

**Invitation to Comment**

<p>Title</p>	<p>Probate: Court-Appointed Counsel in Conservatorships and Guardianships (amend rule 7.1101 of the California Rules of Court; revise <i>Certification of Attorney Concerning Qualifications for Court Appointment in Conservatorships or Guardianships</i> (form GC-010); and adopt <i>Annual Certification of Court-Appointed Attorney Concerning Continuing Education</i> (form GC-011)).</p>
<p>Summary</p>	<p>The proposed amendment to newly adopted rule 7.1101 would clarify that the appointing court has authority to inquire into an appointed attorney’s State Bar disciplinary history and professional liability coverage after the attorney’s initial qualification for appointment in conservatorship or guardianship matters. The form adopted this year for attorneys to certify their qualifications for appointment as counsel in these matters would be modified to improve its clarity and ease of use. A new form is proposed for appointed counsel to annually certify their completion of continuing education required by the rule and to update their State Bar disciplinary history and professional liability insurance coverage since their initial qualification certification or their last annual post-qualification certification.</p>
<p>Source</p>	<p>Probate and Mental Health Advisory Committee Hon. Don Edward Green, Chair</p>
<p>Staff</p>	<p>Douglas C. Miller 415.865.7535; douglas.miller@jud.ca.gov</p>
<p>Discussion</p>	<p><i>Rule 7.1101</i> This rule, adopted effective January 1, 2008, establishes the qualifications for attorneys to be appointed by courts in probate conservatorships and guardianships under Probate Code sections 1470 and 1471. The qualifications include requirements that (1) an attorney in private practice have no State Bar discipline imposed within 12 months of the date of first availability for appointment and have no discipline pending on that date (rule 7.1101(b)) and (2) an attorney have professional liability insurance coverage or, in the case of a deputy public defender subject to the rule, coverage under a county’s self-insurance program (rule 7.1101(b)(3) and (c)(2)).</p> <p>The rule requires the attorney to certify that he or she is qualified under the rule before becoming eligible for an appointment. (See rule 7.1101(h)(2).) Rule 7.1101(h)(3) requires, beginning in 2009, each</p>

counsel appointed under the rule to annually certify his or her completion of continuing education required in the previous calendar year.

Rule 7.1101 addresses qualifications for appointment only at and as of the time the attorney initially becomes eligible for appointment. The advisory committee proposes to amend the rule to require the attorney to advise the court of any change of status concerning State Bar discipline at any time after the attorney's eligibility for appointment. The committee also proposes to amend the rule to require the attorney to annually certify that his or her State Bar discipline status and liability insurance coverage has or has not changed since the attorney's initial qualification certification or his or her last annual continuing education certification under the rule. (See proposed amended rule 7.1101(b), (h)(3), and (h)(4)(A) and (B).)

A new paragraph (7) would be added to the definitions in rule 7.1101(a) to clarify that the provisions of the rule concerning attorneys in private practice apply to attorneys employed by or performing services for nonprofit organizations. Some courts appoint counsel connected with nonprofit organizations to represent children in guardianships or conservatees in conservatorships. The advisory committee never intended to exclude these attorneys from the requirements of the rule; the phrase "counsel in private practice" as used in the rule was intended to apply to all attorneys appointed in these cases other than deputy public defenders, including attorneys working with nonprofit organizations.

The advisory committee requests comments on the impact of the liability insurance provisions of rule 7.1101 on the ability of smaller courts to recruit and appoint counsel under the rule.

*Form GC-010*

Form GC-010, adopted effective January 1, 2008, is a mandatory form that attorneys must complete and file to certify that they are qualified under rule 7.1101 for appointments in guardianships and conservatorships. The advisory committee proposes to modify the form to:

1. Replace the unclear "yes/no" choice in item 3a on page 1 with a requirement to place initials at the end of the item, which can only be answered affirmatively for the attorney to qualify

under the rule.

2. Eliminate the choices of professional liability insurance coverage or its absence in items 3d, 4c, and 5b and 5c on pages 2 and 3. The absence of coverage would bar the attorney's qualification for appointment under the rule, so only one answer to these items is possible.
3. Eliminate the space for an administrative file number on page 1 and a file number at the top of each subsequent page because many courts advise that they do not use file numbers for their appointed counsel.

*Form GC-011*

The advisory committee proposes a new form to implement the annual filing requirement of existing rule 7.1101(h)(3) (amended rule 7.1101(h)(4)), concerning completion of required continuing education and history of State Bar discipline and professional liability insurance coverage after an attorney's initial qualification under the rule. The form would be annually filed with the court by the end of March of each year, beginning in 2009, the first year after commencement of the continuing education requirement under rule 7.1101(f).

The text of the proposed amended rule is attached at pages 4–5.

Copies of the proposed revised form GC-010 and new form GC-011 are attached at pages 6–10.

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Attachments

**Rule Proposal**

Rule 7.1101 of the California Rules of Court would be amended, effective January 1, 2009, to read:

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**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:

\* \* \*

(7) “Counsel in private practice” includes attorneys employed by or performing services under contracts with non-profit organizations.

**(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~~ any date of ~~first~~ availability for appointment after January 1, 2008; and

(1)–(3) \* \* \*

**(c)–(g) \* \* \***

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

(1)–(2) \* \* \*

(3) Each counsel appointed or eligible for appointment by the court under this rule must immediately advise the court of any State Bar disciplinary proceeding commenced concerning him or her, and any disposition of the proceeding.

~~(3)~~(4) Beginning in 2009, each appointed counsel must certify to the court before the end of March of each year that:

1           (A) His or her history of State Bar discipline and professional liability  
2           insurance coverage has or has not changed since the date of his or  
3           her qualification certification or last continuing education  
4           certification; and

5  
6           (B) He or she has completed the continuing education required for the  
7           preceding calendar year.

8  
9           (4)(5)       Certifications required under this subdivision must be submitted  
10           to the court but are not to be filed or lodged in a case file.

11  
12       (i)       \* \* \*

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<p><b>SUPERIOR COURT OF CALIFORNIA,</b></p> <p><b>COUNTY OF</b></p> <p>STREET ADDRESS:</p> <p>MAILING ADDRESS:</p> <p>CITY AND ZIP CODE:</p>	<p><i>(Do not file or lodge in case file)</i></p> <p><b>Draft 2</b></p> <p><b>03/27/08</b></p> <p><b>Not Approved by the Judicial Council</b></p>
<p>CERTIFYING ATTORNEY _____ State Bar No.: _____</p> <p><i>(Name):</i></p>	

**CERTIFICATION OF ATTORNEY CONCERNING QUALIFICATIONS FOR COURT APPOINTMENT IN**  
 **CONSERVATORSHIPS**     **GUARDIANSHIPS**

**NOTICE TO ATTORNEYS:**

1. If you were appointed by the court in a conservatorship or guardianship matter that is pending on April 1, 2008, or if you are a deputy public defender with direct responsibility for the performance of legal services on the appointment of a county's public defender in such a matter, you must certify on or before that date that you are qualified for the appointment under rule 7.1101(b) or 7.1101(c) of the California Rules of Court.
2. On or after April 1, 2008, you must certify to the court that you are qualified under rule 7.1101(b) or 7.1101(c) before you may be appointed by the court, or may be placed in direct responsibility for the performance of legal services on appointment of a county's public defender, in a conservatorship or guardianship matter.
3. Under certain circumstances, courts with four or fewer authorized judges may waive the qualifications for appointed counsel under rule 7.1101. (See rule 7.1101(e).)

I certify as follows *(check all boxes that apply)*:

1. I was admitted to the State Bar of California on *(date)*: \_\_\_\_\_ . I am currently an active member.
2. My contact information is as follows:
  - a. Firm or employer name:
  
  - b. Address:
  
  - c. Telephone number: \_\_\_\_\_ d. Fax number: \_\_\_\_\_
  - e. E-mail address: \_\_\_\_\_
3.  I am an attorney in private practice.
  - a.  As of the date of this certification, I have no disciplinary proceedings pending with the State Bar of California and have had no discipline imposed within the 12-month period immediately preceding that date. *(Place initials here)*: \_\_\_\_\_
  - b.  I am qualified to accept appointments by the court to represent minors in probate guardianships under Probate Code section 1470 under rule 7.1101(b)(1) of the California Rules of Court, in that:
    - (1)  Within the five years immediately before the date of this certificate, I 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 child custody proceedings under the Family Code; or
    - (2)  I am qualified for appointment to represent children in juvenile dependency proceedings under local court rules required by rule 5.660 of the California Rules of Court; or
    - (3)  I am qualified for appointment to represent children in custody proceedings under the Family Code under rule 5.242 of the California Rules of Court.

**CERTIFICATION OF ATTORNEY** *(Name):*

**CONCERNING QUALIFICATIONS FOR APPOINTMENT IN**  **CONSERVATORSHIPS**  **GUARDIANSHIPS**

3. *(cont.)* c.  I am qualified to accept appointments by the court to represent conservatees or proposed conservatees under Probate Code sections 1470 or 1471 under rule 7.1101(b)(2) of the California Rules of Court, in that, within the five years immediately before the date of this certificate:
- (1)  I have represented at least three conservatees or proposed conservatees in probate or Lanterman-Petris-Short Act conservatorship proceedings; or
  - (2)  I have completed at least three of the following five tasks:
    - (A)  Represented probate conservatorship petitioners at commencement of three probate conservatorship proceedings, from initial contact with the petitioner through the appointment hearing and issuance of Letters of Conservatorship;
    - (B)  Represented a petitioner, a conservatee or a proposed conservatee, or an interested third party, in two contested probate or Lanterman-Petris-Short Act conservatorship matters *(a contested matter that qualifies under items (A) and (B) may be applied to both items)*;
    - (C)  Represented a party for whom a court could appoint counsel in a total of three matters under Probate Code sections 1470, 1471, 1954, 2356.5, 2357, 2620.2, 3140, or 3205;
    - (D)  Represented fiduciaries in three cases for settlement of a court-filed account and report, through filing, hearing, and settlement, in any combination of probate conservatorships or guardianships, decedents' estates, or trust proceedings under division 9 of the Probate Code; or
    - (E)  Prepared five wills or trusts, five durable powers of attorney for health care, and five durable powers of attorney for asset management.
- d.  I am covered by professional liability insurance in the amount of at least \$100,000 per claim and \$300,000 per year. My insurer is *(specify)*:
- e. I will, if requested, provide the case names and numbers, courts, and parties I represented in the court proceedings identified above and, if item 3c(2)(E) is checked, redacted copies of the estate planning documents prepared.
4.  I am a deputy public defender of *(name of county)*:
- a.  I would be directly responsible for performing legal services for minors in probate guardianships on the appointment of my county's public defender under Probate Code section 1470. I certify that I am qualified to perform those services under rule 7.1101(c)(1) of the California Rules of Court, in that:
    - (1)  I satisfy the experience requirements for attorneys in private practice for appointment to represent minors in probate guardianships identified in item 3b above, as shown by the boxes checked in that item *(check the box for item 3b above and as many of the boxes for items 3b(1), 3b(2), or 3b(3) as apply to you, but do not check the box for item 3)*; or
    - (2)  I have at least three years' experience representing minors in juvenile dependency or delinquency proceedings or patients, proposed conservatees, or conservatees in postcertification judicial proceedings or conservatorships under the Lanterman-Petris-Short Act.
  - b.  I would be directly responsible for performing legal services for conservatees or proposed conservatees in probate conservatorships on the appointment of my county's public defender under Probate Code sections 1470 and 1471. I certify that I am qualified to perform those services under rule 7.1101(c)(1) of the California Rules of Court, in that:
    - (1)  I satisfy the experience requirements for attorneys in private practice for appointment to represent conservatees or proposed conservatees in probate conservatorships identified in item 3c above, as shown by the boxes checked in that item *(check the box for item 3c above and as many of the boxes for items 3c(1) and 3c(2)(A)–(E) as apply to you, but do not check the box for item 3)*; or
    - (2)  I have at least three years' experience representing minors in juvenile dependency or delinquency proceedings or patients, proposed conservatees, or conservatees in postcertification judicial proceedings or conservatorships under the Lanterman-Petris-Short Act.
  - c.  I am covered by professional liability insurance in the amount of at least \$100,000 per claim and \$300,000 per year or at an equivalent level by a self-insurance program for the professional employees of my county. My insurer or self-insurance program is *(specify)*:

**CERTIFICATION OF ATTORNEY** (Name):

**CONCERNING QUALIFICATIONS FOR APPOINTMENT IN**  **CONSERVATORSHIPS**  **GUARDIANSHIPS**

- 4. (cont.) 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, redacted 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 California 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.
    - (1) Facts supporting my appointment are stated in attachment 5 to this certification. I certify that the facts stated are true and correct.
    - (2) I am covered by professional liability insurance in the amount of at least \$100,000 per claim and \$300,000 per year. My insurer is (specify):
  - c.  I am a deputy public defender who would be responsible for performing legal services on the appointment of my county's public defender.
    - (1) Facts supporting my appointment are stated in attachment 5 to this certification. I certify that the facts stated are true and correct.
    - (2) I am covered by professional liability insurance in the amount of at least \$100,000 per claim and \$300,000 per year or at an equivalent level by a self-insurance program for the professional employees of my county. My insurer or self-insurance program is (specify):
- 6.  Additional information required by the court  is provided in attachment 6.  is submitted separately with this certification.  is as follows:

Additional space provided and signature required on next page.

**CERTIFICATION OF ATTORNEY** *(Name):*

**CONCERNING QUALIFICATIONS FOR APPOINTMENT IN**  **CONSERVATORSHIPS**  **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)

<b>SUPERIOR COURT OF CALIFORNIA,</b>  <b>COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE:	<i>(Do not file or lodge in case file)</i>  <b>Draft 3</b>  <b>03/27/08</b>  <b>Not Approved by the Judicial Council</b>
CERTIFYING ATTORNEY _____ State Bar No.: _____ <i>(Name):</i>	

**ANNUAL CERTIFICATION OF COURT-APPOINTED ATTORNEY CONCERNING CONTINUING EDUCATION**

**NOTICE TO ATTORNEYS APPOINTED BY THE COURT IN PROBATE CONSERVATORSHIPS AND GUARDIANSHIPS**

- Beginning in 2008, you must complete three hours of continuing education each calendar year that qualifies for mandatory continuing legal education credit for California State Bar-certified specialists in estate planning, trust, and probate law. (See Cal. Rules of Court, rule 7.1101(f).)
- Beginning in 2009, you must certify to the court before the end of March of each year that you completed the required continuing education during the previous calendar year. (See rule 7.1101(h)(4).)

I certify as follows *(check all boxes that apply)*:

- I have no disciplinary proceedings pending with the California State Bar and have had no discipline imposed since the date of my qualification certification or my last continuing education certification.
  - I have a disciplinary proceeding pending with the California State Bar or have had discipline imposed since the date of my qualification certification or my last continuing education certification. The circumstances are described in Attachment 1c.
- My professional liability insurance or self-insurance program coverage has not changed since the date of my qualification certification or my last continuing education certification.
  - My professional liability insurance or self-insurance program coverage has changed since the date of my qualification certification or my last continuing education certification. My current coverage is described in Attachment 2b.
- My contact information is  as stated in my qualification certification or last continuing education certification.  as follows:
  - Firm or employer name:
  - Address:
  - Telephone number:
  - Fax number:
  - E-mail address:
- During calendar year \_\_\_\_\_, I completed a total of *(specify)*: \_\_\_\_\_ hours of continuing education that qualifies for mandatory continuing legal education credit for State Bar-certified specialists in estate planning, trust, and probate law, as follows:

<u>Provider</u>	<u>Subject</u>	<u>Hours</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
		Total hours: _____

I certify that the foregoing is true and correct.

Dated: \_\_\_\_\_

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



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

## Item SPR08-43 Response Form

**Title:** Probate—Guardianships and Conservatorships: Court-appointed Counsel  
(amend Cal. Rules of Court, rule 7.1101, revise form GC-010, adopt form GC-011)

- 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: \_\_\_\_\_

### To Submit Comments

Comments may be written on this form, prepared in a letter format, or submitted online. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments.

**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

**Email:** [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

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

**Fax:** (415) 865-7664, Attn: Camilla Kieliger

**DEADLINE FOR COMMENT:** 5:00 p.m., Friday, June 20, 2008

*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.*