

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

LEG19-05

Title	Action Requested
Judicial Council–Sponsored Legislation (Telephonic Appearances): Court Fees Collected from Telephone Appearance Revenue	Review and submit comments by June 7, 2019
Proposed Rules, Forms, Standards, or Statutes Amend Gov. Code, §§ 68085.1 and 72011	Proposed Effective Date January 1, 2021
Proposed by Judicial Branch Budget Committee Hon. David M. Rubin, Chair	Contact Christy Simons, 415-865-7694 christy.simons@jud.ca.gov

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

Senate Bill 857 (Stats. 2010, ch. 720) created the statutory framework for statewide telephone appearance fees. 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 sections 72010 and 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

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

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) will 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.

Fiscal year 2009–10 revenue-sharing arrangement

In addition to the \$20 per call that providers must transmit to the TCTF, the fee statutes 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 2009–10 fiscal year.” (Gov. Code, § 72011(c).) This amount, determined to be \$943,840, was received in fiscal year (FY) 2009–10 by 38 courts from the vendors under revenue-sharing arrangements. The FY 2009–10 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 2009–10 amount in quarterly payments.

The 2010 legislation directed the Judicial Council to allocate the FY 2009–10 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 FY 2009–10 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.

Telephone appearance services provided directly by courts

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 2009–10 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 follow.

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) through (e), which requires vendors to transmit the FY 2009–10 amount each year 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) to increase the fee share from \$20 to \$23 that each vendor or court that provides telephone appearance services must transmit to the State Treasury for deposit in the TCTF; and
3. Amend Government Code section 72011(b) to prescribe a method and timeline for the courts to use to transmit the fee share amount prescribed in section 72011(a) that is consistent with their regular judicial branch fiscal practices.

Discussion

Repeal Government Code section 72011(c) through (e)

As noted above, the fee structure that requires vendors to continue indefinitely to transmit the FY 2009–10 amount (\$943,840) each year 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 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.

The allocation method under subdivisions (c) through (e) is not based on court size, 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 appearance services (El Dorado and Placer) are still receiving revenue-sharing money of over \$24,000 each annually from the vendor, which CourtCall regards as unfair and anticompetitive.

The committee is proposing to eliminate the FY 2009–10 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 2009–10 amount. The increased revenue transmitted to the TCTF under this approach would, in turn, be distributed among the trial courts under current allocation standards, rather than the outdated SB 857 formula. The additional legislation required to implement this approach is discussed in the next section.

Amend Government Code section 72011(a)

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) with an amendment to subdivision (a) to increase the fee share for providing telephone appearance services.

The committee proposes increasing the share by \$3 per call, from \$20 to \$23. This would result in the distribution to the TCTF of approximately \$864,000, assuming 288,076 CourtCall appearances per year,¹ thereby largely offsetting the loss of the \$943,840 annually.² If the number of telephone appearances increases in the future, the amount distributed to the TCTF would increase.

Any legislation that would simply eliminate the requirements of subdivisions (c) through (e) would result in an immediate savings of \$943,840 annually for CourtCall, essentially providing a windfall, with no offset for the courts for the loss of revenue. However, if legislation to repeal subdivisions (c) through (e) is combined with a \$3 increase in the \$20 share set forth in subdivision (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 courts began providing these services directly, only the vendor provided them, 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 2009–10 allocation. However, some courts are now beginning to

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 result in a distribution to the TCTF of approximately \$951,000. However, due to the accounting problems a fractional dollar amount would create, the committee proposes increasing the share by \$3 per call, not \$3.30.

provide the services and collect the telephone appearance fee themselves. Any courts providing direct telephone appearance services must also transmit \$20 of each telephone appearance fee they receive to the TCTF. (Gov. Code, § 72011(a).) Thus, if the \$20 share to the TCTF set forth in subdivision (a) is increased, the direct service courts would have to pay a greater share of their telephone appearance revenues pursuant to that subdivision. 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.

Amend Government Code section 72011(b)

Trial courts that provide telephone appearance services directly and transmit the share amount to the TCTF are currently required to use the statutory method for transmission provided in section 72011(b). However, this method does not work procedurally for the courts, which use a different method and time frame for the transmission of revenues. To be consistent with the courts' practices, section 72011(b) should be amended to direct courts to follow the procedures that are established in Government Code section 68085.1. In addition, section 72011(b) should be amended to include a reference to fees collected under section 72011(a).

Alternatives Considered

The committee considered two legislative proposals from CourtCall that would eliminate the \$943,840 (the FY 2009–10 amount) required annually under SB 857:

- CourtCall's 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 some period of time, replace the current fixed FY 2009–10 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 2009–10 amount annually 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 share amount by \$3.30 to \$23.30, the amount calculated by Judicial Council Budget Services that would be adequate to offset the FY 2009–10 amount. However, a fractional dollar amount would be difficult for accounting purposes and needlessly awkward. The committee preferred to avoid these issues even if the \$23 share amount does not fully offset the loss of the FY 2009–10 amount.

The committee also considered raising the \$20 share amount 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 2009–10 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 existing 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 FY 2009–10 revenue-sharing arrangement would no longer receive these payments. Instead, the increased share of the telephone appearance fee transmitted to the TCTF 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 TCTF—\$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 time frame that work for the courts that provide telephone appearance services directly may require those courts to modify their procedures. The new method and time frame 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:

- 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 one year from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments

1. Gov. Code, §§ 68085.1 and 72011, at pages 8–9

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

1 **§ 68085.1.**

2
3 (a) This section applies to all fees and fines that are collected on or after January 1, 2006,
4 under all of the following:

5
6 (1)–(3) * * *

7
8 (4) Subdivision (d) of Section 6103.5, Sections 68086 and 68086.1, subdivision (d) of
9 Section 68511.3, Sections 68926.1 and 69953.5, ~~and~~ Chapter 5.8 (commencing
10 with Section 70600), and subdivision (a) of Section 72011.

11
12 (5)–(10) * * *

13
14 (b)–(k) * * *

15
16
17 **§ 72011.**

18
19 (a) For each fee received for providing telephone appearance services, each vendor or court
20 that provides for appearances by telephone shall transmit ~~twenty dollars (\$20)~~ twenty-
21 three dollars (\$23) to the State Treasury for deposit in the Trial Court Trust Fund
22 established pursuant to Section 68085. If the vendor or court receives a portion of the fee
23 as authorized under paragraph (2) of subdivision (b) of Section 367.6 of the Code of Civil
24 Procedure, the vendor or court shall transmit only the proportionate share of the amount
25 required under this section. This section shall apply regardless of whether the Judicial
26 Council has established the statewide uniform fee pursuant to Section 367.6 of the Code
27 of Civil Procedure, or entered into one or more master agreements pursuant to Section
28 72010 of this code. This section shall not apply when a vendor or court does not receive a
29 fee.

30
31 (b) ~~The amounts described in subdivision (a) shall be transmitted~~ A vendor shall transmit the
32 amounts described in subdivision (a) within 15 days after the end of each calendar quarter
33 for fees collected in that quarter. A court shall deposit the amounts described in
34 subdivision (a) as provided in subdivision (b) of Section 68085.1, and the Judicial
35 Council will transmit the fees collected as provided in subdivision (b) of Section 68085.1.

36
37 (c) ~~Vendors shall also transmit an amount equal to the total amount of revenue received by~~
38 ~~all courts from all vendors for providing telephonic appearances for the 2009–10 fiscal~~
39 ~~year.~~

40
41 (d) ~~The amount set forth in subdivision (c) shall be apportioned by the Judicial Council~~
42 ~~among the vendors with which the Judicial Council has a master agreement pursuant to~~

1 ~~Section 72010. Within 15 days of receiving notice from the Judicial Council of its~~
2 ~~apportioned amount, each vendor shall transmit that amount to the State Treasury for~~
3 ~~deposit in the Trial Court Trust Fund.~~

- 4
- 5 ~~(e) The Judicial Council shall allocate the amount collected pursuant to subdivisions (c) and~~
6 ~~(d) for the purpose of preventing significant disruption in services in courts that~~
7 ~~previously received revenues from vendors for providing telephone appearance services.~~
8 ~~The Judicial Council shall determine the method and amount of the allocation to each~~
9 ~~eligible court.~~

10
11