearances will be separately circulated for public comment during the regular spring cycle to include more substantive amendments. These amendments will include a proposal for a different time for requesting to appear by telephone in ex parte proceedings than in other types of hearings. In anticipation that rule 3.670 may provide for a different time for providing notice in ex parte proceedings, this proposal recommends that subdivision (j)(2)(A) be modified to be in more generic terms: instead of referring to “three days’ notice,” the amended rule would refer to the “a timely notice under these rules.” In addition, the subpart would be modified to state that, when an ex parte or other hearing is set on shortened time for which a timely notice under these rules would not be feasible or practical, only the

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<sup>6</sup> It should be noted, however, that some economists anticipate higher levels of inflation than have occurred in recent years.

<sup>7</sup> The provision will still be in statute, which makes clear that all the pre-July 2011 contracts were to expire or be cancelled. (See Gov. Code, § 72010(c)(2).)

applying party—and not any responding party—would be charged the late fee. (See proposed amended rule 3.670(j)(2)(A).)

Some clarifications would be made to two other exceptions to when a late fee is charged. The amended rule would state that no late fee is to be charged to any party (1) when the court on its own motion sets a hearing or conference on shortened time, or (2) when the matter has a tentative ruling posted within the three day period before the hearing. (See proposed amended rule 3.670(j)(2)(B)–(C).)

Finally, the amendments would also make it clearer that no late fee is to be charged to a party that received notice of another party’s intent to appear and afterwards decides to appear by telephone provided the request is made to the vendor or the court providing the service by noon on the court day before the hearing or conference. (See proposed amended rule 3.670(j)(2)(D).)

### **Alternatives Considered**

Because of recent legislation, the Rules of Court—in this instance, rule 3.670—must continue to provide for uniform fees for telephone appearance services after June 30, 2013. However, the specific amounts of the three fees required by statute (i.e., the telephone appearance fee, the late fee, and the cancellation fee) are set by the Judicial Council and are open for consideration.

At this time, to provide for some reasonable increase in the telephone appearance fees appears appropriate, as part of obtaining a master agreement for telephone appearance services for a multi-year period. For the reasons discussed above, this proposal is to increase only the main telephone appearance fee by the amount of \$8 per call; the other two fees would remain unchanged. This increase would apply throughout the anticipated five-year duration of the amended master agreement to go into effect after June 2013. Although different fee amounts and a different duration for the master agreement were considered, the proposed increase in the main telephone appearance fee based on the CPI appears reasonable and should provide continuity of telephone appearance services for the public and the courts.

### **Implementation Requirements, Costs, and Operational Impacts**

This proposal affects only the amount of the telephone appearance fee, which is collected by the vendor under the master agreement. If adopted, the change in the amount of the fee should not require any additional implementation efforts by the trial courts, should not increase any court costs, and should have little or no impact on court operations.

## **Request for Specific Comments**

Comments are specifically invited on the following questions:

- Is the proposed increase in the amount of the telephone appearance fee from \$78 to \$86, for the period from July 1, 2013 through June 30, 2018, appropriate? If not, why not and what alternative—or alternatives—would you recommend?
- Are the proposed modifications to rule 3.670(j)(2)(A)–(D) appropriate?
- Are any other modifications to the fee provisions in rule 3.670 necessary or appropriate at this time?

### **Attachments**

Text of proposed amended Cal. Rules of Court, rule 3.670, at pages 7–9

Rule 3.670 of the California Rules of Court would be amended, effective July 1, 2013, to read:

1 **Rule 3.670. Telephone appearance**

2  
3 **(a)–(h) \* \* \***

4  
5 **(i) Provision of telephone appearance services**

6  
7 A court may provide for telephone appearances only through one or more of the  
8 following methods:

- 9  
10 (1) An agreement with one or more vendors under a statewide master agreement  
11 or agreements.  
12  
13 ~~(2) An agreement between a court and a vendor that was entered into before July~~  
14 ~~1, 2011, and that has not expired. If a contract is subject to cancellation by a~~  
15 ~~court after July 1, 2011, that court must exercise its option to cancel the~~  
16 ~~contract as soon after July 1, 2011 as is legally possible to do so.~~  
17  
18 ~~(3)~~(2) The direct provision by the court of telephone appearance services. If a court  
19 directly provides telephone services, it must collect the telephone appearance  
20 fees specified in (j), except as provided in (k) and (l). A judge may, at his or  
21 her discretion, waive telephone appearance fees for parties appearing directly  
22 by telephone in that judge's courtroom.  
23

24 **(j) Telephone appearance fee amounts; time for making requests**

25  
26 The telephone appearance fees specified in this subdivision are the statewide,  
27 uniform fees to be paid by parties to a vendor or court for providing telephone  
28 appearance services. ~~These fees supersede any fees paid by parties to vendors or~~  
29 ~~courts under agreements or procedures existing before July 1, 2011.~~ Except as  
30 provided under (k) and (l), the fees to be paid to appear by telephone are as follows:  
31

- 32 (1) The fee to appear by telephone, made by a timely request to a vendor or court  
33 providing telephone appearance services, is ~~\$78~~ \$86 for each appearance.  
34  
35 (2) An additional late request fee of \$30 is to be charged for an appearance by  
36 telephone if the request to the vendor or the court providing telephone  
37 services is not made at least three days before the scheduled appearance,  
38 except ~~when~~:  
39  
40 (A) ~~There is~~ When an ex parte or other hearing or conference is set on  
41 shortened time for which ~~three days~~ timely notice under these rules

1 would not be feasible or practical, only the applying party—and not  
2 any responding party—is to be charged the late fee;

3  
4 (B) When the court, on its own motion, sets a hearing or conference on  
5 shortened time, no late fee is to be charged to any party;

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7 (C) When the matter has a tentative ruling posted within the three-day  
8 period, no late fee is to be charged to any party; ~~or~~ and

9  
10 (D) When the request to appear by telephone is made by a party that  
11 received notice of another party’s intent to appear and afterward  
12 decides also to appear by telephone under (g)(2), no late fee is to be  
13 charged to that party. ~~The request of a party seeking to appear under~~  
14 (g)(2) is timely if the ~~its~~ request is made to the vendor or the court  
15 providing the service by noon on the court day before the hearing or  
16 conference.

17  
18 (3) A fee of \$5 is to be charged instead of the fees under (1) and (2) if a party  
19 cancels a telephone appearance request and no telephone appearance is made.  
20 A hearing or appearance that is taken off calendar or continued by the court is  
21 not a cancellation under this rule. If the hearing or appearance is taken off  
22 calendar by the court, there is no charge for the telephone appearance. If the  
23 hearing or appearance is continued by the court, the appearance fee must be  
24 refunded to the requesting party or, if the party agrees, be applied to the new  
25 hearing date.

26  
27 (k) \* \* \*

28  
29 (l) **Title IV-D proceedings**

30  
31 (1) *Court-provided telephone appearance services*

32 If a court provides telephone appearance services in a proceeding for child or  
33 family support under Title IV-D of the Social Security Act brought by or  
34 otherwise involving a local child support agency, the court must not charge a  
35 fee for those services.

36  
37 (2) *Vendor-provided telephone appearance services*

38 If a vendor provides for telephone appearance services in a proceeding for  
39 child or family support under Title IV-D, the amount of the fee for a  
40 telephone appearance under (j)(1) is ~~\$58~~ 66 instead of ~~\$78~~ 86. No portion of  
41 the fee received by the vendor for a telephone appearance under this  
42 subdivision is to be transmitted to the State Treasury under Government Code  
43 section 72011.

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(3) *Responsibility of requesting party*

When a party in a Title IV-D proceeding requests telephone appearance services from a court or a vendor, the party requesting the services must advise the court or the vendor that the requester is a party in a proceeding for child or family support under Title IV-D brought by or otherwise involving a local child support agency.

(4) *Fee waivers applicable*

The fee waiver provisions in (k) apply to a request by a party in a Title IV-D proceeding for telephone appearance services from a vendor.

~~(k)(m)-(p)~~ \* \* \*