



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-202

For business meeting on December 2, 2022

Title

Telephone Appearances: Conforming Rules of Court to Senate Bill 233

Agenda Item Type

Action Required

Effective Date

January 1, 2023

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 3.55, 3.670, and 10.815

Date of Report

November 9, 2022

Recommended by

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Executive Summary

In consultation with the chairs of the Judicial Council's internal committees and representative members of the Chief Justice's Ad Hoc Workgroup on Post-Pandemic Initiatives, Judicial Council staff recommend amending three rules of court to conform them to statutory changes that will become effective January 1, 2023. Senate Bill 233 (Stats. 2022, ch. 979) repeals statutes that, among other provisions, required the Judicial Council to set specified uniform, statewide fees for telephone appearances and enter into one or more master agreements with a vendor to provide telephone appearances. The proposed amendments to the rules would make them consistent with these statutory changes and will also maintain legal authority for telephone appearance fees that do not to exceed the cost of providing this service.

Recommendation

Judicial Council staff recommend that the Judicial Council, effective January 1, 2023, amend California Rules of Court, rules 3.55, 3.670, and 10.815 to be consistent with SB 233 and to

maintain legal authority for telephone appearance fees that do not exceed the cost of providing the service pending any further action the Legislature may take.

The text of the proposed rule amendments is attached at pages 7–12.

Relevant Previous Council Action

Since the 1980s, the Judicial Council and the Legislature have been developing statutes and rules to permit parties to appear by telephone in various types of civil court proceedings.¹

Relevant to this proposal are the council’s 2011 amendments to rule 3.670 of the California Rules of Court,² which were made in response to Senate Bill 857 (Stats. 2010, ch. 720), the 2010 judicial branch–related budget trailer bill. Among other provisions, that bill required the Judicial Council to (1) enter into one or more master agreements with a vendor or vendors to provide for telephone appearances in civil cases³ and (2) establish specific statewide, uniform telephone appearance fees in civil cases.⁴ Senate Bill 857 also added a provision that a party who received a fee waiver could not be charged a fee for a telephone appearance, but also provided a court or vendor a lien on a judgment in the amount of the fee that they would have received.⁵ These fees were authorized only for civil proceedings. Fees were not authorized in criminal proceedings.

Consistent with the mandates in SB 857, the council’s 2011 amendments to rule 3.670

- amended subdivision (i) to limit courts to providing telephone appearances in civil proceedings either directly or through an agreement with a vendor under a statewide master agreement;⁶
- added subdivision (j) to establish the amounts of the statutorily mandated telephone appearance fees in civil cases;⁷ and
- added subdivision (k) to reflect that a party who has received a fee waiver must not be charged the fees for telephone appearances, a party must advise the vendor or the court

¹ Judicial Council of Cal., Staff Rep., *Telephone Appearances: Fees and Revenues* (June 20, 2011), p. 2, <https://www.courts.ca.gov/documents/20110624item9.pdf>.

² All further references to rules are to the California Rules of Court.

³ Gov. Code, § 72010(a).

⁴ Code Civ. Proc., § 367.6(a).

⁵ Code Civ. Proc., § 367.6(b).

⁶ Rule 3.670(i), as amended effective July 1, 2011. (See Staff Rep., *supra* note 1, at p. 18.) The rule also permitted a court to continue to use a vendor under an agreement between the court and vendor that was entered into before July 1, 2011, and had not expired or been subject to cancellation, a provision later deleted from the rule, effective July 1, 2013.

⁷ Rule 3.670(j), as amended effective July 1, 2011. (See Staff Rep., *supra* note 1, at pp. 18–19.) The rule set the fees at the following rates: a telephone appearance fee of \$78, a late request fee of \$30, and a cancellation fee of \$5.

that he or she has received a fee waiver from the court, and that the court or vendor is entitled to a lien on any judgment in the amount the party would have paid.⁸

Since the council amended rule 3.670 in 2011, it has amended the rule on four more occasions, often updating the amount of the telephone appearance fee as the council issued requests for proposals that resulted in new master agreements.

Analysis/Rationale

Background

Remote proceedings and emergency rule 3

On April 6, 2020, to address the public health issues caused by the COVID-19 pandemic, the Judicial Council adopted emergency rule 3, which provided that courts could require that judicial proceedings and court operations be conducted remotely. Unlike the authority in Code of Civil Procedure section 367.5, which was limited to telephone appearances, emergency rule 3 expanded the authority for the use of remote technology to include “the use of video, audio, and telephonic means for remote appearances.”⁹

Statutory authority for remote proceedings

(Senate Bill 241 and Code of Civil Procedure Section 367.75)

After 18 months of courts conducting civil proceedings remotely under the authority of emergency rule 3, the Legislature passed a bill (Sen. Bill 241)¹⁰ that enacted a statute (Code Civ. Proc., § 367.75) that explicitly authorized courts to conduct civil proceedings through the use of remote technology. The Judicial Council promptly adopted a new rule, amended other rules, and provided necessary forms to implement the statute.¹¹ Though it did not define “remote technology,” nothing in SB 241 indicated that it should exclude the use of telephones for remote appearances. Accordingly, rule 3.672 states that for purposes of the rule, the term “is meant to be interpreted broadly” and means “technology that provides for the transmission of video and audio signals or audio signals alone” including “a computer, tablet, telephone, cellphone, or other electronic or communications device.”¹² Consistent with the understanding that telephone appearances under Code of Civil Procedure section 367.5 and rule 3.670 were included within

⁸ Rule 3.670(k), as amended effective July 1, 2011. (See Staff Rep., *supra* note 1, pp. 19–20.)

⁹ Emergency rule 3(a)(3), as adopted April 6, 2022, <https://jcc.legistar.com/View.ashx?M=F&ID=8234474&GUID=79611543-6A40-465C-8B8B-D324F5CAE349>.

¹⁰ Stats. 2021, ch. 214.

¹¹ Judicial Council of Cal., Circulating Order No. CO-21-05 (Dec. 28, 2021) <https://jcc.legistar.com/View.ashx?M=A&ID=918636&GUID=BFA5B7E4-6AD9-42AA-BA44-3CCE361CDD7F>. The council also amended emergency rule 3 effective January 1, 2022, to remove civil proceedings from the scope of that rule. This was intended to make the rule consistent with the newly enacted statute (Code Civ. Proc., § 367.75), which would govern remote proceedings in civil proceedings. (Judicial Council of Cal., Internal Com. Rep., *Emergency Rule on Use of Technology for Remote Appearances* (Oct. 28, 2021), <https://jcc.legistar.com/View.ashx?M=F&ID=9943235&GUID=2151CCEB-D89E-4F7F-8D3C-01BD74D9C5E6>.)

¹² Rule 3.672(c)(8).

the broader category of remote appearances, the council suspended those provisions of rule 3.670 relating to telephone appearances to the extent they were inconsistent with Code of Civil Procedure section 367.75 and rule 3.672.¹³ For the same reason, the council revoked three forms that related solely to telephone appearances.¹⁴

Senate Bill 233—Repeal of standalone telephone appearance statutes

Following its enactment of a statute on remote civil proceedings under SB 241, the Legislature passed SB 233 to repeal the four statutes¹⁵ related exclusively to telephone appearances. Although SB 241 maintained much of the authority for telephone appearances and even expanded on it—covering a broader range of proceedings and technological platforms—the bill did not clarify whether it superseded the existing telephonic appearance framework or provide direction on how the two statutory frameworks could be reconciled.¹⁶ Senate Bill 233 was “intended to eliminate the confusion and duplicative efforts caused by the simultaneous telephonic and remote appearance frameworks by repealing the standalone telephonic appearance statutes.”¹⁷

With the enactment of SB 233, and the repeal of Code of Civil Procedure section 367.6 and Government Code sections 72010 and 72011, the Judicial Council will no longer be required to enter into one or more master agreements with a vendor or vendors to provide for telephone appearances in civil cases. Courts will no longer be required to use only those vendors with whom the Judicial Council has a master agreement or to provide for telephone services directly. In addition, the Judicial Council will no longer be required to establish specific statewide, uniform telephone appearance fees in civil cases.

Rule amendments

Rule 3.55

Rule 3.55 identifies the costs that must be waived upon granting an application for an initial fee waiver. Paragraph (7) identifies fees for telephone appearances as one of the costs that must be waived. The council already determined that the fee for any remote appearance would be subject to a fee waiver,¹⁸ so the inclusion of fees for telephone appearance may remain in the rule, but the proposal would delete the reference to Code of Civil Procedure section 367.5, as that statute will be repealed effective January 1, 2023.

¹³ Rule 3.670(b); Circulating Order No. CO-21-05, *supra* note 11, at pp. 11–12.

¹⁴ Circulating Order No. CO-21-05, *supra* note 11, at pp. 11–12.

¹⁵ Code Civ. Proc., §§ 367.5, 367.6; Gov. Code, §§ 72010, 72011.

¹⁶ Sen. Judiciary Com., Analysis of Sen. Bill No. 233 (2021–2022 Reg. Sess.) as amended June 16, 2022, p. 5, https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB233.

¹⁷ *Ibid.*

¹⁸ Rule 3.672(k).

Rule 3.670

The proposed amendments to rule 3.670, chiefly the revocation of subdivisions (j) and (k), are intended to make the California Rules of Court consistent with the repeal of the statutes requiring the council to enter into a master agreement with one or more vendors to provide telephone appearance services and to set certain fees for telephone appearances. There is no need to revoke other subdivisions at this time, as they are consistent with legal authorities for remote appearances (i.e., Code of Civil Procedure section 367.75 and rule 3.672) or they have been suspended for the time period in which section 367.75 is currently in place.¹⁹

Other proposed amendments to rule 3.670 include re-lettering the subdivisions to reflect the revocation of subdivisions (j) and (k); amending subdivision (l)(1) (Fee waivers) to remove references to subdivision (k) of the rule and Code of Civil Procedure section 367.6; and amending subdivision (m) (Title IV-D proceedings) to delete paragraph (2) on vendor fees and update a cross-reference to a re-lettered subdivision in the rule.

Rule 10.815

Senate Bill 241 did not address the fees that may be charged for a remote appearance. At the time, however, Code of Civil Procedure section 367.6 provided authority to charge for telephone appearances and Government Code section 70630 provided authority to “charge a reasonable fee to cover the costs of permitting parties to appear by videoconferencing.” Now that Code of Civil Procedure section 367.6 is being repealed, there is no statutory provision addressing the fee for a telephone appearance.

Where it has not set a civil fee by statute, the Legislature has authorized the Judicial Council to approve “a reasonable fee not to exceed the costs of providing the service or product.”²⁰ The council exercises this approval authority through rule 10.815. To maintain authority for collection of a fee for telephone appearances, this proposal would amend rule 10.815 to add “telephone appearance services” to the list of fees that a court may charge. This would bring the framework for telephone appearance fees into parity with that of video appearance fees. Both are required to relate to the actual costs of providing the service. Rule 10.815 also provides for transparency and accountability in setting the amount of a fee.²¹ Bringing the fee setting for telephone and video appearances into alignment is also consistent with the intent of SB 233, in that it further dissolves the disparate administrative treatment for remote appearances. This amendment will authorize the continued collection of fees for telephone appearances, at least until the Legislature acts on this matter.

¹⁹ Rule 3.672(b) (“Subdivisions (c) through (i) of this rule are suspended from January 1, 2022, to July 1, 2023, during which time the provisions in rule 3.672 apply in their place”).

²⁰ Gov. Code, § 70631.

²¹ Rule 10.815(c)–(g), which provides a definition of “reasonableness,” guidelines for determining costs, public notice, and reporting to the Judicial Council.

Policy implications

The amendments to rules 3.55 and 3.670 make the rules consistent with the changes in statute resulting from the enactment of SB 233. To the extent there are policy implications (eliminating the disparate treatment of telephone appearances as compared with other remote technologies), these are the result of legislative action, not the rule amendments.

The amendment to rule 10.815 is intended to continue existing legal authority and be consistent with SB 233 by treating the fees for telephone appearances the same as fees for remote appearances.

Comments

The proposal was not circulated for comment because it involves minor substantive changes that are unlikely to create controversy as they would make existing rules consistent with recent statutory changes that become effective on January 1, 2023.²² The changes related to telephone appearances in civil proceedings parallel existing practices and procedures for remote appearances using video technology in civil proceedings. In addition, the amendments are urgently needed by January 1, 2023, to continue legal authority for a reasonable fee not to exceed the costs for providing telephone appearances in civil proceedings.

Alternatives considered

Staff considered recommending no action, but concluded the proposed amendments are necessary to make the rules consistent with recent statutory changes and to assure there is continuity in the legal authority to charge a fee for telephone appearances.

Fiscal and Operational Impacts

There are likely to be fiscal and operational impacts on trial courts, but these are the result of statutory changes.

Attachments and Links

1. Cal. Rules of Court, rules 3.55, 3.670, and 10.815, at pages 7–12

²² Cal. Rules of Court, rule 10.22(d)(2).

Rules 3.55, 3.670, and 10.815 of the California Rules of Court are amended, effective January 1, 2023, to read:

Rule 3.55. Court fees and costs included in all initial fee waivers

Court fees and costs that must be waived upon granting an application for an initial fee waiver include:

(1)–(6) * * *

(7) The court fee for a telephone appearance ~~under Code of Civil Procedure section 367.5;~~

(8)–(10) * * *

Rule 3.670. Telephone appearance

(a) Policy favoring telephone appearances

The intent of this rule is to promote uniformity in the practices and procedures relating to telephone appearances in civil cases. To improve access to the courts and reduce litigation costs, courts should permit parties, to the extent feasible, to appear by telephone at appropriate conferences, hearings, and proceedings in civil cases.

(b) Application

Subdivisions (c) through (i) of this rule are suspended from January 1, 2022, to July 1, 2023, during which time the provisions in rule 3.672 apply in their place. This rule applies to all general civil cases as defined in rule 1.6 and to unlawful detainer and probate proceedings.

(c)–(i) * * *

~~(j) Provision of telephone appearance services~~

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

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

~~(2) The direct provision by the court of telephone appearance services. If a court directly provides telephone services, it must collect the telephone appearance~~

1 fees specified in (k), except as provided in (l) and (m). A judge may, at his or
2 her discretion, waive telephone appearance fees for parties appearing directly
3 by telephone in that judge's courtroom.
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 \$94 for each appearance.
14

15 (2) — An additional late request fee of \$30 is to be charged for an appearance by
16 telephone if the request to the vendor or the court providing telephone
17 services is not made at least two days before the scheduled appearance,
18 except:
19

20 (A) — When an opposing party has provided timely notice under (h)(4) on an
21 ex parte application or other hearing, conference, or proceeding, no late
22 fee is to be charged to that party;
23

24 (B) — When the court, on its own motion, sets a hearing or conference on
25 shortened time, no late fee is to be charged to any party;
26

27 (C) — When the matter has a tentative ruling posted within the two day
28 period, no late fee is to be charged to any party; and
29

30 (D) — When the request to appear by telephone is made by a party that
31 received notice of another party's intent to appear and afterward
32 decides also to appear by telephone under (h)(2), no late fee is to be
33 charged to that party if its request is made to the vendor or the court
34 providing the service by noon on the court day before the hearing or
35 conference.
36

37 (3) — A fee of \$5 is to be charged instead of the fees under (1) and (2) if a party
38 cancels a telephone appearance request and no telephone appearance is made.
39 A hearing or appearance that is taken off calendar or continued by the court is
40 not a cancellation under this rule. If the hearing or appearance is taken off
41 calendar by the court, there is no charge for the telephone appearance. If the
42 hearing or appearance is continued by the court, the appearance fee must be

1 refunded to the requesting party or, if the party agrees, be applied to the new
2 hearing or appearance date.

3
4 **~~(d)~~(i) Fee waivers**

5
6 (1) *Effect of fee waiver*

7
8 A party that has received a fee waiver must not be charged the fees for
9 telephone appearances provided under (k), subject to the provisions of Code
10 of Civil Procedure section 367.6(b).

11
12 (2) *Responsibility of requesting party*

13
14 To obtain telephone services without payment of a telephone appearance fee
15 from a vendor or a court that provides telephone appearance services, a party
16 must advise the vendor or the court that he or she has received a fee waiver
17 from the court. If a vendor requests, the party must transmit a copy of the
18 order granting the fee waiver to the vendor.

19
20 (3) *Lien on judgment*

21
22 If a party based on a fee waiver receives telephone appearance services under
23 this rule without payment of a fee, the vendor or court that provides the
24 telephone appearance services has a lien on any judgment, including a
25 judgment for costs, that the party may receive, in the amount of the fee that
26 the party would have paid for the telephone appearance. There is no charge
27 for filing the lien.

28
29 **~~(m)~~(k) Title IV-D proceedings**

30
31 (1) *Court-provided telephone appearance services*

32
33 If a court provides telephone appearance services in a proceeding for child or
34 family support under Title IV-D of the Social Security Act brought by or
35 otherwise involving a local child support agency, the court must not charge a
36 fee for those services.

37
38 ~~(2) Vendor-provided telephone appearance services~~

39
40 ~~If a vendor provides for telephone appearance services in a proceeding for~~
41 ~~child or family support under Title IV D, the amount of the fee for a~~
42 ~~telephone appearance under (k)(1) is \$74 instead of \$94. No portion of the~~
43 ~~fee received by the vendor for a telephone appearance under this subdivision~~

1 is to be transmitted to the State Treasury under Government Code section
2 72011.

3
4 ~~(3)~~(2) *Responsibility of requesting party*

5
6 When a party in a Title IV-D proceeding requests telephone appearance
7 services from a court or a vendor, the party requesting the services must
8 advise the court or the vendor that the requester is a party in a proceeding for
9 child or family support under Title IV-D brought by or otherwise involving a
10 local child support agency.

11
12 ~~(4)~~(3) *Fee waivers applicable*

13
14 The fee waiver provisions in ~~(4)~~(j) apply to a request by a party in a Title IV-
15 D proceeding for telephone appearance services from a vendor.

16
17 ~~(n)~~(l) **Audibility and procedure**

18
19 The court must ensure that the statements of participants are audible to all other
20 participants and the court staff and that the statements made by a participant are
21 identified as being made by that participant.

22
23 ~~(o)~~(m) **Reporting**

24
25 All proceedings involving telephone appearances must be reported to the same
26 extent and in the same manner as if the participants had appeared in person.

27
28 ~~(p)~~(n) **Conference call vendor or vendors**

29
30 A court, by local rule, may designate the conference call vendor or vendors that
31 must be used for telephone appearances.

32
33 ~~(q)~~(o) **Information on telephone appearances**

34
35 The court must publish notice providing parties with the particular information
36 necessary for them to appear by telephone at conferences, hearings, and
37 proceedings in that court under this rule.

38
39 **Advisory Committee Comment**

40
41 This rule does not apply to criminal or juvenile matters, and it also does not apply to family law
42 matters, except in certain respects as provided in rule 5.324 relating to telephone appearances in
43 proceedings for child or family support under Title IV-D of the Social Security Act. (See Cal.

Rules of Court, rule 3.670(b) [rule applies to general civil cases and unlawful detainer and probate proceedings]; rule 5.324(j) [subdivisions (j)–(q) of rule 3.670 apply to telephone appearances in Title IV-D proceedings].)

Subdivision (d) * * *

Subdivision (h) * * *

~~**Subdivision (j).** Under subdivision (j)(3) of this rule and Government Code section 72010(c), 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.~~

Rule 10.815. Fees to be set by the court

(a) Authority

Under Government Code section 70631, a superior court may charge a reasonable fee for a service or product not to exceed the costs of providing the service or product, if the Judicial Council approves the fee.

(b) Approved fees

The Judicial Council authorizes courts to charge a reasonable fee not to exceed costs for the following products and services unless courts are prohibited by law from charging a fee for, or providing, the product or service:

(1)–(15) * * *

(16) Training programs for attorneys who serve as court-appointed temporary judges, including the materials and food provided to the participants; ~~and~~

(17) Other training programs or events, including materials and food provided to the participants; and

(18) Telephone appearance services.

(c) Guidelines for determining costs

The fee charged for any product or service listed in (b) may not exceed the court's cost in providing the product or service. In determining the costs of a product or service, the court must:

1
2 (1) Identify the specific product or service; and

3
4 (2) Prepare an analysis of the direct and indirect costs on which the fee is based.
5

6 **(d) Reasonableness**

7
8 In deciding what specific fee or fees, if any, to charge for a product or service under
9 (b), the court must determine that the fee charged is reasonable considering relevant
10 factors such as the benefits to the court and the public from providing the product
11 or service and the effects of charging the fee on public access to the court.
12

13 **(e) Reporting requirement**

14
15 Each court that charges a fee under this rule must provide Judicial Council staff
16 with a description of the fee, how the amount of the fee was determined, and how
17 the fee is applied.
18

19 **(f) Public notice**

20
21 The court must notify the public of any fee that it charges under this rule by
22 providing information concerning the fee in a conspicuous place such as the court's
23 fee schedule.
24

25 **(g) Procedure for adoption of fee**

26
27 If a court proposes to change any fee authorized under (b) that it is already charging
28 or to charge any new fee authorized under (b), the court must follow the procedures
29 for adopting or amending a local rule under rule 10.613 of the California Rules of
30 Court.
31