



Judicial Council of California · Administrative Office of the Courts

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JUDICIAL COUNCIL REPORT

For business meeting on April 29, 2011

Title	Agenda Item Type
Telephone Appearances: Statewide Uniform Fees	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 3.670 and 5.324	July 1, 2011
Recommended by	Date of Report
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Executive Summary

The Office of the General Counsel and the Finance Division of the Administrative Office of the Courts recommend that the Judicial Council amend rule 3.670 of the California Rules of Court on telephone appearances to establish the fees to be charged by vendors and courts for parties to appear by telephone at court hearings and conferences. The fees established under amended rule 3.670 implement Senate Bill 857, the 2010 judicial-branch related budget trailer bill that requires the Judicial Council to establish statewide, uniform telephone appearance fees by July 1, 2011. In addition, this report recommends that rule 5.324 on telephone appearances in Title IV-D child support proceedings be amended to be consistent with the amendments to rule 3.670.

Recommendation

The Office of the General Counsel and the Finance Division of the Administrative Office of the Courts recommend¹ that the Judicial Council, effective July 1, 2011:

1. Amend rule 3.670 of the California Rules of Court on telephone appearances to establish statewide, uniform fees for telephone appearances consisting of (1) a telephone appearance fee of \$75, (2) a late request fee of \$25, and (3) a cancellation fee of \$5; and
2. Amend rule 5.324 on telephone appearances in Title IV-D child support proceedings to provide accurate cross-references to the amended subdivisions in rule 3.670.

The text of the amended rules is attached at pages 12–14.

Previous Judicial Council Action

Since the 1980s, the Judicial Council and the Legislature have been developing statutes, standards, and rules to permit parties to appear by telephone in various types of court proceedings.² The goal of these efforts has been to increase access to court proceedings and to reduce costs for attorneys and self-represented litigants by enabling them to appear in court by telephone.

Significant legislative and rule changes relating to telephone appearances occurred in 2007. That year, the Legislature passed Assembly Bill 500 (Lieu; Stats. 2007, ch. 268) and the Judicial Council amended rule 3.670. The legislation and the amended rule stated that their common intent was “to promote uniformity in the practices and procedures relating to telephone appearances in civil cases.” Both also contain a policy statement that “[to] improve access to the courts and reduce litigant costs, courts should permit parties, to the extent feasible, to appear by telephone at appropriate conferences, hearings, and proceedings.” (Code Civ. Proc., § 367.5(a); Cal. Rules of Court, rule 3.670(a).)

Rule 3.670 prescribes the procedures for parties to appear by telephone in civil cases. It also includes provisions on vendors, charges for service, audibility, the reporting of telephonic

¹ In preparing this recommendation, advice was provided by a working group that was composed of members of the Civil and Small Claims Advisory Committee, the Court Executives Advisory Committee, and other court representatives.

² A history of the law on telephone appearances was included in a previous Judicial Council report. That report was on the agenda for the Judicial Council’s meeting on October 26, 2007, which is available online at: www.courts.ca.gov/xbcr/cc/age102607.pdf.

proceedings, and the provision of information about telephone appearances.³ Because this rule was most recently amended several years before SB 857 was enacted, it does not provide for any uniform fees for telephone appearances.

As explained further below, to implement SB 857, rule 3.670 should be amended to include statewide, uniform telephone appearance fees, effective July 1, 2011. That rule should also be amended to include several other provisions to effectuate the legislation. And rule 5.324 should be amended to be consistent with rule 3.670.

Rationale for Recommendation

Telephone Appearance Fee Legislation

SB 857, which was signed by the Governor on October 19, 2010, and went into effect immediately, contains several provisions relating to fees for telephone appearances in court proceedings.⁴

The bill provides that for each fee received for providing telephone services, each vendor or court that provides for appearances by telephone shall transmit \$20 to the State Treasury for deposit in the Trial Court Trust Fund. The amounts to be sent to the State Treasury shall be transmitted within 15 days after the end of each calendar quarter for fees collected in that quarter. (Gov. Code, § 72011(a)–(b).) The two vendors that currently provide telephone appearance services to the superior courts in California have been transmitting the funds as required.

The telephone appearance fee statutes enacted as part of SB 857 require certain additional actions to be taken in order for the legislation to be fully implemented. In particular, SB 857 provides: “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 existing agreements and procedures.” (Code Civ. Proc., § 367.6(a).) This provision reflects the long-term policy supported by the bar and the public that the procedures and processes for appearances in court by telephone should be uniform throughout California.

SB 857 specifies that the fees to be paid for telephone appearances shall include three separate fees:

1. A fee for providing the telephone appearance service pursuant to a timely request to the vendor or court;

³ A rule concerning telephone appearances in Title IV-D child support proceedings had been adopted in 2005. (See Cal. Rules of Court, rule 5.324.) That rule includes cross-references to the subdivisions of rule 3.670 on vendors, procedures, audibility, reporting, and information.

⁴ SB 857 (Stats. 2010, ch. 720) is available online at www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0851-0900/sb_857_bill_20101019_chaptered.pdf.

2. An additional fee for providing services if the request is made shortly before the hearing, as defined by the Judicial Council; and
3. A fee for canceling a telephone appearance request.

(Code Civ. Proc., § 367.6(a).)⁵

Proposed fees

To implement SB 857, the Judicial Council, by July 1, 2011, must establish the amounts of the statewide, uniform fees to be charged for telephone appearances. This involves three specific fees: (1) a fee for telephone appearances, (2) a late request fee, and (3) a cancellation fee.⁶

Telephone appearance fee (rule 3.670(j)(1). The principal fee to be established is the telephone appearance fee. This is the total fee to be charged by a vendor or court for providing telephone appearance services to a party that wants to appear by telephone. The fee includes the \$20 that the vendor or court receiving the fee must transmit to the State Treasury for deposit in the Trial Court Trust Fund.

Currently, two vendors provide telephone appearance services to the trial courts in California. One vendor provides services in 57 counties and the other in 1 county. The first vendor presently charges between \$70 and \$85 per call, including the \$20 for transmittal to the State Treasury, for telephone appearances; the different amounts charged mostly reflect existing local contracts between the vendors and courts under which some courts share a portion of the vendor's revenue from telephone appearance fees and others do not.⁷ In general, the fee is higher at courts that receive a portion of the fee revenue from the vendor. The second telephone appearance services

⁵ SB 857 also provides: "On 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." (See Gov. Code, § 72010(a).) The Administrative Office of the Courts previously issued a Request for Information, received responses, and is in the process of preparing one or more master agreements to implement this statutory requirement.

⁶ Under SB 857, the version of Code of Civil Procedure section 367.6 that provides for these three fees will become inoperative on July 1, 2013, and, as of January 1, 2014, will be repealed, unless a later enacted statute that becomes operative on or before January 1, 2014, deletes or extends the dates on which it becomes inoperative and is repealed. Thus, the amendments to the rules proposed in this report implementing SB 857 will need to be reviewed again within two years to determine what further rule changes may be necessary to comply with the statutory changes that will occur in 2013.

⁷ Under SB 857, the existing local contracts between the vendors and the courts will be terminated and replaced by the new statewide master agreement or agreements; hence, there will no longer be any revenue sharing between the vendors and the courts under local contracts. However, to prevent service disruption in courts that previously received revenues, SB 857 provides that—in addition to the \$20 per call transmitted to the State Treasury—vendors shall transmit an amount equal to the total amount of revenue received by all courts from all vendors for providing telephone appearances in the 2009–2010 fiscal year, which amount shall be allocated by the Judicial Council to the courts. (Gov. Code, § 72011(c)–(e).) Thus, after the new uniform telephone appearance fees are established, vendors will continue to provide some share of the revenues that they receive to the courts in addition to \$20 per call.

vendor charges a total of \$74 per call, including the \$20 collected for transmission to the State Treasury and \$14 collected for the court.

This proposal recommends that the statewide, uniform telephone appearance fee be established in the amount of \$75 per call. This amount is reasonable. The fee of \$75 per call appears to be close to the weighted average of all the current telephone appearance fees charged by the vendors. The fee is set at the proposed amount based on the assumption that the telephone services and equipment that will be provided under the new master agreement or agreements will be at essentially the same level of quality as is presently provided. The proposed fee amount also assumes that some benefits should accrue to the users of telephone appearance services because of the large volume of services that will be provided under the statewide master agreement or agreements.

Fee for late requests (rule 3.670(j)(2). This proposal recommends a fee of \$25 for late requests to appear by telephone. The large vendor in California currently charges a late fee of between \$0 and \$35. The small vendor currently does not charge a late fee, though it has stated that it once did and reserves the right to do so again to prevent abuse.

Cancellation fee (rule 3.670(j)(3). This proposal recommends a cancellation fee of \$5. It appears that neither of the current vendors charges a cancellation fee. The applicable statute requires a cancellation fee and this proposal recommends that the cancellation fee be assessed at a modest amount. Furthermore, the proposal recommends that a hearing or an appearance that is taken off calendar or continued by the court should not be treated as a cancellation under the rule. If the hearing or appearance is taken off calendar by the court, there would be no charge to the party for the telephone appearance. If the hearing or appearance is continued by the court, the appearance fee would be refunded to the requesting party or, if the party requesting the telephone appearance agrees, would be applied to the new hearing date.

Other proposed rule amendments

This proposal recommends several additional amendments to rule 3.670 to assist in the implementation of the new legislation on telephone appearance fees.

First, rule 3.670 would be amended to be consistent with the provisions in SB 857 concerning the permissible methods of providing for telephone appearances.⁸ Existing rule 3.670(i), which allows courts to enter into contracts with private vendors, would be replaced with a new provision listing the permissible methods of providing telephone appearance services, effective July 1, 2011. Specifically, amended subdivision (i) would authorize courts to provide for telephone services only by one of the following three methods: (1) under an agreement with a vendor or vendors that have entered into a statewide master agreement with the Judicial Council; (2) by directly providing telephone services; or (3) under an agreement between the court and a vendor that was entered into before July 1, 2011, and has not expired. SB 857 requires that, if an

⁸ See Gov. Code, § 72010(c).

existing local contract for telephone appearance services is subject to cancellation by the court after July 1, 2011, the court shall exercise its option to cancel the contract as soon after July 1, 2011 as is legally possible.

Second, rule 3.670 would be amended to specify by when a party must notify the vendor that it intends to appear by telephone to avoid a fee for a late request. Currently, rule 3.670 provides that a party intending to appear by telephone must, at least three court days before the appearance, notify the court and all other parties of the party's intent. If after receiving notice from another party, a party that has not given notice also decides to appear by telephone, the party may do so by notifying the court and all other parties that have appeared in the action, no later than noon on the court day before the appearance, of its intent to appear by telephone. (See rule 3.670(g)(1) and (2).) The current rule is silent on the notice to be given to vendors of telephone appearance services. The amendments to rule 3.670 would essentially provide that, if a party notifies a vendor that it wants to appear by telephone within the timelines contained in these provisions for notifying the court, the request is timely. In addition, the rule would recognize certain other circumstances in which a party may provide shorter notice to the vendor without incurring a late fee because it would not be feasible or practical for the party to give notice earlier.

Specifically, rule 3.670(j)(2), on late fees, would provide that an additional late request fee of \$25 shall be charged for an appearance by telephone if the request to the vendor or court providing telephone services is not made at least three days before the scheduled appearance, except when:

1. There is an ex parte or other hearing set on shortened time for which three days' notice would not be feasible or practical;
2. The court, on its own motion, sets a hearing or a conference on shortened time;
3. The matter has a tentative ruling posted within the three-day period; or
4. The request to appear by telephone is made by a party that received notice of another party's intent to appear and afterwards decides also to appear by telephone under rule 3.670(g)(2). The request of a party seeking to appear under (g)(2) would be timely if the request is made by noon on the court day before the hearing or conference.

Third, rule 3.670 would be amended to clarify how the fee waiver provision in SB 857 would operate for callers and vendors. The legislation provides that persons entitled to fee waivers shall not be charged telephone appearance fees, subject to certain conditions that are enumerated in the legislation. (See Code Civ. Proc., § 367.6(b).) The statute, however, does not specify how a vendor or a court providing telephone appearance services is to know about or confirm the existence of a fee waiver. To clarify this, the amended rule would include a new provision stating that, in order to obtain telephone services without payment of a telephone appearance fee from a

vendor or a court that provides telephone appearance services, the party must advise the vendor or court that he or she has a fee waiver; and, if a vendor requests, the requestor must transmit to the vendor a copy of the order granting the fee waiver. (See amended rule 3.670(k)(1).)

Fourth, a new provision would be added to rule 3.670 stating that proceedings for child or family support under Title IV-D of the Social Security Act that involve the local child support agency are exempt from the new fee provisions in rule 3.670(j). (See proposed amended rule 3.670(k)(2).) As a commentator has explained,⁹ because federal regulations prohibit charging fees in title IV-D cases where the state has elected to be a non-cost recovery state (as is the case with California's IV-D program), the proposed statewide uniform fee cannot apply to any telephone appearances under rule 5.324 without putting federal funding for California's child support program at risk. Thus, it is important that the rule on telephone appearance fees make it clear that no fees may be charged for appearances in Title IV-D proceedings; also, the new provision in rule 3.670 on telephone appearances in Title IV-D proceedings would state that, when requesting telephone services from a vendor or a court that provides telephone appearance services, the requester must advise the vendor or the court that the proceeding is for child or family support under Title IV-D and involves the local child support agency. (See rule 3.670(k)(2).)

Fifth, rule 3.670(l) would be amended to become (n) and to provide that the court, by local rule, may designate the conference call vendor or vendors that must be used for telephone appearances.

Sixth, an advisory committee comment would be added to rule 3.670 to clarify its scope and application. The comment would explain that rule 3.670 generally does not apply to criminal, juvenile, or family law matters. (See Cal. Rules of Court, rule 3.670(b)[rule applies to general civil cases and unlawful detainer and probate proceedings].) The comment would note, however, that certain provisions of the rule do apply to telephone appearances in proceedings for child or family support under Title IV-D. (See proposed amended rule 5.324(j)[rule 3.670(i) and(k)–(o)—on vendors, procedure, audibility, reporting, and information—apply to telephone appearances in Title IV-D proceedings].) Furthermore, the comment would point out that, under new subdivision (k)(2), telephone appearances in Title IV-D proceedings are exempt from the fee provisions in subdivision (j). (See proposed amended rule 3.670(k)(2).) Finally, the comment would indicate that, under Government Code section 72010(c) and rule 3.670(i)(3), even for proceedings in which fees are authorized, the fees may be waived by a judicial officer, in his or her discretion, for parties appearing directly by telephone in that judicial officer's courtroom. Providing this information should be helpful to persons seeking to understand the effect of the rule.

Finally, this proposal recommends amending rule 5.324 on telephone appearances in child support proceedings under Title IV-D. Currently, this rule provides that subdivisions (i) through

⁹ See comment chart, comment 11.

(m) of rule 3.670, on vendors, procedure, audibility, reporting, and information, apply to telephone appearances under it. (Cal. Rules of Court, rule 5.324(j).) To reflect the amendments to rule 3.670 in this proposal, rule 5.324(j) would be amended to state that subdivisions (i) and (k) through (o) apply to it. As explained above, new subdivision (j) of rule 3.670 on fees would not apply to the telephone appearances under Title IV-D because such appearances are exempt from fees. (See proposed amended rule 3.670(k)(2).)

Comments, Alternatives Considered, and Policy Implications

Comments and alternatives considered

This proposal was circulated for public comment on a special cycle between March 7 and April 1, 2011. Eleven comments were received on the proposal.¹⁰ The commentators included two judges, a commissioner, an attorney, an unidentified individual, three superior courts, the Court Liaison Committee of the San Francisco Trial Lawyers Association, the Committee on Administration of Justice of the State Bar, and a vendor of telephone appearance services.¹¹

General comments on proposed fees. The Court Liaison Committee of the San Francisco Trial Lawyers Association commented that “uniform fees for court calls are a very good idea.” (Comment chart, comment 6.)

Comments on the amount of the fees. The major purpose of this proposal is to establish the telephone appearance fees required by SB 857. As mentioned above, the invitation to comment suggested that the principal fee might be set at a specific dollar amount between \$70 and \$75. It also suggested that the late fee might be set at \$25 and the cancellation fee at \$5. Several commentators made observations and recommendations about the amounts of the fees to be charged for telephone appearance services. (See comment chart, comments 1, 2, 4, and 7.)

CourtCall, LLC, the main vendor of telephone appearance services for court proceedings in California, urged that the main telephone appearance fee be established at \$80 for the first two years. CourtCall did not oppose either the \$25 late fee or the \$5 cancellation fee proposed in the invitation. (Comment chart, comment 1.) The commentator’s recommendation for an \$80 statewide uniform fee for telephone appearances has been carefully considered. However, based on consideration of all the information and comments, this report recommends a statewide, uniform telephone appearance fee of \$75 per call. Although \$80 per call is less than the maximum amount currently charged by CourtCall, it is also more than the weighted average of the fees currently charged by that vendor in all the courts where it has contracts. The weighted average of the telephone appearance fees that CourtCall is currently charging in all the superior courts appears to be close to the amount proposed for the fee in this report. In addition, based on

¹⁰ In addition, one court indicated that it had reviewed the proposal but had no comments to submit.

¹¹ A chart summarizing the comments and the responses is attached at pages 15–30.

the comments and information, this report recommends that the late fee be set at \$25 and the cancellation fee be set at \$5, as originally proposed.

Several commentators suggested fees lower than those proposed in the invitation to comment and recommended in this report. For instance, an individual suggested that the telephone appearance fee be set at \$20 per call. (Comment chart, comment 4.) This would be impractical and would defeat the purpose of the law that expressly provides for vendor-based telephone appearances. Because the principal telephone appearance fee includes the \$20 to be distributed to the courts, a fee set at that level would provide no revenue for vendors and no incentive for them to provide telephone appearance services. To address the issue of access for low-income parties to the courts through telephone appearances, both SB 857 and the proposed rule amendments provide that if a party is entitled to a fee waiver, neither a vendor nor a court may charge that party any fees, subject to certain conditions. (See Code Civ. Proc., § 367.6(b); proposed amended rule 3.670(k)(1).)

Other commentators questioned the proposed amounts of the late fee and the cancellation fee. One suggested eliminating the late fee and reducing the cancellation fee to \$1. (Comment chart, comment 2.) Another suggested reducing the proposed late fee from \$25 to \$5. (Comment chart, comment 7.) This report does not recommend that these changes be made. First, the option of eliminating one or both of these fees is not available because the applicable statute requires fees for late requests and cancellations. (Code Civ. Proc., § 367.6(a).) Second, the proposed amounts of \$25 for the late fee and \$5 for the cancellation fee are reasonable. The \$25 late fee is in the middle range of what is currently charged by vendors (between \$0 and \$35), and the \$5 fee is nominal.

Comments on determining when a request is late. This proposal includes amendments to rule 3.670 to clarify when a party must notify a vendor that it wants to appear by telephone to avoid paying a fee for a late request. The proposal that was circulated proposed that if a party notified a vendor that it wanted to appear by telephone within the timelines specified in rule 3.670((g)(1)–(2) for notifying the court, the request would be timely. The invitation to comment asked whether parties should be required to notify vendors of their request to appear by telephone anytime sooner than they provide notice to the court. Several comments were received on this issue. (See comment chart, comments 1, 2, 7 and 8.)

None of the commentators recommended any additional time for notice to vendors. However, some did suggest clarifications of the rule. For example, a court recommended that there should be no late fee if the court, on its own motion, added a case on calendar with so little advance notice that a party could not make a timely request for a telephone appearance. (Comment chart, comment 8.) Another commentator expressed concern that every request for a telephone appearance at an ex parte hearing might be considered late and therefore result in the imposition of a late fee. (Comment 2.) The main vendor of telephone appearance services suggested that, consistent with its current practice, there should be a late fee if notice to the vendor is not provided at least three days before the appearance, but with exceptions for when the court has

requested a hearing on shortened time, the matter has a tentative ruling posted within three days of the appearance, or the appearance is for an ex parte hearing in which the three-day rule would be impractical. (Comment 1.) Finally, the State Bar's Committee on Administration of Justice stated that the notice to the vendor does not need to be any longer than to the court and notice by noon on the court day before the hearing should be sufficient. (Comment 7.)

Based on the comments, this proposal recommends that rule 3.670 should be amended to state that the late fee should apply if a request to appear by telephone is not made at least three days before the scheduled appearance, but with the following exceptions: (1) there is an ex parte or other hearing on shortened time for which three days' notice would not be feasible or practical; (2) the court, on its own motion, has set a hearing or a conference on shortened time; (3) the matter has a tentative ruling posted within the three-day period; or (4) the request to appear by telephone is made by a party who received notice of another party's intent to appear and afterwards decides also to appear by telephone under rule 3.670(g)(2).¹² The request of a party seeking to appear under (g)(2) would be timely if its request is made to the vendor or the court by noon on the court day before the hearing or conference. (See proposed amended rule 3.670(j)(2)(A)–(D).) This approach to the late fee balances the needs of vendors and courts to receive information about telephone appearances sufficiently in advance to make preparations with the recognition that, as a practical matter, certain requests cannot be made until shortly before a hearing or conference.

Comments on other matters. Two commentators raised some issues and made suggestions about clarifying the scope of rule 3.670. (See comment chart, comments 3 and 11.) A judge stated that she had no issue with the proposed rule, but that she uses telephone appearances in criminal and other types of proceedings. She did not want the setting of uniform fees by the rule to create an impression that courts always need to utilize a vendor in order to allow telephone appearances. To clarify that rule 3.670 does not generally apply to criminal, family, or juvenile law cases and that a judge always has the discretion to use the court's own telephone to conduct hearings and conferences, an advisory committee note has been added to amended rule 3.670.

A commissioner pointed out another matter that needs clarification. Although rule 3.670 does not generally apply outside the civil area, there is an exception for child support hearings and conferences under Title IV-D of the Social Security Act. Several provisions in rule 3.670 do apply to these proceedings. (See rule 5.324(j).) But for the reasons explained by the commissioner, no fee should be charged. To clarify this, a new provision has been added to rule 3.670 stating that subdivision (j) of that rule, on fees, would not apply to telephone appearances

¹² The first three exceptions are based on comments 1 and 8. The fourth exception is based partly on the original proposal that was circulated and partly on comment 7, which recognize that a request by a party that decides to appear after another party has requested to appear by telephone should not be treated as late for the purposes of the fee. However, this report does not agree with the suggestion of a commentator that notice to a vendor by noon the day before the appearance would generally be sufficient. For calendaring, scheduling and other reasons, both vendors and the courts often need more notice than such a rule would provide. (See comment 7 and response.)

under Title IV-D because those appearances are exempt from fees. (See proposed amended rule 3.670(k)(2).

Policy Implications

This proposal implements legislation that provides funding for the courts for providing a service to the public directly or through vendors that increases access and reduces costs for litigants appearing at hearings and conferences in civil cases.

Implementation Requirements, Costs, and Operational Impacts

This rule proposal by itself will not require any significant action by the courts. However, the underlying trailer bill legislation will require the courts to undertake some further administrative activities to fully implement that legislation, including canceling existing local contracts with telephone appearance service vendors and electing to participate under the new master agreement or agreements that will be in effect by July 1, 2011. Courts will have the ability to choose their preferred vendor or vendors under the master agreement or agreements. To the extent that they elect to continue to use their current vendor, there would be little change in operations.

Attachments

1. Amended Cal. Rules of Court, rules 3.670 and 5.324, at pages 12–14.
2. Chart of comments, at pages 15–30.

Rules 3.670 and 5.324 of the California Rules of Court are amended, effective July 1, 2011, to read:

1 **Rule 3.670. Telephone appearance**

2
3 (a)–(h) * * *

4
5 (i) ~~Private vendor; charges for service~~ **Provision of telephone appearance services**

6
7 A court may provide ~~teleconferencing for court~~ for telephone appearances by entering into
8 a contract with a private vendor. The contract may provide that the vendor may charge the
9 party appearing by telephone a reasonable fee, specified in the contract, for its services.
10 only through one or more of the following methods:

- 11
12 (1) An agreement with one or more vendors under a statewide master agreement or
13 agreements.
14
15 (2) An agreement between a court and a vendor that was entered into before July 1,
16 2011, and that has not expired. If a contract is subject to cancellation by a court after
17 July 1, 2011, that court must exercise its option to cancel the contract as soon after
18 July 1, 2011 as is legally possible to do so.
19
20 (3) The direct provision by the court of telephone appearance services. If a court directly
21 provides telephone services, it must collect the telephone appearance fees provided
22 for under (j). A judge may, at his or her discretion, waive telephone appearance fees
23 for parties appearing directly by telephone in that judge’s courtroom.

24
25 (j) **Telephone appearance fee amounts; time for making requests**

26
27 The telephone appearance fees specified in this subdivision are the statewide, uniform fees
28 to be paid by parties to a vendor or court for providing telephone appearance services.
29 These fees supersede any fees paid by parties to vendors or courts under agreements or
30 procedures existing before July 1, 2011. The fees to be paid to appear by telephone are as
31 follows:

- 32
33 (1) The fee to appear by telephone, made by a timely request to a vendor or court
34 providing telephone appearance services, is \$75 for each appearance.
35
36 (2) An additional late request fee of \$25 is to be charged for an appearance by telephone
37 if the request to the vendor or the court providing telephone services is not made at
38 least three days before the scheduled appearance, except when:
39

- 1 (A) There is an ex parte or other hearing or conference set on shortened time for
2 which three days' notice would not be feasible or practical;
3
4 (B) The court, on its own motion, sets a hearing or conference on shortened time;
5
6 (C) The matter has a tentative ruling posted within the three-day period; or
7
8 (D) The request to appear by telephone is made by a party that received notice of
9 another party's intent to appear and afterward decides also to appear by
10 telephone under (g)(2). The request of a party seeking to appear under (g)(2) is
11 timely if the request is made to the vendor or the court providing the service by
12 noon on the court day before the hearing or conference.

- 13
14 (3) A fee of \$5 is to be charged instead of the fees under (1) and (2) if a party cancels a
15 telephone appearance request and no telephone appearance is made. A hearing or
16 appearance that is taken off calendar or continued by the court is not a cancellation
17 under this rule. If the hearing or appearance is taken off calendar by the court, there
18 is no charge for the telephone appearance. If the hearing or appearance is continued
19 by the court, the appearance fee must be refunded to the requesting party or, if the
20 party agrees, be applied to the new hearing date.

21
22 **(k) Fee waivers and Title IV-D proceedings**

- 23
24 (1) A party that has received a fee waiver must not be charged any of the fees for
25 telephone appearances provided under (j), subject to the provisions of Government
26 Code section 367.6(b). To obtain telephone services without payment of a telephone
27 appearance fee from a vendor or a court that provides telephone appearance services,
28 a party must advise the vendor or the court that he or she has a fee waiver. If a
29 vendor requests, the requester must transmit a copy of the order granting the fee
30 waiver to the vendor.
31
32 (2) Proceedings for child or family support under Title IV-D of the Social Security Act
33 that are brought by or otherwise involve the local child support agency are exempt
34 from the fee provisions in (j). When requesting telephone services from a vendor or a
35 court that provides telephone appearances services, the requester must advise the
36 vendor or the court that the proceeding is for child or family support under Title IV-
37 D and involves the local child support agency.

38
39 ~~(j)(l)~~ * * *

40
41 ~~(k)(m)~~ * * *

42
43 ~~(l)(n)~~ **Conference call provider vendor or vendors**

1
2 A court, by local rule, may designate a particular the conference call provider vendor or
3 vendors that must be used for telephone appearances.

4
5 ~~(m)(o)~~ * * *

6
7 **Advisory Committee Comment**

8
9 This rule generally does not apply to criminal, juvenile, or family law matters. (See Cal. Rules of Court,
10 rule 3.670(b)[rule applies to general civil cases and unlawful detainer and probate proceedings].)
11 However, certain provisions of this rule apply to telephone appearances in proceedings for child or family
12 support under Title IV-D of the Social Security Act. (See rule 5.324(j)[subdivisions (i) and (k)–(o) of rule
13 3.670— on vendors, procedure, audibility, reporting, and information—apply to telephone appearances in
14 Title IV-D conferences and hearings].) As stated in subdivision (k)(2) of this rule, telephone appearances
15 in Title IV-D proceedings are exempt from the fee provisions in subdivision (j) of this rule. Also, under
16 Government Code section 72010(c) and subdivision (i)(3) of this rule, even for proceedings in which fees
17 are authorized, the fees may be waived by a judicial officer, in his or her discretion, for parties appearing
18 directly by telephone in that judicial officer’s courtroom.

19
20
21 **Rule 5.324. Telephone appearance in Title IV-D hearings and conferences**

22
23 **(a)–(i)** * * *

24
25 **(j) Vendors, procedure, audibility, reporting, and information**

26
27 ~~Subdivisions (i) through (m) of r~~Rule 3.670(i) and (k)–(o) apply to telephone appearances
28 under this rule.

29
30 **(k)** * * *

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Telephone Appearances: Statewide Uniform Fees (amend Cal. Rules of Court, rule 3.670)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Response
1.	<p>CourtCall, LLC Los Angeles, California By Bob Alvarado, CEO</p>	<p>NI</p>	<p>In 1995 CourtCall created the turn-key telephonic court appearance system that is the basis for the revenue model contained within SB 857 and the rule at issue. In fact, it was also CourtCall that first suggested and implemented the revenue sharing program with local courts that has been successfully operating for almost 15 years. CourtCall has facilitated well in excess of two million CourtCall Appearances, and accordingly, is the one company that has the requisite experience and knowledge to address the issues surrounding the proposed rule.</p> <p>CourtCall set \$80 as the appropriate amount to be charged for the Uniform Statewide Fee. CourtCall did not arbitrarily determine this amount. Indeed, it is less than the maximum amount currently charged by CourtCall. Rather it was, and is, based upon CourtCall's unique position of knowing what is required to maintain the appropriate level of service demanded by courts and attorneys. No one else has the experience to do anything but speculate about this. While it is odd that CourtCall's historical late fee is proposed to be reduced by 28% (from \$35 to \$25), CourtCall does not challenge that change nor does CourtCall seek any increase in the \$5 cancellation fee. However, we are troubled by the notion that others who lack experience in the field have appeared to determine, by virtue of the suggestion in the Invitation To Comment, that the fee should be "between \$70 and \$75."</p>	<p>The commentator's recommendation for an \$80 statewide uniform fee for telephone appearances has been carefully considered. However, based on consideration of all the comments and information, this proposal recommends a statewide uniform telephone appearance fee of \$75 per call. Although \$80 per call is less than the maximum amount currently charged by CourtCall, it is also more than the weighted average of the fees currently charged by that vendor in all the courts where it has contracts. The weighted average of the telephone appearance fees that CourtCall is currently charging in all the superior courts is close to the amount proposed in the report.</p> <p>In addition, based on the comments and other information, this proposal recommends that the late fee be set at \$25 and the cancellation fee be set at \$5, as originally proposed.</p>

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			<p>The State previously established its share of the fee to be \$20, effectively increasing existing prices by \$20. CourtCall has historically limited its price increases to \$5 every three years, so the State has now effectively taken the next twelve years of increases away from CourtCall. While CourtCall recognizes the unique relationship it has with the courts and the general legal community, it must also be recognized that the State has now taken over 33% of the old gross fee and 25% of the new fee, even if that fee is \$80 as suggested by CourtCall. CourtCall strongly urges that the fee be established at \$80 for the first two years.</p> <p>CourtCall also suggests that consistent with our current practice, the late fee should be in place for telephonic appearances set on less than 3 days notice, except when the court has requested a hearing on shortened time, the matter has a tentative ruling posted within that 3 day period or it is an ex parte hearing on shortened time where the 3 day rule would be impractical.</p>	<p>The additional \$20 per call that the Legislature has determined should be allocated to the Trial Courts under SB 857 is very much needed at this time to address the present fiscal crisis. The amounts set by this rule amendment—and the corresponding master agreements required by statute—will have a duration of two years, until June 30, 2013. Before that time, the rules and master agreements will be reconsidered in light of the circumstances.</p> <p>Rule 3.670 (j)(2) has been modified in response to this comment., including specifying in the rule the exceptions to the requirement to provide three days’ notice to vendors. However, based partially on the comments of the State Bar’s Committee on Administration of Justice, an additional exception has been added: there would be no late fee if the request to appear by telephone is made by a party who received notice of another party’s intent to appear and thereafter decides also to appear by telephone under rule 3.670(g)(2).The request of such a party seeking to appear would be timely if its request is made to the vendor or court providing telephone appearance services by noon on the court day before the hearing or conference.</p>
2.	William M. Grewe, Esq. Rose, Klein & Marias LLP	NI	My concern is that, down the road, the cost of a telephonic appearance will be at a price point	The fees will not grow each year. It is anticipated that the rule and related master agreement or

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	Ventura, California		<p>that will cause attorneys to make more appearances in person. That would be contrary to the original justification for telephonic appearances: Lawyers/cars would be off the highways and out of the parking lots; courthouses would be less crowded. As with filing fees, it is likely that the cost of a telephonic appearance will grow each year as those setting the price will be concerned with generating income not keeping the price at an attractive level.</p> <p>There should be only a \$1 charge for cancelling an appearance. It will begin at \$5 and creep to \$20 in no time. If a cancellation is to occur, it will be because something has changed compelling the attorney to appear personally. There should be only the most modest penalty for that.</p> <p>Consistently, a request to appear telephonically should only be considered "late" if it is made one court day before the hearing. There should not be a penalty. There is no additional work justifying a penalty. Moreover, every ex parte hearing would mandate a "late" fee for a telephonic appearance.</p>	<p>agreements will remain effect for the next two years, until June 30, 2013.</p> <p>This proposal recommends only a modest cancellation fee of \$5. Furthermore, a hearing or appearance that is taken off calendar or continued by the court would not be a cancellation under the rule. If the hearing or appearance is taken off calendar by the court, there would be no charge for the telephone appearance. If the hearing or appearance is continued by the court, the appearance fee would be refunded to the requesting party or, if the party agrees, be applied to the new hearing date.</p> <p>This proposal recommends only a modest late fee of \$25. The report further proposes the late fee should apply if a request to appear by telephone is not made at least three days before the scheduled appearance, with the following significant exceptions: (1) when the matter involves an ex parte or other hearing or conference set on shortened time where the three-day rule would be not be feasible or practical, (2) when the court, on its own motion, sets a hearing or conference on</p>

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				shortened time, (3) when the matter has a tentative ruling posted within the three-day period, or (4) when the request is made by a party who receives notice of another party’s intent to appear and then decides to appear by telephone under rule 3670(g)(2). This approach to the late fee balances the needs of vendors and courts to receive information about telephone appearances sufficiently in advance to make preparations with the recognition that, as a practical matter, some requests cannot be made until shortly before a hearing or conference.
3.	Hon. Suzanne N. Kingsbury Judge of the Superior Court of El Dorado County	NI	I don’t have an issue with the proposed rule, per se, but I have a criminal calendar and allow telephone appearances for attorneys who are distant from the court on short non contested matters (such as requesting a continuance, setting future dates, etc.) or who cannot appear due to weather conditions. I also allow victims to appear by phone if they want to be heard but cannot make it to court, such as addressing the court at sentencing, on bail issues, and so on. Although I utilize Court Call as a provider when I am handling civil matters, I don’t use them for criminal cases. Our court also tends not to use them for DCSS cases and other types of family law matters. I wouldn’t want the setting of uniform fees by the rule to create some sort of presumption that courts need to always utilize a provider in order to allow a telephone appearance. The court needs to retain the discretion to directly make the call at its own expense.	The proposed amendments to rule 3.670 are not intended to create a presumption that courts always need to use a vendor to provide for telephone appearances. First, rule 3.670 generally does not apply to criminal, juvenile, or family law matters. (See Cal. Rules of Court, rule 3.670(b)[rule applies to general civil cases and unlawful detainer and probate proceedings].) There is an exception for telephone appearances in child support and custody hearings and conferences under Title IV-D. For such cases several subdivisions of rule 3.670 apply to telephone services (see rule 5.324(j)), but the fees provided in rule 3.670(j) do not apply. (See rule 3.670(k)(2).) But otherwise, the rule does not apply to family law cases. Second, SB 857 authorizes both vendors and courts to charge telephone appearance fees. But Government Code section 72010(c)(3) and rule 3.670(i)(3) further provide that, even in

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				<p>proceedings where the statutory fees apply, fees may be waived by a judicial officer, in his or her discretion, for parties appearing directly by telephone in that judicial officer’s courtroom.</p> <p>In sum, judicial officers will always retain the discretion to make telephone calls at the court’s expense. Because the concerns raised by this commentator are of general interest to the public, the matters addressed in this comment and the response have been clarified by adding a new advisory committee comment to rule 3.670.</p>
4.	LB Vista, California	N	<p>The vendor cost is too high for many individual and/or families to pay. What is the profit to these vendors?</p> <p>The judicial system should not be setup as a business. The courts are not for the judges or lawyers. The courts are for the people to be heard.</p> <p>One does not have control over where a Plaintiff/Petitioner files and are unfamiliar with court rules and procedures. The majority of cases are prolonged due to Court and attorney error and misapplication of the law and/or pleadings.</p> <p>Many will view the cost as a decision to pay this appearance fee versus using this money to purchase food or use it toward housing. The waiver is meaningless as many times it is denied based on frivolous reasoning.</p>	<p>The proposed fees are in an amount that has been determined appropriate to attract vendors to provide telephone service at no cost to the courts, which is essential at this time for fiscal reasons. To protect members of the public who cannot afford to pay the fees, both the underlying legislation (SB 857) and the amended rule specifically provide that persons eligible for fee waivers are not required to pay the telephone appearance fees, subject to certain conditions. (See Code Civ. Proc., § 367.6(b); rule 3.670(k)(1).)</p> <p>.</p> <p>Fee waivers play an important part in providing access to the courts. They are neither meaningless nor denied for frivolous reasons. The fact that fee waivers are available under SB 857 and rule 3.670 to enable low-income persons to appear in court</p>

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			<p>Place the burden where it belongs on the judges and attorneys whose inabilities to handle cases effectively causes increased litigation. A flat \$20.00 can be affordable. More importantly it provides for the people access to Justice as many of these individuals will be appearing pro per or end up pro per after being robbed by his/her attorney for mediocre and many times incorrect or substandard pleadings leaving the individual with a legal malpractice case that no other attorney will take. Clean up the courts = someone, anyone is the cry of The People.</p>	<p>by telephone through vendors is an important contribution to providing greater public access.</p> <p>The suggested \$20 fee would provide no revenue for vendors and hence no incentive for them to provide telephone appearance services. Vendor-provided services have played an important and effective role in providing access to the courts in a cost-efficient manner. Accordingly, this proposal recommends a fee structure that will continue to make telephone appearances services widely available and at the same time takes into account the situation of low-income litigants who are entitled to fee waivers and seek to appear by telephone.</p>
5.	<p>Hon. Cindee F. Mayfield Judge of the Superior Court of Mendocino County</p>	A	<p>If revenue is to be shared with the courts, request that it be done pro rata, rather than limited to courts which previously received revenue from court call or other telephone appearance provider.</p>	<p>SB 857 provides that an amount equal to the amount received by all courts from all vendors for providing for telephone appearances for the 2009-2010 fiscal year shall be allocated by the Judicial Council “for the purpose of preventing significant disruptions in service in courts that previously received revenues from vendors for providing telephone appearance services.” It further provides: “The Judicial Council will determine the method and amount of the allocation to each eligible court.” (Gov. Code, § 72011(e).) Thus, the amounts of revenue received under SB 857 will need to be allocated as provided under the statute.</p>
6.	<p>San Francisco Trial Lawyers Association, Court Liaison Committee San Francisco, California</p>	A	<p>On behalf of the Court Liaison Committee of the San Francisco Trial Lawyers Association, we believe that uniform fees for court calls are a</p>	<p>The committee’s support for uniform fees is noted.</p>

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	By Mark J. Zanobini, Esq.		very good idea.	
7.	State Bar of California’s Committee on Administration of Justice (CAJ) San Francisco, California	NI	<p>The State Bar of California’s Committee on Administration of Justice (CAJ) appreciates the opportunity to submit the following comments on this proposal.</p> <p>First, the invitation to comment proposes that a fee of \$25 be established for late requests to appear by telephone. CAJ has been advised that, as of March 14, 2011, CourtCall no longer charges a fee for late requests unless the request is made after the time for the hearing has begun. CAJ recognizes that a statewide late request fee must be established, pursuant to SB 857. CAJ recommends that this fee be set at the nominal amount of \$5, the same as the proposed cancellation fee.</p> <p>Second, it appears that the proposal contemplates requiring notice to the vendor within the same timelines as notice to the court under subdivision (j)(1). However, the Invitation to Comment notes that “it may be that parties should be required to notify the vendors of their requests to appear sometime sooner than they provide notice to the court and other parties” and comments are invited on what alternative times for notification of vendors, if any, would be appropriate.</p> <p>Under the proposal, there are two timelines for</p>	<p>First, as of the time this report was being prepared in April 2011, CourtCall’s online fee schedule still shows a range of late fees from \$0 to \$35, depending on the court. There are reasons to charge more for a late request fee than for a cancellation fee, including the additional expense of processing a late request and the fact where there is a cancellation no appearance was ever made or services provided. Also, it should be noted that the rule has been modified to clarify that the late fee will only apply in limited circumstances.</p> <p>Second, this report recommends that a request to appear by telephone should generally given to the vendor at approximately the same time as the court, but that the rule should recognize various circumstances under which shorter notice would be appropriate. To implement this, the rule would be revised along the lines suggested by this commentator and commentator 8 to require three days’ advance notice to the vendor, with exceptions for the following situations where less time is needed: (1) when the matter involves an ex parte or other hearing set on shortened time where the three-day rule would be not be feasible</p>

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			<p>notice to the court and other parties: (1) three court days before the hearing applies to a party who give notice of intent to appear without first receiving notice of intent to appear telephonically from any other party; and (2) noon the court day before the hearing applies to a party who receives notice of intent to appear telephonically and who then decides to also appear telephonically.</p> <p>Rather than requiring more notice to the vendor than that given to the court, CAJ believes the notice to the vendor should either be less or not trigger the late fee provision at all for the following reasons:</p> <ul style="list-style-type: none"> • The vendor likely has the same process for setting up a telephonic appearance regardless of whether it is done three court days before the hearing or by noon the court day before the hearing. Thus, there is no compelling reason to provide the vendor more notice than the required notice to the court or to require more than notice by noon the court day before the hearing. • There should not be an additional cost (late fee) for the same service for one party and not another. A request/notice of intent to appear provided by noon the court day before the hearing, by a party who receives notice of intent to appear and thereafter decides to also telephonically appear, is timely under subdivision (j)(1) and therefore would not be 	<p>or practical, (2) when the court, on its own motion, sets a hearing or conference on shortened time, or (3) when the matter has a tentative ruling posted within the three-day period.</p> <p>In addition, based on the original proposal that was circulated and the comments from the State Bar’s Committee on Administration of Justice (see the second point in the left column), an additional exception would be added: there would be no late fee if the request to appear by telephone is made by a party who received notice of another party’s intent to appear and afterwards decides also to appear by telephone. The request of such a party seeking to appear would be timely if its request is made to the vendor by noon on the court day before the hearing or conference.</p> <p>This approach to the late fee balances the needs of vendors and courts to receive information about telephone appearances sufficiently in advance to make preparations and the recognition that, as a practical matter, some requests cannot be made until shortly before a hearing or conference.</p>

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			<p>subject to the late fee. Since notice to the court of intent to appear by telephone by noon the court day before the hearing is already allowed for some parties, it should be allowed for all. There should be no differentiation between a party who receives notice of intent to appear by telephone and also decides to appear by telephone and a party who simply decides shortly before a hearing that it wishes to appear by telephone. It is unlikely that the decision to appear by telephone is triggered by the other party’s intent to appear by telephone. The decision is likely one based on cost savings.</p> <ul style="list-style-type: none"> • CourtCall currently requires only a few hours notice to set up the telephonic appearance and, as noted above, does not charge a late request fee unless the request is made after the time for the hearing has begun. Thus, CAJ believes that notice to the vendor should not be included as a trigger for the late fee provision. CAJ believes that only untimely notice to the court should trigger the provision. In other words, once timely notice is provided to the court, no late fee should apply even if notice to the vendor is provided later. However, if notice to the vendor must also be a trigger for the late fee provision, the deadline for notice to the vendor should be noon the court day before the hearing for all parties. 	<p>For calendaring, scheduling, and other practical reasons, notice to the vendor as well as to the court in a timely manner is needed. Making the deadline for all matters noon the day before the hearing would be too late. The rule basically makes a request timely if the request to the vendor is made at the same time as to the court. However, as explained above, the rule has further been revised to permit notice to the vendor less than three days before the appearance in a variety of circumstances in which a party would not be able to provide notice that early; in the enumerated circumstances, no late fee would be charged.</p>
8.	Superior Court of Los Angeles County Los Angeles, California	AM	<p>1. <u>Subpart (j)(2) late request fee</u> If the Court, on its own motion, has added a case on calendar with such little advance notice</p>	<p>1. <u>Subpart (j)(2) late request fee</u> The late request fee provision in (j)(2) has been modified to provide for such a exception.</p>

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			<p>that a party cannot make a timely request for a telephonic appearance, there should be a waiver of the fee for late requests.</p> <p>2. <u>Subpart (l) Audibility and procedure</u> This section states “<i>The court must ensure that the statements of participants are audible to all other participants.</i>” We would recommend changing the word “<i>ensure</i>” to the word “<i>confirm</i>”. Audibility may ultimately be a vendor issue, beyond the ability of the court to address.</p>	<p>2. <u>Subpart (l) Audibility and procedure</u> This suggestion is beyond the scope of the proposal that was circulated.</p>
9.	Superior Court of Orange County Santa Ana, California By Alan Carlson Chief Executor Officer	NI	<p>Current practices and experiences in Orange County Superior Court are as follows:</p> <p>1. TELEPHONIC APPEARANCE FEE Our current contract fee is \$50 per call, all payable to the vendor; the Court does not receive any revenue. Note that the vendor supplies all equipment and the analog phone line into the courtroom, so there is no cost to the Court.</p> <p>2. FEE FOR LATE REQUESTS The Invitation to Comment proposes a \$25 fee be established for late requests to appear by phone. No such fee is in Orange’s current contract.</p> <p>3. CANCELLATION FEE The Invitation to Comment proposes a \$5 cancellation fee. There is currently no similar fee in Orange. In Orange’s contract, refunds are</p>	<p>This information about the court’s current practices and experiences is appreciated.</p>

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			<p>issued when a matter has been taken off calendar or dismissed by the Court, as long as the participant notifies the vendor in writing. If a matter is continued, the fee remains valid for the continued date of the matter.</p> <p>4. CONTRACTING GUIDELINES The Orange Court's current contract has an end date of June 30, 2011; however, under the terms of the Agreement, the Court does have a renewal option for additional years. Based on the new law, the contract can be terminated as of July 1st.</p> <p>5. IMPACT ON THE COURT AND COURT STAFF Based upon Orange's experience with a recent RFP for a telephonic appearance vendor, the burden on the court and its staff varies widely with the different business models of the two vendors. One does not require any equipment or phone lines to be provided by the Court. The impact on the staff is simply to push a button to answer the phone at the start of the hearing. The other vendor's model works through the Court's internet connection, and involves considerably greater activity and monitoring by the court staff on the part of the in court staff.</p>	
10.	Superior Court of Tulare County Visalia, California By Kerrie Scalia, Court Financial Officer	NI	Our Court has reviewed the proposed amendments to California Rules of Court (CRC), rule 3.670 and would like to submit the following comment.	

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			<p>The discussion under “Proposed Fees” indicates “there will no longer be any revenue sharing between the vendor and the courts under local contracts.” It further goes on to state “...to prevent service disruption in courts that previously received revenues, vendors shall transmit an amount equal to the total amount of revenue received from all courts from all vendors for providing telephone appearances in the 09-10 fiscal year, which amount shall be allocated by the Judicial Council to the courts”. Our Court has annual expenditures related to telephone appearances in the form of dedicated phone lines. The revenues our Court receives from the vendor are used to offset the cost of these dedicated phone lines.</p> <p>Is the Judicial Council going to provide our Court with sufficient funding to cover the costs we incur by providing telephone appearances? How will the Judicial Council allocate the “total amount of revenue received from all courts from all vendors for providing telephone appearances in the 09-10 fiscal year” to the Courts? Will this be an annual allocation to the courts or is it just for fiscal year 11-12?</p>	<p>The statements in the discussion in the invitation to comment referenced in this comment are based on the provisions in SB 857. (See Gov. Code, § 72011(c)–(e).)</p> <p>These questions about the allocation of the amounts to be received based on the 2009-2010 fiscal year revenues will be addressed soon. However, they are beyond the scope of the present rules proposal, which is focused on establishing the statewide uniform fees to be charged by vendors and courts for appearances by telephone. The issues relating to allocation will be addressed when the Judicial Council implements other provisions in SB 857 besides those relating to the establishment of fees.</p>
11.	Hon. Rebecca Wightman, Commissioner of the Superior Court of San Francisco County San Francisco, California	AM	As a Child Support Commissioner, I would point out that the proposed amendments to rule 3.670 need to carve out an exception for telephone appearances in title IV-D child support hearings and conferences, which are	The commentator persuasively explains the need for clarifying the scope of amended rule 3.670 and its relation to rule 5.324 on telephone appearances in child support proceedings under Title IV-D. To provide that clarification, a new subpart (k)(2) and

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			<p>permitted under California Rules of Court, rule 5.324.</p> <p>The exception is needed because subdivisions (i) through (m) of rule 3.670 apply to title IV-D telephone appearances, per rule 5.324 (j). Title IV-D refers to Title IV-D of the Social Security Act (42 U.S.C. §601 <i>et seq.</i>) which requires each state to establish and enforce support orders when public assistance has been spent on behalf of a child or upon application of the parent. Since federal regulations prohibit charging fees in title IV-D cases where the state has elected to be a non-cost recovery state (as is the case with California’s IV-D program), the proposed statewide uniform fee cannot apply to telephone appearances made under rule 5.324 without putting federal funding for California’s child support program at risk.</p> <p>By way of background, federal law permits each state to elect one of two methods to recover the cost of administering the Title IV-D program. Each state is to elect to be either a “cost recovery state” or a “non-cost recovery state” (45 Code of Federal Regulations 302.33(c)). California under the State Plan of the Department of Child Support Services has expressly elected not be a “cost recovery state” to avoid the additional burdensome requirements inherent in such a system. If, contrary to the State Plan, a state is determined to have collected any fees related to Title IV-</p>	<p>a new advisory committee comment have been added to the rule 3.670. In addition, rule 5.324(j) would be amended because the cross- references in rule 5.324 to several subdivisions in existing rule 3.670 need to be revised to reflect the amendments to rule 3.670.</p>

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			<p>D cases, this will be offset against the state’s federal funding. The Department of Child Support Services [“DCSS”] has entered into an agreement with the Administrative Office of the Courts, pursuant to AB 1058, to provide funding to cover the cost of child support commissioners to hear all of the cases being provided services by the local child support agencies. As such, the courts are subject to the same prohibition on collecting fees as is the state Title IV-D agency [DCSS]).</p> <p>It might also help to be aware that California Government Code section 70672 states that no fee shall be charged to file a first paper or subsequent pleading on issues relating to support or parentage in a case in which a Title IV-D child support agency is providing services under Family Code section 17400. It is my understanding this provision was added to the Govt. Code to specifically deal with the prohibition on collecting fees in Title IV-D cases and eliminates the need to deal with fee waivers in any Title IV-D case as fees are prohibited regardless of any income means test.</p> <p>As noted, telephone appearances in Title IV-D proceedings are governed by a separate rule of court: California Rule of Court rule 5.324. Rule 5.324 was adopted to comply with Family Code section 5003’s mandate that the Judicial Council adopt rules on or before July 1, 2005 to implement the provisions of</p>	

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			<p>subdivision (f) of Family Code section 4930 regarding hearings by telephone, audiovisual means or other electronic means. Section 5003 further mandated that hearings by telephone, audiovisual or other electronic means shall be permitted in cases in which the local child support agency is providing child support services but both parents reside in California, so long as the hearings are conducted so that they comply with the rules of court adopted pursuant to this section. Family Code section 4930 sets out special rules of evidence and procedure regarding establishment, enforcement or modification of a support order or issuance of a judgment determining parentage in cases where one of the parents resides outside of California. Subdivision (f) of Section 4930 provides that a tribunal of this state shall permit a party or witness residing in another state to testify or be deposed by telephone, audiovisual means or other electronic means at a designated tribunal or other location in that state.</p> <p>I would suggest that the following language be added to the proposed new subsection (k) of rule 3.670 to make it clear that the fee provisions of this rule do not apply to Title IV-D support proceedings. Also, as a long time trainer of new Child Support Commissioners statewide, I believe putting the proposed new language at this spot in the proposed new rules, would be the best place to provide clear information to all, including practitioners and</p>	

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			<p>pro-per litigants alike:</p> <p>(k) <u>Fee waivers and Title IV-D proceedings</u></p> <p>(1) A party that has received a fee waiver must not be charged any of the fees for telephone appearances provided under (j), subject to the provisions of Government Code section 367.6(b). To obtain telephone services from a vendor without payment of a telephone appearance fee, upon request by the vendor, a party must transmit a copy of the order granting the fee waiver to the vendor.</p> <p>(2) <u>Proceedings for child or family support that are brought by or otherwise involve the local child support agency under Title IV-D of the Social Security Act are exempt from the fee provisions under (j). When requesting telephone services from a vendor, the requester must advise the vendor that the proceeding is for child or family support and involves the local child support agency.</u></p>	