



JUDICIAL COUNCIL
OF CALIFORNIA

JUDICIAL BRANCH BUDGET
COMMITTEE

JUDICIAL BRANCH BUDGET COMMITTEE

MATERIALS FOR OCTOBER 17, 2018

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JUDICIAL COUNCIL OF CALIFORNIA

JUDICIAL BRANCH BUDGET
COMMITTEE

www.courts.ca.gov/jbbc.htm
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JUDICIAL BRANCH BUDGET COMMITTEE

NOTICE AND AGENDA OF OPEN MEETING

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1) and (e)(1))

THIS MEETING IS BEING CONDUCTED BY ELECTRONIC MEANS

THIS MEETING IS BEING RECORDED

Date: October 17, 2018
Time: 12:15 p.m. - 1:00 p.m.
Public Call-in Number: 1-877-820-7831; passcode 6677064 (Listen Only)

Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Members of the public seeking to make an audio recording of the meeting must submit a written request at least two business days before the meeting. Requests can be e-mailed to JBBC@jud.ca.gov.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(1))

This meeting will be conducted by electronic means with a listen only conference line available for the public. As such, the public may submit comments for this meeting only in writing. In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to JBBC@jud.ca.gov or mailed or delivered to Judicial Council of California, 455 Golden Gate Avenue, San Francisco, CA 94102, attention: Lucy Fogarty. Only written comments received by 12:15 p.m. on October 16, 2018, will be provided to advisory body members prior to the start of the meeting.

III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEM 1)

Item 1

Telephone Appearance Fee in Civil Cases (Action Required)

Consider public comments on proposal to amend rule 3.670(k)(1) of the California Rules of Court to increase the fee to appear by telephone in civil cases from \$86 to \$94.

Presenter(s)/Facilitator(s): Ms. Christy Simons, Attorney, Legal Services, Judicial Council

IV. ADJOURNMENT

Adjourn



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on November 29-30, 2018:

Title	Agenda Item Type
Telephonic Appearances: Change in the Fee Amount	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 3.670	January 1, 2019
Recommended by	Date of Report
Judicial Branch Budget Committee	October 16, 2018
Hon. David M. Rubin, Chair	Contact
	Christy Simons, 415-865-7694 christy.simons@jud.ca.gov

Executive Summary

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

Recommendation

The Judicial Branch Budget Committee recommends that the Judicial Council, effective January 1, 2019, amend California Rules of Court, rule 3.670(k)(1), to provide that the fee to appear by telephone is \$94 for each appearance.

The text of the amended rule is attached at page 9.

Relevant Previous Council Action

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

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

Analysis/Rationale

The 2013-2018 master agreement for telephone appearance services with CourtCall expired on June 30, 2018. In January 2018, a request for proposals for the provision of such services was issued.⁴ In March 2018, a master agreement was awarded to CourtCall to provide these services for a four-year term beginning on July 1, 2018, and is now in effect.⁵ During the RFP and master agreement formation process, CourtCall requested an increase in the telephone appearance fee to \$96 per appearance. A change in the amount of the fee was considered, but there was insufficient time to resolve the issue before the new agreement went into effect on July 1, 2018. The Judicial

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

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

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

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

⁵ *Id.*

Branch Budget Committee (JBBC) has now had an opportunity to review the fee issue and to make the recommendation described in this report.

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

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

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

The Judicial Branch Budget Committee considered the arguments and information from CourtCall and other sources. It also considered the council’s past actions with respect to requests for fee increases. When the CourtCall Master Agreement was amended in 2013, CourtCall sought and the council approved an increase in the telephone appearance fee for the five-year term of the agreement. The grounds presented by CourtCall for the increase were similar to those provided in its current proposal. At that time, the council agreed to an increase but, rather than accepting all of CourtCall’s arguments, it based its determination of what the amount of the

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

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

⁸ CourtCall Proposal, cover letter, p. 1.

increase should be on a Consumer Price Index (CPI) analysis by the Fiscal Services Office (now Budget Services). Based on that analysis, the council increased the telephone appearance fee from \$78 to \$86 (i.e., an \$8 increase for CourtCall) for the five-year term of the agreement.⁹

This year, Budget Services has prepared an analysis similar to the one prepared in 2013, to be used in determining what fee increase, if any, may be appropriate for a four-year term under the new master agreement (rather than for a five-year term, such as under the agreement that terminated at the end of June 2018). Budget Services' analysis indicates that the CPI-U (Consumer Price Index–All Urban Consumers) adjusted total fee per telephonic appearance should be \$94 for the four-year term.¹⁰

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

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

Policy implications

The proposal implements legislation requiring the Judicial Council to set the amount of the statewide uniform fee for telephone appearances. The provision of such services fosters public access to the courts and helps reduce costs for litigants across the state. The committee has determined that the proposed increase in the statutorily mandated statewide uniform fee for telephone appearances is appropriate and reasonable.

⁹ See 2013 report.

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

Comments

The proposed amendment to rule 3.670 was circulated on a special cycle for public comment from September 27 through October 15, 2018. Two comments were received, both of which disagreed with the proposal. The comments were from a superior court and a social justice organization. A chart with the full text of the comments received and the committee's responses is attached at pages 10-14.

Superior court comments

A superior court raised questions regarding the method of determining the fee increase and whether such an increase would reduce the number of telephone appearances. Regarding the proposed fee increase, the court questioned whether the current fee was found to be fair and reasonable at the time it was adopted. If that determination was not properly made, it contends, there would be no justification for the proposed increase.

The current and previous statewide uniform fees, for 2013-2018 and 2011-2103, respectively, were both found to be appropriate and reasonable at the time they were adopted.¹¹ In 2010, legislation required the Judicial Council to establish uniform statewide telephone appearance fees. Following a competitive bidding process, the council entered into initial telephone appearance agreements with two vendors. Under the agreements, vendors were required to provide a specified level of telephone equipment and services to the trial courts. The fee amount of \$78 adopted in 2011 was based on the weighted statewide average of the fees that were then being charged in courts with vendor contracts to provide telephone appearance services. The vendors' estimated rising expenses to continue to provide the appropriate level of service were also taken into account. The \$78 fee was lower than the fees that were being charged in 43 counties, and higher than the fees charged in 15 counties.¹² In 2013, when the 2011 contract was expiring, a proposal addressing the telephone appearance fee for a five-year term, from 2013-2018, recommended increasing the fee from \$78 to \$86 based on the Consumer Price Index for All Urban Consumers (CPI-U) over the term of the agreement. That proposed increase was adopted and, as noted above, was found to be reasonable.¹³

The superior court also questioned whether a study was done to determine whether a fee increase would result in fewer telephone appearances, which would result in less money going back to the courts. As discussed above under Analysis/Rationale, each telephone appearance fee includes \$20, which is transmitted by the vendor or the court providing the service to the TCTF. No such study was conducted, but based on past experience, the committee expects call volume—and deposits into the TCTF—to continue to increase. CourtCall states that call volume during the period following the last fee increase has increased each year. During fiscal year 2014 when the

¹¹ See 2013 report and 2011 report.

¹² See 2011 report.

¹³ See 2013 report.

fee changed, there were an average of over 22,400 CourtCall appearances in California each month. The monthly average for fiscal year 2017 rose to over 25,400.

Social justice organization comments

A social justice organization has several issues with the proposal. First, it contends that the Judicial Council's contract with CourtCall is a "monopolistic arrangement." The committee disagrees. CourtCall's contract is non-exclusive and does not preclude other agreements with other vendors. CourtCall is the only vendor with which the council currently has a contract, but CourtCall was the only vendor that responded to the RFP. There are, of course, other vendors of telephone appearance services, but none chose to submit an offer to serve this market. Moreover, CourtCall faces competition within this market from the courts themselves, which are free to provide telephone appearance services directly.

The telephone appearance fee, which is separate from any issue regarding the awarding of telephone appearance contracts (and beyond the scope of this proposal), applies to any vendor that provides telephone appearance services in California and any court that directly provides these services. The research and analysis regarding telephone appearance fees relies primarily on data involving CourtCall as the longest-serving vendor, but the committee emphasizes that the fee is not being set *for* CourtCall. The statewide uniform fee is the same for any vendor or court.

Second, the social justice organization contends that the fee increase will disproportionately affect low-income individuals who do not qualify for fee waivers. It is true that all costs disproportionately affect low-income populations. However, voluntary telephone appearance services often are an effective alternative that make court hearings less costly and more accessible for many people. The cost of a telephone appearance can be orders of magnitude less expensive than traveling to the courthouse, taking the additional time off work, arranging coverage for family responsibilities, and other costs in terms of time and money. Charging appropriate fees for telephone appearances is necessary to provide the kinds of service and equipment that the public and the courts need. In addition, telephone appearance fees are recoverable as costs under Code of Civil Procedure section 1033.5. (Code Civ. Proc., § 367.6(c).)

Third, the social justice organization contends the fee increase is unfair, and cites as an example the \$30 fee for telephone appearance services charged by CourtCall in the United States Bankruptcy Court for the Northern District of California. The contract between the Judicial Council and CourtCall includes specific requirements for equipment and administration designed to ensure that telephone appearance services meet the needs of judges, attorneys, and members of the public consistently and reliably in hundreds of courtrooms across the state. As discussed above, the competitive bidding processes over the years and the fact that no other vendors responded to the recent RFP support the committee's determination that the fee and the proposed increase are fair and reasonable.

With respect to the fees charged in the United States District Courts and the United States Bankruptcy Courts, CourtCall observes that, in the California court system, it is required to bear

the cost of the phones, phone line installation, phone line monthly service costs, and equipment installation and replacement costs. CourtCall incurs none of those costs in the federal model. CourtCall also states that, in virtually all of the federal courts it serves, the fees are based on a sliding scale and on longer appearances that frequently result in a fee that exceeds the fee in California.

Moreover, the fees in California courts pay for more than the cost of providing the service. In California, CourtCall transmits \$20 of every call to the TCTF pursuant to Government Code section 72011(a); no such fees are collected, processed, or transmitted in the federal system. In California, CourtCall continues to pay \$943,840.00 per year in “legacy payments” to the courts that previously engaged in direct revenue sharing with CourtCall; no such direct payments are made in the federal system. In addition, CourtCall believes that no other private company providing a service to the California courts is required to honor fee waivers. This is at an additional expense of approximately \$340,164.00 for the twelve months ending September 30, 2018. (5,154 waivers processed with CourtCall’s share at \$66.00). CourtCall reports that, historically, it recovers less than 3% of the fee revenue that is waived in a given year.

Finally, CourtCall states that, as necessary and appropriate, it is moving to more expensive VoIP technology in California courts.

Next, the social justice organization states its preference for a standardized process “to certify vendors for master agreements” and that the list of vendors would include those who provide “simple consumer teleconferencing setups without a significant per-use cost, which would far better suit the needs of smaller courts.” The Judicial Council, however, is required to establish statewide uniform fees. (See Code Civ. Proc., § 367.6(a).) Any change to the statute would require action by the Legislature. Under the statute, individual courts are free to decide if it is beneficial for them to provide telephone appearance services directly rather than through a vendor. Currently, three courts provide telephone appearance services directly.

Finally, in response to a question presented in the invitation to comment, the consumer justice organization objects to an automatic adjustment of the fee because it would preclude input from the public; it would not take into account any possible decreased costs; and would not be tied to any market measure of the cost of providing the services. The committee sought input on the idea of establishing an automatic fee adjustment as an option to consider in the future.

Alternatives considered

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

Fiscal and Operational Impacts

This proposal affects only the amount of the telephone appearance fee. This fee is principally collected by the vendor under the master agreement. The change in the fee amount, if adopted, should not require any additional implementation efforts or have any cost or operational impacts

on courts that rely on the vendor for the provision of telephone appearance services. However, those courts that directly provide telephone appearance services would need to update their notifications and operations to reflect the higher fee that, if adopted would become effective January 1, 2019.

Attachments and Links

1. Cal. Rules of Court, rule 3.670, at page 9
2. Comment chart, at pages 10-14
3. Link A: Code Civ. Proc., § 367.6:
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=367.6.&lawCode=CCP
4. Link B: Gov. Code, § 72010:
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=72010.&lawCode=GOV
5. Link C: Gov. Code, § 72011:
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=72011.&lawCode=GOV

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

1 **Rule 3.670. Telephone appearance**

2
3 **(a)–(j) * * ***

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

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

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

14
15 (2) * * *

16
17 (3) * * *

18
19 **(l)–(q) * * ***

SP18-18

Telephonic Appearances: Change in the Fee Amount (Amend Cal. Rules of Court, rule 3.670)

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

Commenter	Position	Comment	DRAFT Committee Response
<p>Superior Court of Riverside County Patrick Barney Procurement & Contracting Officer Riverside, California</p>	<p>N</p>	<p>First Comment: The proposed fee increase is based on an increase to the Consumer Price Index. That method, however, assumes that the previous fee was fair and reasonable at the time it was agreed to. It's unclear from the proposal how it was determined that the previous fee was fair and reasonable, and if that determination was never properly made, there would be no justification for a proposed fee increase.</p> <p>Second Comment: Was any study done to determine whether a fee increase would reduce the number of telephonic appearances? The proposed fee increase does not increase the amount of the fee going back to the courts. So, if an increased fee would reduce the number of</p>	<p>The current and previous statewide uniform fees were both found to be reasonable at the time they were adopted. Following the enactment of legislation that required the Judicial Council to establish uniform statewide telephone appearance fees, the initial telephone appearance agreements were the result of competitive bidding in 2011. Vendors were required to provide a specified level of telephone equipment and services to the trial courts. The \$78 fee amount for 2011-2013 agreements was based on the weighted statewide average of the fees currently charged in courts with vendor contracts to provide telephone appearance services, and took into account the estimated rising expenses to continue to provide the appropriate level of service. The \$78 fee was lower than the previous fees charged in 43 counties and higher than the fees charged in 15 counties. The 2013 fee proposal for a five-year contract, from 2013-2018, recommended increasing the fee from \$78 to \$86 based on the Consumer Price Index for All Urban Consumers (CPI-U) over the term of the agreement. A number of comments and issues were considered, and the proposed new fee was adopted.</p> <p>No study was undertaken on the impact of a proposed fee increase on usage of telephone appearance services, and the proposal does not affect the statutorily-mandated \$20 of each fee that is transmitted to the Trial Court Trust Fund. However, the committee expects that the number of telephone appearances will continue to</p>

SP18-18

Telephonic Appearances: Change in the Fee Amount (Amend Cal. Rules of Court, rule 3.670)

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

Commenter	Position	Comment	DRAFT Committee Response
		<p>telephonic appearances, that would reduce the amount of fees going back to the courts.</p>	<p>increase. CourtCall states that call volume during the period following the last fee increase has increased each year. During fiscal year 2014 when the fee changed, there were an average of over 22,400 CourtCall appearances in California each month. The monthly average for fiscal year 2017 rose to over 25,400. Note also that courts that provide telephone appearance services directly will receive an increased amount under this proposal.</p>
<p>Unite the People Amitabho Chattopadhyay Management Director Los Angeles, California</p>	<p>N</p>	<p>The Judicial Council's singular contract with CourtCall is an ongoing, unnecessary and self-defeating measure. While the Government Code mandates that the Judicial Council enter into a master agreement, it does not mandate the current, monopolistic arrangement.</p> <p>Further, this change wreaks a particularly disproportionate impact on low-income litigants who are not sufficiently indigent to qualify for fee waivers, for whom the previous fees were already oppressive.</p>	<p>As described above, the Judicial Council enters into contracts for the provision of telephone appearance services through an open and competitive process. In response to its most recent Request for Proposals, only CourtCall submitted an offer.</p> <p>Although a fee increase for telephone appearances would disproportionately affect low-income litigants who do not qualify for fee waivers, providing these voluntary services can make court hearings and procedures less costly and more accessible for many people. Charging fees for telephone appearances is necessary to obtain the kinds of service and equipment that the public and the courts need and, as discussed in the report, the recommended increase in the telephone appearance fee appropriately addresses the increased costs that will be incurred by CourtCall and courts providing telephone appearance services in the next several years. In addition, telephone appearance fees are recoverable as costs</p>

SP18-18

Telephonic Appearances: Change in the Fee Amount (Amend Cal. Rules of Court, rule 3.670)

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

	Commenter	Position	Comment	DRAFT Committee Response
			<p>The current fee increase is symptomatic of the inefficiencies which this fundamentally unfair arrangement creates. As the proposal stands, it is unexplained how CourtCall manages to provide the same service to litigants in the Bankruptcy Court for the Northern District of California for \$30 while state courts are subject to extortionate rates.</p>	<p>under Code of Civil Procedure section 1033.5. (Code Civ. Proc., § 367.6(c).)</p> <p>The contract between the Judicial Council and CourtCall includes specific requirements for equipment and administration designed to ensure that telephone appearance services meet the needs of judges, attorneys, and members of the public consistently and reliably in hundreds of courtrooms across the state. As discussed above, the competitive bidding processes over the years and the fact that no other vendors responded to the recent RFP support the committee’s determination that the fee and the proposed increase are reasonable.</p> <p>The telephone appearance fee, which is separate from any issue regarding the awarding of telephone appearance contracts (which is beyond the scope of this proposal), applies to any vendor that provides telephone appearance services in California and any court that directly provides these services. The research and analysis regarding telephone appearance fees relies primarily on data involving CourtCall as the longest-serving vendor, but the committee emphasizes that the fee is not being set <i>for</i> CourtCall. The statewide uniform fee is the same for any vendor or court.</p> <p>CourtCall observes that, in the California court system, it is required to bear the cost of the phones, phone line installation, phone line</p>

SP18-18

Telephonic Appearances: Change in the Fee Amount (Amend Cal. Rules of Court, rule 3.670)

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

	Commenter	Position	Comment	DRAFT Committee Response
				<p>monthly service costs, and equipment installation and replacement costs; CourtCall incurs none of those costs in the federal courts it serves. CourtCall also states that, in virtually all of the federal courts it serves, the fees are based on a sliding scale and on longer appearances that frequently result in a fee that exceeds the fee in California.</p> <p>California law and rules of court also affect the telephone appearance fee. In California, CourtCall deposits \$20 of every call into the TCTF pursuant to Government Code section 72011(a); no such fees are collected, processed, or transmitted in the federal system. In California, CourtCall continues to pay \$943,840.00 per year in “legacy payments” to the courts that previously engaged in direct revenue sharing with CourtCall; no such direct payments are made in the federal system. In addition, CourtCall believes that no other private company providing a service to the California courts is required to honor fee waivers. This is at an additional expense of approximately \$340,164.00 for the twelve months ending September 30, 2018. (5,154 waivers processed with CourtCall’s share at \$66.00). CourtCall reports that, historically, it recovers less than 3% of the fee revenue that is waived in a given year.</p> <p>Finally, CourtCall states that, as necessary and appropriate, it is moving to more expensive VoIP technology in California courts.</p>

SP18-18

Telephonic Appearances: Change in the Fee Amount (Amend Cal. Rules of Court, rule 3.670)

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

	Commenter	Position	Comment	DRAFT Committee Response
			<p>For the foregoing reasons, we do not agree with the proposed changes. We would instead prefer that a standardized process be established to certify vendors for master agreements and that vendors. Preferably, such a list would include vendors of simple consumer teleconferencing setups without a significant per-use cost, which would far better suit the needs of smaller courts. This would be a significant improvement over the current anti-competitive system.</p> <p>We also further object to an automatic adjustment of the rate because this would it would reify the current state of affairs without requiring further input from the public as to the rapidly growing cost of telephonic appearances. This does not account for decreased costs due to improved technology or competition and is not tied to any rational market measure of the cost of providing such services. Such a policy would effectively leave litigants with multi-hundred dollar appearance fees decades after telephones themselves go out of use.</p>	<p>By law, the Judicial Council is required to establish statewide uniform fees. (See Code Civ. Proc., § 367.6(a).) Any change to the statute would require action by the Legislature. Under the statute, individual courts can determine if it is beneficial for them to provide telephone appearance services directly rather than through a vendor. Currently, three courts provide telephone appearance services directly.</p> <p>The committee appreciates this feedback in response to the question presented in the invitation to comment.</p>