

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on December 7, 2007,
effective on January 1, 2008.

| | | |
|----|---|----|
| 1 | Rule 4.115. Criminal case assignment..... | 2 |
| 2 | Rule 4.201. Voir dire in criminal cases..... | 3 |
| 3 | Rule 4.405. Definitions | 3 |
| 4 | Rule 4.420. Selection of term of imprisonment..... | 4 |
| 5 | Rule 4.428. Criteria affecting imposition of enhancements | 5 |
| 6 | Rule 4.433. Matters to be considered at time set for sentencing | 5 |
| 7 | Rule 4.437. Statements in aggravation and mitigation | 6 |
| 8 | <u>Rule 7.1101. Qualifications and continuing education required of counsel</u> | |
| 9 | <u>appointed by the court in guardianships and conservatorships.....</u> | 6 |
| 10 | <u>Rule 10.468. Content-based and hours-based education for superior court</u> | |
| 11 | <u>judges and subordinate judicial officers regularly assigned to hear</u> | |
| 12 | <u>probate proceedings</u> | 11 |
| 13 | <u>Rule 10.478. Content-based and hours-based education for court</u> | |
| 14 | <u>investigators, probate attorneys, and probate examiners</u> | 15 |
| 15 | Rule 10.481. Approved providers; approved course criteria | 20 |
| 16 | <u>Rule 10.776. Definitions</u> | 21 |
| 17 | <u>Rule 10.777. Qualifications of court investigators, probate attorneys, and</u> | |
| 18 | <u>probate examiners</u> | 22 |

1 **Rule 4.115. Criminal case assignment**

2
3 **(a) Master calendar departments**

4
5 To ensure that the court’s policy on continuances is firm and uniformly
6 applied, that pretrial proceedings and trial assignments are handled
7 consistently, and that cases are tried on a date certain, each court not
8 operating on a direct calendaring system must assign all criminal matters to
9 one or more master calendar departments. The presiding judge of a master
10 calendar department must conduct or supervise the conduct of all
11 arraignments and pretrial hearings and conferences and assign to a trial
12 department any case requiring a trial or dispositional hearing.

13
14 *(Subd (a) lettered effective January 1, 2008; adopted as unlettered subd effective January*
15 *1, 1985.)*

16
17 **(b) Trial calendaring and continuances**

18
19 Any request for a continuance, including a request to trail the trial date, must
20 comply with rule 4.113 and the requirement in section 1050 to show good
21 cause to continue a hearing in a criminal proceeding. Active management of
22 trial calendars is necessary to minimize the number of statutory dismissals.
23 Accordingly, courts should avoid calendaring or trailing criminal cases for
24 trial to the last day permitted for trial under section 1382. Courts must
25 implement calendar management procedures, in accordance with local
26 conditions and needs, to ensure that criminal cases are assigned to trial
27 departments before the last day permitted for trial under section 1382.

28
29 *(Subd (b) adopted effective January 1, 2008.)*

30
31 *Rule 4.115 amended effective January 1, 2008; adopted as section 10 of the Standards of Judicial*
32 *Administration effective January 1, 1985; amended and renumbered effective January 1, 2001;*
33 *previously amended effective January 1, 2007.*

34
35 **Advisory Committee Comment**

36
37 Subdivision (b) clarifies that the “good cause” showing for a continuance under section 1050
38 applies in all criminal cases, whether or not the case is in the 10-day grace period provided for in
39 section 1382. The Trial Court Presiding Judges Advisory Committee and Criminal Law Advisory
40 Committee observe that the “good cause” requirement for a continuance is separate and distinct
41 from the “good cause” requirement to avoid dismissals under section 1382. There is case law
42 stating that the prosecution is not required to show good cause to avoid a dismissal under section
43 1382 during the 10-day grace period because a case may not be dismissed for delay during that
44 10-day period. (See, e.g., *Bryant v. Superior Court* (1986) 186 Cal.App.3d 483, 488.) Yet, both
45 the plain language of section 1050 and case law show that there must be good cause for a
46 continuance under section 1050 during the 10-day grace period. (See, e.g., section 1050 and

1 People v. Henderson (2004) 115 Cal.App.4th 922, 939–940.) Thus, a court may not dismiss a
2 case during the 10-day grace period under section 1382, but the committees believe that the court
3 must deny a request for a continuance during the 10-day grace period that does not comply with
4 the good cause requirement under section 1050.

5
6 The decision in Henderson states that when the prosecutor seeks a continuance but fails to show
7 good cause under section 1050, the trial court “must nevertheless postpone the hearing to another
8 date within the statutory period.” (115 Cal.App.4th at p. 940.) That conclusion, however, may be
9 contrary to the plain language of section 1050, which requires a court to deny a continuance if the
10 moving party fails to show good cause. The conclusion also appears to be dicta, as it was not a
11 contested issue on appeal. Given this uncertainty, the rule is silent as to the remedy for failure to
12 show good cause for a requested continuance during the 10-day grace period. The committees
13 note that the remedies under section 1050.5 are available and, but for the Henderson dicta, a court
14 would appear to be allowed to deny the continuance request and commence the trial on the
15 scheduled trial date.

16 17 18 **Rule 4.201. Voir dire in criminal cases**

19 * * *

20
21
22 *Rule 4.201 amended effective January 1, 2006; adopted as rule 228.2 effective June 6, 1990;*
23 *previously amended and renumbered effective January 1, 2001.*

24 25 26 **Advisory Committee Comment**

27
28 Although Code of Civil Procedure section 223 creates a preference for nonsequestered voir dire
29 (People v. Roldan (2005) 35 Cal.4th 646, 691), a judge may conduct sequestered voir dire on
30 questions concerning media reports of the case and on any other issue deemed advisable. (See,
31 e.g., Cal. Stds. Jud. Admin., std. 4.30(a)(3).) To determine whether such issues are present, a
32 judge may consider factors including the charges, the nature of the evidence that is anticipated to
33 be presented, and any other relevant factors. To that end, a judge should always inform jurors of
34 the possibility of sequestered voir dire if the voir dire is likely to elicit answers that the juror may
35 believe are sensitive in nature. It should also be noted that when written questionnaires are used,
36 jurors must be advised of the right to request a hearing in chambers on sensitive questions rather
37 than answering them on the questionnaire. (Copley Press Inc. v. Superior Court (1991) 228
38 Cal.App.3d 77, 87.)

39 40 **Rule 4.405. Definitions**

41
42 As used in this division, unless the context otherwise requires:

43
44 (1)–(10) * * *

45
46 *Rule 4.405 amended effective May 23, 2007; adopted as rule 405 effective July 1, 1977;*
47 *previously renumbered effective January 1, 2001; previously amended effective July 28, 1977,*
48 *January 1, 1991, July 1, 2003, and January 1, 2007.*

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
38
39
40
41
42
43
44
45
46

Advisory Committee Comment

“Base term” is the term of imprisonment selected under section 1170(b) from the three possible terms. (See section 1170(a)(3); *People v. Scott* (1994) 9 Cal.4th 331, 349.) Following the United States Supreme Court decision in *Cunningham v. California* (2007) 549 U.S. __ [127 S.Ct. 856.], the Legislature amended the determinate sentencing law. (See Sen. Bill 40; Stats. 2007, ch. 3.) To comply with those changes, these rules were also amended. In light of those amendments, for clarity, the phrase “base term” in (4) and (5) was replaced with “one of the three authorized prison terms.” It is an open question whether the definitions in (4) and (5) apply to enhancements for which the statute provides for three possible terms. The Legislature in SB 40 amended section 1170(b) but did not modify sections 1170.1(d), 12022.2(a), 12022.3(b), or any other section providing for an enhancement with three possible terms. The latter sections provide that “the court shall impose the middle term unless there are circumstances in aggravation or mitigation.” (See, e.g., section 1170.1(d).) It is possible, although there are no cases addressing the point, that this enhancement triad with the presumptive imposition of the middle term runs afoul of *Cunningham*. Because of this open question, rule 4.428(b) was deleted.

Rule 4.420. Selection of term of imprisonment

(a) ***

(b) In exercising his or her discretion in selecting one of the three authorized prison terms referred to in section 1170(b), the sentencing judge may consider circumstances in aggravation or mitigation, and any other factor reasonably related to the sentencing decision. The relevant circumstances may be obtained from the case record, the probation officer’s report, other reports and statements properly received, statements in aggravation or mitigation, and any ~~further~~ evidence introduced at the sentencing hearing.

(Subd (b) amended effective January 1, 2008; previously amended effective July 28, 1977, January 1, 1991, January 1, 2007, and May 23, 2007.)

(c) ***

(d) A fact that is an element of the crime upon which punishment is being imposed may not be used to impose a greater term.

(Subd (d) amended effective January 1, 2008; adopted effective January 1, 1991; previously amended effective January 1, 2007, and May 23, 2007.)

(e) ***

1 *Rule 4.420 amended effective January 1, 2008; adopted as rule 439 effective July 1, 1977;*
2 *previously amended and renumbered as rule 420 effective January 1, 1991; previously*
3 *renumbered effective January 1, 2001; previously amended effective July 28, 1977, January 1,*
4 *2007, and May 23, 2007.*

5
6
7 **Rule 4.428. Criteria affecting imposition of enhancements**

8
9 **~~Imposing or not imposing enhancement~~**

10 No reason need be given for imposing a term for an enhancement that was charged
11 and found true.

12
13 If the judge has statutory discretion to strike the additional term for an
14 enhancement in the furtherance of justice under section 1385(c) or based on
15 circumstances in mitigation, the court may consider and apply any of the
16 circumstances in mitigation enumerated in these rules or, under rule 4.408, any
17 other reasonable circumstances in mitigation or in the furtherance of justice.

18
19 The judge should not strike the allegation of the enhancement.

20
21 *Rule 4.428 amended effective January 1, 2008; adopted as rule 428 effective January 1, 1991;*
22 *previously renumbered effective January 1, 2001; previously amended effective January 1, 1998,*
23 *July 1, 2003, January 1, 2007, and May 23, 2007.*

24
25
26 **Rule 4.433. Matters to be considered at time set for sentencing**

27
28 (a) * * *

29
30 (b) If the imposition of a sentence is to be suspended during a period of
31 probation after a conviction by trial, the trial judge must identify and state
32 circumstances that would justify imposition of one of the three authorized
33 prison terms referred to in section 1170(b) if probation is later revoked. The
34 circumstances identified and stated by the judge must be, based on evidence
35 admitted at the trial or other circumstances properly considered under rule
36 4.420(b).

37
38 *(Subd (b) amended effective January 1, 2008; previously amended effective July 28, 1977,*
39 *January 1, 2007, and May 23, 2007.)*

40
41 (c)–(e) * * *

42
43 *Rule 4.433 amended effective January 1, 2008; adopted as rule 433 effective July 1, 1977;*
44 *previously renumbered effective January 1, 2001; previously amended effective July 28, 1977,*
45 *January 1, 1979, July 1, 2003, January 1, 2007, and May 23, 2007.*

1
2
3 **Rule 4.437. Statements in aggravation and mitigation**
4

5 **(a)–(e) * * ***
6

7 *Rule 4.437 amended effective May 23, 2007; adopted as rule 437 effective July 1, 1977;*
8 *previously renumbered effective January 1, 2001; previously amended effective July 28, 1977,*
9 *January 1, 1991, and January 1, 2007.*

10
11 **Advisory Committee Comment**
12

13 Section 1170(b) states in part: * * *
14

15 The requirement that the statement include notice of intention to rely on new evidence will
16 enhance fairness to both sides by avoiding surprise and helping to ~~assure~~ ensure that the time
17 limit on pronouncing sentence is met.
18

19
20 **Title 7.**
21

22 **Probate Rules**
23

24 **Chapter 23. Court-Appointed Counsel in Probate Proceedings**
25

26 *Chapter 23 adopted effective January 1, 2008.*
27

28
29 **Rule 7.1101. Qualifications and continuing education required of counsel**
30 **appointed by the court in guardianships and conservatorships**
31

32 **(a) Definitions**
33

34 As used in this rule, the following terms have the meanings stated below:
35

36 (1) “Appointed counsel” or “counsel appointed by the court” are legal
37 counsel appointed by the court under Probate Code sections 1470 or
38 1471, including counsel in private practice and deputy public defenders
39 directly responsible for the performance of legal services under the
40 court’s appointment of a county’s public defender.
41

42 (2) A “probate guardianship” or “probate conservatorship” is a
43 guardianship or conservatorship proceeding under division 4 of the
44 Probate Code.
45

1 (3) “LPS” and “LPS Act” refer to the Lanterman-Petris-Short Act, Welfare
2 and Institutions Code section 5000 et seq.

3
4 (4) An “LPS conservatorship” is a conservatorship proceeding for a
5 gravely disabled person under chapter 3 of the LPS Act, Welfare and
6 Institutions Code sections 5350–5371.

7
8 (5) A “contested matter” in a probate or LPS conservatorship proceeding is
9 a matter that requires a noticed hearing and in which written objections
10 are filed by any party or made by the conservatee or proposed
11 conservatee orally in open court.

12
13 (6) “AOC” is the Administrative Office of the Courts.

14
15 **(b) Qualifications of appointed counsel in private practice**

16
17 Except as provided in this rule, each counsel in private practice appointed by
18 the court on or after January 1, 2008, must be an active member of the State
19 Bar of California for at least three years immediately before the date of
20 appointment, with no disciplinary proceedings pending and no discipline
21 imposed within the 12 months immediately preceding the date of first
22 availability for appointment after January 1, 2008; and

23
24 (1) Appointments to represent minors in guardianships

25 For an appointment to represent a minor in a guardianship:

26
27
28 (A) Within the five years immediately before the date of first
29 availability for appointment after January 1, 2008, must have
30 represented at least three wards or proposed wards in probate
31 guardianships, three children in juvenile court dependency or
32 delinquency proceedings, or three children in custody proceedings
33 under the Family Code; or

34
35 (B) At the time of appointment, must be qualified:

36
37 (i) For appointments to represent children in juvenile
38 dependency proceedings under rule 5.660 and the court’s
39 local rules governing court-appointed juvenile court
40 dependency counsel; or

41
42 (ii) For appointments to represent children in custody
43 proceedings under the Family Code under rule 5.242,

1 including the alternative experience requirements of rule
2 5.242(g).

3
4 (C) Counsel qualified for appointments in guardianships under (B)
5 must satisfy the continuing education requirements of this rule in
6 addition to the education or training requirements of the rules
7 mentioned in (B).

8
9 (2) Appointments to represent conservatees or proposed conservatees

10
11 For an appointment to represent a conservatee or a proposed
12 conservatee, within the five years immediately before the date of first
13 availability for appointment after January 1, 2008, counsel in private
14 practice must have:

15
16 (A) Represented at least three conservatees or proposed conservatees
17 in either probate or LPS conservatorships; or

18
19 (B) Completed any three of the following five tasks:

20
21 (i) Represented petitioners for the appointment of a conservator
22 at commencement of three probate conservatorship
23 proceedings, from initial contact with the petitioner through
24 the hearing and issuance of Letters of Conservatorship;

25
26 (ii) Represented a petitioner, a conservatee or a proposed
27 conservatee, or an interested third party in two contested
28 probate or LPS conservatorship matters. A contested matter
29 that qualifies under this item and also qualifies under (i)
30 may be applied toward satisfaction of both items;

31
32 (iii) Represented a party for whom the court could appoint legal
33 counsel in a total of three matters described in Probate Code
34 sections 1470, 1471, 1954, 2356.5, 2357, 2620.2, 3140, or
35 3205;

36
37 (iv) Represented fiduciaries in three separate cases for settlement
38 of a court-filed account and report, through filing, hearing,
39 and settlement, in any combination of probate
40 conservatorships or guardianships, decedent's estates, or
41 trust proceedings under division 9 of the Probate Code; or
42

1 (v) Prepared five wills or trusts, five durable powers of attorney
2 for health care, and five durable powers of attorney for asset
3 management.

4
5 (3) Private counsel qualified under (1) or (2) must also be covered by
6 professional liability insurance satisfactory to the court in the amount
7 of at least \$100,000 per claim and \$300,000 per year.

8
9 (c) **Qualifications of deputy public defenders performing legal services on**
10 **court appointments of the public defender**

11
12 (1) Except as provided in this rule, beginning on January 1, 2008, each
13 county deputy public defender with direct responsibility for the
14 performance of legal services in a particular case on the appointment of
15 the county public defender under Probate Code sections 1470 or 1471
16 must be an active member of the State Bar of California for at least
17 three years immediately before the date of appointment; and either

18
19 (A) Satisfy the experience requirements for private counsel in (b)(1)
20 for appointments in guardianships or (b)(2) for appointments in
21 conservatorships; or

22
23 (B) Have a minimum of three years' experience representing minors
24 in juvenile dependency or delinquency proceedings or patients in
25 postcertification judicial proceedings or conservatorships under
26 the LPS Act.

27
28 (2) A deputy public defender qualified under (1) must also be covered by
29 professional liability insurance satisfactory to the court in the amount
30 of at least \$100,000 per claim and \$300,000 per year, or be covered for
31 professional liability at an equivalent level by a self-insurance program
32 for the professional employees of his or her county.

33
34 (3) A deputy public defender who is not qualified under this rule may
35 periodically substitute for a qualified deputy public defender with direct
36 responsibility for the performance of legal services in a particular case.
37 In that event, the county public defender or his or her designee, who
38 may be the qualified supervisor, must certify to the court that the
39 substitute deputy is working under the direct supervision of a deputy
40 public defender who is qualified under this rule.

41
42 (d) **Transitional provisions on qualifications**

1 (1) Counsel appointed before January 1, 2008, may continue to represent
2 their clients through March 2008, whether or not they are qualified
3 under (b) or (c). After March 2008, through conclusion of these
4 matters, the court may retain or replace appointed counsel who are not
5 qualified under (b) or (c) or may appoint qualified co-counsel to assist
6 them.

7
8 (2) In January, February, and March 2008, the court may appoint counsel
9 in new matters who have not filed the certification of qualifications
10 required under (h) at the time of appointment but must replace counsel
11 appointed under this paragraph who have not filed the certificate before
12 April 1, 2008.

13
14 **(e) Exemption for small courts**

15
16 (1) Except as provided in (2), the qualifications required under (b) or (c)
17 may be waived by a court with four or fewer authorized judges if it
18 cannot find qualified counsel or for other grounds of hardship.

19
20 (2) A court may not waive the insurance or self-insurance requirements of
21 (b)(3) or (c)(2).

22
23 (3) A court waiving the qualifications required under (b) or (c) must make
24 express written findings showing the circumstances supporting the
25 waiver and disclosing all alternatives considered, including
26 appointment of qualified counsel from adjacent counties and other
27 alternatives not selected.

28
29 **(f) Continuing education of appointed counsel**

30
31 Beginning on January 1, 2008, counsel appointed by the court must complete
32 three hours of education each calendar year that qualifies for mandatory
33 continuing legal education credit for State Bar–certified specialists in estate
34 planning, trust, and probate law.

35
36 **(g) Additional court-imposed qualifications, education, and other**
37 **requirements**

38
39 The qualifications in (b) and (c) and the continuing education requirement in
40 (f) are minimums. A court may establish higher qualification or continuing
41 education requirements, including insurance requirements; require initial
42 education or training; and impose other requirements, including an
43 application by private counsel.

1
2 **(h) Certification of qualifications and continuing education**
3

- 4 (1) Each counsel appointed or eligible for appointment by the court before
5 January 1, 2008, including deputy public defenders, must certify to the
6 court in writing before April 1, 2008, that he or she satisfies the
7 qualifications under (b) or (c) to be eligible for a new appointment on
8 or after that date.
9
10 (2) After March 2008, each counsel must certify to the court that he or she
11 is qualified under (b) or (c) before becoming eligible for an
12 appointment under this rule.
13
14 (3) Beginning in 2009, each appointed counsel must certify to the court
15 before the end of March of each year that he or she has completed the
16 continuing education required for the preceding calendar year.
17
18 (4) Certifications required under this subdivision must be submitted to the
19 court but are not to be filed or lodged in a case file.
20

21 **(i) Reporting**
22

23 The AOC may require courts to report appointed counsel’s qualifications and
24 completion of continuing education required by this rule to ensure
25 compliance with Probate Code section 1456.
26

27 *Rule 7.1101 adopted effective January 1, 2008.*
28
29

30 **Rule 10.468. Content-based and hours-based education for superior court**
31 **judges and subordinate judicial officers regularly assigned to hear**
32 **probate proceedings**
33

34 **(a) Definitions**
35

36 As used in this rule, the following terms have the meanings stated below:
37

- 38 (1) “Judge” means a judge of the superior court.
39
40 (2) “Subordinate judicial officer” has the meaning specified in rule
41 10.701(a).
42
43 (3) “Judicial officer” means a judge or a subordinate judicial officer.

- 1
2 (4) “Probate proceedings” are decedents’ estates, guardianships and
3 conservatorships under division 4 of the Probate Code, trust
4 proceedings under division 9 of the Probate Code, and other matters
5 governed by provisions of that code and the rules in title 7 of the
6 California Rules of Court.
7
8 (5) A judicial officer “regularly assigned to hear probate proceedings” is a
9 judicial officer who is:
10
11 (A) Assigned to a dedicated probate department where probate
12 proceedings are customarily heard on a full-time basis;
13
14 (B) Responsible for hearing most of the probate proceedings filed in a
15 court that does not have a dedicated probate department; or
16
17 (C) Responsible for hearing probate proceedings on a regular basis in
18 a department in a branch or other location remote from the main
19 or central courthouse, whether or not he or she also hears other
20 kinds of matters in that department and whether or not there is a
21 dedicated probate department in the main or central courthouse;
22 or
23
24 (D) Designated by the presiding judge of a court with four or fewer
25 authorized judges.
26
27 (6) “AOC” is the Administrative Office of the Courts.
28
29 (7) “CJER” is the AOC Education Division/Center for Judicial Education
30 and Research.
31
32 (8) “CJA” is the California Judges Association.
33

34 **(b) Content-based requirements**
35

- 36 (1) Each judicial officer beginning a regular assignment to hear probate
37 proceedings after the effective date of this rule—unless he or she is
38 returning to this assignment after less than two years in another
39 assignment—must complete, as soon as possible but not to exceed six
40 months from the assignment’s commencement date, 6 hours of
41 education on probate guardianships and conservatorships, including
42 court-supervised fiduciary accounting.
43

- 1 (2) The education required in (1) is in addition to the New Judge
2 Orientation program for new judicial officers and the B. E. Witkin
3 Judicial College required under rule 10.462(c)(1)(A) and (C) and may
4 be applied toward satisfaction of the 30 hours of continuing education
5 expected of judges and required of subordinate judicial officers under
6 rule 10.462(d).
7
8 (3) The education required in (1) must be provided by CJER, CJA, or the
9 judicial officer’s court. CJER is responsible for identifying content for
10 this education and will share the identified content with CJA and the
11 courts.
12
13 (4) The education required in (1) may be by traditional (face to face) or
14 distance-learning means, such as broadcasts, videoconferences, or
15 online coursework, but may not be by self-study.
16

17 **(c) Hours-based continuing education**
18

- 19 (1) In a court with five or more authorized judges, each judicial officer
20 regularly assigned to hear probate proceedings must complete 18 hours
21 of continuing education every three years, with a minimum of six hours
22 required in the first year, on probate guardianships and
23 conservatorships, including court-supervised fiduciary accounting. The
24 three-year period begins on January 1 of the year following the judicial
25 officer’s completion of the education required in (b)(1) or, if he or she
26 is exempt from that education, on January 1 of the year the assignment
27 commenced after the effective date of this rule.
28
29 (2) In a court with four or fewer authorized judges, each judicial officer
30 regularly assigned to hear probate proceedings must complete nine
31 hours of continuing education every three years, with a minimum of
32 three hours per year, on probate guardianships and conservatorships,
33 including court-supervised fiduciary accounting. The three-year period
34 begins on January 1 of the year following the judicial officer’s
35 completion of the education required in (b)(1) or, if he or she is exempt
36 from that education, on January 1 of the year the assignment
37 commenced after the effective date of this rule.
38
39 (3) The first continuing education period for judicial officers who were
40 regularly assigned to hear probate proceedings before the effective date
41 of this rule and who continue in the assignment after that date is two
42 years, from January 1, 2008, through December 31, 2009, rather than
43 three years. The continuing education requirements in (1) are prorated

1 for the first continuing education under this paragraph. The first full
2 three-year period of continuing education for judicial officers under this
3 paragraph begins on January 1, 2010.

4
5 (4) The number of hours of education required in (1) or (2) may be reduced
6 proportionately for judicial officers whose regular assignment to hear
7 probate proceedings is for a period of less than three years.

8
9 (5) The education required in (1) or (2) may be applied toward satisfaction
10 of the 30 hours of continuing education expected of judges or required
11 of subordinate judicial officers under rule 10.462(d).

12
13 (6) A judicial officer may fulfill the education requirement in (1) or (2)
14 through AOC-sponsored education, a provider listed in rule 10.481(a),
15 or a provider approved by the judicial officer's presiding judge as
16 meeting the education criteria specified in rule 10.481(b).

17
18 (7) The education required in (1) or (2) may be by traditional (face-to-face)
19 or distance-learning means, such as broadcasts, videoconferences, or
20 online coursework but may not be by self-study.

21
22 (8) A judicial officer who serves as faculty for a California court-based
23 audience, as defined in rule 10.462(d)(4), for education required in (1)
24 or (2) may be credited with three hours of participation for each hour of
25 presentation the first time a course is given and two hours for each hour
26 of presentation each subsequent time the course is given.

27
28 **(d) Extension of time**

29
30 The provisions of rule 10.462(e) concerning extensions of time apply to the
31 content-based and hours-based education required under (b) and (c) of this
32 rule.

33
34 **(e) Record keeping and reporting**

35
36 (1) The provisions of rule 10.462(f) and (g) concerning, respectively,
37 tracking participation, record keeping, and summarizing participation
38 by judges and tracking participation by subordinate judicial officers,
39 apply to the education required under this rule.

40
41 (2) Presiding judges' records of judicial officer participation in the
42 education required by this rule are subject to audit by the AOC under
43 rule 10.462. The AOC may require courts to report participation by

1 judicial officers in the education required by this rule to ensure
2 compliance with Probate Code section 1456.

3
4 *Rule 10.468 adopted effective January 1, 2008.*
5

6
7 **Rule 10.478. Content-based and hours-based education for court**
8 **investigators, probate attorneys, and probate examiners**

9
10 **(a) Definitions**

11
12 As used in this rule, the following terms have the meanings specified below,
13 unless the context or subject matter otherwise require:

14
15 (1) A “court investigator” is a person described in Probate Code section
16 1454(a) employed by or under contract with a court to provide the
17 investigative services for the court required or authorized by law in
18 guardianships, conservatorships, and other protective proceedings
19 under division 4 of the Probate Code;

20
21 (2) A “probate attorney” is an active member of the State Bar of California
22 who is employed by a court to perform the functions of a probate
23 examiner and also to provide legal analysis, recommendations, advice,
24 and other services to the court pertaining to probate proceedings;

25
26 (3) A “probate examiner” is a person employed by a court to review filings
27 in probate proceedings in order to assist the court and the parties to get
28 the filed matters properly ready for consideration by the court in
29 accordance with the requirements of the Probate Code, the rules in title
30 7 of the California Rules of Court, and the court’s local rules;

31
32 (4) “Probate proceedings” are decedents’ estates, guardianships and
33 conservatorships under division 4 of the Probate Code, trust
34 proceedings under division 9 of the Probate Code, and other matters
35 governed by provisions of that code and the rules in title 7 of the
36 California Rules of Court;

37
38 (5) “AOC” is the Administrative Office of the Courts;

39
40 (6) “CJER” is the AOC Education Division/Center for Judicial Education
41 and Research.

1
2 **(b) Content-based requirements for court investigators**
3

4 (1) Each court investigator must complete 18 hours of education within
5 one year of his or her start date after the effective date of this rule. The
6 education must include the following general topics:
7

8 (A) Court process and legal proceedings;
9

10 (B) Child abuse and neglect and the effect of domestic violence on
11 children (guardianship investigators); elder and dependent adult
12 abuse, including undue influence and other forms of financial
13 abuse (conservatorship investigators);
14

15 (C) Medical issues;
16

17 (D) Access to and use of criminal-record information, confidentiality,
18 ethics, conflicts of interest;
19

20 (E) Assessing and evaluating community resources for children and
21 mentally impaired elderly or developmentally disabled adults; and
22

23 (F) Interviewing children and persons with mental function or
24 communication deficits.
25

26 (2) A court investigator may fulfill the education requirement in (1)
27 through AOC-sponsored education, a provider listed in rule 10.481(a),
28 or a provider approved by the court executive officer or the court
29 investigator's supervisor as meeting the education criteria specified in
30 rule 10.481(b).
31

32 (3) The education required in (1) may be applied to the specific-job portion
33 of the orientation course required for all new court employees under
34 rule 10.474(b)(2)(D) and the continuing education required for all
35 nonmanagerial or nonsupervisory court employees under rule
36 10.474(c)(2).
37

38 (4) The education required in (1) may be by traditional (face-to-face) or
39 distance-learning means, such as broadcasts, videoconferences, or on-
40 line coursework, but may not be by self-study.
41

42 **(c) Content-based education for probate attorneys**
43

- 1 (1) Each probate attorney must complete 18 hours of education within six
2 months of his or her start date after January 1, 2008, in probate-related
3 topics, including guardianships, conservatorships, and court-supervised
4 fiduciary accounting.
5
6 (2) A probate attorney may fulfill the education requirement in (1) through
7 AOC-sponsored education, a provider listed in rule 10.481(a), or a
8 provider approved by the court executive officer or the probate
9 attorney’s supervisor as meeting the education criteria specified in rule
10 10.481(b).
11
12 (3) The education required in (1) may be applied to the specific-job portion
13 of the orientation course required for all new court employees under
14 rule 10.474(b)(2)(D) and the continuing education required for all
15 nonmanagerial or nonsupervisory court employees under rule
16 10.474(c)(2).
17
18 (4) The education required in (1) may be by traditional (face-to-face) or
19 distance-learning means, such as broadcasts, videoconferences, or on-
20 line coursework, but may not be by self-study.

21
22 **(d) Content-based education for probate examiners**
23

- 24 (1) Each probate examiner must complete 30 hours of education within one
25 year of his or her start date after January 1, 2008, in probate-related
26 topics, of which 18 hours must be in guardianships and
27 conservatorships, including court-appointed fiduciary accounting.
28
29 (2) A probate examiner may fulfill the education requirement in (1)
30 through AOC-sponsored education, a provider listed in rule 10.481(a),
31 or a provider approved by the court executive officer or the probate
32 examiner’s supervisor as meeting the education criteria specified in rule
33 10.481(b).
34
35 (3) The education required in (1) may be applied to the specific-job portion
36 of the orientation course required for all new court employees under
37 rule 10.474(b)(2)(D) and the continuing education required for all
38 nonmanagerial or nonsupervisory court employees under rule
39 10.474(c)(2).
40
41 (4) The education required in (1) may be by traditional (face-to-face) or
42 distance-learning means, such as broadcasts, videoconferences, or
43 online coursework, but may not be by self-study.

1
2 **(e) Hours-based education for court investigators**
3

4 (1) Each court investigator must complete 12 hours of continuing
5 education on some or all of the general topics listed in (b)(1) each
6 calendar year. For court investigators employed by or performing
7 services under contract with the court before the effective date of this
8 rule, the first calendar year the education is required begins on January
9 1, 2008. For court investigators who begin their employment or
10 performance of services under contract with the court after the effective
11 date of this rule, the first year this education is required begins on
12 January 1 of the year immediately following completion of the
13 education required in (b).

14
15 (2) A court investigator may fulfill the education requirement in (1)
16 through AOC-sponsored education, a provider listed in rule 10.481(a),
17 or a provider approved by the court executive officer or the court
18 investigator's supervisor as meeting the education criteria specified in
19 rule 10.481(b).

20
21 (3) The education required in (1) may be applied to the continuing
22 education required for all nonmanagerial or nonsupervisory court
23 employees under rule 10.474(c)(2).

24
25 (4) The education required in (1) may be by traditional (face-to-face) or
26 distance-learning means, such as broadcasts, videoconferences, or
27 online coursework, but may not be by self-study.

28
29 **(f) Hours-based education for probate attorneys**
30

31 (1) Each probate attorney must complete 12 hours of continuing education
32 each calendar year in probate-related subjects, of which six hours per
33 year must be in guardianships and conservatorships, including court-
34 supervised fiduciary accounting. For probate attorneys employed by or
35 performing services under contract with the court before the effective
36 date of this rule, the first calendar year the education is required begins
37 on January 1, 2008. For probate attorneys who begin their employment
38 with the court after the effective date of this rule, the first year this
39 education is required begins on January 1 of the year immediately
40 following completion of the education required in (c).

41
42 (2) A probate attorney may fulfill the education requirement in (1) through
43 AOC-sponsored education, a provider listed in rule 10.481(a), or a

1 provider approved by the court executive officer or the probate
2 attorney's supervisor as meeting the education criteria specified in rule
3 10.481(b).

4
5 (3) The education required in (1) may be applied to the continuing
6 education required for all nonmanagerial or nonsupervisory court
7 employees under rule 10.474(c)(2).

8
9 (4) The education required in (1) may be by traditional (face-to-face) or
10 distance-learning means, such as broadcasts, videoconferences, or
11 online coursework, but may not be by self-study.

12
13 **(g) Hours-based education for probate examiners**

14
15 (1) Each probate examiner must complete 12 hours of continuing education
16 each calendar year in probate-related subjects, of which six hours per
17 year must be in guardianships and conservatorships, including court-
18 appointed fiduciary accounting. For probate examiners employed by
19 the court before the effective date of this rule, the first calendar year the
20 education is required begins on January 1, 2008. For probate examiners
21 who begin their employment with the court after the effective date of
22 this rule, the first year this education is required begins on January 1 of
23 the year immediately following completion of the education required in
24 (d).

25
26 (2) A probate examiner may fulfill the education requirement in (1)
27 through AOC-sponsored education, a provider listed in rule 10.481(a),
28 or a provider approved by the court executive officer or the probate
29 examiner's supervisor as meeting the education criteria specified in rule
30 10.481(b).

31
32 (3) The education required in (1) may be applied to the continuing
33 education required for all nonmanagerial or nonsupervisory court
34 employees under rule 10.474(c)(2).

35
36 (4) The education required in (1) may be by traditional (face-to-face) or
37 distance-learning means, such as broadcasts, videoconferences, or
38 online coursework, but may not be by self-study.

39
40 **(h) Extension of time**

41
42 The provisions of rule 10.474(d) concerning extensions of time apply to the
43 content-based and hours-based education required under this rule.

1
2 **(i) Record keeping and reporting**

3
4 (1) The provisions of rule 10.474(e) concerning the responsibilities of
5 courts and participating court employees to keep records and track the
6 completion of educational requirements apply to the education required
7 under this rule.

8
9 (2) The AOC may require courts to report participation by court
10 investigators, probate attorneys, and probate examiners in the education
11 required by this rule as necessary to ensure compliance with Probate
12 Code section 1456.

13
14 *Rule 10.478 adopted effective January 1, 2008.*

15
16
17 **Rule 10.481. Approved providers; approved course criteria**

18
19 **(a) Approved providers**

20
21 Any education program offered by any of the following providers that is
22 relevant to the work of the courts or enhances the individual participant's
23 ability to perform his or her job may be applied toward the education
24 requirements and expectations stated in rules 10.461–10.479, except for the
25 requirements stated in rules 10.461(b), 10.462(b)(c), and 10.473(b), for
26 which specific providers are required:

27
28 (1)–(26) * * *

29
30 (27) The Rutter Group; ~~and~~

31
32 (28) American Board of Trial Advocates; and

33
34 (29) California Association of Superior Court Investigators.

35
36 *(Subd (a) amended effective January 1, 2008.)*

37
38 **(b) Approved education criteria**

39
40 Education is not limited to the approved providers listed in (a). Any
41 education from a provider not listed in (a) that is approved by the Chief
42 Justice, the administrative presiding justice, or the presiding judge as
43 meeting the criteria listed below may be applied toward the continuing

1 education expectations and requirements for justices, judges, and subordinate
2 judicial officers or requirements for clerk/administrators or court executive
3 officers. Similarly, any education from a provider not listed in (a) that is
4 approved by the clerk/administrator, the court executive officer, or the
5 employee’s supervisor as meeting the criteria listed below may be applied
6 toward the orientation or continuing education requirements for managers,
7 supervisors, and other employees or the content-based or continuing
8 education for probate court investigators, probate attorneys, and probate
9 examiners in rule 10.478.

10
11 (1)–(2) * * *

12
13 *(Subd (b) amended effective January 1, 2008.)*

14
15 *Rule 10.481 amended and renumbered effective January 1, 2008; adopted as rule 10.471 effective*
16 *January 1, 2007.*

17
18
19 **Division 4. Trial Court Administration**

20
21 **Chapter 7. Qualifications of Court Investigators, Probate Attorneys, and**
22 **Probate Examiners**

23
24 *Chapter 7 adopted effective January 1, 2008.*

25
26
27 **Rule 10.776. Definitions**

28
29 As used in the rules in this chapter, the following terms have the meanings stated
30 below:

31
32 (1) A “court investigator” is a person described in Probate Code section 1454(a)
33 employed by or under contract with a court to provide the investigative
34 services for the court required or authorized by law in guardianships,
35 conservatorships, and other protective proceedings under division 4 of the
36 Probate Code;

37
38 (2) A “probate examiner” is a person employed by a court to review filings in
39 probate proceedings in order to assist the court and the parties to get the filed
40 matters ready for consideration by the court in accordance with the
41 requirements of the Probate Code, title 7 of the California Rules of Court,
42 and the court’s local rules;
43

- 1 (3) A “probate attorney” is an active member of the State Bar of California who
2 is employed by a court to perform the functions of a probate examiner and
3 also to provide legal analysis, recommendations, advice, and other services to
4 the court pertaining to probate proceedings;
5
6 (4) “Probate proceedings” are decedents’ estates, guardianships and
7 conservatorships under division 4 of the Probate Code, trust proceedings
8 under division 9 of the Probate Code, and other matters governed by
9 provisions of that code and the rules in title 7 of the California Rules of
10 Court;
11
12 (5) An “accredited educational institution” is a college or university, including a
13 community or junior college, accredited by a regional accrediting
14 organization recognized by the Council for Higher Education Accreditation;
15 and
16
17 (6) “AOC” is the Administrative Office of the Courts.

18
19 *Rule 10.776 adopted effective January 1, 2008.*
20
21

22 **Rule 10.777. Qualifications of court investigators, probate attorneys, and**
23 **probate examiners**

24
25 **(a) Qualifications of court investigators**
26

27 Except as otherwise provided in this rule, a person who begins employment
28 with a court or enters into a contract to perform services with a court as a
29 court investigator on or after January 1, 2008, must:
30

- 31 (1) Have a bachelor of arts or bachelor of science degree in a science, a
32 social science, a behavioral science, liberal arts, or nursing from an
33 accredited educational institution; and
34
35 (2) Have a minimum of two years’ employment experience performing
36 casework or investigations in a legal, financial, law enforcement, or
37 social services setting.
38

39 **(b) Qualifications of probate attorneys**
40

41 Except as otherwise provided in this rule, a person who begins employment
42 with a court as a probate attorney on or after January 1, 2008, must:
43

- 1 (1) Be an active member of the State Bar of California for:
2
3 (A) A minimum of five years; or
4
5 (B) A minimum of two years, plus a minimum of five years' current
6 or former active membership in the equivalent organization of
7 another state or eligibility to practice in the highest court of
8 another state or in a court of the United States; and
9
10 (2) Have a minimum of two years' total experience, before or after
11 admission as an active member of the State Bar of California, in one or
12 more of the following positions:
13
14 (A) Court-employed staff attorney;
15
16 (B) Intern, court probate department (minimum six-month period);
17
18 (C) Court-employed probate examiner or court-employed or court-
19 contracted court investigator;
20
21 (D) Attorney in a probate-related public or private legal practice;
22
23 (E) Deputy public guardian or conservator;
24
25 (F) Child protective services or adult protective services worker or
26 juvenile probation officer; or
27
28 (G) Private professional fiduciary appointed by a court or employee of
29 a private professional fiduciary or bank or trust company
30 appointed by a court, with significant fiduciary responsibilities,
31 including responsibility for court accountings.
32

33 **(c) Qualifications of probate examiners**
34

35 Except as otherwise provided in this rule, a person who begins employment
36 with a court as a probate examiner on or after January 1, 2008, must have:
37

- 38 (1) A bachelor of arts or bachelor of science degree from an accredited
39 educational institution and a minimum of two years' employment
40 experience with one or more of the following employers:
41
42 (A) A court;
43

1 (B) A public or private law office; or

2
3 (C) A public administrator, public guardian, public conservator,
4 or private professional fiduciary; or

5
6 (2) A paralegal certificate or an Associate of Arts degree from an
7 accredited educational institution and a minimum of a total of four
8 years' employment experience with one or more of the employers listed
9 in (1); or

10
11 (3) A juris doctor degree from an educational institution approved by the
12 American Bar Association or accredited by the Committee of Bar
13 Examiners of the State Bar of California and a minimum of six months'
14 employment experience with an employer listed in (1).

15
16 **(d) Additional court-imposed qualifications and requirements**

17
18 The qualifications in (a), (b), and (c) are minimums. A court may establish
19 higher qualification standards for any position covered by this rule and may
20 require applicants to comply with its customary hiring or personal-service
21 contracting practices, including written applications, personal references,
22 personal interviews, or entrance examinations.

23
24 **(e) Exemption for smaller courts**

25
26 The qualifications required under this rule may be waived by a court with
27 eight or fewer authorized judges if it cannot find suitable qualified
28 candidates for the positions covered by this rule or for other grounds of
29 hardship. A court electing to waive a qualification under this subdivision
30 must make express written findings showing the circumstances supporting
31 the waiver and disclosing all alternatives considered, including those not
32 selected.

33
34 **(f) Record keeping and reporting**

35
36 The AOC may require courts to report on the qualifications of the court
37 investigators, probate attorneys, or probate examiners hired or under contract
38 under this rule, and on waivers made under (e), as necessary to ensure
39 compliance with Probate Code section 1456.

40
41 *Rule 10.777 adopted effective January 1, 2008.*

1 **Chapter ~~7~~ 8. Alternative Dispute Resolution Programs**

2
3 *Chapter 8 renumbered effective January 1, 2008; adopted as Chapter 7 effective January 1,*
4 *2007.*

5
6 **Chapter ~~8~~ 9. Trial Court Budget and Fiscal Management**

7
8 *Chapter 9 renumbered effective January 1, 2008; adopted as Chapter 3 effective July 1, 1998;*
9 *previously renumbered as Chapter 8 effective January 1, 2007.*

10
11 **Chapter ~~9~~ 10. Trial Court Records Management**

12
13 *Chapter 10 renumbered effective January 1, 2008; adopted as Chapter 4 effective January 1,*
14 *2001; previously amended and renumbered as Chapter 9 effective January 1, 2007.*

15
16 **Chapter ~~10~~ 11. Trial Court Automation**

17
18 *Chapter 11 renumbered effective January 1, 2008; adopted as Chapter 5 effective January 1,*
19 *2001; previously amended and renumbered as Chapter 10 effective January 1, 2007.*

20
21 **Chapter ~~11~~ 12. Trial Court Management of Civil Cases**

22
23 *Chapter 12 renumbered effective January 1, 2008; adopted as Chapter 11 effective January 1,*
24 *2007.*

25
26 **Chapter ~~12~~ 13. Trial Court Management of Criminal Cases**

27
28 *Chapter 13 renumbered effective January 1, 2008; adopted as Chapter 12 effective January 1,*
29 *2007.*