JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

LEG19-__

Title
Telephonic Appearances: Court Fees Collected from Telephone Appearance Revenue

Proposed Rules, Forms, Standards, or Statutes
Amend Government Code sections 68085.1 and 72011

Proposed by
Judicial Branch Budget Committee
Hon. David M. Rubin, Chair
Ms. Christy Simons, Attorney

Action Requested
Review and submit comments by June 7, 2019

Proposed Effective Date
January 1, 2021

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Executive Summary and Origin

The Judicial Branch Budget Committee proposes statutory changes for telephone appearance service fees to update and improve the formula to reflect current revenue allocation standards in the courts. The committee also proposes amending the statutes that prescribe the method for transmitting fees to reflect current fiscal practices in the courts. This proposal has no impact on the fee charged to individuals for telephone appearance services. The proposal is based on a suggestion from a vendor of telephone appearance services.

Background

The statutory framework for statewide telephone appearance fees was created in 2010. (SB 857, stats. 2010, ch. 720.) The legislation required the Judicial Council to enter into a master agreement or master agreements for the provision of telephone appearance services. (Gov. Code, § 72010(a).) The 2018-2022 master agreement recently entered into between the Judicial Council and CourtCall LLC (CourtCall) is based on, and subject to, the 2010 legislation.

The principal telephone appearance fee statutes are Code of Civil Procedure section 367.6 and Government Code section 72010-72011. 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).) Rule 3.670 of the California Rules of Court is the rule concerning telephone appearances in the trial courts. Based on the authority granted to the council by statute, the

Judicial Council has amended rule 3.670 several times over the years, most recently in 2018 to set the telephone appearance fee at $94 per call as of January 1, 2019.

The fee statutes also provide that the Trial Court Trust Fund (TCTF) shall receive a portion of each telephone appearance fee. "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).) Under the current fee structure, any court providing telephone appearance services directly may charge an appearance fee of $94, of which it receives $74 and transmits $20 for deposit into the TCTF.

In addition to the $20 per call that providers must transmit to the TCTF, the fee statutes also require vendors to transmit "an amount equal to the total amount of revenues received by all courts from all vendors providing telephonic appearances for the 2009-2010 fiscal year" (the FY 2009-2010 amount). (Gov. Code, § 72011(c).) This amount, determined to be $943,840, was received in fiscal year 2009-2010 by 38 courts from the vendors under revenue sharing arrangements. The FY 2009-2010 amount is included in master agreements and is due from the vendors each year. Because CourtCall has been virtually the only vendor since 2011, it has been responsible for transmitting the entire FY 2009-2010 amount in quarterly payments.

The 2010 legislation directed the Judicial Council to allocate the FY 2009-2010 amounts received "for the purpose of preventing significant disruption in services in courts that previously received revenues from vendors for providing telephone appearance services." The bill further provided: "The Judicial Council shall determine the method and amount of the allocation to each eligible court." (Gov. Code, § 72011(e).) Based on this statutory provision, the Judicial Council in 2011 approved a distribution every quarter to each of the courts that previously had a revenue-sharing agreement with a vendor in an amount equal to one fourth of the amount that the court had received in fiscal year 2009-2010 from their revenue sharing arrangements with the vendor. A total of 38 courts receive revenue through this allocation, with amounts varying from as little as $400 a year to as much as $239,760 a year. The allocations have not changed since they were approved by the Judicial Council in 2011.

Finally, although the legislation on telephone appearance services assumed that these services would be provided primarily by a vendor or vendors, SB 857 also authorized courts to directly provide these services. "If the court provides the services directly, the court shall collect the fees for telephone appearances adopted by the Judicial Council …." (Gov. Code, § 72010(c)(3).) Thus, if a court directly provides telephone appearance services, it currently collects the fee of $94 per call. Like the vendor, it must transmit $20 per call to the TCTF (Gov. Code, § 72011(a)) and retain the balance. Unlike the vendor, however, courts directly providing telephone appearance services are not required to contribute to the FY 2009-2010 amount, which by statute is only apportioned among, and transmitted by, vendors. (Gov. Code, § 72011(c)-(d).) Three courts have recently elected to provide telephone appearance services directly, and others may soon start directly providing these services.

The Proposal

Introduction

The statutory framework for statewide telephone appearance fees was created in 2010. Because circumstances have changed since that time, and to make the fee structure simpler and fairer, the committee proposes the following amendments to the fee statutes:

1. Repeal Government Code section 72011(c)–(e) that requires vendors to transmit the FY 2009-2010 amount and authorizes the Judicial Council to allocate that amount among the courts that had previously had contractual revenue sharing arrangements with vendors (the “eligible” courts);

2. Amend 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 transmit an increased amount of $23 for that purpose; and

3. Amend 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), thereby enabling the courts to transmit these revenues consistently with their regular judicial branch fiscal practices.

Discussion

1. Repealing Government Code section 72011(c)-(e) that provides for the transmission and allocation of the FY 2009-2010 amount ($943,840)

As noted above, this fee structure that requires vendors to continue indefinitely to transmit the FY 2009-2010 amount for allocation among 38 eligible trial courts was enacted in 2010. SB 857 allocated this amount “for the purpose of preventing significant disruption in service in courts that previously received revenues from vendors for proving 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.

The allocation method under section 72011(c)-(e) is outdated because of the manner in which the amounts are distributed among the courts. The amounts are not based on court size, or workload, or other basis consistent with current Judicial Branch fiscal practices. There are large courts (such as Los Angeles and San Diego) that receive nothing and smaller courts (such as Stanislaus and Imperial) that receive significant amounts. The San Bernardino court, an outlier, receives the largest allocation ($239,700 annually). In addition, some of the courts that are now providing direct telephone services (El Dorado and Placer) are still receiving revenue-sharing money of over $24,00 each annually from the vendor, which CourtCall regards as unfair and anticompetitive.

The committee is proposing to eliminate the FY 2009-2010 allocation and replace it by increasing the share of the telephone appearance fee transmitted to the TCTF from $20 to a moderately higher share to offset the loss of the FY 2009-2010 amount. The increased revenue transmitted to the TCTF under this approach, in turn, would be distributed among the courts under current allocation standards, rather than the outdated AB 857 formula. The additional legislation required to implement this approach is discussed in the next section.

2. Amending Government Code section 72011(a) to increase the share of the telephone appearance fee placed in the TCTF

Legislation that simply eliminated the responsibility of vendors to contribute $943,840 annually to the 38 eligible courts would have an adverse fiscal impact on the courts. To substantially offset the impact of this loss of revenue, the committee proposes combining the repeal of subdivisions (c) through (e) of Government Code section 72011 with an amendment of subdivision (a) to increase the current share of $20 from each fee received for providing telephone appearance services.

The committee proposes increasing the share by $3 per call, from $20 to $23. This would increase the distribution to the TCTF by approximately $864,000, assuming annual CourtCall appearances of 288,076,[1] thereby largely offsetting the loss of the FY 2009-2010 amount.[2] If the number of appearances by telephone increases in the future, the amount distributed to the TCTF would increase.

Any legislation that would simply eliminate the requirements of section 72011(c)-(e) would result in an immediate savings of $943,840 annually for CourtCall, essentially a windfall, with no offset for the courts of the loss of revenue. However, if legislation to repeal sections (c) through (e) is combined with a $3 increase in the $20 share in (a), the courts would not suffer an immediate $943,840 revenue loss and the vendor would initially receive approximately the same expected net income before and after the share increase. Thus, the immediate effect of the combined legislation would be to eliminate most of the adverse impacts of repealing subdivisions (c) through (e). This legislation would also convert CourtCall's fixed $943,840 annual obligation into an obligation to pay a variable amount as an increased share, dependent on the number of telephone appearances.

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[1] This number is derived from the lowest quarterly number of appearances of the eight calendar quarters from June 2016 through March 2018.

[2] To achieve a revenue objective of fully offsetting the impact of repealing subdivisions (c) through (e), Budget Services estimates that an increased share of $3.30 per call would be required. This would increase the distribution to the TCTF by approximately $951,000. However, due to the accounting problems an uneven dollar amount would create, the committee proposes increasing the share by $3 per call, not $3.30.

A statutory increase in the $20 share amount would also affect courts that provide telephone appearance services directly. Before courts recently began providing these services directly, only the vendor provided the services, collected the fee, and transmitted to the TCTF the $20 share per call. Under these circumstances, a statutory increase in the $20 share amount could simply be used to offset the elimination of the FY 2009-2010 allocation. However, some courts are now beginning to provide the services and collect the telephone appearance fee themselves. Not only vendors, but also any courts providing direct telephone appearance services, must transmit $20 of each telephone appearance fee they receive to the TCTF. (Gov. Code, § 72011(a).) Thus, if the $20 share to the TCTF in section 72011(a) is increased, the direct service courts would have to pay a greater share of their telephone appearance revenues pursuant to section 72011(a). This revenue would go into the TCTF instead of to the specific court directly providing the services. This may be an issue for some of these courts. However, the telephone appearance fee was recently raised from $86 to $94, an $8 per call increase, which might assuage some of these courts' concerns.

3. Amendments to Government Code section 72011(b) (technical changes to the process for transmitting fees)

Finally, there are other legislative issues relating to the telephone appearance fee of a more technical nature. As trial courts are beginning to provide telephone appearance services directly, the statutory method for the transmission of the $20 share of the telephone appearance fee to the State Treasury for vendors does not work procedurally for the courts, which use a different method and timeframe for the transmission of revenues. To be consistent with the courts' practices, Government Code section 72011(b) should be amended to direct courts to follow the procedures that are established in Government Code section 68085.1. In addition, that section should be amended to include a reference to fees collected under Government Code section 72011(a).

Alternatives Considered

The committee considered a legislative proposal from CourtCall that would eliminate the $943,840 FY 2009-2010 amount required under SB 857. Its preferred approach would be to repeal subdivisions (c) through (e) of Government Code section 72011 entirely, thereby eliminating its obligation to make any such payments. Its alternative proposal would, for a while, replace the current fixed FY 2009-2010 amount with an amount based on the number of appearances conducted by the vendor in each participating court. The Judicial Council would continue to allocate the revenues received from this amount among eligible courts; however, any court that directly provides telephone appearance services would no longer be eligible to receive any allocation. This alternative proposal would include a termination date on which subdivisions (c) through (e) would expire; thus, the ultimate goal of CourtCall's legislative proposals is the complete elimination of the vendor's obligation to make payments based on historic revenue sharing arrangements with select courts.

The committee agrees with modernizing the fee structure. However, eliminating the statutory requirement to transmit the FY 2009-2010 amount without offsetting the loss of revenue would be a windfall to CourtCall and would adversely impact the courts. The committee's proposal avoids a financial loss for the courts, eliminates the outdated "legacy payments," and provides a more fair revenue sharing framework based on call volume.

The committee considered raising the $20 amount by $3.30, the amount calculated by Judicial Council Budget Services that would be adequate to offset the FY 2009-2010 amount. However, an uneven dollar amount would be difficult for accounting purposes and needlessly awkward. The committee preferred to avoid these issues even if the $23 amount does not fully offset the loss of the FY 2009-2010 amount.

The committee also considered raising the $20 by $4. The committee rejected this option because it would generate increased revenue for the TCTF rather than offsetting what stands to be lost if the FY 2009-2010 amount is eliminated. It would also require trial courts that directly provide telephone appearance services to transmit to the TCTF a greater share of each fee.

Finally, the committee considered proposing no change to the statutory framework. This option was rejected because the current law is outdated and does not reflect current allocation standards.

Fiscal and Operational Impacts

The 38 trial courts that have been receiving an allocation of telephone appearance revenue based on the 2009-2010 revenue-sharing arrangement would no longer receive these payments. Instead, the increased share of the telephone appearance fee transmitted to the Trial Court Trust Fund would be distributed among the trial courts under current allocation standards.

Courts that directly provide telephone appearance services would pay a greater share of their telephone appearance fee to the Trial Court Trust Fund, that is, $23 instead of $20. However, the recent increase in the telephone appearance fee from $86 to $94 per call would mitigate this impact. Direct provider courts would still see a net revenue increase of $5 per-call over revenue received prior to January 1, 2019.

Amending the statutes that prescribe the method for transmitting a portion of the telephone appearance fee to the State Treasury to provide a method and timeframe that work for the courts that provide telephone appearance services directly may require those courts to modify their procedures. The new method and timeframe would be consistent with the courts' practices and would improve the process for the courts.

Request for Specific Comments

In addition to comments on the proposal as a whole, the committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee [or other proponent] also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would __ months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments

1. Amended Government Code sections 68085.1 and 72011, at pages _____