

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT

### SP11-\$(

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Title	Action Requested
Telephone Appearances: Statewide Uniform Fees	Review and submit comments by May 31, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 3.670 and 5.324	July 1, 2011
Proposed by	Contact
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### 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 these fees. It would also amend rule 3.670 to provide certain procedures to implement the legislation. Finally, this proposal would amend rule 5.324 on telephone appearances in Title IV-D child support proceedings to be consistent with the amendments to rule 3.670.<sup>1</sup>

The proposal was previously circulated for public comment on a special cycle between March 7 and April 1, 2011. It is being re-circulated for several reasons. First, for technical reasons, some

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<sup>1</sup> 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.

*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 These proposals are circulated for comment purposes only.*

comments submitted during the previous special cycle may not have been received and considered in the development of the rule proposal.<sup>2</sup> To ensure that the public has a full opportunity to comment, the proposal is being circulated again.<sup>3</sup>

Second, based on the comments received in the initial cycle, the rule proposal has been revised. It presently includes recommendations for specific dollar amounts for the fees, a modified definition of what constitutes a late fee request, and a recommendation for amendments to rule 5.324 as well as to rule 3.670. In this recirculation, the revised version is being presented so that the public will have a full opportunity to review and comment on all aspects of the latest version of the proposal.

## **Discussion**

SB 857, the 2010 budget trailer bill for the judicial branch, was signed by the Governor on October 19, 2010.<sup>4</sup> 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 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

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<sup>2</sup> During the time that this proposal was initially circulating, the new judicial branch website was being launched and two different versions of the website were temporarily available. The comments on this proposal submitted through the invitations to comment page on the old website ([www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)) were received. But the invitations to comment page on the new website ([www.courts.ca.gov/policyadmin-invitationstocomment](http://www.courts.ca.gov/policyadmin-invitationstocomment)) was not working properly. It has not been possible to determine whether any attempts were made to submit comments on this proposal through the new website; however, if any persons or entities did attempt to do so, their comments were not received, even though it might have appeared to them that their comments had been successfully submitted.

<sup>3</sup> On the previous cycle, eleven comments were received and forwarded on for consideration. The commentators were CourtCall, LLC, the Court Liaison Committee of the San Francisco Trial Lawyers Association, the Committee on Administration of Justice of the State Bar, three superior courts (Los Angeles, Orange, and Tulare), three judicial officers (Hon. Suzanne Kingsbury, Hon. Cindee Mayfield, and Hon. Rebecca Wightman), attorney William M. Grewe, and an individual from Vista (identified as “LB”). Any person or entity whose comments were inadvertently not received during the previous comment cycle may resubmit their comments at this time. Also, those who previously successfully submitted comments are welcome to supplement their earlier submissions and comment on the revised version of the rules proposal presented in this invitation.

<sup>4</sup>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](http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0851-0900/sb_857_bill_20101019_chaptered.pdf).

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).)<sup>5</sup>

### **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.<sup>6</sup>

***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.<sup>7</sup> In general, the fee is higher at courts that

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<sup>5</sup> 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.

<sup>6</sup> 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 invitation to comment 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.

<sup>7</sup> 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

receive a portion of the fee revenue from the vendor. The second telephone appearance services 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 is 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 amendments to rule 3.670**

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.<sup>8</sup> Existing rule 3.670(i), which allows courts to enter into contracts with private vendors, would be replaced with a new

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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.

<sup>8</sup> See Gov. Code, § 72010(c).

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 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).) However, 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).) This provision was added at the suggestion of a commissioner who commented on this rules proposal during the previous public comment period. 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.

**Proposed amendments to rule 5.324**

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 (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).)

Rules 3.670 and 5.324 of the California Rules of Court would be 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  
8 entering into a contract with a private vendor. The contract may provide that the  
9 vendor may charge the party appearing by telephone a reasonable fee, specified in  
10 the contract, for its services. only through one or more of the following methods:

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

14  
15 (2) An agreement between a court and a vendor that was entered into before July  
16 1, 2011, and that has not expired. If a contract is subject to cancellation by a  
17 court after July 1, 2011, that court must exercise its option to cancel the  
18 contract as soon after 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  
21 directly provides telephone services, it must collect the telephone appearance  
22 fees provided for under (j). A judge may, at his or her discretion, waive  
23 telephone appearance fees for parties appearing directly by telephone in that  
24 judge’s courtroom.

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

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

33  
34 (1) The fee to appear by telephone, made by a timely request to a vendor or court  
35 providing telephone appearance services, is \$75 for each appearance.

36  
37 (2) An additional late-request fee of \$25 is to be charged for an appearance by  
38 telephone if the request to the vendor or the court providing telephone

1 services is not made at least three days before the scheduled appearance,  
2 except when:

3  
4 (A) There is an ex parte or other hearing or conference set on shortened  
5 time for which three days' notice would not be feasible or practical;

6  
7 (B) The court, on its own motion, sets a hearing or conference on shortened  
8 time;

9  
10 (C) The matter has a tentative ruling posted within the three-day period; or

11  
12 (D) The request to appear by telephone is made by a party that received  
13 notice of another party's intent to appear and afterward decides also to  
14 appear by telephone under (g)(2). The request of a party seeking to  
15 appear under (g)(2) is timely if the request is made to the vendor or the  
16 court providing the service by noon on the court day before the hearing  
17 or conference.

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

27  
28 **(k) Fee waivers and Title IV-D proceedings**

29  
30 (1) A party that has received a fee waiver must not be charged any of the fees for  
31 telephone appearances provided under (j), subject to the provisions of Code  
32 of Civil Procedure section 367.6(b). To obtain telephone services without  
33 payment of a telephone appearance fee from a vendor or a court that provides  
34 telephone appearance services, a party must advise the vendor or the court  
35 that he or she has a fee waiver. If a vendor requests, the party must transmit a  
36 copy of the order granting the fee waiver to the vendor.

37  
38 (2) Proceedings for child or family support under Title IV-D of the Social  
39 Security Act that are brought by or otherwise involve a local child support

1 agency are exempt from the fee provisions in (j). When a party in such a  
2 proceeding requests telephone services from a vendor or a court that provides  
3 telephone appearance services, the party must advise the vendor or the court  
4 that the proceeding is for child or family support under Title IV-D and  
5 involves the local child support agency.

6  
7 ~~(j)~~(l) \* \* \*

8  
9 ~~(k)~~(m) \* \* \*

10  
11 ~~(h)~~(n) **Conference call ~~provider~~ vendor or vendors**

12  
13 A court, by local rule, may designate ~~a particular~~ the conference call ~~provider~~  
14 vendor or vendors that must be used for telephone appearances.

15  
16 ~~(m)~~(o) \* \* \*

17  
18 **Advisory Committee Comment**

19  
20 This rule generally does not apply to criminal, juvenile, or family law matters. (See Cal. Rules of  
21 Court, rule 3.670(b)[rule applies to general civil cases and unlawful detainer and probate  
22 proceedings].) However, certain provisions of this rule apply to telephone appearances in  
23 proceedings for child or family support under Title IV-D of the Social Security Act. (See rule  
24 5.324(j)[subdivisions (i) and (k)–(o) of rule 3.670— on fee waivers and exemptions, vendors,  
25 procedure, audibility, reporting, and information—apply to telephone appearances in Title IV-D  
26 conferences and hearings].) As stated in subdivision (k)(2) of this rule, telephone appearances in  
27 Title IV-D proceedings are exempt from the fee provisions in subdivision (j) of this rule. Also,  
28 under Government Code section 72010(c) and subdivision (i)(3) of this rule, even for proceedings  
29 in which fees are authorized, the fees may be waived by a judicial officer, in his or her discretion,  
30 for parties appearing directly by telephone in that judicial officer’s courtroom.

31  
32 **Rule 5.324. Telephone appearance in Title IV-D hearings and conferences**

33  
34 **(a)–(i) \* \* \***

35  
36 **(j) Vendors, procedure, audibility, reporting, and information**

37  
38 ~~Subdivisions (i) through (m) of r~~Rule 3.670(i) and (k)–(o) apply to telephone  
39 appearances under this rule.

40  
41 **(k) \* \* \***

## Item SP11-04 Response Form

**Title:** Telephone Appearances: Statewide Uniform Fees (amend Cal. Rules of Court, rules 3.670 and 5.324)

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

Comments: \_\_\_\_\_

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\_\_\_\_\_

**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.

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**DEADLINE FOR COMMENT: 5:00 p.m., Thursday, May 12, 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.*