



Judicial Council of California · Administrative Office of the Courts

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 28, 2013

Title	Agenda Item Type
Telephone Appearances: Amendment of the Fee Amount	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 3.670	July 1, 2013
Recommended by	Date of Report
Administrative Office of the Courts	June 21, 2013
Curt Soderlund, Chief Administrative Officer	Contact
Mary M. Roberts, Chief Counsel	Patrick O'Donnell, 415-865-7665
Legal Services Office	patrick.o'donnell@jud.ca.gov

Executive Summary

The Administrative Office of the Courts recommends amending rule 3.670 of the California Rules of Court on telephone appearances. The proposed amendments would increase the fee to appear by telephone in civil cases from \$78 to \$86, effective July 1, 2013, and would make other changes to clarify the operation of the fee provisions in the rule. The changes in the rule are needed at this time to respond to recent legislation and to provide for the amendment of the statewide master agreement for telephone appearance services, which is set to end on June 30, 2013.

Recommendation

The Administrative Office of the Courts recommends that the Judicial Council, effective July 1, 2013, amend rule 3.670 of the California Rules of Court to increase the fee to appear by telephone in civil cases from \$78 to \$86 per call and to make other changes to clarify the operation of the fee provisions in the rule.

The text of amended rule 3.670 is attached at pages 9–10.

Previous Council Action

In 2011, the Judicial Council adopted the original rule provisions establishing statewide, uniform fees for telephone appearances to implement Senate Bill 857 (Stats. 2010, ch.720). This 2010 budget trailer bill for the judicial branch, which became effective on October 19, 2010, provided: “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 specified that the fees to be paid for telephone appearances must 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).) To implement SB 857, the Judicial Council, effective July 1, 2011, established the amounts of the three fees to be charged for telephone appearances: (1) a \$78 fee for timely requests for telephone appearances,¹ (2) a \$30 late request fee, and (3) a \$5 cancellation fee.

Rationale for Recommendation

Changed circumstances warrant amending the fee provisions in rule 3.670 at this time. The legislation providing for the three fees for telephone appearances originally would have expired in July 2013. Under SB 857, the statutes that provided for these fees (Code Civ. Proc., § 367.6 and Gov. Code, § 72011) stated that the fees would become inoperative on July 1, 2013, and, as of January 1, 2014, would be repealed, unless a later-enacted statute operative on or before January 1, 2014, deleted or extended the dates on which they would have become inoperative or repealed. Legislation was passed in 2012 that removed the sunset language from sections 367.6 and 72011; hence, the Judicial Council is now authorized to establish by rule telephone appearance fees beyond July 1, 2013.

In addition, SB 857 provided: “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).) Effective July 1, 2011, the Administrative Office of the Courts (AOC) on behalf of the Judicial Council entered into a master agreement for telephone appearance services for a term of two years ending June 30, 2013.² It is contemplated that the master agreement will be amended for an additional multi-year term commencing July 1, 2013.

¹ Under Government Code section 72011, enacted as part of SB 857, for each telephone appearance fee collected, the vendor transmits \$20 to the State Treasury for deposit in the Trial Court Trust Fund.

² The AOC originally entered into master agreements with two vendors; however, presently only one vendor is still providing telephone appearance services under the master agreement.

Thus, the amounts of the telephone appearance fees set in rule 3.670 and the master agreement were established effective July 1, 2011, for an anticipated duration of two years. Now that the sunset provisions in the statutes relating to the telephone appearance fees have been removed and the master agreement is set to terminate, the amount of the fees set in the rule and the anticipated amended master agreement need to be reconsidered.

Proposed amendments to the amount of the fee

This proposal recommends increasing the amount of the basic telephone appearance fee from \$78 to \$86 per call. No changes are proposed to the amounts of the late request fee³ or the cancellation fee. The proposed increase in the telephone appearance fee is intended to address the cost and other concerns of the vendor that provides telephone appearance services to the 58 trial courts under the master agreement.

CourtCall, LLC is presently the only provider of telephone appearance services to the California courts. It has provided telephone appearance services for the courts for many years and it is anticipated that it will continue to provide such services in the future, although the master agreement with CourtCall is non-exclusive. Under this rule proposal, effective July 1, 2013, the vendor of telephone services would receive an increase in the portion of each uniform fee that it receives from \$58 to \$66 per call. No increase would be made at this time to the \$20 amount currently deposited in the Trial Court Trust Fund from each fee.⁴ Thus, the total new fee for telephone appearances, effective July 1, 2013, would be \$86.

It is anticipated that this proposed new fee will be in place for five years (i.e., for the duration of a proposed extension of the master agreement from July 1, 2013 through June 30, 2018), unless the Legislature changes the statutory amount of the portion of the telephone appearance fee to be deposited in the Trial Court Trust Fund.

The current vendor has provided an explanation in support of the proposed increase in the fee amount. CourtCall contends that more than 50 percent of its cost structure is composed of three primary categories: employee benefits, courtroom expenses, and general overhead. Collectively, these costs have increased at a compound annual rate of nearly 12 percent between 2010 and 2012. CourtCall states that it offers comprehensive health insurance options to all eligible full-time employees—more than 70 percent of which is paid for by the company—and health care

³ However, as explained in the next section, this proposal to amend rule 3.670 includes some clarifications of how the late request fee operates and who must pay it.

⁴ Any increase in the \$20 amount would require legislative amendment to Government Code section 72011. Also, under section 72011, 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 2009–2010 fiscal year; this amount will continue to be transmitted after July 1, 2013, as provided by law.

premiums have increased significantly in the past decade. CourtCall also indicates that it lost the opportunity to initiate a \$5 per call increase in the telephone appearance fee in 2011 as a result of the enactment of SB 857. CourtCall had been increasing the amount of its fee by \$5 once every three years; but it last initiated such an increase in most California counties in June 2008, resulting in a statewide average fee of \$58 at the time the uniform fee was implemented. In sum, CourtCall contends that the proposed \$8 increase is reasonable and fair, especially when viewed over the course of the proposed extension term, in the context of past revenues lost, and mindful of the company's increasing costs.

The AOC Fiscal Services Office has reviewed how the current \$58 share of the telephone appearance fee received by the vendor (the "base fee") might be adjusted based on the Consumer Price Index (CPI).⁵ Using the CPI to adjust the 2008 \$58 year-end average fee would result in a 2012 year-end fee of \$61.84. Assuming that the annual increase in the CPI from 2013 through 2018 will be the same as the annual average increase in the CPI from 2001 through 2012 (i.e., 2.4 per cent), the CPI adjusted base fee at 2018 year-end would be \$71.40.⁶ Thus, the proposed base fee of \$66, effective from July 1, 2013, through June 30, 2018, appears to be reasonable.

Other proposed amendments to rule 3.670

In addition to increasing the amount of the telephone appearance fee, this proposal recommends several other amendments to rule 3.670 to clarify and update the operation of the law.

First, rule 3.670 currently states that courts may 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 unexpired agreement that was entered into before July 1, 2011, between the court and a vendor. SB 857 required that, if an existing local contract for telephone appearance services was subject to cancellation by the court after July 1, 2011, the court had to exercise its option to cancel the contract as soon after July 1, 2011, as was legally possible. This proposal recommends eliminating the third alternative because all pre-July 1, 2011, contracts have expired or been cancelled, and all trial courts have participation agreements under a statewide master agreement. Therefore the transitional provision for unexpired pre-July 1, 2011, contracts no longer needs to be in the rule.⁷

Second, the provision in rule 3.670 (j)(2) on late fees currently provides that an additional late request fee 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 under certain circumstances. Under this proposal, the amount of the late fee (\$30) would

⁵ The source of the CPI data is the U.S. Department of Labor, Bureau of Labor Statistics.

⁶ It should be noted, however, that some economists anticipate higher levels of inflation than have occurred in recent years.

⁷ The provision will still be in statute, which makes clear that all the pre-July 2011 contracts were to expire or be cancelled. (See Gov. Code, § 72010(c)(2).)

not be changed; however, the exceptions for ex parte applications in subdivision (j)(2) would be modified. Subdivision (j)(2)(A) would be revised to state that, when an ex parte or other hearing is set on shortened time for which a timely notice under these rules would not be feasible or practical, only the applying party—and not any responding party—would be charged the late fee. (See amended rule 3.670(j)(2)(A).)⁸ The amended rule would also state that no late fee is to be charged to any party when the court on its own motion sets a hearing or conference on shortened time, or when the matter has a tentative ruling posted within the three-day period before the hearing. (See amended rule 3.670(j)(2)(B)–(C).) Finally, the amendments would make it clearer that no late fee is to be charged to a party that received notice of another party’s intent to appear and afterward decides to appear by telephone, provided the request is made to the vendor or the court providing the service by noon on the court day before the hearing or conference. (See amended rule 3.670(j)(2)(D).)

Comments, Alternatives Considered, and Policy Implications

Comments

This rule proposal was circulated on a special cycle for public comment from March 22 through April 19, 2013. Three comments were received. The comments were from a consumer law center, a student, and a local bar association.⁹

Consumer Law Center comments.

A consumer law center had several criticisms of CourtCall, the vendor currently providing telephone appearance services to the courts. (See comment 1.) First, it objected that CourtCall on several occasions has improperly denied a waiver of its fees to represented persons who had fee waivers based on an unwritten “new policy” that did not recognize fee waivers for persons who are represented by an attorney. The AOC has contacted CourtCall about this complaint. CourtCall has confirmed that it will not collect telephone appearance fees from attorneys whose clients have appropriately been issued fee waivers.

Second, the consumer law center objected that the vendor on several occasions has refused to waive the \$30 late fee when the telephone appearance has involved a tentative ruling. CourtCall states that its practice is to waive the late fee in this situation. It further states that it has done so

⁸ The version of rule 3.670(j)(2)(A) that was circulated for public comment also recommended modifying subdivision (j)(2)(A) to be in more generic terms: instead of referring to “three days’ notice,” the amended rule would have referred to “a timely notice under these rules.” The reason for this change was that rule 3.670 on telephone appearances is being separately circulated for public comment during the regular spring cycle to include more substantive amendments. The proposed separate amendments include a proposal for a different time for requesting to appear by telephone in ex parte proceedings than in other types of hearings. Thus, in anticipation that rule 3.670 might provide for a different time for providing notice in ex parte proceedings, the proposal had recommended that subdivision (j)(2)(A) be modified to use the more generic term “a timely notice under these rules” instead of “three days’ notice.” However, based on the comments (see comment 3), to avoid ambiguity, this proposal recommends retaining the current reference to “three days’ notice” until the rest of the rule is amended.

⁹ A chart presenting the three comments and the responses to each is attached at pages 11–14.

thousands of times and, if its staff errs on this matter, would make a correcting refund. To make the rule on late fees in the tentative ruling situation clearer, this proposal recommends amending the provision in the rule on late fees to state: “When the matter has a tentative ruling posted within the three-day period, no late fee is to be charged to any party”(underlining added to show new text). (Amended rule 3.670(j)(2)(C).)

Third, the consumer law center contends that the telephone appearance contract needs to be procured from a competitive bidding process. It contends that the current fees are more than enough for the unattended conference calls. And it states that, with free conference call companies available, the contract should be revisited instead of providing for a fee increase. The AOC does not agree.

The initial agreements for telephone appearance services were obtained through competitive bidding in 2011. Vendors were required to provide a specified level of telephone equipment and services to the trial courts. Any qualified business could have applied; however, only two did so. Both became parties to master agreements for the provision of telephone services. At this time, only one of the original vendors of telephone appearance services to the courts remains; no other providers of comparable services and equipment have been identified.

The amount of the proposed fees is reasonable. The fees established under SB 857 are required to be uniform statewide fees. The amount of the fees adopted in 2011 was lower than the previous fees charged in 43 counties and higher than the fees charged in 15 counties. The current master agreement with CourtCall terminates on June 30, 2013. To address the fees to be charged for the next five years under an amended agreement to provide for telephone appearance services, this proposal recommends an increase in the telephone appearance fee from \$78 to \$86 (i.e., a change in the “base fee” received by CourtCall from \$58 to \$66). As discussed earlier in this report, the proposed \$8 increase in the amount of the telephone appearance fee appears to be reasonable based on the CPI. There will be no change in the late fee or the cancellation fee.

Finally, free conference call companies do not provide telephonic equipment to the courts and cannot provide the level of services provided by CourtCall to the courts and the public.

Student comments.

A student commented that the court process is already inaccessible because of excessive fees. She is concerned that the imposition of the proposed higher fees for telephone appearance services will preclude justice for a greater number of people. (See comment 2.) There are several responses to these concerns. First, providing telephone appearance services can make court hearings and procedures less costly and more accessible for many people. Second, to provide access to the courts for low-income parties, the law provides that all eligible parties may request a waiver of fees—including specifically waiver of the fees relating to telephone appearance services. (See Code Civ. Proc., § 367.5(b) and Cal. Rules of Court, rule 3.670(k).) Thus, parties eligible for a fee waiver should not be adversely affected by the telephone appearance fees or by any changes to them. Third, charging fees for telephone appearances is necessary to obtain the

kinds of service and equipment that the public and the courts need. As discussed previously, the recommended increase in the telephone appearance fee is reasonable. Fourth, telephone appearance fees are recoverable as costs under Code of Civil Procedure section 1033.5. (Code Civ. Proc., § 367.6(c).

Local bar association comments.

A local bar association submitted comments. (See comment 3.) The bar association’s only concern was with the proposed amendments to the late fee provision in subdivision (j)(2)(A). Its comment—that the proposed new language in subdivision (j)(2)(A), if presently added to rule 3.670, would be vague—is well-taken. The reason for suggesting the proposed change—replacing the “three days’ notice” with the more general phrase “timely notice under these rules”—was that it is anticipated that rule 3.670 will be further amended effective January 1, 2014, (1) to provide additional times for notice to be given by persons requesting to appear by telephone at ex parte applications, and (2) to clarify that, for requests that would be untimely under any such new notification requirement, only the requesting party—and not the responding party—would be charged the late fee. However, making this change at this time may lead to unnecessary confusion. Accordingly, for the present, the current “three days’ notice” language would be left in the rule. If the rule is later amended to provide for additional forms of notice for appearing ex parte by telephone, the provisions of 3.670(j)(2)(A) can be amended to refer specifically to the new ex parte notice requirements as well as the current three days’ notice requirement.

Alternatives considered

Because of recent legislation, the Rules of Court—in this instance, rule 3.670—must continue to provide for uniform fees for telephone appearance services after June 30, 2013. However, the specific amounts of the three fees required by statute (i.e., the telephone appearance fee, the late fee, and the cancellation fee) are set by the Judicial Council.

To provide for some reasonable increase in the telephone appearance fees is appropriate, at this time, as part of obtaining a master agreement for telephone appearance services for a multi-year period. For the reasons discussed above, this proposal is to increase only the main telephone appearance fee by the amount of \$8 per call; the other two fees would remain unchanged. This increase would apply throughout the anticipated five-year duration of the amended master agreement to go into effect after June 2013. Although different fee amounts and a different duration for the master agreement were considered, the proposed increase in the main telephone appearance fee based on the CPI appears reasonable and should provide continuity of telephone appearance services for the public and the courts.

Implementation Requirements, Costs, and Operational Impacts

This proposal affects only the amount of the telephone appearance fee, which is collected by the vendor under the master agreement. If adopted, the change in the amount of the fee should

require no significant implementation efforts by the trial courts, should increase no court costs, and should have little or no impact on court operations.

Attachments

1. Cal. Rules of Court, rule 3.670, at pages 9–10
2. Chart of comments and responses, at pages 11–14

Rule 3.670 of the California Rules of Court would be amended, effective July 1, 2013, to read:

1 **Rule 3.670. Telephone appearance**

2
3 **(a)–(h) * * ***

4
5 **(i) Provision of telephone appearance services**

6
7 A court may provide for telephone appearances only through one or more of the
8 following methods:

9
10 (1) * * *

11
12 ~~(2) An agreement between a court and a vendor that was entered into before July~~
13 ~~1, 2011, and that has not expired. If a contract is subject to cancellation by a~~
14 ~~court after July 1, 2011, that court must exercise its option to cancel the~~
15 ~~contract as soon after July 1, 2011 as is legally possible to do so.~~

16
17 ~~(3)~~(2) The direct provision by the court of telephone appearance services. If a court
18 directly provides telephone services, it must collect the telephone appearance
19 fees specified in (j), except as provided in (k) and (l). A judge may, at his or
20 her discretion, waive telephone appearance fees for parties appearing directly
21 by telephone in that judge's courtroom.

22
23 **(j) Telephone appearance fee amounts; time for making requests**

24
25 The telephone appearance fees specified in this subdivision are the statewide,
26 uniform fees to be paid by parties to a vendor or court for providing telephone
27 appearance services. ~~These fees supersede any fees paid by parties to vendors or~~
28 ~~courts under agreements or procedures existing before July 1, 2011.~~ Except as
29 provided under (k) and (l), the fees to be paid to appear by telephone are as follows:

30
31 (1) The fee to appear by telephone, made by a timely request to a vendor or court
32 providing telephone appearance services, is ~~\$78~~ \$86 for each appearance.

33
34 (2) An additional late request fee of \$30 is to be charged for an appearance by
35 telephone if the request to the vendor or the court providing telephone
36 services is not made at least three days before the scheduled appearance,
37 except ~~when~~:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

- (A) ~~There is~~ When an ex parte or other hearing or conference is set on shortened time for which three days’ notice would not be feasible or practical, only the applying party—and not any responding party—is to be charged the late fee;
- (B) When the court, on its own motion, sets a hearing or conference on shortened time, no late fee is to be charged to any party;
- (C) When the matter has a tentative ruling posted within the three-day period, no late fee is to be charged to any party; ~~or~~ and
- (D) When the request to appear by telephone is made by a party that received notice of another party’s intent to appear and afterward decides also to appear by telephone under (g)(2), no late fee is to be charged to that party. The request of a party seeking to appear under (g)(2) is timely if the its request is made to the vendor or the court providing the service by noon on the court day before the hearing or conference.

(3) * * *

(k) * * *

(l) Title IV-D proceedings

(1) * * *

(2) Vendor-provided telephone appearance services

If a vendor provides for telephone appearance services in a proceeding for child or family support under Title IV-D, the amount of the fee for a telephone appearance under (j)(1) is \$~~58~~ 66 instead of \$~~78~~ 86. No portion of the fee received by the vendor for a telephone appearance under this subdivision is to be transmitted to the State Treasury under Government Code section 72011.

(3)–(4) * * *

(m)–(p) * * *

SP13-02

Telephonic Appearances: Amendment of the Fee Amount. Amend Cal. Rules of Court, rule 3.670

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

	Commentator	Position	Comment	Response
1.	Consumer Law Center, Inc. Fred W. Schwinn, Attorney San Jose	N	<p>CourtCall uses its monopoly to extract unlawful fees from consumers with court fee waivers. On several occasions consumers with counsel and fee waivers have been denied a waiver of the CourtCall fees on the basis of a "new policy" which CourtCall refused to provide in writing and which could be found nowhere on its website (though I have a voice mail recording from a CourtCall supervisor). The "new policy" apparently allowed CourtCall to ignore court fee waivers for individuals with counsel (CourtCall personnel states that Court fee waivers were only honored for individuals without counsel). The rules clearly do not allow this.</p> <p>Moreover, CourtCall has on several occasions refused to waive the \$30 late fee based on the tentative ruling rule. CourtCall personnel simply cancel your CourtCall appearance if you refuse to pay their unlawful fees.</p>	<p>Legislation enacted in 2010 required the Judicial Council to establish uniform statewide telephone appearance fees, which it has done. (See AB 857; Cal. Rules of Court, rule 3.670(j).) The legislation also required the creation of statewide master agreements for telephone services. Through a competitive process, CourtCall was selected to be one of two vendors to provide telephone appearance services for the trial courts pursuant to the master agreements required by SB 859. The 2010 legislation and the 2011 amendments to the Rules of Court also provide that parties eligible for fee waivers do not have to pay the telephone appearance fees. (See Code Civ. Proc., 367.6(b) and Cal. Rules of Court, rule 3.670(k)(1).) CourtCall has confirmed to the Administrative Office of the Courts that it will not collect telephone appearance fees from attorneys whose clients have appropriately issued fee waivers.</p> <p>With respect to the complaint that CourtCall has sometimes refused to waive the late fee in connection with a tentative ruling, CourtCall states that its practice is to waive the late fee in this situation. It further states it has done so thousands of times of times and, if its staff errs on this, CourtCall would make a correcting refund. To make the rule on late fees in the tentative ruling situation clearer, this proposal recommends amending the provision in the rule on late fees to state: "<u>When</u> the matter has a tentative ruling posted within the three-day period, <u>no late fee is to be charged to any party</u>"(underlining added). (Amended rule 3.670(j)(2)(C).)</p>

SP13-02

Telephonic Appearances: Amendment of the Fee Amount. Amend Cal. Rules of Court, rule 3.670

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

	Commentator	Position	Comment	Response
			<p>The contract need[s] to be let for competitive bidding. The current fees are currently more than enough for unattended conference calls as provided by CourtCall. With several free conference call companies available, CourtCall's statewide contract needs a revisit not a fee increase.</p>	<p>The initial telephone appearance agreements were obtained through competitive bidding in 2011. Vendors were required to provide a specified level of telephone equipment and services to the trial courts. Any qualified business could have applied; however, only two did so. Both became parties to master agreements for the provision of telephone services. At this time, only one of the original vendors of telephone appearance services to the courts remains; no other providers of comparable services and equipment have been identified. Under SB 857, the fees established under SB 857 were required to be uniform statewide fees. The amount of the fees adopted in 2011 was lower than the previous fees charged in 43 counties and higher than the fees charged in 15 counties. The current master agreement with CourtCall terminates on June 30, 2013. To address the fees to be charged for the next five years under an amended agreement to provide for telephone appearance services, this proposal recommends a fee increase from \$78 to \$86 per call based on the CPI. The proposed change in the amount of the telephone appearance fee appears to be reasonable. (See report.) Free conference call companies do not provide telephonic equipment to the courts and cannot provide the level of services provided by CourtCall to the courts and the public.</p>

SP13-02**Telephonic Appearances: Amendment of the Fee Amount.** Amend Cal. Rules of Court, rule 3.670

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

	Commentator	Position	Comment	Response
2.	Michele Marino Student Long Beach	N	Too much of the court process is already made inaccessible to the general public due to excessive fees. With the current economic status, to impose higher fees is to preclude justice for a greater amount of people.	There are several responses to these concerns. First, providing telephone appearances services can make court hearings and procedures less costly and more accessible for many people. Second, to provide access to the courts for low-income parties, the law provides that all eligible parties may request a waiver of fees—including specifically waiver of the fees relating to telephone appearance services. (See Code Civ. Proc., § 367.5(b) and Cal. Rules of Court, rule 3.670(k).) Thus, parties eligible for a fee waiver should not be adversely affected by the telephone appearance fees or by any changes to them. Third, charging fees for telephone appearances is necessary to obtain the kinds of service and equipment that the public and the courts need. As discussed in the report, the recommended increase in the telephone appearance fee is reasonable. Fourth, telephone appearance fees are recoverable as costs under Code of Civil Procedure section 1033.5. (Code Civ. Proc., § 367.6(c).)
3.	Orange County Bar Association By: Wayne Gross President	AM	At (j)(2)(A) of the rule, the proposal deletes the “three day” standard for notice and, in its stead, uses the phrase “timely notice under these rules.” The proposed phrase is vague and open to wide interpretation, as it provides no standard or direction. This could prove confusing to litigants and lead to unanticipated expense. Accordingly, it is suggested that the language of (j)(2)(A) which sets forth the three day notice standard be left as it is until any anticipated and fuller revision of rule 3.670 is drafted and proposed. In all other respects, the codifications	The comment that the proposed new language in subdivision (j)(2)(A), if presently added to the rule, would be vague is well-taken. The reason for the suggesting the proposed change—replacing the “three days’ notice” with the more general phrase “timely notice under these rules”—was that it is anticipated that rule 3.670 will be further amended effective January 1, 2014 to provide additional times for notice to be given by persons requesting to appear by telephone at ex parte applications, and that the rule should clarify that, for requests that would be untimely under any

SP13-02

Telephonic Appearances: Amendment of the Fee Amount. Amend Cal. Rules of Court, rule 3.670

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

	Commentator	Position	Comment	Response
			to rule 3.670(j)(2)(A)-(D) appear appropriate.	such new notification requirement, only the requesting party—and not the responding party—would be charged the late fee. However, making this change at this time may lead to some unnecessary confusion. Accordingly, for the present, the current language about “three days’ notice” would be left in the rule. If the rule is later amended to provide for additional forms of notice for appearing ex parte by telephone, the provisions of rule 3.670(j)(2)(A) can be amended to refer specifically to the new ex parte notice requirements as well as the current three days’ notice requirement.