



# Judicial Council of California

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## INVITATION TO COMMENT

### SPR23-23

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**Title**

Probate Conservatorship: Less Restrictive Alternatives

**Action Requested**

Review and submit comments by May 12, 2023

**Proposed Rules, Forms, Standards, or Statutes**

Amend Cal. Rules of Court, rules 7.1103, 10.468, and 10.478; revise form GC-312

**Proposed Effective Date**

January 1, 2024

**Proposed by**

Probate and Mental Health Advisory Committee  
Hon. Jayne Chong-Soon Lee, Chair

**Contact**

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### Executive Summary and Origin

The Probate and Mental Health Advisory Committee proposes amending three rules of court and revising one form in response to changes to conservatorship law enacted by recent legislation. The rule amendments would implement legislation that requires education on alternatives to conservatorship for judicial officers assigned to probate, probate staff attorneys, probate examiners, court investigators, and counsel appointed in probate conservatorship proceedings. Revisions to the form would implement legislation that requires the supplemental information provided by the petitioner or proposed conservator to specify clearly and discuss in detail the less restrictive alternatives to a conservatorship that were considered or tried before the filing of the petition. Additional revisions to the form would identify the person completing the form, clarify the structure of information to be provided about the reasons for conservatorship, and solicit information about the proposed conservatee's knowledge and opinion of the conservatorship.

### The Proposal

Assembly Bill 1663 (Stats. 2022, ch. 894) amended multiple provisions in the Probate Code related to conservatorship proceedings. The bill focused on two principal themes: less restrictive alternatives to conservatorship and the rights retained by a person under conservatorship, or conservatee. This proposal would address the first of these themes by amending the rules that

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.*

prescribe educational requirements for judicial officers, court staff, and appointed counsel in conservatorship proceedings revising the mandatory supplemental information form.

### **Rules requiring education on less restrictive alternatives**

Section 1456 requires the Judicial Council to develop a rule of court to address the qualifications and education of judicial officers regularly assigned to hear probate matters, court-employed probate staff attorneys, probate examiners, court investigators, and counsel appointed under section 1470 or 1471 in guardianship and conservatorship proceedings.<sup>1</sup> Effective January 1, 2008, the council adopted the required rules, since renumbered as rules 7.1103, 10.468, and 10.478, to effectuate this mandate. Rule 7.1103 provides education requirements for counsel appointed under section 1470 or 1471 in conservatorship proceedings. Rule 10.468 provides education requirements for judges and subordinate judicial officers regularly assigned to probate matters. And rule 10.478 provides education requirements for court-employed probate staff attorneys, probate examiners, and court investigators.

AB 1663 amended section 1456(a)(4) to require that, where the mandatory subject matter of annual education specified in the rules of court must include, at a minimum, “the less restrictive alternatives to conservatorship set forth in [s]ection 1800.3.” The committee therefore proposes amendments to add those less restrictive alternatives to the applicable provisions of rules 7.1103, 10.468, and 10.478.<sup>2</sup>

### **Less restrictive alternatives in the supplemental information form**

Section 1821(a) requires the petitioner or the proposed conservator to file, in addition to the petition, supplemental information explaining why appointment of a conservator is necessary. The supplemental information must be filed on a form separate from the petition form and must be confidential, made available only to parties, persons given notice of the petition who have requested the supplemental information or who have appeared in the proceedings, their attorneys, and the court. As required by the statute, the Judicial Council adopted a mandatory form, *Confidential Supplemental Information* (form GC-312), to implement these requirements.

Section 1821 specifies five categories of information to be provided in the supplemental information form. AB 1663 amended the provisions addressing each of those categories. Of the four provisions that were amended substantively, three require revisions to form GC-312.<sup>3</sup> First, section 1821(a)(1)(B) requires the information on the form to include, in addition to the location of the proposed conservatee’s residence, the nature of that residence. The committee proposes

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<sup>1</sup> All subsequent statutory references are to the Probate Code unless otherwise specified.

<sup>2</sup> In addition to the substantive amendments, the committee also proposes amending the cross-references to title 7 in rules 10.468 and 10.478 to reflect the anticipated division of title 7, effective September 1, 2023, into two separate divisions, the first for the probate rules and the second for the mental health rules.

<sup>3</sup> The proposed revisions are not highlighted on the attached form because they are extensive and the form has been reorganized, as described below.

revising renumbered item 5 on form GC-312 to add a description of the nature of the proposed conservatee's residence.

Second, section 1821(a)(1)(D) requires supplemental information about the health and social services provided to the proposed conservatee to cover the year immediately preceding the filing of the petition when the petitioner or proposed conservator has that information. The committee proposes inserting the term immediately into renumbered item 7 on form GC-312 to reflect this amendment.

Third, and most significant, section 1821(a)(1)(C) requires the supplemental information form to include more detailed and specific information about the alternatives to conservatorship that the petitioner or proposed conservator considered; reasons those alternatives were not suitable; alternatives tried, if any; and reasons the alternatives do not meet the proposed conservatee's needs. The statute requires that the alternatives considered include at least a supported decisionmaking agreement, as defined in Welfare and Institutions Code section 21001; the designation of a health care surrogate as described in section 4711; an advance health care directive under section 4670 et seq.; and a power of attorney under section 4000 et seq. (§ 1821(a)(1)(C).) The committee therefore proposes revising renumbered item 6 on form GC-312 to solicit additional, specific information about the consideration or attempt, if any, of the statutorily specified alternatives and any other alternatives, along with the reasons that each alternative is unsuitable or does not meet the proposed conservatee's needs.

In addition to the statutorily mandated revisions, the committee proposes adding item 2 to specify whether the person completing the form is the petitioner or the proposed conservator; revising items 3 and 4 to provide clearer structure to the information, required by section 1821(a)(1)(A) and (E), about the reasons that a conservatorship; and adding item 8 to request information, if known, about the proposed conservatee's knowledge and preferences regarding the conservatorship. Not only will these proposed revisions bring the form into conformity with current law, but they are also intended to present more relevant information to the court and organize that information in a format that will help the court process it more efficiently.

In summary, the committee proposes that the Judicial Council, effective January 1, 2024:

- Amend California Rules of Court, rules 7.1103, 10.468, and 10.478, to add the less restrictive alternatives to conservatorship stated in section 1800.3 to the subject matter of the education required under these rules; and
- Revise *Confidential Supplemental Information* (form GC-312) to incorporate the changes required by AB 1663's amendments to section 1821(a) and to provide more clarity and structure to the information provided on that form.

The text of the proposed rules and the proposed form are attached at pages 5–12.

## Alternatives Considered

The committee did not consider taking no action. Sections 1456 and 1821 expressly require implementation through, respectively, rules and a form. The existing rules and form no longer conform to the law and must be updated to satisfy the council's statutory mandates.

The committee considered taking action to implement other statutory amendments enacted by AB 1663 that did not immediately require revisions to existing rules or forms. Unfortunately, the committee lacks the resources to undertake these additional projects at this time. The committee will consider additional action regarding probate conservatorships in a future comment cycle.

## Fiscal and Operational Impacts

The fiscal and operational impacts of the proposal, including updating curricula for judicial branch education, are almost entirely attributable to statute. Petitioners, their attorneys if they have them, and proposed conservators are now required to specify in more depth the reasons that a conservatorship is needed. In that respect, the proposed form will assist them to do so more completely by reminding them of the issues that they must address. An increased rate of complete supplemental information forms would, at least in theory, lead to fewer continued hearings and other delays in conservatorship proceedings.

### Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

## Attachments and Links

1. Cal. Rules of Court, rules 7.1103, 10.468, and 10.478, at pages 5–8
2. Form GC-312, at pages 9–12
3. Link A: Assem. Bill 1663 (Stats. 2022, ch. 894),  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB1663](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1663)

Rules 7.1103, 10.468, and 10.478 of the California Rules of Court would be amended, effective January 1, 2024, to read:

1 **Rule 7.1103. Qualifications and annual education required for counsel appointed to**  
2 **represent a conservatee, proposed conservatee, or person alleged to lack legal**  
3 **capacity (Prob. Code, §§ 1456, 1470(a), 1471)**  
4

5 Except as provided in rule 7.1104(b), an attorney appointed to represent the interests of a  
6 conservatee, proposed conservatee, or person alleged to lack legal capacity must have  
7 met the qualifications in (a) or (b) and, in every calendar year after first availability for  
8 appointment, must meet the annual education requirements in (c).

9  
10 **(a)–(c) \* \* \***

11  
12 **(d) Subject matter and delivery of education**

13  
14 Education in the following subjects—delivered in person or by any State Bar–  
15 approved method of distance learning—may be used to satisfy this rule’s education  
16 requirements:

17  
18 **(1)–(2) \* \* \***

19  
20 **(3) Special considerations for representing an older adult or a person with a**  
21 **disability, including:**

22  
23 **(A)–(C) \* \* \***

24  
25 **(D) ~~Less restrictive~~ The less restrictive alternatives to conservatorship,**  
26 **including supported decisionmaking, stated in Probate Code section**  
27 **1800.3.**

28  
29  
30 **Rule 10.468. Content-based and hours-based education for superior court judges**  
31 **and subordinate judicial officers regularly assigned to hear probate**  
32 **proceedings**

33  
34 **(a) Definitions**

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

37  
38 **(1) “Probate proceedings” are decedents’ estates, guardianships and**  
39 **conservatorships under division 4 of the Probate Code, trust proceedings**  
40 **under division 9 of the Probate Code, and other matters governed by**  
41 **provisions of that code and the rules in division 1 of title 7 of the California**  
42 **Rules of Court.**

Rules 7.1103, 10.468, and 10.478 of the California Rules of Court would be amended, effective January 1, 2024, to read:

1           (2) \* \* \*

2

3       **(b) Content-based requirements**

4

5           (1) Judicial officers beginning a regular assignment to hear probate proceedings  
6           after the effective date of this rule, ~~—~~unless they are returning to this  
7           assignment after less than two years in another assignment, ~~—~~must  
8           complete six hours of education on probate guardianships and  
9           conservatorships, including court-supervised fiduciary accounting and the  
10          less restrictive alternatives to conservatorship stated in Probate Code section  
11          1800.3, within one year of starting the assignment.

12

13          ~~(2)–(4)~~ \* \* \*

14

15       **(c) Hours-based continuing education**

16

17           (1) In a court with five or more authorized judges, judicial officers regularly  
18           assigned to hear probate proceedings must complete 12 hours of continuing  
19           education every three-year education cycle on probate guardianships and  
20           conservatorships, including court-supervised fiduciary accounting and the  
21           less restrictive alternatives to conservatorship set forth in Probate Code  
22           section 1800.3.

23

24           (2) In a court with four or fewer authorized judges, judicial officers regularly  
25           assigned to hear probate proceedings must complete nine hours of continuing  
26           education every three-year education cycle, on probate guardianships and  
27           conservatorships, including court-supervised fiduciary accounting and the  
28           less restrictive alternatives to conservatorship stated in Probate Code section  
29           1800.3.

30

31          ~~(3)–(7)~~ \* \* \*

32

33       ~~(d)–(e)~~ \* \* \*

34

35

36       **Rule 10.478. Content-based and hours-based education for court investigators,**  
37       **probate attorneys, and probate examiners**

38

39       **(a) Definitions**

40

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

43

Rules 7.1103, 10.468, and 10.478 of the California Rules of Court would be amended, effective January 1, 2024, to read:

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(1)–(2) \* \* \*

(3) A “probate examiner” is a person employed by a court to review filings in probate proceedings in order to assist the court and the parties to get the filed matters properly ready for consideration by the court in accordance with the requirements of the Probate Code, the rules in division 1 of title 7 of the California Rules of Court, and the court’s local rules;

(4) “Probate proceedings” are decedents’ estates, guardianships and conservatorships under division 4 of the Probate Code, trust proceedings under division 9 of the Probate Code, and other matters governed by provisions of that code and the rules in division 1 of title 7 of the California Rules of Court;

**(b) Content-based requirements for court investigators**

(1) Court investigators must complete 12 hours of education within one year of their start date after January 1, 2008. The education must include the following general topics:

(A)–(D) \* \* \*

(E) Accessing and evaluating community resources for children and mentally impaired elderly or developmentally disabled adults; ~~and~~

(F) Interviewing children and persons with mental function or communication deficits; and

(G) The less restrictive alternatives to conservatorship stated in Probate Code section 1800.3.

(2)–(4) \* \* \*

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

(1) Probate attorneys must complete 12 hours of education within six months of their start date after January 1, 2008, in probate-related topics, including guardianships, conservatorships, ~~and~~ court-supervised fiduciary accounting, and the less restrictive alternatives to conservatorship stated in Probate Code section 1800.3.

(2)–(4) \* \* \*

Rules 7.1103, 10.468, and 10.478 of the California Rules of Court would be amended, effective January 1, 2024, to read:

1 **(d) Content-based education for probate examiners**

2  
3 (1) Probate examiners must complete 20 hours of education within one year of  
4 their start date after January 1, 2008, in probate-related topics, of which 12  
5 hours must be in guardianships and conservatorships, including court-  
6 appointed fiduciary accounting and the less restrictive alternatives to  
7 conservatorship stated in Probate Code section 1800.3.  
8

9 (2)–(4) \* \* \*

10  
11 **(e) \* \* \***

12  
13 **(f) Hours-based education for probate attorneys**

14  
15 (1) Probate attorneys must complete 12 hours of continuing education each two-  
16 year education cycle in probate-related subjects, of which six hours per year  
17 must be in guardianships and conservatorships, including court-supervised  
18 fiduciary accounting and the less restrictive alternatives to conservatorship  
19 stated in Probate Code section 1800.3. The education cycle is determined in  
20 the same manner as in rule 10.474(c)(3).  
21

22 (2)–(4) \* \* \*

23  
24 **(g) Hours-based education for probate examiners**

25  
26 (1) Probate examiners must complete 12 hours of continuing education each two-  
27 year education cycle in probate-related subjects, of which six hours per year  
28 must be in guardianships and conservatorships, including court-appointed  
29 fiduciary accounting and the less restrictive alternatives to conservatorship  
30 stated in Probate Code section 1800.3. The education cycle is determined in  
31 the same manner as in rule 10.474(c)(3).  
32

33 (2)–(4) \* \* \*

34  
35 **(h)–(i) \* \* \***

# CONFIDENTIAL (DO NOT ATTACH TO PETITION)

GC-312

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:  STATE: ZIP CODE: FAX NO.:	FOR COURT USE ONLY
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CONSERVATORSHIP OF (name):  PROPOSED CONSERVATEE		
<b>CONFIDENTIAL SUPPLEMENTAL INFORMATION</b> <input type="checkbox"/> Limited Conservatorship of <input type="checkbox"/> Person <input type="checkbox"/> Estate		CASE NUMBER:

1. a. **Proposed conservatee (name):**

b. Date of birth:

c. Age:

d. Social security number:

HEARING DATE:

DEPT.:

TIME:

2. I, the person completing this form, am the (check each that applies)  petitioner  proposed conservator in this proceeding.

3.  **ABILITY TO PROVIDE PROPERLY FOR PERSONAL NEEDS\*** The following facts and circumstances supplement and support the petition's assertions that the proposed conservatee is unable to provide properly for personal needs for physical health, food, clothing, or shelter (specify in detail, expanding on the reasons in the petition; give specific examples from the proposed conservatee's daily life showing significant, ongoing behavior patterns):

a. Physical health (give examples showing the proposed conservatee's inability to move and exercise, maintain personal hygiene, make and attend routine medical appointments, take medication as prescribed, etc.):

Continued in Attachment 3a.

b. Food (give examples showing the proposed conservatee's inability to eat or drink, prepare food, shop for food, etc.):

Continued in Attachment 3b.

c. Clothing (give examples showing the proposed conservatee's inability to get dressed, do laundry, shop for clothing, etc.):

Continued in Attachment 3c.

d. Shelter (give examples showing the proposed conservatee's inability to pay rent or mortgage, pay utility bills, keep house, etc.):

Continued in Attachment 3d.

\* If any part of item 3 does not apply to the proposed conservatorship, skip it, check box 3 in item 10, and explain why it does not apply.

CONSERVATORSHIP OF (name):  PROPOSED CONSERVATEE	CASE NUMBER:
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4.  **ABILITY TO MANAGE OWN FINANCIAL RESOURCES\*** The following facts and circumstances supplement the petition's assertions that the proposed conservatee is substantially unable to manage that person's own financial resources or to resist fraud or undue influence (*specify in detail, expanding on the reasons in the petition; give specific examples from the proposed conservatee's daily life showing significant, ongoing behavior patterns*):

a. Financial resources (*give examples of the proposed conservatee's substantial inability to manage money or property*):

Continued in Attachment 4a.

b. Fraud or undue influence (*give examples of the proposed conservatee's substantial inability to resist fraud or undue influence*):

Continued in Attachment 4b.

\* If any part of item 4 does not apply to the proposed conservatorship, skip it, check box 4 in item 10, and explain why it does not apply.

5. **RESIDENCE\*** ("Residence" means the place that a person would usually describe as "home"; for example, owned real property or a long-term rental where the proposed conservatee has lived for some time, lives currently, and would continue to live, if possible.)

a. The proposed conservatee's **residence** is (*for example, owned or rented, single-family home or apartment in multiunit building*):

b. The proposed conservatee's **residence** is located at (*street address, city, state*):

c. The proposed conservatee is **currently located** at  the residence in item 4b  other (*street address, city, state*):

d. **Ability to live in residence** The proposed conservatee is

(1)  **living** in the residence, and

- (a)  is able to continue living there unless circumstances change.
- (b)  will need to be moved after a conservator is appointed (*give specific reasons in item 5e*).
- (c)  other (*specify and give reasons in item 5e*).

(2)  **not living** in the residence, and

- (a)  will be able to return home by (*date*): *(explain in item 5e)*
- (b)  will not return to live there (*give specific reasons in item 5e*).
- (c)  other (*specify and give reasons in item 5e*).

e. Specific reasons supporting the determination in item 5d about the proposed conservatee's ability to live in the residence:

Continued in Attachment 5e.

\* If any part of item 5 does not apply to the proposed conservatorship, skip it, check box 5 in item 10, and explain why it does not apply.

CONSERVATORSHIP OF <i>(name):</i>  PROPOSED CONSERVATEE	CASE NUMBER:
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6. **ALTERNATIVES TO CONSERVATORSHIP\*** I have considered the following alternatives to conservatorship and determined that they are unsuitable or do not meet the proposed conservatee's needs (*check the box next to each alternative you considered; state whether you tried it and, if so, for how long; and explain why it is unsuitable or does not meet the conservatee's needs*):

a.  A supported decisionmaking agreement, as defined in Welfare and Institutions Code section 21001

Continued in Attachment 6a.

b.  Designation of a health care surrogate under Probate Code section 4711

Continued in Attachment 6b.

c.  An advance health care directive Probate Code section 4600 et seq.

Continued in Attachment 6c.

d.  A power of attorney (general or limited, durable or nondurable) under Probate Code section 4000 et seq.

Continued in Attachment 6d.

e.  A trust, as defined in Probate Code section 82

Continued in Attachment 6e.

f.  Other alternatives considered (*describe each and explain why it is unsuitable or does not meet the conservatee's needs*):

Continued in Attachment 6f.

\* If any part of item 6 does not apply to the proposed conservatorship, skip it, check box 6 in item 10, and explain why it does not apply.

CONSERVATORSHIP OF (name):  PROPOSED CONSERVATEE	CASE NUMBER:
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7. HEALTH OR SOCIAL SERVICES PROVIDED\* (complete each that applies):

a.  In the year immediately before the petition was filed, the proposed conservatee received the following **health services**, for example, doctor's visits, medical testing, hospitalizations, surgeries, administration of medication, wound care, or therapy. (Describe the services and the circumstances in which they were provided):

Continued in Attachment 7a.

b.  In the year immediately before the petition was filed, the proposed conservatee received the following **social services**, for example, companionship, assistance with personal hygiene, housekeeping, shopping, cooking, or assistance managing finances. (Describe the services and the circumstances in which they were provided):

Continued in Attachment 7b.

c.  I do not know, and cannot reasonably find out, what, if any,  health services  social services were provided to the proposed conservatee in the year before the petition was filed.

\* If any part of item 7 does not apply to the proposed conservatorship, skip it, check box 7 in item 10, and explain why it does not apply.

8. KNOWLEDGE AND PREFERENCES The proposed conservatee (check all that apply):

a.  knows about  does not know about the proposed conservatorship.  I don't know.  
b.  agrees with  does not agree with the proposed conservatorship.  I don't know.  Not applicable.

9. SOURCE OF INFORMATION The facts, circumstances, and conclusions stated on this form are based on (check all that apply):

a. for item 3,  my own personal knowledge  an affidavit (declaration) by another person, attached as Attachment 3.  
b. for item 4,  my own personal knowledge  an affidavit (declaration) by another person, attached as Attachment 4.  
c. for item 5,  my own personal knowledge  an affidavit (declaration) by another person, attached as Attachment 5.  
d. for item 6,  my own personal knowledge  an affidavit (declaration) by another person, attached as Attachment 6.  
e. for item 7,  my own personal knowledge  an affidavit (declaration) by another person, attached as Attachment 7.

10. ITEMS THAT DO NOT APPLY The following items, or parts of those items, on this form do not apply to the proposed conservatorship (for each item checked, explain why that item, or part of that item, does not apply to the proposed conservatorship):

3  4  5  6  7

Continued on Attachment 10.

11. Number of pages attached: \_\_\_\_\_

DECLARATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

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