



## JUDICIAL BRANCH BUDGET COMMITTEE

### MATERIALS FOR SEPTEMBER 20, 2018 OPEN IN-PERSON MEETING

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# JUDICIAL COUNCIL OF CALIFORNIA

JUDICIAL BRANCH BUDGET  
COMMITTEE

[www.courts.ca.gov/jbbc.htm](http://www.courts.ca.gov/jbbc.htm)  
[JBBC@jud.ca.gov](mailto:JBBC@jud.ca.gov)

Request for ADA accommodations should be made at least three business days before the meeting and directed to: [JCCAccessCoordinator@jud.ca.gov](mailto:JCCAccessCoordinator@jud.ca.gov)

## JUDICIAL BRANCH BUDGET COMMITTEE

### NOTICE AND AGENDA OF OPEN IN-PERSON MEETING WITH CLOSED SESSION

Open to the Public Unless Indicated as Closed (Cal. Rules of Court, rule 10.75(c)(1), (d), and (e)(1))

OPEN PORTION OF THIS MEETING IS BEING RECORDED

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<b>Date:</b>	September 20, 2018
<b>Time:</b>	12:30 p.m. - 2:00 p.m.
<b>Location:</b>	455 Golden Gate Avenue, San Francisco, CA 94102, Catalina Room
<b>Public Call-In Number:</b>	1-877-820-7831; passcode 6677064; (Listen Only)

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Meeting materials for open portions of the meeting will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Members of the public seeking to make an audio recording of the open meeting portion of the meeting must submit a written request at least two business days before the meeting. Requests can be e-mailed to [JBBC@jud.ca.gov](mailto:JBBC@jud.ca.gov).

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

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#### I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

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##### **Call to Order and Roll Call**

##### **Approval of Minutes**

Approve minutes of the July 18, 2018, Judicial Branch Budget Committee meeting.

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#### II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(1)-(2))

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##### **In-Person Public Comment**

Members of the public requesting to speak during the public comment portion of the meeting must place the speaker's name, the name of the organization that the speaker represents if any, and the agenda item that the public comment will address, on the public comment sign-up sheet. The sign-up sheet will be available at the meeting location at least 30 minutes prior to the meeting start time. The Chair will establish speaking limits at the beginning of the public comment session. While the advisory body welcomes and encourages public comment, time may not permit all persons requesting to speak to be heard at this meeting.

**Written Comment**

In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to [JBBC@jud.ca.gov](mailto:JBBC@jud.ca.gov) or mailed or delivered to 455 Golden Gate Avenue, San Francisco, CA 94102, attention: Lucy Fogarty. Only written comments received by 12:00 p.m. on September 19, 2018, will be provided to advisory body members prior to the start of the meeting.

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**III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS X-X)**

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**Item 1**

**Fees for Telephone Appearance Services (Action Required)**

Consideration of a recommendation from the ad hoc subcommittee regarding issues related to fees for telephone appearance services.

Presenter(s)/Facilitator(s): Mr. Patrick O'Donnell, Principal Managing Attorney  
Judicial Council Legal Services

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**IV. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)**

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None

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**V. ADJOURNMENT**

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**Adjourn to Closed Session**

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**VI. CLOSED SESSION (CAL. RULES OF COURT, RULE 10.75(D))**

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**Item 1**

**Innovations Grant Program (Cal. Rules of Court, Rule 10.75(d)(9))**

Discussion regarding the innovations grant program.

Presenter(s)/Facilitator(s): Ms. Maureen Dumas, Principal Manager, Special Projects  
Ms. Marcela Eggleton, Supervisor, Special Projects

**Adjourn Closed Session**



# JUDICIAL COUNCIL OF CALIFORNIA

JUDICIAL BRANCH BUDGET  
COMMITTEE

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## JUDICIAL BRANCH BUDGET COMMITTEE

### MINUTES OF OPEN MEETING WITH CLOSED SESSION

July 18, 2018

10:30 a.m. – 12:00 p.m.

455 Golden Gate Avenue, San Francisco, CA 94102

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**Advisory Body Members Present:** Hon. David M. Rubin (Chair), Hon. Marla O. Anderson, Hon. Kyle S. Brodie, Hon. Patricia M. Lucas (phone), Hon. Gary Nadler, Ms. Kimberly Flener (phone), Mr. Michael M. Roddy, and Ms. Audra Ibarra.

**Advisory Body Members Absent:** Hon. James M. Humes, (Vice-Chair)

**Others Present:** Mr. John Wordlaw, Mr. Zlatko Theodorovic, and Ms. Lucy Fogarty.

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#### OPEN MEETING

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##### **Call to Order and Roll Call**

The chair called the meeting to order at 10:45 a.m., and took roll call.

##### **Approval of Minutes**

The advisory body reviewed and approved the minutes of the April 17 and May 23, 2018, Judicial Branch Budget Committee meetings.

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#### DISCUSSION AND ACTION ITEMS (ITEMS 1–2)

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##### **Item 1**

##### **Budget Change Proposal for Court Reporters**

**Action:** *The committee voted unanimously to include a budget change proposal (BCP) for court reporters in their list of priorities for 2019-20 at priority number 5.*

##### **Item 2**

##### **Fees for Telephone Appearance Services**

**Action:** *No action was taken.*

The committee established an ad hoc subcommittee to review the issues and report back with a recommendation. The members of the subcommittee are Judge Anderson, Judge Brodie, and Ms. Flener.

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**ADJOURNMENT**

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There being no further open meeting business, the meeting was adjourned at 11:30 a.m.

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**CLOSED SESSION**

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**Item 1**

**Innovations Grant Program (Cal. Rules of Court, Rule 10.75(d)(9))**

Adjourned closed session at 12:00 p.m.

Approved by the advisory body on enter date.

DRAFT



## JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688

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### MEMORANDUM

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Date	Action Requested
September 11, 2018	Recommend Rule Changes and Explore Possible Statutory Changes Relating to Fees for Telephone Appearance Services
To	Deadline
Judicial Branch Budget Committee Hon. David M. Rubin, Chair	September 20, 2018
From	Contact
Ad Hoc Subcommittee on Fees for Telephone Appearance Services	Patrick O'Donnell, 415-865-7665 patrick.o'donnell@jud.ca.gov
Subject	
Telephone Appearance Services: Recommendations Regarding Possible Rule and Statutory Changes Relating to Fees	

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#### Executive Summary

The Ad Hoc Subcommittee on Fees for Telephone appearances is reporting back to the Judicial Branch Budget Committee (JBBC) with its recommendations on possible rule and statutory changes regarding fees for telephone appearance services.

First, regarding rules on fees, the subcommittee recommends that the JBBC propose that rule 3.670(k)(1) of the California Rules of Court be amended to provide for an increase in the amount of the fee to appear by telephone in civil cases from \$86 to \$94. The amount of the proposed fee increase would reflect the estimated increase in the Consumer Price Index for All Urban Consumers for the term of the new master agreement. This rule proposal would be circulated for public comment before being submitted to the Judicial Council. It would become effective January 1, 2019 or as soon thereafter as the proposal can be presented to the council.

Second, regarding the fee statutes, the subcommittee recommends that the JBBC next year explore and possibly develop Judicial Council–sponsored legislation to update and improve

several statutes that provide the legal framework for fees relating to telephone appearances in civil cases. If this legislation goes forward, it would probably be introduced in 2020.

## Recommendations

The ad hoc subcommittee recommends that the JBBC:

1. Propose that the Judicial Council amend rule 3.670(k)(1) to increase the fee for an appearance by telephone in a civil case from \$86 to \$94. This proposal is discussed in Part One of this memorandum. A draft Invitation to Comment on the proposal is included as Attachment 1 to this memorandum.
2. Explore possible Judicial Council–sponsored legislation next year that would update and improve the statutes that provide the legal framework for telephone appearance fees. The issues that might warrant legislation are discussed in Part 2 of the memorandum. Links to the current fee statutes are provided at the end of the memorandum.

## Background

On June 21, 2018, the Executive and Planning Committee referred various fee issues relating to the 2018–2022 statewide master agreement for telephone appearance services to the JBBC for consideration and possible action. On July 18, the JBBC formed an ad hoc subcommittee to consider these fee issues and report back with its recommendations.

The issues referred to the subcommittee relating to fees for telephone appearance services under the 2018–2022 statewide master agreement were the following:

1. Whether any increase in the telephone appearance fee (currently \$86 per call) should be recommended to the Judicial Council during the four-year term of the master agreement commencing July 1, 2018;
2. If any increase in the fee is recommended, what should be the amount of the increase; and
3. Whether any legislative changes should be considered and recommended to update or improve the statutory framework that authorizes the fees charged under a master agreement for telephone appearance services in the trial courts.

The ad hoc subcommittee<sup>1</sup> established to consider these issues has met and makes the recommendations presented in this memorandum.

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<sup>1</sup> The subcommittee consisted of JBBC members Hon. Marla O. Anderson, Hon. Kyle S. Brodie, and Ms. Kimberly Flener.

Part One  
Proposal for an Increase in the Amount  
of the Telephone Appearance Fee

**Introduction**

The Judicial Council is required by law to enter into a master agreement or master agreements for the provision of telephone appearance services. (Gov. Code, § 72010(a).) The statutes on telephone appearances also require the council to set fees for these services. The Code of Civil Procedure states: “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 any previously existing agreements and procedures. The fees to be paid for telephone appearances shall include . . . [a] fee for providing the telephone appearance services pursuant to a timely request to the vendor or court . . . .” (Code Civ. Proc., § 367.6(a).)<sup>2</sup>

The telephone appearance fee is set by the council using its rule-making authority. Rule 3.670 is the rule in the California Rules of Court concerning telephone appearances in the trial courts. Based on the authority granted to the council by statute, the Judicial Council in 2011 amended rule 3.670 to establish a uniform telephone appearance fee of \$78 per call.<sup>3</sup> Two years later, when the master agreement with CourtCall LLC (CourtCall) was extended for an additional five-year term, the council amended rule 3.670 to increase the telephone appearance fee from \$78 per call to its current amount of \$86 per call.<sup>4</sup>

When the 2013–2018 master agreement for telephone appearance services with CourtCall was due to expire on June 30, 2018, a Request For Proposals (RFP) was issued for the provision of

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<sup>2</sup> The statute also provides for a late fee and a cancellation fee, which are not at issue. The existing fees in those areas would remain unchanged under the proposal.

<sup>3</sup> Judicial Council of Cal., staff rep., *Telephone Appearances: Fees and Revenues* (June 20, 2011)(2011 report), [www.courts.ca.gov/documents/20110624item9.pdf](http://www.courts.ca.gov/documents/20110624item9.pdf). Of the total fee of \$78 per call, \$58 went to the vendor and \$20 was transmitted to the Trial Court Trust Fund (TCTF). (See Gov. Code, § 72011(a) [. “For each fee received for providing telephone appearance services, each vendor or court that provides for appearances by telephone shall transmit twenty dollars (\$20) to the State Treasury for deposit in the Trial Court Trust Fund established pursuant to Section 68085 . . . .”].

<sup>4</sup> Judicial Council of Cal., staff rep., *Telephone Appearances: Amendment of the Fee Amount* (June 21, 2013)(2013 report), [www.courts.ca.gov/documents/jc-20130628-itemA3.pdf](http://www.courts.ca.gov/documents/jc-20130628-itemA3.pdf). Of the total fee of \$86, \$66 goes to the vendor and \$20 is transmitted to the TCTF. (See Gov. Code, § 72011(a).)



such services on January 30, 2018.<sup>5</sup> On March 26, a master agreement was awarded to CourtCall to provide these services for a four-year term commencing on July 1, 2018.<sup>6</sup> The master agreement was finalized in June 2018 and is now in effect. During the RFP and master agreement formation process in 2018, CourtCall requested an increase in the telephone appearance fee to \$96 per call. A change in the amount of the telephone appearance fee was considered but there was insufficient time to resolve the fee issue before the old agreement expired and the new agreement went into effect July 1, 2018.

The subcommittee has now had an opportunity to review the fee issue and recommends to the JBBC that it propose to the Judicial Council the fee increase described in the next section of this memorandum.

### **The Proposal**

This proposal would recommend amending rule 3.670(k)(1) to increase the fee for a telephone appearance, made by a timely request to a vendor or court providing telephone appearance services, from \$86 to \$94 for each appearance.<sup>7</sup> No changes would be proposed to the amounts of the late request fee or the cancellation fee currently set in the rule. (See rule 3.670(k)(2)–(3).)

By statute, \$20 of each telephone appearance fee is deposited into the Trial Court Trust Fund (TCTF). (Gov. Code, § 72011(a).) The balance is retained by the vendor or court that provides the services. Thus, under this proposal, if the telephone appearance fee is increased to \$94, the vendor or court providing telephone appearance services would receive \$74 per call and the TCTF would receive \$20.<sup>8</sup>

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<sup>5</sup> See Proposal for Telephone Appearance Services, RFP No.TCAS-2018-02-MS available online at: <http://www.courts.ca.gov/38184.htm>

<sup>6</sup> Id.

<sup>7</sup> A party that has received a fee waiver must not be charged the telephone appearance fee, subject to the provisions in Code of Civil Procedure section 367.6(b). (Cal. Rules of Court, rule 3.670(l).) So the proposed fee increase should generally not impact those who have received fee waivers.

<sup>8</sup> There has been no increase in the \$20 amount shared with the TCTF since the telephone appearance fee statutes became effective in July 2011. Any increase in the \$20 amount would require a legislative amendment to Government Code section 72011. Also, under section 72011, the vendor or 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, which has been determined to be \$943,840, will continue to be transmitted for distribution to eligible courts under the 2018-2022 master agreement, unless this is changed by some future legislation.

The proposed increase in the telephone appearance fee would address the increased costs that will be incurred by the vendor and courts providing telephone appearance services in the next several years. CourtCall, the current vendor, in its response to the RFP issued earlier this year for telephone appearance services, provided arguments and information in support of its proposed increase in the fee amount to \$96 per call. It contended that it faces ever-rising costs; and it cited various studies and indices that would support a fee increase.<sup>9</sup> It also stated: “While we believe the proposed Uniform Fee [of \$96] is reasonable and fair, should CourtCall be awarded a Master Agreement, the Company will abide by whatever Uniform Fee the [Judicial Council] establishes.”<sup>10</sup>

The Judicial Branch Budget Committee’s ad hoc subcommittee considered the arguments and information from CourtCall and other sources. It also considered the council’s past actions with respect to requests for fee increases. When the CourtCall Master Agreement was amended in 2013, CourtCall sought and the council approved an increase in the telephone appearance fee for the five-year term of the agreement. The grounds presented by CourtCall for the increase were similar to those provided in its current Proposal. At that time, the council agreed to an increase but, rather than accepting all of CourtCall’s arguments, it based its determination of what the amount of the increase should be on a Consumer Price Index (CPI) analysis by the Fiscal Services Office (now Budget Services). Based on that analysis, the council increased the telephone appearance fee from \$78 to \$86 (i.e., an \$8 increase for CourtCall) for the five-year term of the agreement.<sup>11</sup>

This year, Budget Services has prepared an analysis similar to the one prepared in 2013, to be used in determining what fee increase, if any, may be appropriate for a four-year term under the new master agreement (rather than for a five-year term, such as under the agreement that terminated at the end of June 2018). Budget Service’ analysis indicates that the CPI-U (Consumer Price Index-All Urban Consumers) adjusted total fee per telephonic appearance should be \$94.00 for the 4-year term.<sup>12</sup>

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<sup>9</sup> CourtCall Proposal, Fee Structure (Attachment 3).

<sup>10</sup> CourtCall Proposal, Cover Letter (Attachment 2), page 1.

<sup>11</sup> See 2013 report.

<sup>12</sup> See Updated Base Fee CPI Analysis – 2018, Attachment 4. The total fee of \$94.00 is calculated using the same method as the original CPI-U analysis, with one exception. The actual annual CPI-U rates used in the average to forecast CPI-U rates is 17 years, from 2001 through 2017, in the updated analysis compared with 12 years in the original. The longer time period was also used by CourtCall in a number of the indices it cited in its response to the RFP to support of its arguments for a fee increase.

The updated total \$94.00 fee is calculated by applying the actual annual CPI-U factors under the contract's previous 5-year term from 2014 through 2017 and the forecasted CPI-U rate for 2018 to CourtCall's \$66.00 contract fee during the 5-year 2013 through 2018 renewal term, yielding the CPI-U adjusted fee of \$70.88 as of 2018. The forecasted CPI-U factor of 2.1%, which is the simple average of the actual CPI factors from 2001 through 2017, is then applied to the \$70.88 from 2018 through 2022, providing the final CPI-U adjusted fee estimate of \$77.03 at the expiration of the proposed 4-year contract renewal term, as of June 30, 2022. The final CourtCall fee portion of \$74.00 is the simple average of the CPI-U adjusted CourtCall fees of \$70.88 and \$77.03 estimated as of the beginning and end of the proposed 4-year contract renewal term. To this \$74.00 per appearance fee retained by CourtCall is then added the \$20.00 TCTF portion to yield the final total fee of \$94.00.

The ad hoc subcommittee regards the council's previous approach as sound and recommends that the JBBC recommend that the telephone appearance fee be increased from \$86 to \$94 per call, based on the updated CPI analysis. This increased fee would become effective January 1, 2019, or as soon thereafter as possible, and would apply to telephone appearances taking place after the effective date of the fee increase.

### **Alternatives Considered**

The subcommittee considered various alternatives, including recommending no fee increase and recommending an increase in the amount proposed by CourtCall. But for the reasons explained above, it recommends proposing an increase in the fee from \$86 to \$94 per appearance.

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

This rule proposal would affect only the amount of the telephone appearance fee. This fee is principally collected by the vendor under the master agreement. The change in the fee amount, if adopted, should not require any additional implementation efforts or have any cost or operational impacts on courts that rely on the vendor for the provision of telephone appearance services. Those courts that directly provide telephone appearance services will need to update their notifications and operations to reflect the higher fee that will become effective on or after January 1, 2019.

## Part Two

### Possible Legislation to Modify and Update the Fee Structure for Telephone Appearance Services

#### Introduction

In addition to the issue of whether rule 3.670(k) should be amended to provide for an increase in the \$86 telephone appearance fee, there are other fee-related issues which, to be addressed

effectively, would require legislation. The statutory framework for statewide telephone appearance fees was created in 2010. Because circumstances have changed since that time, revisions to, and the updating of, the various fee statutes may be desirable. Although the ad hoc subcommittee does not regard legislative changes to be so urgent that they require immediate attention, it thinks that legislation to modify and update the legal framework for fees should be considered and, if appropriate, proposals should be developed for Judicial Council sponsorship in the future.

#### Possible statutory changes

The principal fee statutes are Code of Civil Procedure section 367.6 and Government Code sections 72010–72011.<sup>13</sup> These provide that “the Judicial Council shall establish statewide, uniform fees to be paid by a party for appearing by telephone. . . .” (Code Civ. Proc., § 367.6(a).) They also provide: “For each fee received for providing telephone appearance services, each vendor or court that provides for appearances by telephone shall transmit twenty dollars (\$20) to the State Treasury for deposit in the Trial Court Trust Fund established pursuant to Section 68085 . . . .” (Gov. Code, § 72011(a).) In addition to the \$20 per call that vendors must transmit to the TCTF, the statutes require that they transmit “an amount equal to the total amount of revenues received by all courts from all vendors for providing telephone appearances for the 2009-2010 fiscal year.” (Gov. Code, § 72011(c).)

Some possible changes to these statutes—both substantive and technical—that might be pursued include:

*(Substantive changes):*

**1. Repealing or modifying Government Code section 72011(c)–(e)** that authorizes the Judicial Council to allocate among the courts that had previously had contractual revenue sharing arrangements with vendors (the “eligible” courts) an amount of revenues received from the current vendor or vendors equivalent to what those courts received in FY 2009-2010 (that is, \$943,840).<sup>14</sup> This amount was allocated “for the purpose of preventing significant disruption in service in courts that previously received revenues from vendors for providing telephone appearance service.” (Gov. Code., §72011(e).) The language “for the purpose of preventing significant disruption” suggests that this allocation was intended to be a temporary measure; however, after more than seven years, the allocation has become an ongoing part of the revenues transmitted to the courts under SB 857. It may be time to consider modifying or eliminating this

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<sup>13</sup> Links to these statutes are provided at the end of this memorandum.

<sup>14</sup>The specific allocations to each of the 38 eligible courts, which was approved by the council in 2011, are shown in Attachment 5.

amount.<sup>15</sup> However, if the amount is totally eliminated, this will result in significant revenue losses at least for some courts.

**2. Amending Government Code section 72011(a)**—that currently requires each vendor or court that provides telephone appearance services to transmit \$20 of each fee it receives to the State Treasury for deposit in the TCTF—to provide for the transmittal of a greater amount for that purpose. The greater amount could be put in the statute or, alternatively, the statute could be amended to authorize the Judicial Council to determine by rule the amount of the share to be deposited in the TCTF. The increase in the \$20 share could offset the loss of revenues from the repeal of section 72011(c)–(e). Specifically, if Government Code section 72011(c)–(e) were to be repealed resulting in a decrease in revenues of \$943,840 to the 38 currently eligible courts, contemporaneous legislation increasing the amount transmitted under section 72011(a) from \$20 to \$23.30 would result in an increased distribution of approximately \$951,000 to the TCTF that would be shared by all 58 courts.<sup>16</sup> The replacement amount would initially be paid principally by the vendor, but as more trial courts become involved in providing direct telephone services and collecting fees subject to the distribution under section 72011(a), those courts would contribute an increasing share of the amounts transmitted to the TCTF.

**3. A combination of 1 and 2.** From the courts' overall perspective, if legislation is pursued to change the fee statutory framework for telephone appearance fees, it would probably be best to propose some combination of the two previous proposals.

**4. Additional suggestions for substantive changes to improve the fee structure** might be developed and proposed by the JBBC, with input from the courts and other stakeholders.

*(Technical changes):*

**5. Amending Government Code section 72011(b)** to prescribe a different method and timeline for the courts to use to transmit the \$20 (or other) amount prescribed in section 72011(a). This technical change would enable the courts to transmit these revenues consistently with regular judicial branch fiscal practices.

These possible legislative changes are not mutually exclusive options. It is feasible to recommend one or more, or some combination of them. There may also be other legislative initiatives regarding the fee statutes that may be worth pursuing.

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<sup>15</sup> CourtCall has submitted proposals that would repeal or modify these subsections. (See CourtCall's Legislative Proposal, Attachment 6.) Although its submissions include a transitional proposal, CourtCall's ultimate goal is to repeal subdivisions (c)–(e) of section 72011 entirely.

<sup>16</sup> This is based on an estimate by Budget Services.

If the JBBC thinks that the legislative proposals should be further explored, more detailed proposals could be developed by a reconstituted ad hoc committee, staff, or both for presentation to the JBBC. In exploring possible legislation on the legal framework for telephone appearance fees, the JBBC should also reach out for input and suggestions from courts and advisory bodies such as the Joint Legislative Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees and the Civil and Small Claims Advisory Committee.

#### Links

1. Code of Civil Procedure, § 367.6:

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=367.6.&lawCode=CCP](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=367.6.&lawCode=CCP)

2. Gov. Code, § 72010:

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=72010.&lawCode=GOV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=72010.&lawCode=GOV)

3. Gov. Code, § 72011:

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=72011.&lawCode=GOV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=72011.&lawCode=GOV)

4. Cal. Rules of Court, rule 3.670:

[http://www.courts.ca.gov/cms/rules/index.cfm?title=three&linkid=rule3\\_670](http://www.courts.ca.gov/cms/rules/index.cfm?title=three&linkid=rule3_670)

#### Attachments

Attachment 1: Invitation to Comment

Attachment 2: CourtCall Proposal, Cover Letter

Attachment 3: CourtCall Proposal, Fee Structure

Attachment 4: Updated Base Fee CPI Analysis – 2018

Attachment 5: Judicial Council's Allocations of FY 2009-2010 Revenue Amounts

Attachment 6: CourtCall's Proposed Revisions to Section 72011 of the Government Code

# Attachment 1

# JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

SP18-\_\_

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<b>Title</b>	<b>Action Requested</b>
Telephone Appearances: Change in the Fee Amount	Review and submit comments by November __, 2018
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Amend Cal. Rules of Court, rule 3.670	[January 1, 2019]
<b>Proposed by</b>	<b>Contact</b>
Judicial Branch Budget Committee, Hon. David M. Rubin, Chair	[Contact], [Phone number], [E-mail address]

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### Executive Summary and Origin

The Judicial Branch Budget Committee proposes amending rule 3.670(k)(1) of the California Rules of Court to increase the fee to appear by telephone in civil cases from \$86 to \$94, [effective January 1, 2019]. The new fee will apply to the balance of the four-year term of master agreement for telephone appearance services that was recently entered into with CourtCall LLC. The fee increase reflects the estimated increase in the Consumer Price Index for All Urban Consumers for the term of the agreement.

### Background

The Judicial Council is required by law to enter into a master agreement or master agreements for the provision of telephone appearance services. (Gov. Code, § 72010(a).) The statutes on telephone appearances also require the council to set fees for these services. The Code of Civil Procedure states: “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 any previously existing agreements and procedures. The fees to be paid for telephone appearances shall include . . . [a] fee for providing the telephone appearance services pursuant to a timely request to the vendor or court . . . .” (Code Civ. Proc., § 367.6(a).) <sup>1</sup>

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<sup>1</sup> The statute also provides for a late fee and a cancellation fee, which are not at issue. The existing fees in those areas would remain unchanged under this proposal.

*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.*



The telephone appearance fee is set by the council using its rule-making authority. Rule 3.670 is the rule in the California Rules of Court concerning telephone appearances in the trial courts. Based on the authority granted to the council by statute, the Judicial Council in 2011 amended rule 3.670 to establish a uniform telephone appearance fee of \$78 per call.<sup>2</sup> Two years later, when the master agreement with CourtCall LLC (CourtCall) was extended for an additional five-year term, the council amended rule 3.670 to increase the telephone appearance fee from \$78 per call to its current amount of \$86 per call.<sup>3</sup>

When the 2013–2018 master agreement for telephone appearance services with CourtCall was due to expire on June 30, 2018, a Request For Proposals (RFP) was issued for the provision of such services on January 30, 2018.<sup>4</sup> On March 26, a master agreement was awarded to CourtCall to provide these services for a four-year term commencing on July 1, 2018.<sup>5</sup> The master agreement was finalized in June 2018 and is now in effect. During the RFP and master agreement formation process in 2018, CourtCall requested an increase in the telephone appearance fee to \$96 per call. A change in the amount of the telephone appearance fee was considered but there was insufficient time to resolve the fee issue before the old agreement expired and the new agreement went into effect July 1, 2018.

The Judicial Branch Budget Committee (JBBC) has now had an opportunity to review the fee issue and proposes to make the recommendation to the council described in the next section of this invitation to comment.

## The Proposal

This proposal recommends amending rule 3.670(k)(1) to increase the fee for a telephone appearance, made by a timely request to a vendor or court providing telephone appearance services, from \$86 to \$94 for each appearance.<sup>6</sup> No changes are proposed to the amounts of the late request fee or the cancellation fee currently set in the rule. (See rule 3.670(k)(2)–(3).)

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<sup>2</sup> Judicial Council of Cal., staff rep., *Telephone Appearances: Fees and Revenues* (June 20, 2011)(2011 report), [www.courts.ca.gov/documents/20110624item9.pdf](http://www.courts.ca.gov/documents/20110624item9.pdf). Of the total fee of \$78 per call, \$58 went to the vendor and \$20 was transmitted to the Trial Court Trust Fund (TCTF). (See Gov. Code, § 72011(a) [“For each fee received for providing telephone appearance services, each vendor or court that provides for appearances by telephone shall transmit twenty dollars (\$20) to the State Treasury for deposit in the Trial Court Trust Fund established pursuant to Section 68085 . . . .”].)

<sup>3</sup> Judicial Council of Cal., staff rep., *Telephone Appearances: Amendment of the Fee Amount* (June 21, 2013)(2013 report), [www.courts.ca.gov/documents/jc-20130628-itemA3.pdf](http://www.courts.ca.gov/documents/jc-20130628-itemA3.pdf). Of the total fee of \$86, \$66 goes to the vendor and \$20 is transmitted to the TCTF. (See Gov. Code, § 72011(a).)

<sup>4</sup> See Proposal for Telephone Appearance Services, RFP No.TCAS-2018-02-MS available at: <http://www.courts.ca.gov/38184.htm>

<sup>5</sup> Id.

<sup>6</sup> A party that has received a fee waiver must not be charged the telephone appearance fee, subject to the provisions in Code of Civil Procedure section 367.6(b). (Cal. Rules of Court, rule 3.670(f).) So the proposed fee increase should generally not impact those who have fee waivers.

By statute, \$20 of each telephone appearance fee is deposited into the Trial Court Trust Fund (TCTF). (Gov. Code, § 72011(a).) The balance is retained by the vendor or court that provides the services. Thus, under this proposal, if the telephone appearance fee is increased to \$94, the vendor or court providing telephone appearance services would receive \$74 per call and the TCTF would receive \$20.<sup>7</sup>

The increase in the telephone appearance fee would address the increased costs that will be incurred by the vendor and courts providing telephone appearance services in the next several years. CourtCall, the current vendor, in its response to the RFP issued earlier this year for telephone appearance services, provided various arguments and information in support of its proposed increase in the fee amount. It contended that it faces ever-rising costs; and it cited various studies and indices that would support a fee increase. It also stated: “While we believe the proposed Uniform Fee [of \$96] is reasonable and fair, should CourtCall be awarded a Master Agreement, the Company will abide by whatever Uniform Fee the [Judicial Council] establishes.”<sup>8</sup>

The Judicial Branch Budget Committee considered the arguments and information from CourtCall and other sources. It also considered the council’s past actions with respect to requests for fee increases. When the CourtCall Master Agreement was amended in 2013, CourtCall sought and the council approved an increase in the telephone appearance fee for the five-year term of the agreement. The grounds presented by CourtCall for the increase were similar to those provided in its current Proposal. At that time, the council agreed to an increase but, rather than accepting all of CourtCall’s arguments, it based its determination of what the amount of the increase should be on a Consumer Price Index (CPI) analysis by the Fiscal Services Office (now Budget Services). Based on that analysis, the council increased the telephone appearance fee from \$78 to \$86 (i.e., an \$8 increase for CourtCall) for the five-year term of the agreement.<sup>9</sup>

This year, Budget Services has prepared an analysis similar to the one prepared in 2013, to be used in determining what fee increase, if any, may be appropriate for a four-year term under the new master agreement (rather than for a five-year term, such as under the agreement that terminated at the end of June 2018). Budget Service’ analysis indicates that the CPI-U

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<sup>7</sup> There has been no increase in the \$20 amount shared with the TCTF since the telephone appearance fee statutes became effective in July 2011. Any increase in the \$20 amount would require a legislative amendment to Government Code section 72011. Also, under section 72011, the vendor or 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, which has been determined to be \$943,840, will continue to be transmitted for distribution to eligible courts under the 2018–2022 master agreement, unless this is changed by legislation.

<sup>8</sup> CourtCall Proposal, Cover Letter, page 1.

<sup>9</sup> See 2013 report.

(Consumer Price Index-All Urban Consumers) adjusted total fee per telephonic appearance should be \$94.00 for the 4-year term.<sup>10</sup>

The updated total \$94.00 fee is calculated by applying the actual annual CPI-U factors under the contract's previous 5-year term from 2014 through 2017 and the forecasted CPI-U rate for 2018 to CourtCall's \$66.00 contract fee during the 5-year 2013 through 2018 renewal term, yielding the CPI-U adjusted fee of \$70.88 as of 2018. The forecasted CPI-U factor of 2.1%, which is the simple average of the actual CPI factors from 2001 through 2017, is then applied to the \$70.88 from 2018 through 2022, providing the final CPI-U adjusted fee estimate of \$77.03 at the expiration of the proposed 4-year contract renewal term, as of June 30, 2022. The final CourtCall fee portion of \$74.00 is the simple average of the CPI-U adjusted CourtCall fees of \$70.88 and \$77.03 estimated as of the beginning and end of the proposed 4-year contract renewal term. To this \$74.00 per appearance fee retained by CourtCall is then added the \$20.00 TCTF portion to yield the final total fee of \$94.00.

The Judicial Branch Budget Committee regards the council's previous approach as sound and recommends that the telephone appearance fee be increased from \$86 to \$94 per call, based on the updated CPI analysis. This increased fee would become effective January 1, 2019 and would apply to telephone appearances taking place after that date.

### **Alternatives Considered**

The committee considered various alternatives, including recommending no fee increase and recommending an increase in the amount proposed by CourtCall. But for the reasons explained above, it recommends increasing the fee from \$86 to \$94 per appearance.

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

This proposal affects only the amount of the telephone appearance fee. This fee is principally collected by the vendor under the master agreement. The change in the fee amount, if adopted, should not require any additional implementation efforts or have any cost or operational impacts on courts that rely on the vendor for the provision of telephone appearance services. However, those courts that directly provide telephone appearance services will need to update their notifications and operations to reflect the higher fee that will become effective [January 1, 2019].

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<sup>10</sup> The total fee of \$94.00 is calculated using the same method as the original CPI-U analysis, with one exception. The actual annual CPI-U rates used in the average to forecast CPI-U rates is 17 years, from 2001 through 2017, in the updated analysis compared with 12 years in the original. The longer time period was also used by CourtCall in a number of the indices it cited in its response to the RFP to support of its arguments for a fee increase.

## 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 \$86 to \$94 appropriate? If not, why not and what alternative—or alternatives—would you recommend?
- In rule 3.670(k)(1), should the specific dollar amount of the telephone appearance fee be replaced by a formula that would provide for the automatic adjustment of the telephone fee based on the Consumer Price Index for All Urban Consumers (or some other index) biennially or periodically based on some other defined time period? If so, describe how you would draft the formula.

### Attachments and links

1. Amended Cal. Rules of Court, rule 3.670, at page 6

2. Code of Civil Procedure, § 367.6:

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=367.6.&lawCode=CCP](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=367.6.&lawCode=CCP)

3. Gov. Code, § 72010:

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=72010.&lawCode=GOV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=72010.&lawCode=GOV)

4. Gov. Code, § 72011:

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=72011.&lawCode=GOV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=72011.&lawCode=GOV)

5. Cal. Rules of Court, rule 3.670:

[http://www.courts.ca.gov/cms/rules/index.cfm?title=three&linkid=rule3\\_670](http://www.courts.ca.gov/cms/rules/index.cfm?title=three&linkid=rule3_670)

Rule 3.670 of the California Rules of Court would be amended, effective January 1, 2019, to read:

1 **Rule 3.670. Telephone appearance**

2  
3 ~~(a)–(j)~~ \* \* \*

4  
5 **(k) Telephone appearance fee amounts; time for making requests**

6  
7 The telephone appearance fees specified in this subdivision are the statewide,  
8 uniform fees to be paid by parties to a vendor or court for providing telephone  
9 appearance services. Except as provided under *(l)* and *(m)*, the fees to be paid to  
10 appear by telephone are as follows:

11  
12 (1) The fee to appear by telephone, made by a timely request to a vendor or court  
13 providing telephone appearance services, is \$~~86~~94 for each appearance.

14  
15 (2) \* \* \*

16  
17 (3) \* \* \*

18  
19  
20 ~~(l)–(q)~~ \* \* \*

# Attachment 2



March 9, 2018

**CONFIDENTIAL AND PROPRIETARY**

March 9, 2018

Judicial Council of California  
Attn: Procurement – Contracts Supervisor  
2850 Gateway Oaks Drive, Suite 300  
Sacramento, CA 95833-4348

Re: **RFP No. TCAS-2018-02-MS**

Dear Procurement – Contracts Supervisor:

We are pleased to enclose this response to the above-referenced Request for Proposal (“RFP”) to provide the Judicial Council of California (the “JCC”) with a telephonic appearance system. We are the current statewide provider and hope to earn the opportunity to maintain that status without interruption or disruption to the courts and attorneys who rely on our service.

CourtCall, LLC (“CourtCall” or the “Company”), a privately held company headquartered in Los Angeles, California with over 80 employees, **created the turn-key remote court appearance industry in 1995**. Serving both federal and state courts in the United States and worldwide, including 55 of the 58 Superior Courts of California (the “Court”), the CourtCall Remote Appearance Platform (the “Platform”) has facilitated in excess of **five million remote appearances** during our 22-year history. CourtCall is abundantly qualified to provide the solution requested in the RFP. Given that members of the JCC’s evaluation team (“Evaluators”) may not be familiar with CourtCall and its services, we are compelled to share considerable detail herein for their benefit and out of respect for the procurement process. **CourtCall’s demonstrated abilities are without equal and have been welcomed and accepted by the Court, the members of the California Bar and the public on a daily basis for over 20 years.**

In the attached Proposal, we recommend that the JCC increase the statewide uniform fee for telephone appearances (the “Uniform Fee”) from \$86 to \$96. To arrive at this proposed Uniform Fee amount, we updated and expanded upon an analysis we originally submitted to the JCC in conjunction with the first Uniform Fee increase (in 2013, from \$78 to the current level of \$86) — an analysis the JCC recognized in the Invitation to Comment<sup>1</sup> associated with that fee increase. The results of this updated analysis are presented in detail in our Proposal (see Section 9.2, “Fee Structure”). While we believe the proposed Uniform Fee is reasonable and fair, should CourtCall be awarded a Master Agreement, the Company will abide by whatever Uniform Fee the JCC establishes.

The CourtCall Appearance is a deeply entrenched fixture of the California legal community; in fact, many customers use the CourtCall brand name to describe remote court appearances generically (similar to the tendency we all have to call any soda a “Coke” and any tissue a “Kleenex”). Every day in California,

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<sup>1</sup> Telephone Appearances: Amendment of the Fee Amount, Invitation to Comment #SP13-02, JCC (undated but issued for April 2013 agenda)

thousands of attorneys save hundreds of hours — and save their clients thousands of dollars — when they use CourtCall to “skip the trip” to court. They also contribute to overall reductions in courtroom crowding and traffic while eliminating more than 500,000 pounds of CO<sub>2</sub> emissions daily.<sup>2</sup> CourtCall’s tireless efforts building and promoting the Platform in California produced a revenue model that would lay the groundwork for SB 857<sup>3</sup> and the resulting uniform, statewide program for telephone appearances and fee sharing at the center of this RFP (the “Statewide Program”). In the years since implementation of the Statewide Program, **CourtCall has remitted nearly \$50 million to the Trial Court Trust Fund (“TCTF”) under Sections 72011(a) and 72011(c).**<sup>4</sup> For these and other reasons, the Court and the public it serves should not become a “testing ground” for an unproven company trying to figure out how to replicate CourtCall’s excellence. Promises of future performance from other respondents are meaningless without a proven track record.

The fact that CourtCall created this industry bears repeating: it is only due to CourtCall’s efforts and diligence over the past two decades that a revenue model for remote court appearances even exists. **Without the work that CourtCall has already done, neither the JCC nor any Court that provides these services directly (a “Direct-provision Court”) would be in a position to evaluate or derive meaningful revenue from remote appearances.** The experience that comes with creating the industry and the model rule that has been adapted by courts across the country cannot be understated. We submit that CourtCall is the only qualified respondent to this RFP, as no other vendor can credibly claim the level of experience or capabilities necessary to provide the requested services at the level and volume required by the Court.

The CourtCall Platform cannot be confused with any “copycat” or “self-service” programs that other vendors may offer. In an unsuccessful protest submitted in connection with a previous solicitation for similar services, one such vendor claimed that CourtCall “repeatedly asserted their **undeniable industry experience, number of telephonic appearances provided, staff experience and qualifications**” (emphasis added). That admission of CourtCall’s superiority is a significant hurdle for any vendor and unequivocally demonstrates the importance of experience providing remote court appearances as a complete, turn-key solution. We repeatedly return to our experience because it is the most important factor for Evaluators to consider.

**A Master Agreement should not be awarded to any respondent lacking substantial experience in the field.** It is very easy for a respondent to claim that it can provide high-quality service, but none of them has ever been required to do so with any meaningful volume over extended periods of time. CourtCall is the only company that can back up its words with a consistent, proven, track record and respectfully submits that it would be irresponsible to award a Master Agreement to a firm that has never provided these services on the scale required by the RFP.

As detailed in our Proposal, CourtCall should receive scores **exponentially higher** than any other bidder in each evaluation category. Decades of experience cannot be minimized. Other respondents may claim their experience in a tangential industry to be relevant, but these arguments should be ignored. Experience in teleconferencing or in the development of software solutions for conferencing applications should not be equated with CourtCall’s

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<sup>2</sup> Based on current daily CourtCall volume in California and assuming fuel efficiency of 30 mpg (cars) and 75 mpg (commercial aircraft, per passenger, based on Boeing 737-600 performance summary) and 19.94 lbs. of CO<sub>2</sub> per gallon of gasoline

<sup>3</sup> Cal. Sen. Bill No. 857 (2009-2010 Reg. Sess.)

<sup>4</sup> Cal. Gov. Code, § 72011, subds. (a) and (c)



experience providing the full-service remote court appearance solution clearly described in the RFP.

The CourtCall Platform has been successful because we have a deep understanding of what is required to run a remote appearance service in **any and all courtroom environments**. This understanding allowed us to create a platform that utilizes best practices for scheduling, payment processing and customer service. Several attorneys have privately expressed to CourtCall their frustration and dissatisfaction with the court-run programs recently implemented in Placer and El Dorado counties. **Perhaps even more compelling, and as addressed more directly in our Proposal, remote appearance volumes in Placer and El Dorado are declining, to the detriment of those Courts and to the detriment of the TCTF.** While there may be many reasons for the declines, it is unlikely that someone at those courts is tasked with identifying the causes and reversing the trends.

CourtCall is uniquely qualified to meet or exceed all of the requirements set forth in the RFP. The CourtCall Platform was designed to meet the demands of some of the busiest courts in the world. CourtCall facilitates approximately 2,000 remote appearances every day in big cities and small towns from Newfoundland and Labrador, Canada to Southern California and Washington State to Florida. CourtCall has a proven track record of excellence, having handled some of the largest cases ever filed (including the North Bay Fire cases; the Antelope Valley Groundwater cases; the Volkswagen emissions cases; and the bankruptcies of Takata, Chrysler, Lehman Brothers, PG&E, Enron, United Airlines, WorldCom, CIT, Conseco Insurance, General Motors and the City of Detroit). Moreover, the Court has utilized our Platform for many years without voicing any substantive complaints to CourtCall.

Regarding operator-assisted remote appearances, which CourtCall provides as appropriate to enhance case flow and sound quality, Evaluators should analyze other proposals very carefully to determine that the respondent will, in fact, in every instance, provide a trained, dedicated operator for the duration of each appearance. An operator "monitoring" an appearance is not the same as an operator who is fully dedicated to that judge for the entirety of the appearance. Other respondents' operators may be "monitoring" several calls at the same time, significantly limiting their effectiveness. Furthermore, some companies use the term "operator attended" to indicate that an operator will be "available", which is vastly different than "fully dedicated". Assigning one operator to multiple appearances can save money for the vendor, but it does so at the expense of quality for the participants.

When reviewing proposals, Evaluators should take great care to understand the capabilities of each respondent. For example:

How many courtrooms does the vendor currently serve or has it ever served? *CourtCall serves in excess of 2,000 courtrooms on a rotating basis.*

How many total appearances has the vendor completed? *CourtCall has successfully completed in excess of five million total appearances.*

What is the largest number of attorneys the vendor has served on a single hearing? *CourtCall has had over 100 participants connected to one hearing on multiple occasions.*

What is the largest number of appearances scheduled on the vendor's system in a single day?

*CourtCall has scheduled over 3,000 appearances in a single day on multiple occasions.*

What is the total capacity of the vendor's telephony provider(s) and does the vendor have adequate redundancies in place?

*CourtCall works with some of the largest telephony providers in the world and has multiple alternate providers and abundant staff resources available to ensure minimal service disruption.*

Our full-service Platform includes several key features that do not exist in generic "off-the-shelf" conferencing solutions, including the ability to simultaneously control individual users or groups of users, place users into various audio or video subconferences, send general alerts or private chat messages and many more. Our Platform is comprised of leading edge teleconferencing and VoIP technologies and features a state-of-the art scheduling system that allows parties to schedule appearances by virtually any method they prefer and pay for appearances using any widely accepted form of payment.

While other platforms have limitations, CourtCall offers options and solutions. *Checks? No problem. Fee waivers? No problem. Self-represented litigants? No problem. International participants? No problem. Last minute add-ons? No problem. Coordinating with inmates and state penitentiaries? No problem. A multitude of other daily situations that require immediate solutions? No problem.*

**The CourtCall Platform appears simple to end users because we make it appear simple.** Judges, administrators, court IT professionals, courtroom staff and lawyers need not concern themselves with the technicalities of the Platform because CourtCall employs trained professionals to handle the details. At the very core of the CourtCall Platform is the Company's team of executives, managers, supervisors and staff. We employ over 80 dedicated professionals across several departments, each with its own core competency and service specialty. **The volume of CourtCall appearances in California and the corresponding funds generated for the TCTF are not automatic or inevitable — they are the result of dozens of highly trained professionals delivering high-quality service.** This effort must be maintained and constantly refined to increase volume, prevent failure and prevent millions of dollars of losses to the Court.

Finally, we address the specific RFP requirements for this Cover Letter as follows:

- 9.1.2 a. The person authorized to make representations for CourtCall during negotiations and to commit CourtCall to a contract is:

**Robert V. Alvarado, Jr. Chief**  
*Executive Officer*  
CourtCall, LLC  
6383 Arizona Circle  
Los Angeles, CA 90045  
Phone: (310) 342-0888  
Fax: (310) 348-0152  
E-mail: RVA@CourtCall.com

# Attachment 3

CourtCall maintains the RFP's fee structure-related requirements and evaluation criteria are fundamentally flawed for the reasons outlined in CourtCall's Notification of Error<sup>20</sup> and believes the JCC has not sufficiently responded to CourtCall's Notification of Error or to CourtCall's submitted questions<sup>21</sup> in a manner that explains the JCC's intentions and expectations regarding this Fee Structure section.

Given this uncertainty, this Fee Structure section intends to (i) affirm unequivocally that, if awarded a Master Agreement, CourtCall will adhere to the JCC-established Uniform Fee (as it has done since Implementation); and (ii) propose an increase to the Uniform Fee as supported by the analyses that follow. To be clear, CourtCall considers the former intention to be paramount and the Company intends to continue its decades-long partnership with the Court regardless of whether the JCC increases the Uniform Fee as proposed by CourtCall herein.

### Background

As articulated in CourtCall's 2013 Memorandum to the JCC<sup>22</sup> (which the JCC referenced directly in the *Invitation to Comment* issued prior to the 2013 Uniform Fee increase<sup>23</sup>), Implementation deprived CourtCall of a bedrock free-market principle enjoyed by virtually every other company operating in California: the ability to let market forces determine market prices. Implementation stifled CourtCall's growth prospects in its largest market and significantly reduced the overall value of the enterprise. In the years that followed, CourtCall endured numerous headwinds associated with the Great Recession (court budget cuts, court closures and furloughs and court service restrictions) and the growing trend of courts electing to compete as Direct-provision Courts. Through it all, CourtCall remained a valuable partner of the JCC and the Court and has paid nearly \$50 million to the Court under Section 72011(a) and Section 72011(c) since 2010. To ensure the continued strength of this partnership and the quality service levels that users have come to expect, it is critically important that the JCC periodically authorize an increase to the Contractor Fee (as it did in 2013 when the JCC increased the Uniform Fee from \$78 to \$86).

CourtCall now recommends that the JCC to increase the Uniform Fee from \$86 to \$96 in conjunction with this new Master Agreement. Assuming no change in the State Fee, this increase would have the effect of increasing the Contractor Fee from \$66 to \$76.

### Analysis of Cost Trends

Like all California businesses, CourtCall faces ever-rising costs. According to CNBC's annual America's Top States for Business study<sup>24</sup>, California is the second-costliest place in the nation to do business, with tax rates, utility rates, real estate and state and municipal business fees all well above national

<sup>20</sup> Notification of Error Regarding RFP #TCAS-2018-02-MS, CourtCall (submitted to the JCC on February 13, 2018)

<sup>21</sup> Questions Pertaining to RFP #TCAS-2018-02-MS for Telephone Appearances Services, CourtCall (submitted to the JCC on February 8, 2018)

<sup>22</sup> Extension of Master Agreement #MA301106, CourtCall (submitted to the JCC on February 15, 2013)

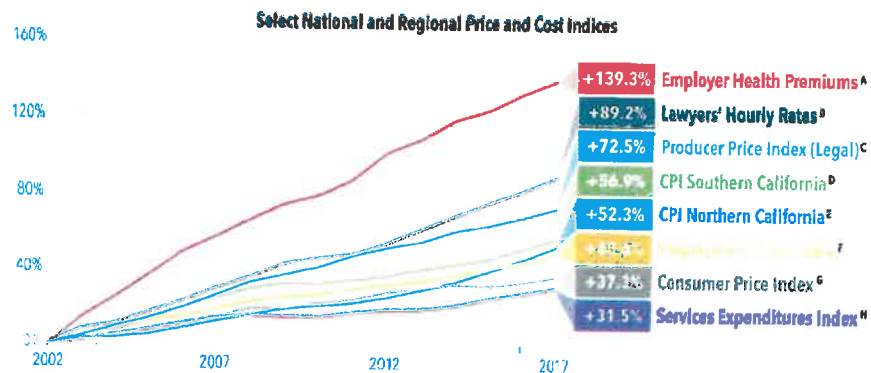
<sup>23</sup> Telephone Appearances: Amendment of the Fee Amount, Invitation to Comment #SP13-02, JCC (undated but issued for April 2013 agenda)

<sup>24</sup> America's Top States for Business 2017, CNBC Staff, July 11, 2017 (<https://www.cnbc.com/2017/07/11/americas-top-states-for-business-2017.html>)

averages. Over 50% of CourtCall's cost structure is comprised of three primary categories: employee benefits, courtroom expenses, and general overhead; collectively, these costs increased at a compound annual rate of 16.4% between 2001 and 2017.

These trends are echoed by several national price and cost indices:

- According to the Kaiser Family Foundation, employers' healthcare premiums for family coverage increased nearly 140% between 2002 and 2017 (see Indices Cited, A). CourtCall is dedicated to the health and well-being of its employees and their families, which is why the Company has offered affordable health insurance options to all eligible full-time employees for several years, even before the implementation of the Patient Protection and Affordable Care Act. CourtCall pays over 77% of employees' premium expense, which is considerably higher than the employer contributions of similarly sized businesses.<sup>25</sup>
- The Employment Cost Index for Private Industry Workers in the West Census Region further demonstrates that overall employment costs increased more than 48% since 2002 (Indices Cited, F).
- Between 2002 and 2017, the index of Real Personal Consumption Expenditures on Services rose by more than 31% (Indices Cited, H) and the Consumer Price Indices for Services in California rose by more than 50% (Indices Cited, D and E).
- Specific to the legal industry, an index of lawyers' hourly billing rates shows rates for partners at major U.S. law firms increased over 89% between 2002 and 2017 (see Indices Cited, B) while the Producer Price Index for the Legal Services industry rose by over 72% during that time (Indices Cited, C).

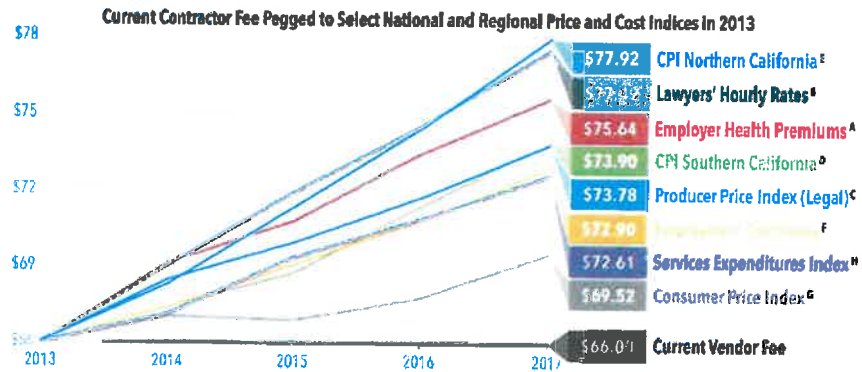


See "Indices Cited" at the end of this "Fee Structure" section for more information on each charted index

This data supports CourtCall's position that an increase in the Contractor Fee, when examined over the course of the four-year term, is consistent with pricing trends in the legal industry and would meet little resistance from the legal community. As attorneys' operating expenses continue to grow, remote court

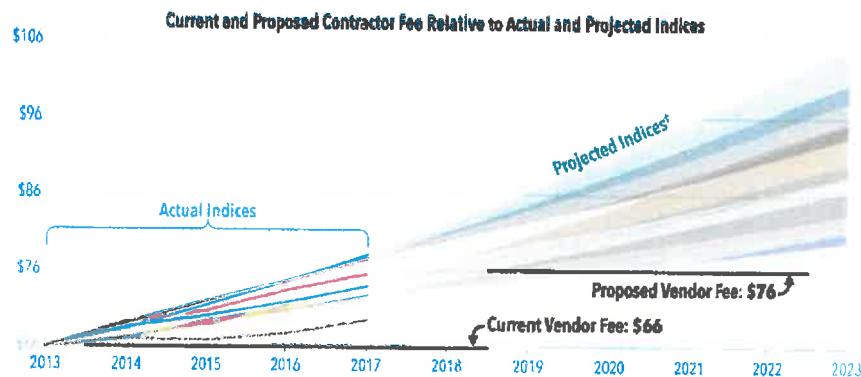
<sup>25</sup> According to a 2017 Benchmarking Report prepared exclusively for CourtCall by a national insurance brokerage and consulting firm

appearances represent an increasingly compelling value proposition and continue to yield material cost savings for attorneys and their clients. In fact, if pegged to these indices in 2013, the current Contractor Fee would have already increased to between \$70 and \$80:



See "Indices Cited" at the end of this "Fee Structure" section for more information on each charted index

Using estimated extrapolations derived from each index's 2013-2017 performance, the Contractor Fee would increase to between \$80 and \$100 by the end of 2022. CourtCall's proposed increase to \$76 is moderate by comparison, especially when viewed over the course of the proposed term:



† Each index is projected using its actual compound annual growth rate between 2015 and 2017 with deviation escalating to ±4.3% by 2023

### Effect of the Fixed Nature of the Uniform Fee

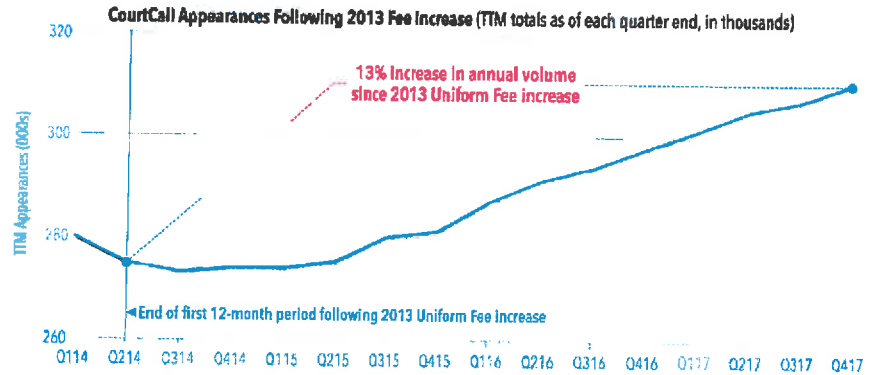
Prior to Implementation, CourtCall initiated price increases throughout its network of participating courts at its own discretion. The Company generally increased the appearance fee in a given court by \$5 once every three years (always with the court's informed consent). CourtCall last initiated such a price increase in most California Courts in June 2008, resulting in a statewide average fee of approximately \$58 at the time of Implementation. This was the basis for the initial Uniform Fee, which the JCC established in direct consultation with CourtCall in an effort to ensure the amount was ultimately "revenue neutral" for pre-Implementation vendors.

The initial Uniform Fee was never "revenue neutral", however, because it did not consider the fee increases that vendors would have achieved on their own (i.e., in the absence of SB 857). CourtCall intended to initiate a price increase in

California in June 2011; instead, the Company's fee was locked at \$58 (through June 2013) and then \$66 (through June 2018).

**Impact on Usage and Access to Justice**

An increase of just \$10 is unlikely to have any impact on overall usage: in the years since the 2013 Uniform Fee increase (a 10.3% increase, comparable to this proposed 11.6% increase), annual CourtCall Appearance volume increased by 13%.<sup>26</sup> CourtCall has every expectation that a similar trend would follow this proposed increase, as the Uniform Fee would still represent a compelling value proposition relative to the cost of an in-person appearance.



Further, CourtCall believes remote appearances are a critically important tool for realizing the core principle embodied by Section 68630 of the California Government Code: that "all persons have access to the courts without regard to their economic means".<sup>27</sup> Judges do a great service to indigent and self-representing litigants by allowing remote appearances in their courtrooms. An in-person court appearance that lasts just 20 minutes can cost the appearing party a great deal in time, money, safety and convenience. When one considers the length of time and the cost of a commute to and from court (including fuel, parking and tolls; or taxi, bus, rideshare or ride-hail fares) and the cost of lost wages for time spent away from work (or the cost of childcare for stay-at-home parents), such an appearance can easily cost the appearing party more than the amount of the Uniform Fee, even at the proposed level. Remote appearances, after all, represent an alternative form of transportation: rather than transporting oneself to court for an *in-person* appearance, an appearing party transports one's *virtual self* to court for a *remote* appearance. Evaluators should view this Proposal in that context, as virtually none of the above-described costs associated with traveling to and from court remain fixed for years at a time.

**Indices Cited**

- A. Index compiled using data from Employer Health Benefits, 2017 Annual Survey (and same report in prior years), The Kaiser Family Foundation and Health Research & Educational Trust (available at [www.kff.org](http://www.kff.org))
- B. Index compiled using data from Law Firms in Transition 2016, Altman Weil, Inc. (available at [www.altmanweil.com](http://www.altmanweil.com)) and 2018 Client Advisory, Citi Private Bank and Hildebrandt Consulting, LLC (available at [www](http://www))

<sup>26</sup> Measured from the end of the first 12-month period following the 2013 Uniform Fee increase to the end of 2017

<sup>27</sup> Gov. Code, § 68630, subd. (a)

hildebrandtconsult.com), as well as the same reports from prior years; certain data also derived from publicly available information published by The Corporate Executive Board Company, The Law Firms Working Group, The Center on the Global Legal Profession and American Lawyer Media

- C. Producer Price Index by Industry: Legal Services, U.S. Department of Labor, Bureau of Labor Statistics (Series ID: PCU54115411)
- D. Consumer Price Index for All Urban Consumers: Services in Los Angeles-Riverside-Orange County, CA, U.S. Department of Labor, Bureau of Labor Statistics (Series ID: CUURA421SAS)
- E. Consumer Price Index for All Urban Consumers: Services in San Francisco-Oakland-San Jose, CA, U.S. Department of Labor, Bureau of Labor Statistics (Series ID: CUURA422SAS)
- F. Employment Cost Index: Total compensation for Private industry workers in the West Census Region, U.S. Department of Labor, Bureau of Labor Statistics (Series ID: ECIWAG)
- G. Consumer Price Index for All Urban Consumers: All Items, U.S. Department of Labor, Bureau of Labor Statistics (Series ID: CPIAUCSL)
- H. Real Personal Consumption Expenditures: Services, U.S. Department of Commerce, Bureau of Economic Analysis (Series ID: PCESC96)



# Attachment 4

# UPDATED CPI-U ANALYSIS: 2018

## Consumer Price Index - All Urban Consumers<sup>1</sup> 12-Month Percent Change

Series Id: CUUR0000SA0  
 Not U.S. city average  
 Area: All items  
 Item: All items  
 Base Period: 1982-84=100  
 Years: 2001 to 2017

### Calculation Notes:

- (a) \$66.00 Telephonic Appearance Fee portion paid to CourtCall at the beginning of the 5-year renewal term in 2013. Total fee in 2013 was \$86.00, the \$66 CourtCall portion plus the \$20.00 paid to the TCTF.
- (b) The actual annual CPIs from 2014 through 2017 and forecasted CPI for 2018, applied to the Telephonic Appearance Fee paid to CourtCall in 2013 of \$66.00, gives an inflation adjusted fee of \$70.88 in 2018.
- (c) The 2018 inflation adjusted fee paid to CourtCall of \$70.88 increased by the estimated CPI of 2.1% for the 4-year renewal term ending in 2022 is \$77.03.
- (d) The Telephonic Appearance Fee portion to be paid to CourtCall during the entire 4-year renewal term is approx. the simple average of (b) and (c) as follows:  $(\$70.88 + \$77.03) / 2 = \$73.95$ .
- (e) The \$74.00 CourtCall portion, plus the \$20 TCTF portion equals the total fee of \$94.00 for the entire 4-year renewal term.

(e) Forecasted CPI Factor is the simple average of the actual annual CPI Factors for 2001 through 2017.

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	CPI Factor <sup>2</sup>	Base Fee (CPI Adjusted) <sup>3</sup>
2001	3.7	3.5	2.9	3.3	3.6	3.2	2.7	2.7	2.6	2.1	1.9	1.6	2.8	1.028	Actual CPI
2002	1.1	1.1	1.5	1.6	1.2	1.1	1.5	1.8	1.5	2.0	2.2	2.4	1.6	1.016	Actual CPI
2003	2.6	3.0	3.0	2.2	2.1	2.1	2.1	2.2	2.3	2.0	1.8	1.9	2.3	1.023	Actual CPI
2004	1.9	1.7	1.7	2.3	3.1	3.3	3.0	2.7	2.5	3.2	3.5	3.3	2.7	1.027	Actual CPI
2005	3.0	3.0	3.1	3.5	2.8	2.5	3.2	3.6	4.7	4.3	3.5	3.4	3.4	1.034	Actual CPI
2006	4.0	3.6	3.4	3.5	4.2	4.3	4.1	3.8	2.1	1.3	2.0	2.5	3.2	1.032	Actual CPI
2007	2.1	2.4	2.8	2.6	2.7	2.7	2.4	2.0	2.8	3.5	4.3	4.1	2.8	1.028	Actual CPI
2008	4.3	4.0	4.0	3.9	4.2	5.0	5.6	5.4	4.9	3.7	1.1	0.1	3.8	1.038	Actual CPI
2009	0.0	0.2	-0.4	-0.7	-1.3	-1.4	-2.1	-1.5	-1.3	-0.2	1.8	2.7	-0.4	0.996	Actual CPI
2010	2.6	2.1	2.3	2.2	2.0	1.1	1.2	1.1	1.1	1.2	1.1	1.5	1.6	1.016	Actual CPI
2011	1.6	2.1	2.7	3.2	3.6	3.6	3.6	3.8	3.9	3.5	3.4	3.0	3.2	1.032	Actual CPI
2012	2.9	2.9	2.7	2.3	1.7	1.7	1.4	1.7	2.0	2.2	1.8	1.7	2.1	1.021	Actual CPI
2013	1.6	2.0	1.5	1.1	1.4	1.8	2.0	1.5	1.2	1.0	1.2	1.5	1.5	1.015	Actual CPI
2014	1.6	1.1	1.5	2.0	2.1	2.1	2.0	1.7	1.7	1.7	1.3	0.8	1.6	1.016	Actual CPI
2015	-0.1	0.0	-0.1	-0.2	0.0	0.1	0.2	0.2	0.0	0.2	0.5	0.7	0.1	1.001	Actual CPI
2016	1.4	1.0	0.9	1.1	1.0	1.0	0.8	1.1	1.5	1.0	1.7	2.1	1.3	1.013	Actual CPI
2017	2.5	2.7	2.4	2.2	1.9	1.6	1.7	1.9	2.2	2.0	2.2	2.1	2.1	1.021	Actual CPI
2018	2.1	2.2	2.4	2.5										1.021	Forec. CPI
2019														1.021	Forec. CPI
2020														1.021	Forec. CPI
2021														1.021	Forec. CPI
2022														1.021	Forec. CPI

(d) 73.95

Notes:  
 1) The source of the Consumer Price Index (CPI) data is the U.S. Department of Labor, Bureau of Labor Statistics; URL: <http://data.bls.gov/cgi-bin/survey/most?blis>  
 2) The CPI factor used for 2018 through 2022 is the simple average of the CPI factors for 2001 through 2017.  
 3) The Base Fee (CPI Adjusted) represents what the base fee would be at year-end if adjusted for the annual CPI.

**Comparison: CPI Adjusted Base Fee Using Forecasted CPI-U  
Simple Average vs. Geometric Mean**

<b>2018-2022 CPI-U Forecast: Based on 2001-2017 Simple Avg. vs. Geometric Mean</b>	
1.021000000	<=== Simple Average Actual CPI-U Factors 2001 - 2017
1.020941019	<=== Geometric Mean Actual CPI-U Factors 2001-2017
0.000058981	<=== Difference CPI-U Forecast Simple Average vs. Geometric Mean

<b>Simple Average: Future Value Fee for 4-Year Contract Renewal Term 2018-2022</b>	
1.086683238	<=== Simple Average Future Value Factor for 4-Year Period 2018-2022
\$77.03	<=== \$ Future Value 2022 Based on Simple Average of Actual CPIs

<b>Geometric Mean: Future Value Fee for 4-Year Contract Renewal Term 2018-2022</b>	
1.086432160	<=== Geometric Mean Future Value Factor for 4-Year Period 2018-2022
\$77.01	<=== \$ Future Value 2022 Based on Geometric Mean of Actual CPIs

<b>DIFFERENCE: Forecasted CPI-U Based on Simple Average vs. Geometric Mean</b>	
0.000251078	<=== Future Value Factor for 4-Year Period 2018-2022
\$0.02	<=== \$ Future Value 2022

<b>Geometric Mean for Actual CPI-U Factors 2013-2018 -Prior 5-year Term</b>	
1.014373145	<=== Geometric Mean CPI-U Factors 2013-2018
1.4373145%	<=== Geometric Mean CPI-U Rate % 2013-2018
1.073961505	<=== Future Value Factor for 5-year period 2013-2018
\$70.88	<=== Future Value 2018

**\$0.0000000000** <=== Differ. Base Fee (CPI Adj.) 2018 vs. Geometric Mean-Future Value 2018

# Attachment 5

FY 2009-10 Telephone Appearance Fee Revenues Provided to Courts by Vendors

Court	Revenue Provided by CourtCall A	Revenue Provided by Tele-Court B	Total C	Proposed Quarterly Allocation D
Alameda	\$0	\$0	\$0	\$0
Alpine	\$0	\$0	\$0	\$0
Amador	\$5,790	\$0	\$5,790	\$1,448
Butte	\$15,210	\$0	\$15,210	\$3,803
Calaveras	\$791	\$0	\$791	\$198
Colusa	\$0	\$0	\$0	\$0
Contra Costa	\$0	\$0	\$0	\$0
Del Norte	\$0	\$0	\$0	\$0
El Dorado	\$24,418	\$0	\$24,418	\$6,105
Fresno	\$75,930	\$0	\$75,930	\$18,983
Glenn	\$1,230	\$0	\$1,230	\$308
Humboldt	\$12,250	\$0	\$12,250	\$3,063
Imperial	\$25,465	\$0	\$25,465	\$6,366
Inyo	\$1,395	\$0	\$1,395	\$349
Kern	\$38,700	\$0	\$38,700	\$9,675
Kings	\$5,935	\$0	\$5,935	\$1,484
Lake	\$0	\$0	\$0	\$0
Lassen	\$4,241	\$0	\$4,241	\$1,060
Los Angeles	\$0	\$0	\$0	\$0
Madera	\$0	\$0	\$0	\$0
Marin	\$42,540	\$0	\$42,540	\$10,635
Mariposa	\$0	\$0	\$0	\$0
Mendocino	\$8,520	\$0	\$8,520	\$2,130
Merced	\$13,095	\$0	\$13,095	\$3,274
Modoc	\$370	\$406	\$776	\$194
Mono	\$0	\$0	\$0	\$0
Monterey	\$0	\$0	\$0	\$0
Napa	\$14,590	\$0	\$14,590	\$3,648
Nevada	\$0	\$0	\$0	\$0
Orange	\$0	\$0	\$0	\$0
Placer	\$24,920	\$0	\$24,920	\$6,230
Plumas	\$2,448	\$0	\$2,448	\$612
Riverside	\$0	\$0	\$0	\$0
Sacramento	\$43,920	\$0	\$43,920	\$10,980
San Benito	\$0	\$0	\$0	\$0
San Bernardino	\$239,760	\$0	\$239,760	\$59,940
San Diego	\$0	\$0	\$0	\$0
San Francisco	\$17,515	\$0	\$17,515	\$4,379
San Joaquin	\$51,955	\$0	\$51,955	\$12,989
San Luis Obispo	\$18,700	\$0	\$18,700	\$4,675
San Mateo	\$39,743	\$0	\$39,743	\$9,936
Santa Barbara	\$44,719	\$0	\$44,719	\$11,180
Santa Clara	\$0	\$0	\$0	\$0
Santa Cruz	\$21,904	\$0	\$21,904	\$5,476
Shasta	\$9,190	\$0	\$9,190	\$2,298
Sierra	\$630	\$0	\$630	\$158
Siskiyou	\$0	\$0	\$0	\$0
Solano	\$42,765	\$0	\$42,765	\$10,691
Sonoma	\$14,895	\$0	\$14,895	\$3,724
Stanislaus	\$46,740	\$0	\$46,740	\$11,685
Sutter	\$2,795	\$0	\$2,795	\$699
Tehama	\$1,340	\$0	\$1,340	\$335
Trinity	\$400	\$0	\$400	\$100
Tulare	\$12,890	\$0	\$12,890	\$3,223
Tuolumne	\$6,280	\$0	\$6,280	\$1,570
Ventura	\$0	\$0	\$0	\$0
Yolo	\$0	\$0	\$0	\$0
Yuba	\$9,456	\$0	\$9,456	\$2,364
Total	\$943,434	\$406	\$943,840	\$235,960

# Attachment 6

PROPOSED REVISIONS TO SECTION 72011 OF THE GOVERNMENT CODE

72011.

- (a) For each fee received for providing telephone appearance services, each vendor or court that provides for appearances by telephone shall transmit twenty dollars (\$20) to the State Treasury for deposit in the Trial Court Trust Fund established pursuant to Section 68085. If the vendor or court receives a portion of the fee as authorized under paragraph (2) of subdivision (b) of Section 367.6 of the Code of Civil Procedure, the vendor or court shall transmit only the proportionate share of the amount required under this section. This section shall apply regardless of whether the Judicial Council has established the statewide uniform fee pursuant to Section 367.6 of the Code of Civil Procedure, or entered into one or more master agreements pursuant to Section 72010 of this code. This section shall not apply when a vendor or court does not receive a fee.
- (b) The amounts described in subdivision (a) shall be transmitted within 15 days after the end of each calendar quarter for fees collected in that quarter.
- (c) Vendors shall also transmit an amount equal to the total amount of revenue received by all courts from all vendors for providing telephonic appearances for the 2009-10 fiscal year.
- (d) The amount set forth in subdivision (c) shall be apportioned by the Judicial Council among the vendors with which the Judicial Council has a master agreement pursuant to Section 72010. within 15 days of receiving notice from the Judicial Council of its apportioned amount, each vendor shall transmit that amount to the State Treasury for deposit in the Trial Court Trust Fund.
- (e) The Judicial Council shall allocate the amount collected pursuant to subdivisions (c) and (d) for the purpose of preventing significant disruption in services in courts that previously received revenues from vendors for providing telephone appearance services. The Judicial Council shall determine the method and amount of the allocation to each eligible court.

(f) The provisions described in subdivisions (c) through (e) shall expire on September 30, 2018.

} See  
Statement C

**ALTERNATIVE PROPOSED REVISIONS TO SECTION 72011 OF THE GOVERNMENT CODE**

72011.

(a) For each fee received for providing telephone appearance services, each vendor or court that provides for appearances by telephone shall transmit twenty dollars (\$20) to the State Treasury for deposit in the Trial Court Trust Fund established pursuant to Section 68085. If the vendor or court receives a portion of the fee as authorized under paragraph (2) of subdivision (b) of Section 367.6 of the Code of Civil Procedure, the vendor or court shall transmit only the proportionate share of the amount required under this section. This section shall apply regardless of whether the Judicial Council has established the statewide uniform fee pursuant to Section 367.6 of the Code of Civil Procedure, or entered into one or more master agreements pursuant to Section 72010 of this code. This section shall not apply when a vendor or court does not receive a fee.

(b) The amounts described in subdivision (a) shall be transmitted within 15 days after the end of each calendar quarter for fees collected in that quarter.

(c) ~~Vendors~~Each vendor shall also transmit, on a quarterly basis, an amount equal to the ~~total product of:~~

(1) The average amount of revenue per telephone appearance received by all courts that received revenues from all telephone appearance service vendors for providing telephonic during the 2009–10 fiscal year; and

(2) The total number of telephone appearances for the 2009– conducted by the vendor during the quarter in any court that received revenues from telephone appearance service vendors during the 2009–10 fiscal year.

(d) ~~The amount set forth~~amounts described in subdivision (c) shall be ~~apportioned by the Judicial Council among the vendors with which the Judicial Council has a master agreement pursuant to Section 72010. transmitted~~ within 15 days ~~of receiving notice from after the Judicial Council~~end of its apportioned amount, each vendor shall transmit that amount to the State Treasury for deposit in the Trial Court Trust Fund~~each calendar quarter for appearances conducted in that quarter.~~

(e) The Judicial Council shall allocate the amount collected pursuant to subdivisions (c) and (d) for the purpose of preventing significant disruption in services in courts that previously received revenues from vendors for providing telephone appearance services. The Judicial Council shall determine the method and amount of the allocation to each eligible court, subject to the following:

(1) Any court that directly provides telephone appearance services pursuant to paragraph (3) of subdivision (c) of Section 72010 during the quarter shall not be eligible to receive any allocation of the amount collected pursuant to subdivision (c).

(f) The provisions described in subdivisions (c) through (e) shall expire on [date].

See Statement A

See Statement B

See Statement C



## STATEMENTS OF RATIONALE FOR PROPOSED REVISIONS

The following Statements of Rationale provide analysis and supporting information for CourtCall's proposed revisions to Section 72011 of the Government Code.

### Statement A

*See proposed revisions to Gov. Code § 72011 subd. (c)*

#### Intention

To change the calculation method used in Section 72011(c) of the Government Code ("Section 72011(c)") from the current "frozen in time" fixed amount to a dollars-per-appearance rate that would correlate directly to appearance volumes.

#### Background

Prior to the implementation of the statewide program for telephone appearances (the "Statewide Program"), as authorized by Senate Bill 857 (2009-2010) ("SB 857"), select courts participated in "revenue sharing" arrangements with remote appearance vendors, whereby the vendor would share a certain amount of revenue per remote appearance directly with the participating court (remitted quarterly for all appearances during the prior quarter) (the "Legacy Program"). For example, in San Bernardino County Superior Court, attorneys paid the vendor \$65 per remote appearance and the vendor subsequently shared \$10 per remote appearance with San Bernardino directly. For many years prior to the Statewide Program, these revenue sharing arrangements provided needed ancillary funds for participating courts while also creating an incentive for the courts to promote the benefits of remote appearances.

These revenue sharing arrangements were eliminated following implementation of the Statewide Program. However, to prevent "significant disruption in services in courts that previously received revenues from vendors for providing telephone appearance services"<sup>1</sup>, vendors are instead required to "transmit an amount equal to the total amount of revenue received by all courts from all vendors for providing telephonic appearances for the 2009-10 fiscal year."<sup>2</sup> The Judicial Council, in consultation with vendors and the participating courts, concluded that a total of \$943,840 (the "Share Amount") was shared with 38 courts (the "Participating Courts") during that 12-month period (the "Measurement Period"). The Judicial Council collects one-fourth of this amount (\$235,960) each quarter, apportioned among all vendors based on each vendor's pro rata share of all appearances (including appearances conducted by direct-provision courts).

#### Rationale

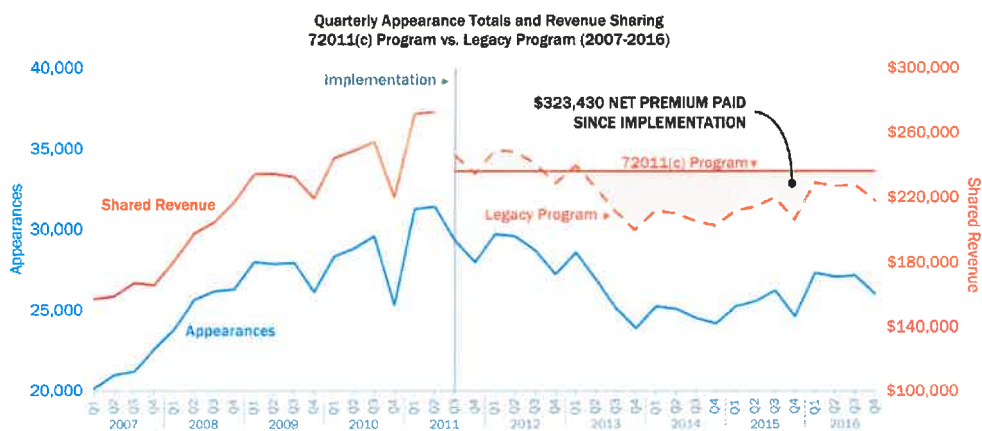
Prior to implementation of the Statewide Program, revenue was shared on a dollars-per-appearance basis: a vendor shared the revenue it earned from appearances it facilitated in one of the Participating Courts. Under Section 72011(c), the gross shared revenue amount from the Measurement Period became *fixed* and vendors are obligated to remit that amount indefinitely, regardless of ongoing appearance volume (the "72011(c) Program"). This is intrinsically unfair to vendors, as it requires them to share revenue that they did not collect when vendor-facilitated appearance volumes decline relative to the Measurement Period.

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<sup>1</sup> Gov. Code, § 72011, subd. (e)

<sup>2</sup> Sen. Bill No. 857 (2009-2010)

The chart that follows illustrates the direct cost of this imbalance. Prior to implementation of the Statewide Program, the amount of revenue shared (the red line) remains directly correlated to the number of appearances conducted (the blue line). Subsequent to implementation of the Statewide Program, appearance volume in the Participating Courts declined materially, due primarily to the recession, reduced court budgets, court closures and furloughs and court service restrictions. Yet due to the fixed nature of the 72011(c) Program, the amount of revenue shared remained flat. The 72011(c) Program therefore requires vendors to pay a premium when volumes decline relative to the Measurement Period. During the 22 quarters between implementation of the Statewide Program and the fourth quarter of 2016, vendors paid \$323,430 in excess of the amount that would have been paid under the Legacy Program (the premium represented by the shaded gap between the 72011(c) Program line and the Legacy Program dotted line).<sup>3</sup> So long as appearance volume remains depressed relative to the Measurement Period, this amount will only continue to increase every quarter.



Further, some of the Participating Courts have stopped using a third-party vendor all together, yet the vendors remain obligated to pay each of these court’s allocations of the Share Amount every quarter. This poses a troubling problem with the 72011(c) Program:

*Suppose this trend continues and every court but one elects to provide remote appearance services directly, leaving just one vendor serving just one court. Under Section 72011(c), so long as one vendor conducts a single call in a single court, that vendor is liable to pay the entire Share Amount. In other words, **the vendor serving that single remaining court would be obligated to pay nearly \$1 million annually—even if the vendor conducted just one appearance each quarter.***

The revisions to 72011(c) proposed herein would correct this inequity by converting the calculation method from a “frozen in time” fixed amount to a volume-based method, whereby each vendor would pay a certain dollar amount per appearance conducted by that vendor in each of the Participating Courts.

The current Share Amount (\$943,840) represents the amount of revenue shared with courts during the Measurement Period, which was based on 112,647 appearances in the Participating Courts. In other words, vendors shared an average of \$8.38 per appearance (the “Share Rate”) across all of the Participating Courts during the Measurement Period. Rather than requiring vendors to remit the Share Amount each year, these revisions would

<sup>3</sup> Includes conservative estimates in the Statewide Program period regarding the percentage of appearances that would have been subject to revenue sharing under the Legacy Program; estimates are derived from actual data during the 24 months preceding implementation of the Statewide Program.

require each vendor to remit an amount equal to (i) the Share Rate times (ii) the number of appearances conducted by that vendor in each Participating Court served by that vendor.

Under this Share Rate method, vendors would no longer be required to share revenue that they never collected in the first place. All revenue sharing arrangements between vendors and courts were structured in this manner prior to implementation of the Statewide Program: the expectation at each Participating Court was that revenue would be shared on a per-appearance basis, such that the amount received would always be correlated to appearance volume. If the intent of Section 72011(c) is truly to avoid “significant disruption” among the Participating Courts, then it should be structured in a manner consistent with the very revenue sharing arrangements it intends to replicate.

### **Statement B**

*See proposed revisions to Gov. Code § 72011, subd. (e)*

#### **Intention**

To ensure that direct-provision courts are not eligible to receive funds from the very vendors with whom they have elected to compete.

#### **Background**

See “Background” subsection of preceding Statement A. Pursuant to Section 72011(e) of the Government Code (“Section 72011(e)”), the Judicial Council “determine[s] the method and amount of the allocation to each eligible court”.<sup>4</sup> Following implementation of the Statewide Program, the Judicial Council determined that each Participating Court would receive an allocation equal to the allocation of the vendors’ direct payments during the Measurement Period.

#### **Rationale**

Under Section 72011(e), the Participating Courts that subsequently converted to direct-provision courts continue to receive vendor funds every year despite maintaining no ongoing relationship with a vendor. Section 72011(c-e) was intended to continue the historical practice of revenue sharing—*by definition, this means a vendor providing the service to a court shares revenue with the court it serves*. If a court elects to provide remote appearance services directly, without a third-party vendor, it necessarily follows that said court should no longer receive an allocation from a program based entirely on the vendor-court relationship.

Moreover, a Participating Court that converts to a direct-provision court will need to purchase equipment, software and services to build the platform that the court will use to provide the services directly. **In other words, Section 72011(c) requires vendors to fund the procurement of the solution that will ultimately supplant the vendor from the court.**

For example, consider Placer County Superior Court (“Placer”), a long-time Participating Court that elected to become a direct-provision court beginning in July 2014. Placer’s allocation of the Share Amount is \$24,920 per year, which it continues to receive despite terminating its relationship with CourtCall. During the 11 fiscal quarters since Placer became a direct-provision court, it collected



<sup>4</sup> Gov. Code, § 72011, subd. (e)

\$67,149.50 from Section 72011 allocations funded entirely by CourtCall. **If Section 72011(e) remains unchanged, by the end of 2019, CourtCall’s payments under Section 72011(c) will have funded the entire procurement of Placer’s competing solution.** Moreover, neither Placer nor the vendor from which Placer procured its direct-provision solution is required to contribute to the Trial Court Trust Fund under Section 72011(c).

Just as the proposed revisions to Section 72011(c) address the issue of propriety in *apportionment among the vendors*, these revisions to Section 72011(e) address the issue of propriety in *allocation among the courts*. **These are separate and distinct topics**: the former ensures that vendors are not unfairly obligated to share revenue from appearances they did not facilitate; the latter ensures that courts only receive vendors’ funds if they engage a vendor to facilitate remote appearances. Any court may, at its own discretion, elect to become a direct-provision court, but such a court should not benefit indefinitely from the revenue of the very vendors with whom they are electing to compete.

### **Statement C**

*See proposed revisions to Gov. Code § 72011, subd. (f) (new insertion)*

#### **Intention**

To establish a termination date for the revenue sharing program.

#### **Background**

See “Background” subsections of preceding Statements A and B.

#### **Rationale**

Given the clearly stated intention of the 72011(c) Program and the degree to which relevant circumstances have changed since implementation of the Statewide Program, the 72011(c) Program should include a termination date.

The 72011(c) Program was created to prevent “significant disruption in services in courts that previously received revenues from vendors”.<sup>5</sup> This language implies that the *absence* of the 72011(c) Program would have resulted in *significant disruption* to the Participating Courts, which is simply not true. Section 72011(a) of the Government Code, which calls for vendors to remit to the courts \$20 per remote appearance each quarter<sup>6</sup> (the “**72011(a) Program**”), created an entirely new revenue stream for the courts. CourtCall alone remits over **\$6 million annually** under the 72011(a) Program. This means that, even after eliminating the \$943,840 Legacy Program revenue, the 72011(a) Program *alone* represents over \$6 million of new annual revenue available for allocation. **A \$5 million increase in annual revenue is hardly a “disruption” to court operations.** Rather, it is the elimination of the Legacy Program and the court’s chosen method for allocating the 72011(a) Program revenue that *could* lead to disruption in *some* courts (i.e., when a Participating Court’s allocation of the 72011(a) Program revenue is less than that court’s allocation of the Share Amount). A refined allocation method (for example, a method whereby the first \$943,840 of the 72011(a) Program revenue is directed to the Participating Courts) would eliminate the possibility of disruption while still yielding over \$5 million for broader allocation.

Further, the revenues collected from the 72011(c) Program are hardly “significant” for the Participating Courts. According to the *Report of Trial Court Revenue, Expenditure, and Fund Balance Constraints for Fiscal Year 2015–2016*, the 38 Participating Courts collected revenues from state financing sources and grants in excess of **\$787**

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<sup>5</sup> Gov. Code, § 72011, subd. (e)

<sup>6</sup> Gov. Code, § 72011, subd. (a)

**million** during the 2015-2016 fiscal year.<sup>7</sup> The 72011(c) Program, with a total annual Share Amount of \$943,840, represents **just 0.12%** (twelve one-hundredths of one percent) of these courts' revenues.

Moreover, the 72011(c) Program provided continuity for one aspect of the Legacy Program (the flow of funds to the courts) while eliminating the other (a direct correlation between the amount of revenue shared and the number of appearances conducted by the vendor). In the absence of the latter, there is no incentive for courts to use the vendors that actually fund the 72011(c) Program. In fact, the Program has created precisely the opposite incentive by allowing direct-provision courts to both collect from and compete with vendors. Without the proper incentive structure in place, the 72011(c) Program truly is just a "tax" or "franchise fee" imposed on any vendor who serves any single court. This was never its intended purposes.

The revisions proposed herein would terminate the 72011(c) Program on a date to be determined. Given the multiple inequities described in Statements A and B above, the clearly stated intention of the 72011(c) Program and the degree to which relevant circumstances have changed since implementation of the Statewide Program, the 72011(c) Program cannot and should not remain in effect in perpetuity.

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<sup>7</sup> Judicial Council of California (February 10, 2017); full report available at [www.courts.ca.gov/7466.htm](http://www.courts.ca.gov/7466.htm)