JUDICIAL COUNCIL
OF CALIFORNIA

JUDICIAL BRANCH BUDGET
COMMITTEE

JUDICIAL BRANCH BUDGET COMMITTEE

MATERIALS FOR JANUARY 15, 2019

Meeting Contents

JUDICIAL COUNCIL OF CALIFORNIA

JUDICIAL BRANCH BUDGET COMMITTEE

www.courts.ca.gov/jbbc.htm
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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

Date:	January 15, 2019
Time:	1:30 p.m. – 3:00 p.m.
Location:	455 Golden Gate Avenue, San Francisco, California 94102
	3rd Floor, Farallon Room
Public Call-In Number:	1-877-820-7831; passcode 6677064 (Listen Only)

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.

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

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

Call to Order and Roll Call

Approval of Minutes

Approve minutes of the October 17, 2018 and November 14, 2018, Judicial Branch Budget Committee meeting(s).

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

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 or mailed or delivered to Judicial Council, 455 Golden Gate Avenue, San Francisco, California 94102, attention: Lucy Fogarty. Only written comments received by 1:30 p.m., Monday, January 14, 2019, will be provided to advisory body members prior to the start of the meeting.

III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS 1)

Item 1

Telephonic Appearance Fees in Civil Cases (Action Required)

Consider whether to recommend circulation of proposed legislative changes to update the statutory framework for telephonic appearance fees.

Presenter(s)/Facilitator(s): Christy Simons, Attorney, Legal Services

IV. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Info 1

2019-20 Budget Update

Provide a budget briefing of the Governor's Proposed Budget for 2019-20.

Presenter(s)/Facilitator(s): Zlatko Theodorovic, Director, Budget Services

V. ADJOURNMENT

Adjourn to Closed Session

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

Item 1

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

Review of requests from grantees regarding Innovations Grant Programs.

Presenter(s)/Facilitator(s): Marcela Eggleton, Supervising Analyst, Special Projects, Leadership Support Services

VII. ADJOURNMENT

Adjourn Closed Session

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JBBC@jud.ca.gov

JUDICIAL BRANCH BUDGET COMMITTEE

MINUTES OF OPEN MEETING

October 17, 2018
12:15 PM
Teleconference

Advisory Body Members Present:	Hon. David M. Rubin, Chair; Hon. Kyle S. Brodie, Vice-Chair; Hon. Marla O. Anderson; Hon. C. Todd Bottke; Hon. Harold W. Hopp; Hon. Ann Moorman; Mr. Michael M. Roddy
Advisory Body Members Absent:	Hon. Brad R. Hill; Ms. Andrea K. Wallin-Rohmann
Others Present:	Heather Anderson

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:15, and took roll call.

DISCUSSION AND ACTION ITEMS (ITEM 1)

Item 1

Telephone Appearance Fee in Civil Cases (Action Required)

The committee received an overview of the proposal to amend 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, and considered the public comments received in response to the invitation to comment. The committee also discussed the alternatives considered, i.e., to recommend (1) the increase requested by CourtCall, (2) an increase to some other amount, or (3) no increase, and agreed that an increase based on the CPI as discussed in the report was appropriate. The committee also agreed that Judge Rubin would work with staff to modify the report to include more information regarding the alternatives considered and the committee's reasoning for its recommendation.

Action: ***The committee recommends that the Judicial Council amend rule 3.670 to increase the fee for telephone appearances from $86 to $94.***

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:35 PM.

Approved by the advisory body on enter date.

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
January 9, 2019

To
Judicial Branch Budget Committee
Hon. David M. Rubin, Chair

From
Ad Hoc Subcommittee on Fees for Telephone Appearance Services

Subject
Telephone Appearance Services: Consider Legislative Proposal Relating to Fees

Action Requested
Please review before committee meeting on January 15, 2019

Deadline
January 15, 2019

Contact
Christy Simons
Legal Services
415-865-7694 phone
christy.simons@jud.ca.gov

Executive Summary

The Ad Hoc Subcommittee on Fees for Telephone Appearances recommends that the Judicial Branch Budget Committee (JBBC) approve circulating for public comment a proposal of Judicial Council–sponsored legislation to update and improve the legal framework for fees relating to telephone appearances in civil cases. If this legislation goes forward, the expected effective date would be January 1, 2021.

Background and Legal Framework

Master agreements. The Judicial Council is required by statute to enter into a master agreement or master agreements for the provision of telephone appearance services. In 2010, Senate Bill 857 (Stats. 2010, ch. 720) was enacted. It provided that "[o]n or before July 1, 2011, and periodically thereafter as appropriate, the Judicial Council shall enter into one or more master agreements with a vendor or vendors to provide for telephone appearances in civil cases under Section 367.5 of the Code of Civil Procedure or as otherwise authorized by law." (Gov. Code, §

72010(a).) The 2018-2022 master agreement recently entered into between the Judicial Council and CourtCall is based on, and subject to, the 2010 legislation.

Statutory fees. The statutes on telephone appearances expressly authorize fees. SB 857 included a section on fees which 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 . . . ." [1] (Code Civ. Proc., § 367.6(a).

These fees are established by the Judicial Council using its rule-making authority. Rule 3.670 of the California Rules of Court is the rule adopted by the council concerning telephone appearances in the trial courts. Effective January 1, 2019, the council amended the rule to increase the telephone appearance fee from $86 to $94.[2] Under the current fee structure, any court providing direct telephone appearance services, like a vendor such as CourtCall, may charge an appearance fee of $94 per call.

Share of fees to the Trial Court Trust Fund. The fee statutes 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).) Of each $94 fee collected by a vendor or court for providing telephone appearance services, $20 is transmitted for deposit into the TCTF.

The FY 2009-2010 Amount ($943,840): apportionment among vendors and allocation to the courts. In addition to the $20 per call that vendors must transmit to the TCTF, SB 857 also requires vendors to transmit "an amount equal to the total amount of revenues received by all courts from all vendors for providing telephonic appearances for the 2009–2010 fiscal year" (the "FY 2009–2010 amount"). (Gov. Code, § 72011(c).) Before the enactment of SB 857, vendors entered into separate agreements with individual courts. Many of these agreements included "revenue sharing" provisions whereby the vendor would share a certain amount of revenue

[1] The statute also provides for a late fee and a cancellation fee, which are not at issue. The existing fees in those areas remain unchanged under the new master agreement.

[2] Judicial Council of Cal., staff rep., *Telephonic Appearances: Change in Fee Amount* (November 30, 2018) (2018 report), https://jcc.legistar.com/View.ashx?M=F&ID=6786252&GUID=EEBEE3A5-4540-4A4F-9A14-1B3A2D210E22.

directly with participating courts.[3] In FY 2009-2010, 38 courts received revenue from vendors in an amount determined to be $943,840. This "FY 2009–2010 amount" due each year from the vendors is stated in the master agreements. SB 857 further provided that the FY 2009–2010 amount "shall be apportioned by the Judicial Council among the vendors with which the Judicial Council has a master agreement pursuant to Section 72010." (Gov. Code, § 72011(c).) Because CourtCall has been virtually the only vendor since 2011,[4] it has been responsible for transmitting the entire FY 2009-2010 amount (i.e., $943,840) in quarterly payments.

In terms of the allocation of this revenue, SB 857 directed the Judicial Council to allocate the FY 2009–2010 amount "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 38 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 FY 2009–2010 from their revenue-sharing arrangements with the vendor.[5] The allocations to the courts vary from as little as $400 a year (Trinity) to as much as $239,760 a year (San Bernardino).[6] The allocations have not changed since they were approved by the Judicial Council in 2011.

Direct provision of telephone appearance services by the courts. A final feature of the legal framework established in under SB 857 is becoming increasingly significant. The legislation on telephone appearances services assumed that these services would be provided primarily by a vendor or vendors. However, SB 857 also authorized courts to directly provide these services to a party. "If the court provides the services directly, the court shall collect the fees for telephone appearances adopted by the Judicial Council in accordance with Section 367.6 of the Code of Civil Procedure and the master agreement or agreements entered pursuant to this section." (Gov. Code, § 72010(c)(3).) Thus, if a court directly provides telephone appearance services, it collects the fee of $94 per call. Like a vendor, it must transmit $20 per call to the TCTF (Gov. Code, § 72011(a)) and it retains the balance. 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).)

Although CourtCall historically provided virtually all the telephone appearance services in the California courts, this is changing. Three courts have recently elected to provide telephone

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[3] *Id*., See CourtCall's Legislative Proposal (Statement A, Background), Attachment 1.

[4] For a short period, there was one other vendor that provided services to the Superior Court of Modoc County.

[5] Judicial Council of Cal., staff rep., *Telephone Appearances: Fees and Revenues* (June 20, 2011) (2011 report), at pages 8-10, *www.courts.ca.gov/documents/20110624item9.pdf*.

[6] 2011 report, at page 22; the chart is included as Attachment 2 to this memorandum.

services directly: Placer (July 2014), El Dorado (December 2015), and Nevada (early 2018); and other courts, including Los Angeles, 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 subcommittee recommends the following amendments to the fee statutes:

1. Repealing 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. 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 transmit and increased amount of $23 for that purpose; and

3. 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), 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. The continuing role that the FY-2009-2010 amount plays in the revenue stream that the courts receive from the vendor providing telephone appearance services seems problematic. 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 a problem, among other reasons, because of the arbitrary manner in which the amounts are distributed among the courts. The amounts are not based on court size, or workload, or any other rational basis. As the allocation chart shows, there are large courts (like Los Angeles and San Diego) that receive nothing and smaller courts (like Stanislaus and Imperial) that receive respectable 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 (over $24,00 each annually) from the vendor, which CourtCall regards as unfair and anticompetitive.

In light of the adoption of the RAS model and WAFM, the 2011 statutory scheme for the allocation of nearly $1 million in telephone appearance revenues annually among selected courts based on 2009-2010 revenue-sharing arrangements seems outdated. An alternative to continuing this arrangement would be 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 higher share sufficient 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 arbitrary and dated AB 857 formula. The additional legislation required to implement this approach is discussed in the next section of this memorandum.

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 subcommittee recommends 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.

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, assuming annual CourtCall appearances of 288,076 [derived from the lowest quarterly number of appearances of the eight calendar quarters from June 2016 through March 2018], thereby offsetting the loss of the FY 2009-2010 amount. However, due to the accounting problems an uneven dollar amount would create, the subcommittee recommends increasing the share by $3 per call, from $20 to $23.

For CourtCall, any legislation that would simply eliminate the requirements of section 72011(c)-(e) would result in an immediate savings in the amount of $943,840 annually. This would essentially be 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 roughly 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.

A statutory increase in the $20 share amount would also affect courts that provide telephone appearance services directly. Before this direct provision started happening recently, 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 just 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, two Government Code sections should be amended:

1. Government Code section 72011(b) should be amended to read:

> (b) ~~The amounts described in subdivision (a) shall be transmitted~~ <u>A vendor shall transmit the amounts described in subdivision (a)</u> within 15 days after the end of each calendar quarter for fees collected in that quarter. <u>A court shall deposit the amounts described in subdivision (a) as provided in Section 68085.1(b), and the Judicial Council will transmit the fees collected as provided in Section 68085.1(d).</u>

2. Government Code section 68085.1(a)(4) should be amended to read:

(a) This section applies to all fees and fines that are collected on or after January 1, 2006, under all of the following:

(4) Subdivision (d) of Section 6103.5, Sections 68086 and 68086.1, subdivision (d) of Section 68511.3, Sections 68926.1 and 69953.5, ~~and~~ Chapter 5.8 (commencing with Section 70600), and subdivision (a) of Section 72011.

Alternatives Considered

CourtCall's legislative proposal. CourtCall has submitted a legislative proposal that would eliminate what it refers to as the "legacy payments" required under SB 857.[7] 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 might be called "transitional": this proposal would, for a while, replace the current fixed FY 2009-2010 amount ($943,840) with an amount calculated by multiplying a historic "share rate" ($8.38 per appearance)[8] by 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 under section 72010(c)(3) would no longer be eligible to receive any allocation. Finally, CourtCall's 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 subcommittee agreed with CourtCall's concerns regarding the fixed cost of $943,840 that only it must pay, while an increasing number of courts are starting to provide direct telephone services and collect fees, including some direct-provider courts that are still receiving allocations from that amount. 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 recommended proposal avoids a financial loss for the courts, eliminates the outdated "legacy payments," and provides for a more fair revenue sharing framework based entirely on call volume.

[7] CourtCall Proposal, Attachment 1.

[8] The "share rate" is based on the average share of revenue received per telephone appearance by all the courts participating in vendors' revenue sharing programs in FY 2009–2010. The share rate of $8.38 is calculated by dividing the FY 2009-2010 amount ($943,840) by the number of appearances that year (112,677 according to CourtCall).

The subcommittee considered raising the $20 amount by $3.30, as calculated by Budget Services, to closely offset the FY 2009-2010 amount. However, an uneven dollar amount would be difficult for accounting purposes and needlessly awkward.

The subcommittee also considered raising the $20 by $4 instead of $3.30. The subcommittee rejected this option as problematic 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 result in a greater impact on trial courts that directly provide telephone appearance services.

Finally, the subcommittee 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.

Next Steps

The committee should review the draft invitation to comment and draft legislative amendments, and provide feedback. The committee may wish to

- Approve the proposal as presented and recommend to PCLC that the proposal be circulated for public comment;
- Modify the proposal and recommend to PCLC that it be circulated for public comment; or
- Ask staff or committee members for further information or analysis

Links

1. Code of Civil Procedure, § 367.6:
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
3. Gov. Code, § 72011:
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

Attachments

Attachment 1: CourtCall's Proposed Revisions to Section 72011 of the Government Code
Attachment 2: Judicial Council's Allocations of FY 2009-2010 Revenue Amounts

Attachment 1

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.

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

See Statement A

(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).

See Statement B

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

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"[1], 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."[2] 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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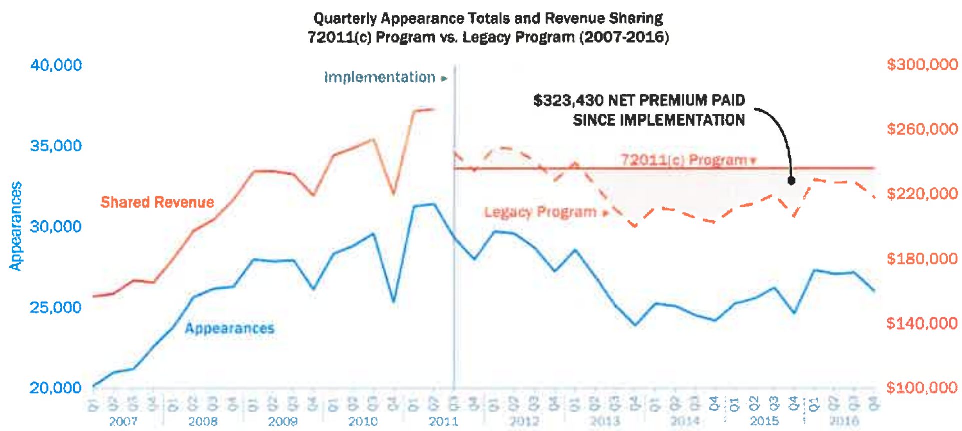
[1] Gov. Code, § 72011, subd. (e)

[2] 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).[3] 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

[3] 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".[4] 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

[4] 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".[5] 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[6] (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**

[5] Gov. Code, § 72011, subd. (e)
[6] Gov. Code, § 72011, subd. (a)

million during the 2015-2016 fiscal year.[7] 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.

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

Attachment 2

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

	Revenue Provided by CourtCall	Revenue Provided by Tele-Court	Total	Proposed Quarterly Allocation
Court	A	B	C	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

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

Contact
Christy Simons, 415-865-7694
christy.simons@jud.ca.gov

Executive Summary and Origin

The Judicial Branch Budget Committee proposes statutory changes regarding fees for telephone appearance services 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 27010-72011. 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 vendors 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, had been 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 (like Los Angeles and San Diego) that receive nothing and smaller courts (like Stanislaus and Imperial) that receive respectable 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 (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 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.

A statutory increase in the $20 share amount would also affect courts that provide telephone appearance services directly. Before this direct provision started happening recently, only the vendor provided the services, collected the fee, and transmitted to the TCTF the $20 share per

[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.

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 just 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 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 advisory committee [or other proponent] is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- [Include any other specific issues for which the proponent seeks comments.]

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 _____

Government Code sections 68085.1 and 72011 would be amended, effective January 1, 2021 to read:

§ 68085.1.

This section applies to all fees and fines that are collected on or after January 1, 2006, under all of the following:

(1) – (3) * * *

(4) Subdivision (d) of Section 6103.5, Sections 68086 and 68086.1, subdivision (d) of Section 68511.3, Sections 68926.1 and 69953.5, ~~and~~ Chapter 5.8 (commencing with Section 70600), and subdivision (a) of Section 72011.

(5) – (10) * * *

(b)-(k) * * *

§ 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)~~ twenty-three dollars and thirty cents ($23.30) 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~~ A vendor shall transmit the amounts described in subdivision (a) within 15 days after the end of each calendar quarter for fees collected in that quarter. A court shall deposit the amounts described in subdivision (a) as provided in Section 68085.1(b), and the Judicial Council will transmit the fees collected as provided in Section 68085.1(d).

~~(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.~~