

## INVITATION TO COMMENT

Title	Probate: Qualifications of Counsel for Appointment in Conservatorships and Guardianships (adopt form GC-010).
Summary	The proposed new form would provide the means for an attorney to demonstrate that he or she is qualified for appointment by the court to represent conservatees or proposed conservatees in probate conservatorship matters, or minors in probate guardianship proceedings, under recently adopted rule 7.1101 of the California Rules of Court.
Source	Probate and Mental Health Advisory Committee Hon. Don Edward Green, Chair
Staff	Douglas C. Miller 415.865.7535; douglas.miller@jud.ca.gov
Discussion	<p>Rule 7.1101 of the California Rules of Court, adopted effective January 1, 2008 by the Judicial Council in response to a mandate contained in Probate Code section 1456,<sup>1</sup> establishes qualifications for attorneys appointed by the court in conservatorships and guardianships under Probate Code sections 1470 and 1471.</p> <p>Rule 7.1101(h) requires an attorney to certify that he or she satisfies the qualifications required of an attorney in private practice or a deputy public defender directly responsible for performing services on the appointment of a county's public defender. These qualifications are stated in subdivisions (b) (private attorneys) and (c) (deputy public defenders) of the rule. This duty applies to attorneys appointed before January 1, 2008, in matters remaining open after that date under transition provisions in rule 7.1101(d), and also applies to attorneys appointed in new matters after that date. In both situations, the rule requires the certification to be filed with the court no later than April 1, 2008. (See rules 7.1101(h)(1) and (2).)</p> <p>The <i>Certification of Attorney Concerning Qualifications for Court Appointment in Conservatorships or Guardianships</i> (form GC-010) is proposed to help counsel comply with the certification requirements of rule 7.1101. Because of the April 1, 2008, deadline for certification</p>

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<sup>1</sup> Stats. 2006, ch. 493 (AB 1363), § 3. This legislation is part of the Omnibus Conservatorship and Guardianship Reform Act of 2006 (Stats. 2006, ch. 490–493 (SB 1116, SB 1550, SB 1716, and AB 1363)).

noted above, the form is proposed for adoption effective on March 1, 2008, rather than on the more usual date of July 1st. This in turn means that the comment period for this proposal must be reduced by approximately one week, from December 19, 2007, to January 16, 2008, so the Judicial Council will have an opportunity to consider the form in light of the comments received at its February 2008 meeting.

Form GC-010 is proposed as a mandatory form. However, the new form is designed to be complementary to each court's appointment requirements, including an application and provision of additional information. See rule 7.1101(g), which authorizes courts to establish higher qualifications for appointed counsel and require an application, and item 6 of the proposed form, which calls for additional information required by an appointing court.

Mandatory Judicial Council forms are described in rule 1.31 of the California Rules of Court. A mandatory form must be used where it applies and must be accepted by the court (rule 1.31(a)). An optional Judicial Council form, described in rule 1.35, may be used at the option of the user. If the optional form applies to the situation and is submitted for filing by a party or other user, it must be accepted by the court (rule 1.35(a)). With these rule provisions in mind, the advisory committee asks for comments on whether the proposed form should be mandatory or optional.

Item 3 on page 1 of the form tracks the requirements for attorneys in private practice under rule 7.1101(b). Item 3b identifies the qualifications to represent minors in guardianships (rule 7.1101(b)(1)); item 3c tracks the qualifications to represent conservatees or proposed conservatees in conservatorship proceedings (rule 7.1101(b)(2)).

These requirements include the professional liability insurance and self-insurance requirements of rules 7.1101(b)(3) and 7.1101(c)(2), insurance (or county self-insurance) in a minimum amount of \$100,000 per claim and \$300,000 per year. An earlier draft of the form included a request for the identity of the certifying attorney's insurer and a statement that a certificate of insurance or other evidence of coverage is delivered with the certification. These items have been removed as unnecessary. Your comments on whether this information should be required is requested.

Item 4 on page 2 of the form concerns the qualifications of deputy public defenders directly responsible for the performance of legal services on appointments of a county's public defender under Probate Code sections 1470 and 1471. See rule 7.1101(c).

Rule 7.1101(e) authorizes small courts, those with four or fewer authorized judges, to waive the qualifications required of appointed counsel under the rule for good cause. The professional liability insurance requirements, however, may not be waived. Item 5 on page 3 of the form is designed for attorneys practicing in small courts to demonstrate their suitability for appointment under a small-court waiver under this part of the rule.

A copy of proposed form GC-10 and the text of newly-adopted rule 7.1101 are attached.

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Attachments





<b>CERTIFICATION OF ATTORNEY</b> <i>(Name):</i> <b>CONCERNING QUALIFICATIONS FOR APPOINTMENT IN</b> <input type="checkbox"/> <b>CONSERVATORSHIPS</b> <input type="checkbox"/> <b>GUARDIANSHIPS</b>	<b>FILE NUMBER:</b>
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- c. I am covered by professional liability insurance in the amount of at least \$100,000 per claim and \$300,000 per year or I am covered for professional liability at an equivalent level by a self-insurance program for the professional employees of my county.
- d. I will, if requested, provide the case names and numbers, courts, and parties I represented in the court proceedings identified in item 3 above, if any, and, if item 3c(2)(E) is checked, copies of the estate planning documents prepared.
- 5.  *(Complete this item if you do not qualify for appointment under items 3 or 4 above, but wish to be considered for an appointment in a conservatorship or guardianship by a court with four or fewer authorized judges under rule 7.1101(e) of the Cal. Rules of Court.)*
  - a. I wish to be considered by the court for appointment as legal counsel in  conservatorships  guardianships on a waiver under rule 7.1101(e) of the California Rules of Court.
  - b.  I am an attorney in private practice. Facts supporting my appointment are stated in Attachment 5 to this certification. I certify that the facts stated are true and correct.
  - c.  I am covered by professional liability insurance in the amount of at least \$100,000 per claim and \$300,000 per year.
  - d.  I would be responsible for performing legal services for conservatees or proposed conservatees in conservatorships or minors in guardianships on the appointment of my county's public defender. Facts supporting my appointment are stated in Attachment 5 to this certification. I certify that the facts stated are true and correct.
  - e.  I am a deputy public defender. I am covered by professional liability insurance in the amount of at least \$100,000 per claim and \$300,000 per year or I am covered for professional liability at an equivalent level by a self-insurance program for the professional employees of my county.
- 6.  Additional information required by the court is  provided in Attachment 6.  submitted separately with this certification.  as follows:

CERTIFICATION OF ATTORNEY <i>(Name)</i> :	FILE NUMBER:
CONCERNING QUALIFICATIONS FOR APPOINTMENT IN <input type="checkbox"/> CONSERVATORSHIPS <input type="checkbox"/> GUARDIANSHIPS	

6. Additional information required by the court (Continued)

I certify that the foregoing, including statements made in all attachments and other documents submitted with this certification, is true and correct.

Dated:

\_\_\_\_\_  
(TYPE OR PRINT NAME OF CERTIFYING ATTORNEY )

 \_\_\_\_\_  
(SIGNATURE)

## **Reference Text of Rule 7.1101**

### **Rule 7.1101. Qualifications and continuing education required of counsel appointed by the court in guardianships and conservatorships**

#### **(a) Definitions**

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

- (1) “Appointed counsel” or “counsel appointed by the court” are legal counsel appointed by the court under Probate Code sections 1470 or 1471, including counsel in private practice and deputy public defenders directly responsible for the performance of legal services under the court’s appointment of a county’s public defender.
- (2) A “probate guardianship” or “probate conservatorship” is a guardianship or conservatorship proceeding under division 4 of the Probate Code.
- (3) “LPS” and “LPS Act” refer to the Lanterman-Petris-Short Act, Welfare and Institutions Code section 5000 et seq.
- (4) An “LPS conservatorship” is a conservatorship proceeding for a gravely disabled person under chapter 3 of the LPS Act, Welfare and Institutions Code sections 5350–5371.
- (5) A “contested matter” in a probate or LPS conservatorship proceeding is a matter that requires a noticed hearing and in which written objections are filed by any party or made by the conservatee or proposed conservatee orally in open court.
- (6) “AOC” is the Administrative Office of the Courts.

#### **(b) Qualifications of appointed counsel in private practice**

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

(1) *Appointments to represent minors in guardianships*

For an appointment to represent a minor in a guardianship:

- (A) Within the five years immediately before the date of first availability for appointment after January 1, 2008, must have represented at least three wards or proposed wards in probate guardianships, three children in juvenile court dependency or delinquency proceedings, or three children in custody proceedings under the Family Code; or
- (B) At the time of appointment, must be qualified:
  - (i) For appointments to represent children in juvenile dependency proceedings under rule 5.660 and the court's local rules governing court-appointed juvenile court dependency counsel; or
  - (ii) For appointments to represent children in custody proceedings under the Family Code under rule 5.242, including the alternative experience requirements of rule 5.242(g).
- (C) Counsel qualified for appointments in guardianships under (B) must satisfy the continuing education requirements of this rule in addition to the education or training requirements of the rules mentioned in (B).

(2) *Appointments to represent conservatees or proposed conservatees*

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

- (A) Represented at least three conservatees or proposed conservatees in either probate or LPS conservatorships; or
- (B) Completed any three of the following five tasks:
  - (i) Represented petitioners for the appointment of a conservator at commencement of three probate conservatorship

proceedings, from initial contact with the petitioner through the hearing and issuance of Letters of Conservatorship;

- (ii) Represented a petitioner, a conservatee or a proposed conservatee, or an interested third party in two contested probate or LPS conservatorship matters. A contested matter that qualifies under this item and also qualifies under (i) may be applied toward satisfaction of both items;
- (iii) Represented a party for whom the court could appoint legal counsel in a total of three matters described in Probate Code sections 1470, 1471, 1954, 2356.5, 2357, 2620.2, 3140, or 3205;
- (iv) Represented fiduciaries in three separate cases for settlement of a court-filed account and report, through filing, hearing, and settlement, in any combination of probate conservatorships or guardianships, decedent's estates, or trust proceedings under division 9 of the Probate Code; or
- (v) Prepared five wills or trusts, five durable powers of attorney for health care, and five durable powers of attorney for asset management.

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

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

- (1) Except as provided in this rule, beginning on January 1, 2008, each county deputy public defender with direct responsibility for the performance of legal services in a particular case on the appointment of the county public defender under Probate Code sections 1470 or 1471 must be an active member of the State Bar of California for at least three years immediately before the date of appointment; and either
  - (A) Satisfy the experience requirements for private counsel in (b)(1) for appointments in guardianships or (b)(2) for appointments in conservatorships; or

- (B) Have a minimum of three years' experience representing minors in juvenile dependency or delinquency proceedings or patients in post-certification judicial proceedings or conservatorships under the LPS Act.
- (2) A deputy public defender qualified under (1) must also be covered by professional liability insurance satisfactory to the court in the amount of at least \$100,000 per claim and \$300,000 per year, or be covered for professional liability at an equivalent level by a self-insurance program for the professional employees of his or her county.
- (3) A deputy public defender who is not qualified under this rule may periodically substitute for a qualified deputy public defender with direct responsibility for the performance of legal services in a particular case. In that event, the county public defender or his or her designee, who may be the qualified supervisor, must certify to the court that the substitute deputy is working under the direct supervision of a deputy public defender who is qualified under this rule.

**(d) Transitional provisions on qualifications**

- (1) Counsel appointed before January 1, 2008, may continue to represent their clients through March 2008, whether or not they are qualified under (b) or (c). After March 2008, through conclusion of these matters, the court may retain or replace appointed counsel who are not qualified under (b) or (c) or may appoint qualified co-counsel to assist them.
- (2) In January, February, and March 2008, the court may appoint counsel in new matters who have not filed the certification of qualifications required under (h) at the time of appointment but must replace counsel appointed under this paragraph who have not filed the certificate before April 1, 2008.

**(e) Exemption for small courts**

- (1) Except as provided in (2), the qualifications required under (b) or (c) may be waived by a court with four or fewer authorized judges if it cannot find qualified counsel or for other grounds of hardship.
- (2) A court may not waive the insurance or self-insurance requirements of (b)(3) or (c)(2).

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

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

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

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

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

**(h) Certification of qualifications and continuing education**

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

**(i) Reporting**

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

## Item SP08-01 Response Form

**Title:** Probate: Qualifications of Counsel for Appointment in Conservatorships and Guardianships (adopt form GC-010).

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

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

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\_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

- Commenting on behalf of an organization

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Please **write** or **fax** or [respond using the Internet](#) to:

**Address:** Ms. Camilla Kieliger,  
Judicial Council, 455 Golden Gate Avenue,  
San Francisco, CA 94102

**Fax:** (415) 865-7664    **Attention:** Camilla Kieliger

**Internet:** <http://www.courtinfo.ca.gov/invitationstocomment/commentform.htm>

<b>DEADLINE FOR COMMENT:</b> 5:00 p.m., Wednesday, January 16, 2008
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee.  
All comments will become part of the public record of the council's action.*