

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SP18-18

Title	Action Requested
Telephonic Appearances: Change in the Fee Amount	Review and submit comments by October 15, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 3.670	January 1, 2019
Proposed by	Contact
Judicial Branch Budget Committee Hon. David M. Rubin, Chair	Christy Simons, 415-865-7694 christy.simons@jud.ca.gov

Executive Summary and Origin

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

Background

The Judicial Council is required by law to enter into a master agreement or master agreements for the provision of telephone appearance services. (Gov. Code, § 72010(a).) The statutes on telephone appearances also require the council to set fees for these services. The Code of Civil Procedure states: “On or before July 1, 2011, the Judicial Council shall establish statewide, uniform fees to be paid by a party for appearing by telephone, which shall supersede any fees paid to vendors and courts under any previously existing agreements and procedures. The fees to be paid for telephone appearances shall include . . . [a] fee for providing the telephone appearance services pursuant to a timely request to the vendor or court . . .” (Code Civ. Proc., § 367.6(a).)¹

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

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 These proposals are circulated for comment purposes only.

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

When the 2013–2018 master agreement for telephone appearance services with CourtCall was due to expire on June 30, 2018, a request for proposals (RFP) was issued for the provision of such services on January 30, 2018.⁴ On March 26, a master agreement was awarded to CourtCall to provide these services for a four-year term commencing on July 1, 2018.⁵ The master agreement was finalized in June 2018 and is now in effect. During the RFP and master agreement formation process in 2018, CourtCall requested an increase in the telephone appearance fee to \$96 per call. A change in the amount of the telephone appearance fee was considered, but there was insufficient time to resolve the fee issue before the old agreement expired and the new agreement went into effect on July 1, 2018.

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

The Proposal

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

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

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

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

⁵ *Id.*

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

By statute, \$20 of each telephone appearance fee is deposited into the Trial Court Trust Fund (TCTF). (Gov. Code, § 72011(a).) The balance is retained by the vendor or court that provides the services. Thus, under this proposal, if the telephone appearance fee is increased to \$94, the vendor or court providing telephone appearance services would receive \$74 per call and the TCTF would receive \$20.⁷

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

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

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

⁷ There has been no increase in the \$20 amount shared with the TCTF since the telephone appearance fee statutes became effective in July 2011. Any increase in the \$20 amount would require a legislative amendment to Government Code section 72011. Also, under section 72011, the vendor or vendors under the statewide master agreement for telephone appearance services are required to transmit an amount equal to the amount of revenue received by all courts from all vendors for providing such services in the 2009–10 fiscal year. This amount, which has been determined to be \$943,840, will continue to be transmitted for distribution to eligible courts under the 2018–2022 master agreement, unless this is changed by legislation.

⁸ CourtCall Proposal, cover letter, p. 1.

⁹ See 2013 report.

(Consumer Price Index–All Urban Consumers) adjusted total fee per telephonic appearance should be \$94 for the four-year term.¹⁰

The updated total \$94 fee is calculated by applying the actual annual CPI-U factors under the contract’s previous five-year term from 2014 through 2017—and the forecasted CPI-U rate for 2018—to CourtCall’s \$66 contract fee during the five-year 2013 through 2018 renewal term, yielding the CPI-U adjusted fee of \$70.88 as of 2018. The forecasted CPI-U factor of 2.1%, which is the simple average of the actual CPI factors from 2001 through 2017, is then applied to the \$70.88 from 2018 through 2022, providing the final CPI-U adjusted fee estimate of \$77.03 at the expiration of the proposed four-year contract renewal term, as of June 30, 2022. The final CourtCall fee portion of \$74.00 is the simple average of the CPI-U adjusted CourtCall fees of \$70.88 and \$77.03 estimated as of the beginning and end of the proposed four-year contract renewal term. To this \$74 per appearance fee retained by CourtCall is then added the \$20 TCTF portion to yield the final total fee of \$94.

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

Alternatives Considered

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

Fiscal and Operational Impacts

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

¹⁰ The total fee of \$94 is calculated using the same method as the original CPI-U analysis, with one exception. The actual, annual CPI-U rates used in the average to forecast CPI-U rates is 17 years, from 2001 through 2017, in the updated analysis compared with 12 years in the original. The longer time period was also used by CourtCall in a number of the indices it cited in its response to the RFP to support its arguments for a fee increase.

Request for Specific Comments

Comments are specifically invited on the following questions:

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

Attachments and Links

1. Cal. Rules of Court, rule 3.670, at page 6
2. Link A: Code Civ. Proc., § 367.6:
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=367.6.&lawCode=CCP
3. Link B: Gov. Code, § 72010:
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=72010.&lawCode=GOV
4. Link C: Gov. Code, § 72011:
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=72011.&lawCode=GOV

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

1 **Rule 3.670. Telephone appearance**

2
3 **(a)–(j) * * ***

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

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

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

14
15 (2) * * *

16
17 (3) * * *

18
19 **(l)–(q) * * ***