

Judicial Council of California • Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courtinfo.ca.gov/invitationstocomment/

INVITATION TO COMMENT

SP11-02

Title	Action Requested
Telephone Appearances: Statewide Uniform Fees	Review and submit comments by April 1, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 3.670	July 1, 2011
Proposed by	Contact
Administrative Office of the Courts	Patrick O'Donnell, 415-865-7665
Finance Division	patrick.o'donnell@jud.ca.gov
Stephen Nash, Director	
Office of the General Counsel	
Mary M. Roberts, General Counsel	

Summary

Senate Bill 857 requires the Judicial Council to establish statewide, uniform fees for telephone appearances by July 1, 2011. This proposal would amend rule 3.670 of the California Rules of Court on telephone appearances to provide for such fees. It would also amend rule 3.670 to provide certain procedures to implement the legislation.¹

Discussion

SB 857 (the budget trailer bill) was signed by the Governor on October 19, 2010.² It 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. (Gov. Code, § 72011(a).) The bill went into effect immediately and the two vendors

¹ This proposal was developed in consultation with members of the Court Executives Advisory Committee and the Civil and Small Claims Advisory Committee who have volunteered to assist in implementing the telephone appearance fee legislation.

²SB 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.

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 These proposals are circulated for comment purposes only.

that currently provide telephone appearance services to the courts have transmitted the new fees as required within 15 days of the end of the first calendar quarter. (See Gov. Code, § 72011(b).) The telephone appearance fee statutes enacted as part of SB 857, however, require certain additional actions to be taken in order for the legislation to be fully implemented.

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.” The legislation specifies that the fees to be paid for telephone appearances shall include:

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

(See Code Civ. Proc., § 367.6(a).)³

Proposed fees

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

The Judicial Council currently has a rule on telephone appearances; however, the rule was adopted before SB 857 and does not include any fees for telephone appearances. The rule on telephone appearances should be amended to include the new fees, effective July 1, 2011, to comply with SB 857.

Telephone appearance fee

The main fee to be established is the statewide, uniform telephone appearance fee. This is the total fee to be charged by a vendor or court providing telephone appearance services to a party who 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.

³ 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 and received responses, and is in the process of preparing one or more master agreements to implement this statutory requirement.

Two vendors currently provide telephone appearance services to the trial courts in California. One vendor provides services in 57 counties and the other in one county. The first vendor presently charges between \$70 and \$85 per call, including the \$20 for transmittal to the State Treasury, for telephone appearances.⁴ The second 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 invitation to comment proposes that the statewide, uniform telephone appearance fee be established at a specific dollar amount between \$70 and \$75 dollars per call. The proposal assumes that the telephone services to be provided should be maintained at the current level of quality. It also assumes that some benefits should accrue to the users of telephone appearance services in terms of a reduced amount of the fee compared with the existing fees because of the large volume of such services that will be provided under one or more statewide master agreements.

Fee for late requests

This invitation to comment proposes that a fee of \$25 be established 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 states that it once did and reserves the right to do so again to prevent abuse.

Cancellation fee

This proposal recommends a cancellation fee of \$5. It appears that neither of the current vendors charges a cancellation fee. The statute requires a cancellation fee. This proposal recommends that the cancellation fee be a modest amount.

Furthermore, the proposal recommends that a hearing or 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, applied to the new hearing date.

⁴ One reason for the range of different fee amounts charged by the first vendor for telephone appearances is that the amounts reflect existing local contracts between the vendors and courts under which some courts share a portion of the vendor's revenue from telephone appearances fees. Under SB 857, the existing contracts will be terminated and superseded 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 from 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. Thus, after the new uniform telephone appearance fees are established, vendors will continue to provide some share of their revenues to the courts in addition to the \$20 per call.

Comments are invited on the amounts of each of these fees for telephone appearances.

Other proposed amendments

This proposal recommends four 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.⁵ Existing subdivision (i) that allows courts to enter into contracts with private vendors would be replaced with a new provision stating 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 entered into between the court and a vendor before July 1, 2011, and which has not expired. SB 857 provides that, if a contract 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 to do so. Because the existing contracts are terminable on short notice, this means that, after July 1, 2011, all telephone services will be provided either by vendors that have entered into statewide master agreements or directly by the courts.

Second, rule 3.670 would be amended to clarify when a party must notify the vendor that it wants to appear by telephone to avoid a fee for a late request. The current rule 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 to appear. 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 proposed amendments to rule 3.670 would provide in subdivision (j)(1) that if a party notifies a vendor that it wants to appear by telephone within the timelines contained in these provisions, the request is timely. If the request is untimely, the party would be subject to a late request fee under proposed amended rule 3.670(j)(2).

As a practical matter, however, 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, as is provided for in the proposed rule. Comments are invited on what alternative times for notification of vendors, if any, would be appropriate.

⁵ See Government Code section 72010((c).

Third, the rule 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.⁶ The statute, however, does not specify how a vendor is to know about or confirm the existence of a fee waiver. To clarify this, the amended rule would add a provision stating that to obtain telephone services from a vendor without payment of a telephone appearance fee, upon request by the vendor, a party must transmit to the vendor a copy of the order granting the fee waiver. (See amended rule 3.670(k).)

Finally, subdivision (n) of rule 3.670 would be amended to provide that the court, by local rule, may designate the conference call provider or providers that must be used for telephone appearances.

⁶ Code of Civil Procedure section 367.6(b) provides:

If a party has received a waiver of fees pursuant to Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the Government Code, neither a vendor nor a court shall charge that party any of the fees authorized by this section, subject to the following:

(1) The vendor or court that provides the telephone appearance service shall have a lien, as provided by rule of court, on any judgment, including a judgment for costs, that the party may receive, in the amount of the fee that the party would have paid for the telephone appearance.

(2) If the vendor or court later receives a fee or a portion of a fee for appearance by telephone that was previously waived, that fee shall be distributed consistent with Section 72011 of the Government Code.

Rule 3.670 of the California Rules of Court would be amended, effective July 1, 2011, to read:

1 **Rule 3.670. Telephone appearance**

2
3 **(a)–(f) * * ***

4
5 **(g) Notice by party**

- 6
7 (1) A party choosing to appear by telephone at a hearing, conference, or
8 proceeding under this rule must either:
9
- 10 (A) Place the phrase “Telephone Appearance” below the title of the
11 moving, opposing, or reply papers; or
12
- 13 (B) At least three court days before the appearance, notify the court and all
14 other parties of the party’s intent to appear by telephone. If the notice is
15 oral, it must be given either in person or by telephone. If the notice is in
16 writing, it must be given by filing a “Notice of Intent to Appear by
17 Telephone” with the court at least three court days before the
18 appearance and by serving the notice at the same time on all other
19 parties by personal delivery, fax transmission, express mail, or other
20 means reasonably calculated to ensure delivery to the parties no later
21 than the close of the next business day.
22
- 23 (2) If after receiving notice from another party as provided under (1) a party that
24 has not given notice also decides to appear by telephone, the party may do so
25 by notifying the court and all other parties that have appeared in the action,
26 no later than noon on the court day before the appearance, of its intent to
27 appear by telephone.
28
- 29 (3) If a party that has given notice that it intends to appear by telephone under (1)
30 subsequently chooses to appear in person, the party must so notify the court
31 and all other parties that have appeared in the action, by telephone, at least
32 two court days before the appearance.
33
- 34 (4) The court, on a showing of good cause, may permit a party to appear by
35 telephone at a conference, hearing, or proceeding even if the party has not
36 given the notice required under (1) or (2) and may permit a party to appear in
37 person even if the party has not given the notice required in (3).
38

1 (h) * * * *

2
3 (i) **Private vendor; charges for service Provision of telephone appearance services**

4
5 A court may provide ~~teleconferencing for court~~ for telephone appearances by
6 entering into a contract with a private vendor. The contract may provide that the
7 vendor may charge the party appearing by telephone a reasonable fee, specified in
8 the contract, for its services. only through one or more of the following methods:

9
10 (1) An agreement with one or more vendors under a statewide master agreement
11 or agreements.

12
13 (2) An agreement entered into between a court and a vendor before July 1, 2011,
14 and which has not yet expired. If a contract is subject to cancellation by a
15 court after July 1, 2011, that court must exercise its option to cancel the
16 contract as soon after July 1, 2011, as is legally possible to do so.

17
18 (3) The direct provision by the court of telephone appearance services. If a court
19 directly provides telephone services, it must collect the telephone appearance
20 fees provided for under (j). A judge may, at his or her discretion, waive
21 telephone appearance fees for parties appearing directly by telephone in that
22 judge's courtroom.

23
24 (j) **Telephone appearance fee amounts; time for making requests**

25
26 The telephone appearance fees specified in this subdivision are the statewide,
27 uniform fees to be paid by parties to a vendor or court for providing telephone
28 appearance services. These fees supersede any fees paid by parties to vendors or
29 courts under agreements or procedures existing before July 1, 2011. The fees to be
30 paid to appear by telephone are as follows:

31
32 (1) The fee to appear by telephone, made by a timely request to a vendor or court
33 providing telephone appearance services, is [a specific amount between \$70
34 and \$75] for each appearance. A request by a party notifying the court of
35 intent to appear under (g)(1)(B) is timely if it is made at least 3 court days
36 before the appearance. A request by a party notifying the court under (g)(2) is
37 timely if it is made no later than noon on the court day before the appearance.

38
39 (2) An additional late request fee of \$25 is to be charged for an appearance by
40 telephone if the request to the vendor or court is not made in a timely manner.

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

9
10 **(k) Fee waivers**

11
12 A party that has received a fee waiver must not be charged any of the fees for
13 telephone appearances provided under (j), subject to the provisions of Government
14 Code section 367.6(b). To obtain telephone services from a vendor without
15 payment of a telephone appearance fee, upon request by the vendor, a party must
16 transmit a copy of the order granting the fee waiver to the vendor.

17
18 **(j)(l) Audibility and procedure**

19
20 The court must ensure that the statements of participants are audible to all other
21 participants and the court staff and that the statements made by a participant are
22 identified as being made by that participant.

23
24 **(k)(m) Reporting**

25
26 All proceedings involving telephone appearances must be reported to the same
27 extent and in the same manner as if the participants had appeared in person.

28
29 **(l)(n) Conference call provider**

30
31 A court, by local rule, may designate ~~a particular~~ the conference call provider or
32 providers that must be used for telephone appearances.

33
34 **(m)(o) Information on telephone appearances**

35
36 The court must publish notice providing parties with the particular information
37 necessary for them to appear by telephone at conferences, hearings, and
38 proceedings in that court under this rule.

Item SP11-02 Response Form

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

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: <http://www.courtinfo.ca.gov/invitationscomment/>

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, April 1, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.